

UNCT Myanmar Submission to UPR (March 2015)

This submission by the UN in Myanmar does not intend to be comprehensive or exhaustive. Comments and recommendations have been prioritised around specific areas in which the UN in Myanmar has concentrated its programming and advocacy, within its interim repositioning country strategy. The submission does not elaborate either on issues that have already been covered in other reports on the situation of human rights in the country, including those from the Special Rapporteur on the Situation of Human Rights in Myanmar or specific reports on Myanmar by the UN Secretary General.

CHAPTER I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

During the review period Myanmar ratified/acceded to the Convention on the Rights of Persons with Disabilities (CRPD) in 2011 (*UPR recommendation 106.3*); Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography in 2012 (*UPR recommendation 106.10*); ILO Convention 182 on worst forms of child labour in 2013.

B. Constitutional and legislative framework

Many recommendations to Myanmar in the first UPR cycle highlighted the need for legislative reform to bring laws in line with international human rights standards. The period under review has seen the first session of Parliament commence operations after the 2010 elections, and increasingly assume an active legislature role. More than 120 laws have been promulgated since 2011, and many more are in the pipeline. At the same time, Myanmar has recognized the need for more comprehensive review of existing laws and has begun the process of coordinating between the various branches of government to conduct such a review. The UN in Myanmar recognises the need for national dialogue, including with ethnic groups and CSOs, to further align the country's constitutional and legislative framework with its effort to build a peaceful, inclusive, and people-centred society.

As of May 2014, 136 laws had been identified as requiring revision by the relevant ministry and that this process should be concluded by the end of the first parliamentary session. Many of these laws have represented advances in the promotion and protection of human rights, such as the law establishing the Myanmar National Human Rights Commission which largely conforms to the Paris Principles. Since the Labour Organization Law entered into force in 2012, the number of registered labour organizations has grown steadily. As at January 2015, there were 1,517 basic labour organizations, 58 township labour organizations and 4 federations (all in maritime sectors), as well as 28 basic employers' organizations, one township employers' organization and one Employers' Federation (maritime).

Specific comments below focus on important opportunities to further promote human rights, as well as specific concerns on some aspects of the constitutional and legislative framework that might create set back in the protection of human rights. They belong to areas prioritised by the UN in Myanmar in its current country strategy.

Since the end of 2013, the Government reinvigorated the review of the existing 1993 Child Law. As of February 2015, the draft law has been finalized and consultations with wider government, civil society and subsequent parliamentary processes are planned. The Draft Law presents significant welcomed advances for children, including the age definition and increase in the age criminal responsibility in line with the CRC. It has yet to tackle the issue of the right of every child to be registered at birth, and refer to a mechanism for a child to acquire nationality.

In 2012, a Comprehensive Education Sector Review (CESR) was launched providing the evidence base to guide new legislation, policy, and drafting of the National Education Sector Plan (NESP), 2016-2021. New education laws are currently under development and proposed for debate in the Parliamentary session of March 2015. Draft laws represent an opportunity to promote free, and compulsory primary education, multi-lingual education including in ethnic languages, inclusive education for children with disabilities, as well as rights of associations for teachers and staff in conformity with the UNESCO-ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Myanmar in 1955.

A review of legislation relating to the rights of people living with HIV and AIDS was undertaken and has highlighted specific provisions in current legislation that hamper access to prevention and treatment for people at risk of or living

with HIV and AIDs, including the current 1993 National Drugs Law which prohibits harm reduction programmes for drug users.

A set of “Protection of Race and Religion Bills” proposed to the Parliament which cover areas on religious conversion, inter-faith marriage, monogamy and family planning have raised grave concerns, including from a child rights and women’s rights perspectives, which have been raised by the UN during consultation processes with government and Parliamentarians. The Buddhist Women’s Special Marriage Bill restricts the right to marry, and places restrictions only on Buddhist women wishing to marry outside their faith, while placing no such restrictions on Buddhist men; places continued surveillance over non-Buddhist husbands; denies non-Buddhist fathers custody of children under all circumstances. The Bill thus violates the UDHR, the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) and the CRC, as well as Constitutional provisions on non-discrimination and equality. From a child rights perspective, state control over family planning and birth spacing would impact on the registration of the birth of children, with risks of abandonment of children, an increase in the number of children being admitted into institutional care, infanticide of unwanted children, and discrimination based on sex or disability. It will contravene the CRC which ensures governments work to develop all children to their full potential. From women’s rights perspective, it violates women’s reproductive rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, guaranteed under Article 16 of CEDAW. Moreover, the focus of the population control bill on particular areas raise concerns that they will be targeted to particular ethnic and religious groups. At time of writing, the UN is informed that the population control bill has been passed by both houses of Parliament separately and due to be considered by the bicameral Parliament.

The 2008 Myanmar Constitution provides for non-discrimination on the basis of sex (Article 348). However, there are other sections of the Constitution that decrease the value of this provision, in particular, Chapter 8 of the Constitution provides that there shall be no discrimination in government appointments, but that “nothing in this section shall prevent appointment of men to the positions that are naturally suitable for men.” This provision is applicable to appointments in the army which hampers political representation of women in the government and in the parliament.

Recommendation(s): In accordance with recommendations provided to the Government by the UN in Myanmar, Ratify protocols to international conventions such as the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict; Adopt a comprehensive Child Law that ensures compliance with the CRC and other sources of human rights and humanitarian law; Ensure that guiding principles of CRC, particularly non-discrimination and best interests principles, are well enshrined in the national Child Law; Include the right in CRC of every child to be registered at birth; include the right of every child to acquire a nationality through appropriate mechanism; Ensure a broad consultation process with civil society; include specific provisions relating to children in armed conflict; after the adoption of the new Child Law, review other legislation (including religious and customary laws) to ensure coherence; Adopt an education law that clearly spells out the right to free and compulsory education, inclusive education for children with disabilities, the right to multilingual education ,and the banning of corporal punishment in all education facilities; The right of teachers, staff in educational institutions and university students to form or join organizations, but also to organize their administration and activities and formulate their programmes free from interference by the public authorities must be ensured and implemented. Ensure consistency between the National Education law and the Labour Organization Law; The “Protection of Race and Religion Bills” package be brought in line with international human rights law; Review Chapter 8 of the Constitution to allow for equal representation of men and women in the Parliament Review and amend the 1993 National Drug Law to allow for harm reduction programmes.

CHAPTER II. IMPLEMENTATION OF THE INTERNATIONAL HUMAN RIGHTS OBLIGATIONS, TAKING INTO ACCOUNT APPLICABLE INTERNATIONAL HUMANITARIAN LAW

A. Equality and non-discrimination

The following comments and recommendations summarize key issues and recommendations that the UN in Myanmar has prioritised for its programming and advocacy.

1. Birth registration

Establishment of the Birth Registration Coordination Committee has strengthened coordination between departments and improved service delivery. Successful campaigns in Magwe, Chin and Mon States have been undertaken. The Government has also taken positive steps to harness information and communications technology (ICT) to create permanent records of registered children. Around 1.6 million children - three out of ten children aged under five years

- however remain unregistered with services still limited in rural and remote areas and for children born abroad returning to Myanmar.¹ A birth certificate is key for the realisation of other rights such as health and education. It does not trigger automatic acquisition of nationality, which must be considered through a distinct mechanism.

Recommendation(s): *Register all children at birth and provide a birth certificate regardless of ethnicity and place of birth; Designate a Civil Registrar General with overall coordination responsibility; Establish a legal framework for birth registration within a comprehensive system of civil registration.*

2. Rights of Ethnic and Religious Groups in Rakhine State

Rakhine State is the second poorest state in Myanmar and it suffers from decade-long complex humanitarian needs and unaddressed development needs. The populations of Rakhine State have over decades suffered from multiple deprivations and rights violations. Indicators in child health, nutrition, education and water and sanitation are significantly lower than in other parts of the country, across Rakhine State, according to data gathered prior to the 2012 tensions.

Within this context, the group self-identifying themselves as Rohingya and referred to by the Government as Bengali in particular suffer from multiple forms of discrimination. Restriction on freedom of movements and local orders continue to discriminate against Muslim populations, including over 140,000 displaced persons, in Rakhine. Such restriction undermine a broad range of rights such as rights to health, education, protection, privacy and family life, as well as to socio-economic opportunities. They do not apply to other ethnic groups residing in anywhere else in Myanmar. Many of these authoritative directions/instructions issued in the 1990s for northern Rakhine State continue to be applied without a clear legal or judicial basis.

The local orders, which restrict the movement of Muslim populations in northern Rakhine State, as well as the segregation of communities following the 2012 violence has had a negative impact on the ability to access education, particularly for children. In addition, their lack of birth certificates or citizenship status also bars them from attending certain higher education facilities for technical subjects such as medicine, dentistry, paramedical science, nursing, various institutes of technology and computing, as well as the nation's maritime university and aerospace engineering university, among others. The use of villagers for compulsory labour such as road construction, provision of sentry duties and paddy cultivation continued in northern Rakhine State during the reporting period. Not only adults but also children were subjected to forced labour which is mainly demanded by Tatmadaw regiments in Buthidaung as well as a few locations in the northern part of Maungdaw township. Since its creation in 2014, the Border Guard Police has also requested for forced labour in some limited locations. While the use of forced labour has, overall, decreased since the disbandment of NaSaKa in July 2013, the number of villagers used per year still remains extremely high, over 18,000 in the second half of 2013 alone. Of these instances, over 8,500 were children and some 1,900 were between the ages of 5 and 11 years old. There was a further 7,700 recorded incidents throughout 2014, of these some 1,500 instances involving children over 11 years old.

Recommendation(s): *There is an urgent need to address the long overdue challenges and deprivations in Rakhine State through adequate development plans to improve equal access to quality basic services and economic opportunities for all populations in Rakhine State and to adequately address ongoing rights violations; All local orders that specifically target one particular ethnic and/or religious group limiting their basic rights should be revoked with immediate effect; The movement restrictions imposed on ethnic and religious groups in Rakhine State should be revoked with immediate effect, and these communities should be able to travel to earn a livelihood, access healthcare and education; For persons arrested and detained for violating the local orders, the measures must be proportional to the offence, and there should be an avoidance of the use of detention as a mechanism to put pressure on the population for their compliance; Dignified conditions in detention must be guaranteed, particularly cultural and religious sensitive practices, and a respect physical integrity; To end the use of forced labour by government institutions in Rakhine; The local order on marriage in Rakhine State, including the limitation on number of children per married couple, should be revoked with immediate effect; All children must be registered, as an essential form of protection, irrespective of the marital status of their parents or number of children of the parents.*

3. People living with HIV and other affected populations

The 2008 Myanmar Constitution² enshrines the 'right to health' for every citizen (Article 367). Contrary to this provision, acts of stigma and discrimination towards people living with HIV (PLHIV), men who have sex with men (MSM), sex workers (SWs) and people who inject drugs (PWID), by health care providers is a common occurrence. This leaves affected communities fearful of accessing health services, further impacting on their health.

Sex workers, men who have sex with men, transgender people and people who inject drugs are subject to frequent harassment, victimisation and difficulties created by law enforcement officer. This includes misuse of laws and corruption. Violence committed by police personnel, including physical, sexual, economic and emotional violence, was the most frequently reported type of violence experienced by sex workers – male, female and transgender.³ Harassment and instances of violence lead many communities to head underground and not benefiting from prevention programmes. The situation directly increases their risk to HIV infections and further onwards transmission. Sexual diversity group have also been targeted for bullying, harassment and discrimination. Section 377 of the Penal Code, "Of Unnatural Offences", was frequently used to intimidate and extort male and transgender sex workers for free sex, information, money and possessions. The existence of this provision stigmatizes homosexuals and further prevents them from accessing their fundamental rights.

There is no law in Myanmar prohibiting discrimination in the workplace on the grounds of HIV status. Contrary to Article 349 of the 2008 Constitution, which states that every citizen shall have equal opportunity to occupation, trade, business and public employment; PLHIV report denial of employment, being bypassed for promotions and dismissal⁴. Pre-employment testing for HIV and hepatitis B is required by many employers, with no provision for pre or post-test counseling. Some employees are not given sufficient leave to enable them to access health services while others are denied work entitlements such as medical pension as well as termination from current employment. Furthermore, there have been reports of taxi drivers being denied taxi licences following compulsory HIV tests⁵.

Recommendation(s): *Undertake further assessments, systematic recording and documentation of bullying, harassment and discrimination based on gender and sexual orientation of a person; Conduct more activities to raise awareness and to prevent homophobic bullying and discrimination based on gender and sexual orientation in public and private spheres including in schools and institutions⁶; Repeal/Amend section 377 of the Penal Code; Institution of legal protection for PLHIV in respect of their right to work with no HIV testing condition in employment; Special provision to be made for health insurance rights for employees living with HIV.⁷*

4. Gender equality

One of the most significant initiatives demonstrating the Government's commitment to gender equality and women's empowerment is the development of a 10-year National Strategic Plan for the Advancement of Women (NSPAW) 2013-2022, launched by the Ministry on 3 October 2013. The Department of Social Welfare (DSW) of the Ministry of Social Welfare, Relief and Resettlement (MSWRR) supported by the UN Gender Theme Group (UNG TG) and Gender Equality Network (GEN) began developing this plan in 2010.

The National Strategic Plan for the Advancement of Women (NSPAW) is anchored in the 2008 Constitution of Myanmar, CEDAW and the 12 priority areas of the Beijing Platform for Action, 1995. The goal and objectives of the NSPAW are that "all women in Myanmar are empowered and able to fully enjoy their rights with the support of the Government of the Republic of the Union of Myanmar and that enabling systems, structures and practices are created for the advancement of women, gender equality and the realization of women's rights".

The Plan outlines a set of strategic objectives for women's advancement in the 12 priority areas of the Beijing Platform for Action, 1995 and provides the basis for capacity development and policy and programme formulation and implementation across different areas of women's lives and different government sectors and departments. This has immense potential to ensure that gender equality and women's rights are well addressed in the reform agenda. (**UPR recommendation 105.10**)

Myanmar has achieved gender parity in primary, secondary and tertiary education. The ratio of girls to boys enrolled in primary education, or the Gender Parity Index (GPI), as measured by net enrolment ratio, has increased from 98% in 2000 to 104% in 2010. The ratio of girls to boys enrolled in secondary education has increased from 99% in 2000 to 105% in 2010. However, the overall participation rate in secondary education is still low and inequitable. The gross enrolment rate for secondary education was estimated to be 53% in 2008.

Although the female labour force participation rate has increased, more women than men are found in vulnerable employment in women-oriented sectors and women continue to shoulder the responsibility of unpaid care work, despite their increasing participation in the paid workforce. Further, while the minimum wage law has been enacted to achieve equal wages between women and men, a wide gap remains between men and women in higher ranks of paid employment, with women concentrated in lower ranks and lower-skilled jobs. While women comprise about half of all staff in state administrative organizations and ministries, they are concentrated in lower-level positions. In 2009-

2010, women occupied 36 per cent of senior level posts. Disparities in wages also exist between men and women, both as remuneration gap as can be seen in informal sector, and advancement gaps which can be seen in both sectors. Women may be paid less for a same type of job or may not be considered for higher-paid jobs in some fields of work. Considering the gender parity in enrolment at primary and secondary school levels and the larger proportion of women in higher education, the differences in male-female labour participation rates and women's under employment is a concern. While this gap between women's education and employment begs more rigorous exploration, it certainly points to the inadequate realization of women's rights and lack of optimization of women's potential for sustainable human development.

The Government has been promoting women's participation in political and decision making level. The new government has assigned ministerial and deputy ministerial positions to more women. Presently 8 women hold cabinet positions at the Union level. These include 2 women Union Ministers (Union Minister MSWRR and Union Minister, Ministry of Education) out of 36 union ministerial positions and 6 Deputy Ministers - Deputy Ministers in the MSWRR (1); Ministry of Health (1), Ministry of Culture (1), Ministry of Forestry and Environmental Conservation (1), Ministry of National Planning and Economic Development (1) and Ministry of Labour, Employment and Social Security (1). At least 3 of these 6 are non-conventional ministries for women to hold senior leadership positions. Though the ratio of women's participation in the Government Organizations and Ministries is increasing year by year, female employed at Director Level or equal and above post is still low. The rate of female representatives in the respective Hluttaws (Parliament) is still quite low in comparison with other countries in the Region. There is also need to record the situation of women's participation in different levels and sectors in terms of age, race, urban and rural areas.

Women have been adversely impacted by Myanmar's 60 year-old conflict. This includes suffering loss of land and other economic assets, coping with the economic, social, emotional stresses of widowhood and female household headship in crisis, sexual and gender based violence. Women have also contributed to conflict prevention, peace promotion and peace building in numerous ways. However women and their priorities are poorly represented in Myanmar's current peace process.

***Recommendation(s):** Provide more and decent employment for women in non-traditional sectors and reduce the responsibility of unpaid care work by introducing labour-saving domestic appliances, public services and promoting a culture of shared domestic responsibility between men and women in the family; Build women's capacity to assume senior leadership positions in the legislature, executive and the security and justice sectors; Increase women's participation in different roles in the current nationwide ceasefire negotiations, the drafting of the framework for political dialogue and the dialogue itself; Incorporate women's priorities in the nationwide ceasefire agreement and in long term peace agreements.*

B. Right to life, liberty and security of the person

1. Violence against children and women

The Government has taken steps to address violence against children including through the incorporation of a broader range of abuses against children, including corporal punishment, subject to criminal accountability, in the draft bill of the revised Child Law. The ongoing development of a social work Case Management System by the DSW and planned deployment of government case managers to 27 townships in 2015 will play a crucial role in ensuring a child protection system that identifies and responds to violence. There continues to be a lack of verifiable data on violence against children in Myanmar and reporting remains low due to the sensitive nature of the topic. There is a need for national policy on child protection, and for increased dedicated human and financial resources for prevention and response to violence against children.⁸

To-date, there has been no systematic effort in Myanmar to collect comprehensive national data on the incidence or characteristics of violence against women. However, there are a number of smaller scale studies and surveys on domestic violence that offer valuable data on its prevalence and manifestations. Although there are sections of the 1861 Penal Code which pertain to sexual and gender-based violence, this is not implemented by the Government through the justice system. Section 375 of the 1861 Penal Code stipulates that a man is able to have sexual intercourse with his wife, even without her consent. As such, women are unable to protect themselves against HIV, where a husband may have contracted the infection outside the marriage.

The Government has acknowledged the issue of violence against women in Myanmar and has completed drafting a law to prevent all forms of violence against women and girls that in its current form addresses prevention, protection,

prosecution, punishment, redress and reparations. This law will supersede the limited and discriminatory provisions of the Penal Code that govern sexual and gender based violence. Moreover the government aims to improve systems,, structures and practices to eliminate all forms of violence against women and girls and to respond to the needs of women and girls affected by violence under the National Strategic Plan for Advancement of Women (2013-2022). **(UPR recommendation 105.8)**

Recommendation(s): *Develop and implement a national child protection policy; Increase human and financial resources to support the implementation of the government social work case management system; Undertake comprehensive study on violence against children; Adopt and implement Law to Prevent Violence against Women; Make available services to survivors of violence against women.*

2. Children and Armed Conflict

Since the last UPR, progress has been made in areas of identification, discharge and reintegration of child soldiers with the signing, in 2012, of a Joint Action Plan (JAP) with the County Task Force on Monitoring and Reporting (CTFMR), to end the recruitment and use of children in the Government's armed forces. In the period under review, 726 children and young people were discharged. A nationwide public awareness campaign has been critical in informing the general public of the prohibition of recruiting children. There is regular cooperation with the UN and the Tatmadaw has issued a number of clear directives dealing with prohibition of underage recruitment, strengthened recruitment procedures and accountability measures. In addition they have conducted widespread trainings for military personnel and disseminated information across all battalions, leading to increased implementation of the JAP. **(UPR recommendation 106.42, 106.43)** . Despite progress, children continue to suffer from ongoing conflict. The Tatmadaw and seven ethnic armed groups⁹ have been listed by the UN Secretary-General as persistent perpetrators of recruitment and use of children. Further details can be found in the Secretary General's report on children and armed conflict.

Recommendation(s): *Continue to engage with all stakeholders to implement the Action Plans to end use and recruitment of child soldiers as well as the Strategic Action Plan to end forced labour by 2015; Systematically identify children in the Tatmadaw, including Border Guard Forces, and release through the official discharge process; Review current recruitment/age-verification procedures to strengthen prevention of child recruitment; Strengthen the legal human rights framework through the inclusion of a robust Children and Armed Conflict chapter into the revised Child Law with a specific reference to the criminalisation of all Grave Violations and ensure prosecution (under military or civil law) of perpetrators of underage recruitment; Ratify the Optional Protocol on the Involvement of Children in Armed Conflict; actively engage with the CTFMR to end and prevent all Grave Violations in line with relevant Security Council resolutions and the Joint Action Plan; Secure the commitment of the seven Non-State Armed Groups listed by the S-G's Annual Report on Children and armed Conflict, and support CTFMR engagement with the Non-State Armed Groups, with the aim of developing and signing Action Plans to end the Use and Recruitment of Children.*

3. Violations of International Humanitarian Law and the Displaced Population in Kachin

Following the outbreak of violence between the Kachin Independence Army (KIA) and the Tatmadaw in Kachin State in mid-2011, civilian lives have been lost and some 100,000 people remain displaced in Kachin and northern Shan States across over 130 camps for internally displaced persons (IDPs). The fighting in 2014 resulted in further displacement of thousands of people, in certain cases pushing IDPs to move multiple times. Violations against civilians during outbreaks of fighting include: arrest and torture of young men; villagers taken and used as guides and porters; restricted humanitarian access to civilians; and the killing and maiming of civilians.

(a) Civilian access to safety and security; humanitarian access- During clashes between the Tatmadaw and KIA in January 2015, there were several incidents where civilians were denied access to safety and security. Access to affected communities in government-controlled areas has generally been feasible, however international agencies must rely on cross-line missions with permission from the Government and the Kachin Independence Organisation (KIO) to access communities in non-government controlled areas. Often Government approval is not forthcoming or it is conditioned in a way that impacts on the impartiality of such humanitarian missions. Humanitarian access to government controlled areas affected by conflict has at times been denied.

(b) Torture; killing and maiming of civilians- Several reports were received in 2013 regarding allegations of torture and ill-treatment against civilians while in detention and/or under interrogation by fighting parties. Several reports were also received between 2013 and 2014 of civilians, including medical personnel while providing assistance to soldiers, being maimed and/or killed as a result of the fighting between the Tatmadaw and KIA.

Recommendation(s): Urgent and decisive steps must be taken by the Government to prevent further displacement; Ensure that civilians are protected during conflict, that civilians are distinguished from combatants without the use of torture and arbitrary arrest; Urgent measures must be taken by the Government with all institutions across the country to combat the uses of forced labour through the strict application of the existing law¹⁰ as a standard practice and culturally, in order to achieve the JAP by the end of 2015; Greater awareness against the use of forced labour according to the law and international standards must be implemented to ensure authorities understand their responsibilities, and for the public to know their rights.

C. Administration of justice, including impunity, and the rule of law

1. Children in contact with the Justice System

Increased cooperation has been noted with UNICEF and other partners to provide trainings for the judiciary, police and law officers (prosecutors). (*UPR recommendation 104.9, 104.38*) However, with an exception of some child-friendly policing training modules, most of the capacity building efforts have not yet become part of state-owned capacity building plan to contribute to specialization of the justice system professionals. The jurisdiction of two existing juvenile courts in Myanmar extends only to cases of children in conflict with the law in two cities¹¹, leaving child victims and witnesses within the same areas, and other children elsewhere in the country under the jurisdiction of general courts. The Child Protection Task Forces created by the Myanmar Police Force under its anti-trafficking police division remain understaffed and without clearly defined responsibilities.

The 1993 Child Law sets the minimum age of criminal responsibility (MACR) at 7 years – too low in light of international law and best practice standards.¹² Mechanisms related to age verification for persons in contact with the law, and procedures of nationality confirmation for victims of trafficking identified in other countries remain complicated and lengthy, potentially denying children procedural and fundamental rights, and pose significant protection risks, such as statelessness and family separation in case of trafficking victims.

Recommendation(s): Set MACR at 12 years as per CRC Committee recommendation; Allocate human and institutional resources to ensure further specialisation of all pillars of the justice system, and increase geographical access to specialized institutions and practitioners; Define criminal justice/rule of law strategy and mainstream child-friendly justice principles in all justice reforms; Enshrine in the revised Child Law the principle of using detention for juveniles as a measure of last resort, for the shortest period of time possible; Improve procedures of age verification, and collaborate with ASEAN member states in the format of existing regional cooperation mechanisms to strengthen, harmonize and expedite procedures of nationality verification for trafficking victims.

2. Access to Justice and Fair Trial standards

Many criminal defendants continue to be unrepresented, and yet criminal cases constitute the majority of the caseload of the courts. Currently there is only limited state-funded legal aid provided in cases which could attract capital punishment, and most legal assistance is provided by private lawyers and civil society organizations. In January 2015, a Legal Aid bill was introduced to parliament purporting to give effect to the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Positively, the draft includes a focus on priority measures for children and disabled persons. The UN in Myanmar submitted comments on the bill. Current legal aid providers have expressed concern about potential negative effects of imposing mandatory registration requirements that would limit the activities of current non-government service providers.

Recommendation: Expand the scope of state-funded legal aid services and ensure protection for current non-government services, especially those provided for women and vulnerable groups.

Since 2013 the judiciary and the Office of the Union Attorney General have both significantly increased their cooperation with a range of UN and other international assistance providers on capacity development, including in their institutional programmes for new recruits and regular refresher courses. Guest lectures on human rights and rule of law principles, right to counsel and other access to justice issues, are becoming more commonplace and are beginning to feature in institutional training curricula. In November 2014, the Supreme Court published its first Strategic Plan for 2015-2017 that prioritizes improving judicial integrity, independence and fairness, as well as ensuring greater public access and awareness. In practice, costs, social stigma and fear of engaging with state institutions continue to affect women and vulnerable groups such as children, sex workers and ethnic minorities¹³ Public trust in courts and police remains very low, whereas local authorities such as township administrators and village tract or other community leaders often play a central role in resolving disputes. There are reports of high levels

of sexual and gender based violence and discrimination which remain unaddressed by formal and informal justice systems.

***Recommendation(s):** Incorporate human rights principles into justice-sector core training programmes for new recruits and current justice officials, including local administrators and community leaders; Increase the number of women police officers and develop police capacity to address gender-based violence and improved awareness of human rights standards; Review measures to safeguard judicial independence and accountability.*

3. Accountability mechanisms

There is limited opportunity for independent or judicial review of administrative decisions that impact on fundamental rights. These include the land registration system, in which widespread reports continue of arbitrary seizure of land and property and disproportionate impact on ethnic minority rural communities¹⁴. Although the 2008 Constitution reintroduced a system of constitutional writs, to date this has rarely provided an effective remedy as many applications to the Supreme Court are not admitted.

***Recommendation(s):** Institute an accessible judicial review process for administrative decisions, including in relation to Land Management Committee decisions.*

Although there has been encouraging progress since March 2011 towards ending the 50 years of civil war, particularly through the signing of bilateral ceasefire agreements with most of the ethnic armed groups, there has been no progress in establishing accountability mechanisms or norms for the military. In the 2008 Constitution, the military remains outside of civilian control and accountability mechanisms.¹⁵ Allegations of human rights violations committed by security personnel which remain unaddressed is a continuing concern in areas where armed conflict continues, particularly in Kachin and northern Shan State (including Kokaung region), as well as in areas where armed conflict has ceased but a heavy military presence remains. Impunity is also of particular concern in Rakhine State.

***Recommendations:** Ensure prompt, thorough, effective, independent and impartial investigations into allegations of human rights violations, and ensure that perpetrators are prosecuted and punished with penalties appropriate to the gravity of the acts, and victims provided with redress; Ensure that complainants alleging human rights violations by the military do not suffer reprisals, including criminal prosecution.*

D. Right to privacy, marriage and family life

Refer to comments in Chapter I, B. and Chapter II, A.2.. In addition:

1. Alternative Care for Children

In 2014, the Government launched a national awareness-raising campaign on the importance of family based care for children, and the harmful impacts of institutional care. It was further announced in May 2014 that no new orphanages will be allowed to register in Myanmar. New, improved provisions on adoption have been drafted for the Child Law as well as inclusion principles of alternative care and the requirement of registration of residential care facilities. Alternatives to institutional care do not currently exist in Myanmar. Adoption is rarely practiced and is poorly regulated. Absence of options, combined with a lack of family support at community level often leads to children being unnecessarily placed in institutional care: 17,322 children in 217 registered residential care facilities in 2010 increased to 21,791 children living in 227 registered facilities by 2014¹⁶. There are many more children living in unregistered facilities, although the total number of institutions and the number of children therein is unknown. If enacted, the proposed Bill on Family Planning introducing birth spacing, will increase risks of child abandonment and placement in institutional care.

***Recommendation(s):** Appropriately regulate and resource family-based alternative care options; Regulate existing residential care facilities; Strengthen the national adoption system and revise relevant legislation accordingly (1993 Child Law and 1941 Kittima Adoption Law).*

E. Freedom of Movement

Refer to comments made under Rakhine, Kachin, conflicts.

F. Freedom of religion or belief, expression, association and peaceful assembly and the right to participate in public and political life

1. Freedom of Religion

Since the violence in Rakhine in June 2012, Township Officers have been issuing curfew orders prohibiting gatherings of more than 4 people and prohibiting movement on public streets after certain hours. These curfews restrict the freedom of religion of Muslims as religious gatherings in mosques of more than 4 people are banned under the curfew. The curfew was lifted in Sittwe in the week of 8 September 2014 but remained in place elsewhere. In addition, Village Administrators are obliged since January 2013 to collect signatures from mullahs of mosques and madrassas assuring that they will not teach without obtaining prior permission resulting in many mosques and madrassas remaining closed. Renovation and construction of religious buildings continues to be controlled, and needs to be explicitly authorized in accordance with the local orders.

Recommendation(s): *All local orders in Rakhine limiting freedom of religion of Muslims should be revoked with immediate effect.*

2. Freedom of Association

The main challenge in the application of the Labour Organization Law entered into force in 2012 are the registration procedure for peak representation of employers and workers bodies; and legislature review with respect to the establishment of industrial relation procedures, the dispute resolution processes and the protection of elected representatives required.

See also comments on Education Law in Chapter I. B.

Recommendation(s): *Review the legislations in respect of the registration of the peak employer and workers representative bodies, management of labour disputes, and provide protection to the elected representatives of the labour organizations; An additional legislation be developed providing a framework for the building of sound industrial relation*

3. Right to Peaceful Assembly

Despite an increase in democratic space since the democratic transition in March 2011 for people to exercise their right to peaceful assembly, there is still some way to go before the right can be considered as upheld in accordance with international human rights standards, as described in the report from the Special Rapporteur on the situation on Human Rights in Myanmar.

The 2011 Law on the Right to Peaceful Assembly and Peaceful Procession¹⁷, which is the core relevant legislation which regulates this right, falls below international standards¹⁸. Other laws being used to violate the right to peaceful assembly include section 188, 505 (b), 295, 295 (a) and 333 of the Penal Code. On 10 March, more than 100 students and other protestors were arrested following their participation in demonstrations in Letpadan, in the southern Bago Region of Myanmar calling for amendments to the National Education Law. There are further recent cases in 2014 and 2015 particularly involving land rights activists where both the Law on the Right to Peaceful Assembly and Peaceful Procession and the Penal Code were used to stifle their right to peaceful assembly.

Recommendation(s): *Amend the Law on the Right to Peaceful Assembly and Peaceful Procession to bring it into line with international human rights standards, including replacing the prior authorization procedure with a system of voluntary notification; Cease from using existing laws to restrict the right to peaceful assembly beyond what is permitted under international human rights law; Cease from using existing laws to criminalise the exercise of the right to peaceful assembly, particularly the detention and imprisonment of persons in this regard;*

The Myanmar Police Force has been keen to engage with the international community to support its efforts towards reform and modernization. This includes training with the EU on crowd management, with OHCHR on human rights standards in relation to policing, and with UNDP on dialogue skills. (**UPR recommendation 104.9, 104.38**) Nevertheless, concerns remain over the excessive use of force by the Myanmar police in managing protests, including protests against verification exercises in Rakhine State, student protests calling for reform to the National Education Law, and at the Letpadaung copper mine, which resulted in the fatal shooting of one person and injuries to several others. International standards state that force employed in crowd management situations should be proportional and the minimum necessary to achieve a legitimate policing objective. Intentional lethal force is permitted only when strictly unavoidable in order to protect life.

Recommendation(s): *Continue engagement with the international community, including through training programmes with the EU and OHCHR, to help ensure that law enforcement officials do not use excessive or disproportionate force when managing protests; Ensure that instances of possible excessive or disproportionate use of*

force are investigated promptly and impartially, and perpetrators of excessive use of force are held to account, including within the command chain of the Myanmar Police Force.

4. Freedom of expression

Since March 2011, there have been important improvements in respect for the right to freedom of expression in Myanmar, and some local communities report an improved ability to raise complaints.¹⁹ For instance, the media environment is much freer following the abolition of pre-publication censorship and the launching of private newspapers. There are also increases in reporting on disputes and seeking of various governance institutions for resolution.

Still, large percentages of population that feel reserved in sharing their views.²⁰ Specific changes need to take place in order for these improvements to continue to the point where Myanmar is upholding the right to freedom of expression in accordance with international human rights standards. Outdated defamation, trespassing and national security laws must be amended and not be used to criminalise acts of investigative journalism. In 2014, 10 journalists were imprisoned under such laws. People who speak out against Buddhism being used as a tool for extremism and nationalism are particularly vulnerable to violations of their right to freedom of expression and other rights, including liberty.²¹ A level of fear and uncertainty remains for other persons in Myanmar expressing opinions critical of State authorities, including over the fast expanding social network sites.

***Recommendation(s):** Take steps to avoid the criminalization and imprisonment of journalists, which creates a climate of fear and uncertainty within the media, and to instead develop processes of self-regulation including through mediation by an independent media council; To cease from using existing laws to criminalise the exercise of the right to freedom of expression, including views critical of public officials.*

G. Right to work and to just and favourable conditions of work

In addition to comments on people living with HIV (Chapter II, A), the following issues are of particular attention.

1. Forced labour

The Government signed in 2012 a Strategic Joint Action Plan with the ILO to eliminate the use of forced labour by 2015. Cases of forced labour, including underage recruits, continue to be raised from across the country, with 781 reported since the last report, the majority of which have been verified occurring within the reporting period. Of these, 195 cases were received since 2014 alone. Forced labour in public works continues to be a significant problem, involving compulsory labour contributions, fines or both, as well as difficulties associated with the issue of land rights and confiscation. Forced labour incidents continue to remain high in conflict affected areas, with cases of portering, sentry duty, forced recruitment, displacement, and trafficking still being received.

2. Child labour

While child labour is highly visible in both rural and urban settings, there is currently no verifiable data on numbers of working children. The issue of child labour is increasingly recognised, however, as a key human right as well as development issue for the country. In line with its obligations under ILO Convention 182 on worst forms of child labour, the Government together with the ILO, UNICEF and other stakeholders have been working together to establish a multi-stakeholder technical working group (TWGCL) on child labour. The identification and hazardous list of work to be prohibited for children below 18 is one of the identified priorities of the TWGCL. Enforcement of labour legislation, especially in non-formal sectors, constitutes a considerable challenge. The legal frameworks, including the definitions of child labour, and its worst forms, and the minimum age to retain employment are inconsistent with the international law. The ongoing labour law revision provides an opportunity to address inconsistency of legal framework on child labour. The government has proposed to extend the free compulsory education to middle (secondary) school level which is a positive development.

***Recommendation(s):** In line with CRC, ILO Convention 182 and other applicable international law, raise the minimum age of employment for children in Child Law and other specialized legislation and prohibit employment in worst forms of labour; Ensure that the minimum age of child employment is aligned with the end of compulsory schooling at a secondary school level, establish a list of Hazardous work, and provide a suitable legislative framework for reintegration of child labourers into the education system.*

H. Right to social security and to an adequate standard of living

Realising the rights to health and education as provided for in the Myanmar Constitution has been challenging. Official figures indicate that 26% of the population lives below the poverty line – with a higher prevalence in rural areas.²² Recent revisions of the data produced a higher poverty estimate and suggested that between 70% and 80% of the population are clustered around the poverty line.²³ With increased investment by private business and rapidly increasing GDP, there is a significant risk of growing income inequality if social security policies are not in place to play a redistributive function.

A Social Security Law was adopted in 2012 which significantly extends the number of contingencies covered (i.e. old age, disability, survivors, unemployment, and housing). It also opens the possibility to register for workers in the informal economy. Still, the law provides at this stage only contributory schemes which have proven difficult to access for poor and vulnerable households across countries worldwide. Since 2013, there has been a high-level commitment towards Universal Health Coverage (UHC) from the part of the Government. However, few mechanisms exist to properly relief households from the burden of health expenditure and from the vulnerability to catastrophic health expenditure.

A national social protection strategy was approved by the Government in December 2014²⁴, with the aim of ensuring a wide redistribution of the increased wealth of the country, and a strong input to poverty reduction through a universal approach to social assistance.²⁵ The strategy encompasses 8 flagship programmes which would ensure social assistance to the most vulnerable groups throughout the life cycle. (*UPR recommendation 104.13, 104.14*)

Recommendation(s): *Allocate adequate funding and ensure rapid implementation of the strategy as a comprehensive response to current social and economic vulnerabilities; Systematically deploy the required 6,000 government social work case managers to deliver integrated social protection services.*

I. Right to health

A significant number of people perceive service delivery in health care has improved. The main reasons for improvement include new/upgraded health facility, increase in numbers of health staff including attitudinal improvements, better availability of drugs and reduced costs in accessing health services²⁶.

High rates of immunization coverage²⁷ and the introduction of new vaccines²⁸ are key initiatives that will have a significant impact on reducing under 5 mortality and morbidity. (*UPR recommendation 104.17, 104.47*) However, access to immunization is problematic in hard-to-reach and conflict-affected areas. Access to improved water supply is 86% nationwide; sanitation is 77%, with open defecation at 5%. Despite this progress, however, diarrhoea rates for children under 5 have not substantially reduced.²⁹ Under 5 mortality rate and neonatal mortality rates for Myanmar are 51 and 26 (per 1,000 live births) respectively.³⁰ Interventions that would have maximum impact for new-borns in need are those that are offered in health facilities. However, only 36% of all deliveries are conducted in facilities.³¹ Family planning is recognised as critical to saving lives, protecting mothers and children from death, ill health, disability, and under development. However, in Myanmar, contraceptive prevalence rate remain 38 % (Fertility and Reproductive Health Survey (FRHS) 2007) and unmet needs for contraceptives is 17.7 % (FRHS 2007) resulting persistent high maternal mortality ratio by 200/100,000 births (UN Inter-Agency Estimate 2010).

The existing health system has yet to improve in quality and coverage to adequately serve all the needs of the population. Though investment in health has increased over the last few years, Myanmar's spending in health is the lowest in the ASEAN region and among the lowest in Asia, rising from 1% of the total budget in 2011/12 to about 3% in 2014/15³². 71.3% of total health expenditure is currently borne by households in the form of out-of-pocket payments to health facilities. According to a number of surveys conducted in recent years, catastrophic health expenditure seem to have a significant incidence, especially among the most vulnerable.

Despite tangible progress, maternal and child under-nutrition is still one of the biggest health and socio-economic development problems.³³ About 1 in 3 children below 5 years of age are stunted; 7.9% are dangerously thin.³⁴ The national average hides disparities among states.³⁵ In the northern part of Rakhine State it is estimated that 27,700 children aged 6-59 months are acutely malnourished, of which 4,400 suffer from severe acute malnutrition (SAM)³⁶. In 2013, the Government joined the global 'Scaling up Nutrition' (SUN) movement as part of the country's strategy to reduce under 5 child mortality, as well as the Zero Hunger Challenge.

Recommendation(s): *Establish high level ministerial coordination for one SUN implementation plan under the Zero Hunger Challenge; Increase investments in the SUN plan; Establish national standards for water supply in line with global criteria; Match the level of investment that other Asian developing countries have committed to the health sector by allocating 6-8% of expenditure to health; Reduce out-of-pocket expenditure on health and the incidence of catastrophic health expenditure.*

Lack of access to free or affordable water and sanitation continues in many areas, although some communities report improvements in government service provision in recent years.

Adolescents (10-18 years of age) are not able to provide consent for HIV prevention, testing and treatment services, which denies their right to health. There is limited information and education on sexual and reproductive health and rights for young people. Restrictive laws, policies and law enforcement practices in Myanmar continue to be a barrier to safeguarding young people's right to health. This includes parental consent requirements to access HIV testing and other services; laws that criminalize same-sex conduct, sex work and drug use that are enforced against young people; and police conduct such as confiscation of condoms and syringes, extortion, harassment and arbitrary detention of young people. This also leads to a high number of unwanted pregnancies and unsafe abortions among young girls. According to FRHS 2007, abortion is highest in the youngest age group 15 to 19 years amounting to 11.4 % of total pregnancies of that age group.

Recommendation(s): *Ensure not only a young person's right to the highest attainable standard of health (including access to health services such as HIV prevention, counseling, testing and care), but also to privacy, autonomy, protection and to liberty and security.³⁷*

Slow scale up of services for women and children living with HIV denies the right of every woman and child to health and to life. The services that need to be scaled up to reach universal coverage are: PMTCT, ART for children and adults, HIV testing and counselling, and prevention services (including adolescent friendly services).³⁸ Children affected by HIV (including children infected), are more likely to be in poor health and often unable to have access to health services compared to children not affected by HIV.

Recommendation(s): *Universal health coverage needs to be promoted to cover 70-80% of cost for health services.*

In many areas of the country, PLHIV still do not have adequate access to medicines for treatment of opportunistic infections (OI). This is in contravention of their right to health.³⁹ Currently there are not enough treatment opportunities and drug treatment centres. Some drug treatment centres are located too far from the people that need them⁴⁰. In Kachin State, where drug use is an epidemic, drug treatment is not available for most drug users. Besides, people who inject drugs (PWID) also living with HIV are not on the priority list among service providers to receive Anti-Retroviral Treatment (ART), partly due to on-going stigma but also to a conviction that they will not adhere to the treatment regime. It is also partly because decentralized ART centres are not linked with other health services such as Harm reduction drug treatment centre, Prevention of mother to child transmission of HIV and TB programme. While there is no data of the number of PWID receiving ART, it is widely believed to be low.⁴¹ It is also recognised that people who are arrested, jailed and confined to prison do not have adequate access to full treatment, care and support including access to the tools of harm reduction such as condoms, and clean needles and syringes. HIV-positive sex workers who are arrested may not be able to access or continue ART while in remand or serving a prison sentence, which is a risk for the development of drug resistance.⁴² UNAIDS with UNODC, development partners, including PLHIV, PWID, and other civil society representatives are currently supporting the Ministry of Home Affairs' effort to amend the 1993 Narcotic Drugs and Psychotropic Substances Law, aiming for a more rights based approach by focusing on treatment model rather than a punitive one.

J. Right to education

In addition to comments made under the draft Education Law, it should be noted that gender parity has been achieved at primary and secondary school, with girls outnumbering boys at tertiary level. A national Education reform agenda is underway. And a national Early Childhood Care and Development (ECCD) Policy was launched in 2014 to address the current shortcomings, including low ECCD coverage, with only 22% of children, mostly in urban areas, having access. The Ministry of Education has taken on budget responsibility to print text books for all children and to make primary education free and compulsory. *(UPR recommendation 104.17, 104.47)*

Education is the sector where people perceive most strongly that some positive change has taken place. The main reasons cited include better/new education facility, increased number of primary school teachers and improvement in teaching methods⁴³.

Despite progress and commitments there are still many challenges. It is estimated that over one million children are out-of-school; over half of these are at primary level. Less than 70% of primary school age children complete a full course of primary education at the correct age⁴⁴. Out of every 100 children entering primary school, only about 20 go on to finish lower secondary school. Government spending on education has risen from about 4% of the total budget in 2011/12 to about 6% in 2014/15, however, it still remains the lowest in the ASEAN Region and among the lowest in Asia.

Recommendation(s): *Renew focus on improving the quality of education to attract children to stay in school; Strengthen the Education Management Information System for tracking children who are out of school; Expand Non-Formal Primary and Middle-school Equivalence Programmes nationwide and increase flexibility to offer children out of school a second chance for education; Increase funding and strengthen institutional arrangements to expand coverage and improve quality of ECCD services, especially in rural areas; Match or exceed the level of investment that other Asian developing countries have committed to the education sector.*

1. Inclusive consultations and respect for academic freedom

The government is developing policies and programmes to improve education in collaboration with the international community. However these processes need to include broad based and genuine consultations with all stakeholders. The spirit of consultation and participation constitutes one of the cornerstones of human rights. It also requires that peoples are able to engage in free, prior and informed participation in policy and development processes that affect them. It is necessary to consult all stakeholders on issues that affect them especially in the case of the marginalized and ethnic minorities. The often low status of teachers is also linked to a lack of clear government policy and vision.

Recommendations(s): *Inclusive consultations with teachers, parents, children and youth in education and management of schools and universities and participation in further decision-making relating to all aspects of education policy and policy implementation especially for marginalized and minority populations; Teaching needs to be regarded as a profession with all aspects of the preparation and employment of teachers free from any form of discrimination and working conditions that best promote effective learning and enable teachers to concentrate on their professional tasks.*

L. Persons with disabilities

Following ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2011, the Government launched a National Plan of Action for Persons with Disabilities (2010-2012). Myanmar has committed to implementing the Incheon Strategy to 'Make the Right Real' (2013-2022). In 2014, a new Law on the Rights of Persons with Disabilities was presented to Parliament for approval. (**UPR recommendation 104.21**)

Of the estimated 2% of the population living with a disability in Myanmar, 300,000 are children under the age of 16.⁴⁵ Three out of five children aged 6-15 with disabilities have never attended school, and less than 1% are enrolled in mainstream schools.⁴⁶ There are limited health and rehabilitation services. No early identification and certification mechanisms are in place, making it particularly difficult to create a registry of persons with disabilities, and define eligibility criteria for social protection interventions. New education laws currently under discussion do not adequately reflect the principles of inclusive education for children with disabilities, including the right for children with disabilities to learn together with other children, in compliance with the CRPD.

Recommendation(s): *Ensure rapid and smooth implementation of the Law on the Rights of Persons with Disabilities, focusing on establishment of inter-ministerial mechanisms to increase access to services; Earmark funds for disability services; Establish access to mainstream education services and employment for persons with disabilities.*

M. Minorities and indigenous peoples

See under headings A, D, E, F, J, N and O regarding affected rights of ethnic and religious minority groups in Rakhine State.

1. Right of minorities to enjoy their culture, and to use/teach/learn their own language

The use of the mother tongue promotes peace and diversity in a multi-ethnic society such as Myanmar with positive long-term benefits regarding learning achievement, cognitive development, school retention and community engagement in the school. There needs to be clarity in the National Education Law around the use of mother language in consultation with ethnic minorities, and a clear understanding of and distinction between language as a medium of instruction and as a subject of study at different stages in the school cycle.

Recommendation(s): Multi-lingual education approach, which promotes achievement of literacy in the mother tongue.

N. Migrants, Refugees, Asylum seekers and Stateless persons

1. Statelessness and Citizenship Verification

Several initiatives were launched during the reporting period to ensure that citizens have access to citizenship documents. The Moe Pwint operation from 2011 and still ongoing in 2015 targets persons who do not have access to citizenship documents, ensuring that household lists and citizenship scrutiny cards are issued to persons automatically entitled to citizenship as one of 135 ethnic groups recognized by the Government as being indigenous to Myanmar. Persons of mixed parentage or not within the 135 ethnic groups are not generally covered in this operation.

The 1982 Citizenship Law is however not consistent with Myanmar's international obligations in a number of areas. The provisions relating to the acquisition of citizenship do not comply with the prohibition of discrimination on the grounds of race. While there are procedures for persons outside the 135 ethnic groups to apply for citizenship, the criteria are demanding, and there is evidence that the law has been applied in an arbitrary and discriminatory manner during the reporting period. Several groups, including those who self-identify as 'Rohingya' as well as other ethnic minorities, continue to be at risk of statelessness and were commonly unable to access citizenship during the reporting period.

Myanmar is responsible for ensuring the right of every child to acquire a nationality under the CRC. Discharging this responsibility requires the establishment of safeguards against statelessness in nationality law. The 1982 Citizenship Law does not contain a protection to ensure the acquisition of Myanmar citizenship by children who are born in Myanmar and do not have a "relevant link" to another State and consequently do not acquire any other nationality. As a result, statelessness in Myanmar continues to increase as stateless parents have stateless children. This gap in the law and its implementation also extends to abandoned children whose parents are unknown. Accession to *1961 Convention on the Reduction of Statelessness* and its implementation in national law would further cement every child's right to acquire a nationality under the CRC.

Recommendation(s): Revise the 1982 Citizenship Law of 1982 so that it grants citizenship on the basis of objective criteria which conform to internationally binding legal standards prohibiting racial discrimination, ensures the child's right to a nationality, takes steps towards the reduction of stateless persons as well as preventing further cases of statelessness occurring in the future in accordance with Myanmar's existing international legal obligations; Accede to both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; On the basis of these and other measures develop a national plan to end statelessness by 2024.

A pilot citizenship verification process for the stateless population in Rakhine commenced in July 2014 in Taung Paw displaced camp in Myebon, Rakhine. By the end of 2014, only 209 persons had received citizenship and they had not been afforded the rights of citizens.⁴⁷ Instead, they are confined to the displaced camp with limited services. The citizenship verification process was rolled out from January 2015 across Rakhine, following the conclusion of the pilot. In January 2015, a letter was sent to camp and village leaders requesting the names of persons interested in applying in a verification process of 'Bengalis'. A majority of the stateless population self-identify as 'Rohingya', which was not permitted, and limited numbers of persons had applied by the end of March 2015. In addition to this, prohibitive procedures were applied in January and February 2015, including a lengthy application form, high costs and the requirement to travel to apply.

On 11 February 2015, President Thein Sein declared that the temporary registration cards, held by people without citizenship who legally reside in Myanmar, will expire on 31 March 2015. They are to surrender their cards and invited to apply for citizenship. This decision affects some 590,000 temporary registration card holders country-wide, most of them in Rakhine. It is still unclear what the consequences are for those who are not willing to go through the citizenship verification process.

Recommendation(s): *The application process for citizenship under the citizenship verification exercise should be voluntary; Applicants should be informed of the law and practice relevant to the citizenship verification procedure, with no punitive measures for those who do not elect to participate or do not receive citizenship; Safeguards should be put in place to ensure that there is no deterioration of stateless persons' legal status or rights, including their residency status as a result of the verification procedure.*

2. Civil Registration

There was some progress on the issue on 28 November 2014, when Myanmar joined 44 States in the Asia Pacific in adopting a Ministerial Declaration with the goal of achieving universal Civil Registration and Vital Statistics ("CRVS") systems by 2024. The Declaration contains express references to the importance of the civil registration for the protection of displaced populations and in preventing statelessness. However, birth registration nation-wide remains unharmonised. Also refer to comments made under Birth Registration and Rakhine.

O. Internally displaced persons (IDPs)

Myanmar continues to experience protracted conflict and displacement in Kachin, northern Shan, and Rakhine States. A total of 238,380 persons have been displaced since the conflicts began in 2011 and 2012, respectively. This includes almost 95,000 children⁴⁸ who have been deprived of consistent access to basic services, including their right to health, education, and life-sustaining necessities such as adequate and nutritious food, clean water, and hygienic sanitation facilities. In Kachin/Northern Shan, IDP children in government controlled areas (GCAs) are typically enrolled in the nearest government-run school, however, the influx of additional students has not been matched by a commensurate increase in teachers; schools are over-crowded which affects the quality of learning for both IDP and non-displaced children. In Rakhine State, IDP children are only able to access education through temporary learning spaces (TLS), the majority of which provide emergency non-formal education in two subjects (mathematics and Myanmar language) for two hours a day. Primary education coverage has increased to 70% for displaced children; however, fewer than 10% of secondary school-aged children are accessing education.

Continued conflict and impediments to humanitarian access are likely to impede the reach of the ongoing state measles and rubella immunization campaigns in Kachin, northern Shan and Rakhine States. In Rakhine camps there are no safe delivery rooms, and the inability of IDPs to travel safely to an appropriate health facility has led to severe difficulties for pregnant mothers.

Recommendation(s): *Ensure that the priority humanitarian needs of all internally displaced children and families are met and support equitable delivery of services to all affected populations; Internally displaced persons should enjoy, in full equality, the same rights and freedoms under domestic law as do other persons in their country.*

P. Right to development, and environmental issues

1. Land rights

Land ownership and land confiscation problems remain a huge challenge for the Government to be solved and protests by farmers, including women farmers and women's rights groups, landowners and activists continue across the country and continuous arrests of activists, land owners and farmers under various charges are observed. The Government repeatedly use violent crackdowns on peaceful protesters in cases like the Letpadaung Copper Mine Project and the Migyaungkan land grab, failing to negotiate with the protestors. The Farmland Investigation Commission set up by Pyidaungsu Hluttaw are processing complaints on land issues and the Land Utilization Management Central Committee chaired by the Vice President and other Land Utilization Management Committees at different levels are dealing with confiscated farmlands and other lands in country. However, the functions and procedures of the Committees at different levels and their mechanism needs more clarity, transparency and public awareness. The draft National Land Use Policy is a positive step taken by the Government to tackle land rights issues but there are concerns of the lack of protection of small scale farmers especially women and minority ethnic peoples in relation to land tenure, use and development.

Recommendations: *Ensure thorough, fair and independent investigation into land confiscation problems and the return of land to original land owners; Ensure clarity, transparency, accountability and thorough public awareness and consultation on claiming back lost land and on new development and business projects that require land taking; Ensure all-inclusiveness and thorough public consultation in drafting and regulating laws relating to land reforms and ensure the protection of land rights of small scale farmers, women farmers, rural and ethnic people in relation to land tenure, land use, development and management.*

See also comments and recommendation under Chapter II.A.2 with respect to development needs in Rakhine State.

¹Source MICS 2009-10. Wide differences across the country are apparent. While most children in Yangon are registered, 76 per cent of children in Chin State, 43 per cent of children in Magway, and 11 per cent of children in Mon State do not possess a birth certificate. Children who are less likely to be registered include children of migrants and children who do not live with their parents.

²Constitution of the Republic of the Union of Myanmar (2008). Nay Pyi Taw; Government of the Union of Myanmar; 2008.

³All participants reported experiencing at least one type of violence by police personnel. *Sex Work and Violence in Yangon, Myanmar: Understanding Factors for Safety and Protection (draft report December 2014)*

⁴Ibid.

⁵Ibid.

⁶Department of Medical Research, Yangon, Lower Myanmar. 2015. Multi-level risk and protective factors and HIV-related risk behaviors among young men who have sex with men. Yangon: UNESCO

⁷National HIV Legal Review Report: review of Myanmar's legal framework and its effects on the access to health and HIV services for people living with HIV and key affected populations. Yangon: UNAIDS, UNDP, Pyoe Pin; 2013, pg 29

⁸The Ministry of Social Welfare, Relief and Resettlement received just 0.081% of the national budget in 2014-15.

⁹In addition to the Tatmadaw, there are seven non-state armed groups listed by the UN Secretary-General as being "persistent perpetrators" in the recruitment and use of children in Myanmar. They are:(i). Democratic Karen Benevolent Army (DKBA); (ii) Kachin Independence Army (KIA); (iii) Karen National Liberation Army (KNLA); (iv) Karen National Liberation Army Peace Council; (v) Karenni Army (KA); (vi) Shan State Army South (SSA-S); and (vii) United Wa State Army (UWSA).

¹⁰ Village tract or Township Administration Act 2010

¹¹Yangon and Mandalay

¹²The existing draft of the revised Child Law also envisages improvement of legal guarantees for child perpetrators, victims and witnesses in the justice system and introduction of diversion as an alternative to criminal justice proceedings.

¹³UNDP research on access to justice, forthcoming. UNDP Local Governance Mapping reports.

¹⁴For example, 63% of urban households versus 25% of rural households received a land use certificate for the land they farmed: UNDP Local Governance Mapping, Chin (p.52, 58)

¹⁵Article 20 (b) provides the military with "the right to independently administer and adjudicate all affairs of the armed forces" and article 445 states that, "No proceeding shall be instituted against the said [previously ruling] Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties", effectively providing immunity for any ongoing or past human rights violations that may have been committed.

¹⁶The Situation of Children Living in Residential Care Facilities in Myanmar' (2011), Department of Social Welfare and UNICEF (p5- residential facilities statistics)

¹⁷Adopted in 2011 and amended in 2014.

¹⁸By i) Requiring prior authorization for peaceful assemblies from local authorities, with no means of appeal; ii) Providing local authorities with wide discretion in applying a range of restrictions which are not recognized under international law; iii) Providing for criminal sanctions against those involved in peaceful assemblies, including prison sentences.

¹⁹UNDP Local Governance Mapping reports

²⁰ UNDP Local Governance Mapping reports: Out of about 3000 people interviewed, some 40% of people surveyed stated that they feel completely free to say what they want. It is also found that gender differences are not large in freedom of expression, but fewer women feel free to say what they want and more women are cautious about what they want to say in public. 36% of women compared to 40% of men surveyed stated that they feel completely free to say what they want.]

²¹U Htin Lin Oo is currently in pre-trial detention in Monywa prison, Sagaing Region following a speech he gave at a literary event in October 2014 in which he criticized the political use of Buddhism. He has been charged under section 295 (a) of the Penal Code, which prohibits "deliberate and malicious acts intended to outrage religious feelings," and section 298, which bans uttering words with deliberate intent to wound religious feelings.

²² Integrated Household Living Conditions Assessment (HILCA, 2009-2010)

²³ Despite these revisions, no new comprehensive assessment on poverty has been conducted since the 2009-10 HILCA report.

²⁴In 2014, the Government of Myanmar, under the leadership of the Ministry of Social Welfare, Relief and Resettlement, conducted a social protection assessment-based national dialogue with the UNCT in order to identify policy gaps and make concrete proposals for the development of a national social protection floor, as per the ILO Social Protection Floors Recommendation (No. 202), 2012, embedded in a strategic plan.

²⁵ The programmes include cash transfers to pregnant women and children up to 2 year of age (covering the first 1,000 days of life), a progressive extension of benefits to all children up to 15 years of age; a cash transfer to children and adults with disabilities; public work programmes for unemployed adults; and a social pension of elderly above 65 years of age. The strategy includes the promotion of a system of integrated social protection services – through the opening of single-window units at township level, and the recruitment of 6,000 social workers

²⁶ UNDP Local Governance Mapping Reports: Out of more than 5000 people interviewed by the UNDP local governance mapping more than 50% of the respondents perceive improvements in health with more/better infrastructure (49%), more health staff (30%), more availability of medicines (30%), reduction in health costs (29%) and improved attitude of staff (29%)

²⁷ 98% for DPT3 and Polio3 (MICS 2009/2010)

²⁸For hepatitis B, haemophilus influenza and Rubella in 2013 and 2015; and the plan to introduce vaccine for pneumococcus and rotavirus in the near future.

²⁹This indicates deficiencies in service quality and reliability.

³⁰ Recent estimates by the United Nations Inter-agency Group for Child Mortality Estimation (2013)

³¹ MICS 2009/2010

³² "Making Public Finance Work for Children in Myanmar: an overview of public finance trends 2011-12 to 2014-15", UNICEF and MDRI, November 2014

³³ International evidence indicates that under nutrition is responsible for 45% of all under five child deaths globally

³⁴ This wasting rate is the third highest in South-East Asia (Lancet - 2013).

³⁵ The stunting prevalence among children in Rakhine (50%), Chin (58%) and Shan North (47%) are 2 times the rate in Yangon (24%)

³⁶SMART nutrition surveys, November 2013 to April 2014.

³⁷UNESCO Bangkok and Department of Medical Research, Lower Yangon. 2015. Multi-level risk and protective factors and HIV-related risk behaviors among young men who have sex with men. Yangon: UNESCO.

³⁸Annual progress report

³⁹Statement of Myanmar Positive Group (MPG), MPG Annual Forum 2014

⁴⁰Situational Analysis on Drug Use, HIV and the Response in Myanmar: Looking Forward, UNAIDS, page 41

⁴¹UNAIDS Situational analysis on Drug Use and HIV in Myanmar

⁴²UNAIDS Gender Assessment of the National HIV Response in Myanmar)

⁴³ UNDP local governance mapping. Out of more than 5000 people interviewed by the UNDP local governance mapping, close to 70% perceive that service delivery in education has improved with 71 % owing it to better infrastructure and 37% to more teachers

⁴⁴Ministry of Education, Comprehensive Education Sector Review Phase 1, Rapid Assessment Report, Nay Pyi Taw, 2013, p 115

⁴⁵ Ministry of Social Welfare, Relief and Resettlement, Department of Social Welfare and Leprosy Mission International, Myanmar National Disability Survey, Nay Pyi Taw, 2010

⁴⁶ Children with sensory impairments tend to be enrolled in special schools, some of these residential, rather than in mainstream schools. Schools and vocational training centres for children with disabilities are mostly located in urban areas.

⁴⁷Over 1,000 of the applicants had not received their decisions at all by the end of 2014.

⁴⁸Rakhine State data source: CCCM Cluster Analysis Report, November 2014; Kachin/Shan data source: CCCM Cluster Camp Profile, June 2014.