



**Submission by the United Nations Country Team Myanmar for the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review**

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I. Background and framework

This contribution highlights the main issues being addressed by the United Nations Country Team (UNCT) in Myanmar and is founded upon the development of constructive relationships and partnerships in support the further realization of human rights based on commitments by the Government of the Union of Myanmar (GoUM).

A. Scope of international obligations

<i>Relevant Conventions to which Myanmar is a party</i>	Signed	Ratification Accession	Reservations
Convention Against Trans-National Organized Crime, 2000	-	30 March 2004 a	Articles 16 and 35
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Trans-national Organized Crime, 2000	-	30 March 2004 a	Article 15
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000	-	30 March 2004 a	Article 20
Convention on the Rights of the Child, 1989	-	15 July 1991 a	None
Convention on the Elimination of All Forms of Discrimination Against Women, 1979	-	22 July 1997 a	Article 29
Geneva Conventions on Humanitarian Law, 1949	-	25 August 1992 Ratification	None
International Labour Organisation Convention No 87 concerning the Freedom of Association and Protection of the Right to organize, 1948	-	4 March 1955 Ratification	None
Convention on the Prevention and Punishment of the Crime of Genocide, 1948	30 December 1949	14 March 1956 Ratification	Articles III, VI, VIII
International Labour Organisation Convention No 29 on Forced Labour, 1930	-	4 March 1955 Ratification	None

Relevant Convention to which Myanmar is not a party: Convention on the Rights of Persons with Disabilities, 2006; Convention on the Rights of the Child, Optional Protocol on the sale of children, child prostitution and child pornography, 2000; Convention on the Rights of the Child, Optional Protocol on the involvement of children in armed conflicts, 2000; Convention on the Elimination of Discrimination Against Women, Optional Protocol, 1999; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984; International Covenant on Civil and Political Rights (ICCPR), 1966; International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966; UNESCO Convention against Discrimination in Education, 1960; Conventions relating to Refugees 1951, and Stateless Persons, 1954 & 1961.

B. Constitutional and legislative framework

Myanmar has a military government. The current head of state holds the posts of Chairman of the State Peace and Development Council and Commander-in-Chief of the Defence Services, as well as the Minister for Defence. The majority of senior ministry and cabinet posts are held by military officers who recently resigned their military commissions to enable them to stand for election. Low-intensity armed conflicts between government forces and armed groups continue to affect the population and to impede development at various levels in some areas. Over the years, the Government has arranged ceasefire agreements with 17 groups, contributing to development in ceasefire areas. However, the relationships between some of the armed groups that have accepted a ceasefire and the government remain tense.

The 2008 Constitution (the Constitution) was adopted on 29 May 2008, through a national referendum. The Myanmar authorities have indicated that it is their intention to hold elections in 2010 and some related legislation is in place. Representatives to three different bodies will be elected: the upper house, the lower house and regional legislatures. The Constitution will come into force after these elections, on the day the first session of the Pyidaungsu Hluttaw (Union Assembly) is convened. The Constitution establishes a presidential system of governance with a bicameral legislature known as the Union Assembly. Legislative bodies at regional level with limited powers will be created. A quarter of the seats in the bicameral legislatures are reserved for military personnel appointed by the Commander-in-Chief.

The President is both the Head of State and the Head of Government, but is not the head of the military. The President is responsible for appointing ministers other than the Ministers for Defence, Home Affairs and Border Affairs, who are chosen by the Commander-in-Chief. The highest judicial body is the Supreme Court. It does not have jurisdiction over military justice or constitutional matters.

The Constitution may, to some extent, shape the human rights parameters in Myanmar. Chapter VIII of the Constitution, “Citizenship, Fundamental Rights and Duties of Citizens” indicates that “The state shall enable any citizen to enjoy equal rights before the law and shall equally provide legal protection.”¹ It says, “The State shall not discriminate against or in favour of any citizen based on race, birth, religion, official position, status, culture, sex

¹ Constitution of the Republic of the Union of Myanmar (2008), Chapter VIII Article 347

and wealth.”² Women shall be entitled to the same rights and salaries as men in respect of similar work and mothers, children and expectant women shall enjoy rights as prescribed by law.³

The Constitution further states, “There shall be liberty in the exercise of the following rights subject to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality: (a) The right of the citizens to express freely their convictions and opinions; (b) The right of the citizens to assemble peacefully without arms; (c) The right of the citizens to form associations and unions; (d) The right of the citizens to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another, or among national races, or to other faiths.”⁴

Freedom of movement is addressed so that every citizen shall have the right to settle and reside in any place within the State according to law.⁵ According to the Constitution, the State prohibits enslaving and trafficking of persons and prohibits forced labour except hard labour as a punishment for crimes duly convicted and duties assigned by the Union in accord with the law in the interests of the public.⁶ The three branches of sovereign power, namely, legislative, executive and judicial, are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.⁷

However, in Myanmar few mechanisms or institutions exist that are completely independent and can ensure that citizens have the capacity to exercise their rights or those that can be openly and legally challenged. Furthermore, the Constitution does not make clear the legal rights and protection available to non citizens.

C. Institutional and human rights structure

UNCT notes recent policy advances in a range of significant areas, including human trafficking, drug control, disability access and HIV/AIDS strategy which have been achieved through dialogue and engagement. In 2000, GoUM established the Myanmar Human Rights Committee, which was renamed the Myanmar Human Rights Body, in November 2007 and is chaired by the Minister of Home Affairs. But it does not meet the standards entrenched by the principles relating to the Status of National Institutions (The Paris Principles).⁸ In 2009 Myanmar appointed a Representative of the Union of Myanmar to the ASEAN Intergovernmental Commission on Human Rights (AICHR). UNCT welcomes Myanmar’s membership in AICHR and hopes for its proactive role in promoting human rights in Myanmar.

Myanmar’s domestic courts cannot directly invoke the provisions of global or regional human rights instruments to interpret national norms unless such norms are incorporated into national legislation. There is a lack of

² *ibid.* Article 348

³ *ibid.* Articles 350, 351

⁴ *ibid.* Article 354

⁵ *ibid.* Article 355

⁶ *ibid.* Articles 358,359

⁷ *ibid.* Chapter I Article 11(a)

⁸ Adopted by the United Nations General Assembly resolution 48/134 of 20 December 1993 <http://www.un.org/documents/ga/res/48/a48r134.htm>

accountability for grave human rights violations when they do occur. This is partly due to the lack of an independent judiciary and weak rule of law.

D. Policy measures

The UNCT is working to mainstream human rights into operational activities at country level and has recommended that a human rights-based approach be applied to the UN Strategic Framework planned for 2012 to 2015. An Action Plan has been drafted on the issue of Children and Armed Conflict (CAAC), and is awaiting endorsement by the GoUM. In consultation with others, including UN agencies, the GoUM has prepared or drafted National Plans of Action in relation to women, children, older persons, combating human trafficking and persons with disability. These Plans of Action incorporate aspects of a human rights-based approach.

Members of the UNCT provide training on human rights and related matters in accordance with their agency mandates. Non-resident agencies, including the Office of the High Commissioner for Human Rights and the United Nations Institute for Training and Research, have provided human rights-related training in Myanmar. The Protection Working Group's Task Force on Protection Training and Capacity Building and other agencies including those responsible for child and women's protection have completed training sessions on protection-related matters involving the GoUM and the civil society.

II. Promotion and protection of human rights on the ground

Access to vulnerable groups across the country remains limited for UN agencies and other international humanitarian actors in Myanmar. GoUM continues to restrict access to some parts of the country, citing security concerns as the main reason for limiting access. Notably, the highly improved access to the Ayeyarwady Division, after Cyclone Nargis, over the course of the last two years is a result of a simplified visa application and internal travel permit procedure. However, this progress has not been translated into simplified access to other areas in the country, and in particular ceasefire areas and non-ceasefire areas (including but not limited to conflict zones). Occasional access has been allowed, however, the number of organisations operating is limited in parts of the country. Certain regions remain completely inaccessible to international organisations. This severely limits the capacity of the UNCT to support the GoUM to deliver assistance to, and improve the living standard of, some of the most vulnerable groups in the country. Furthermore, without access UNCT cannot satisfactorily promote, monitor, report, assess, or take appropriate action on the ground in relation to human rights issues. In order for the individual UN Agencies to further address human rights issues through their operational activities, the removal of formal and informal access constraints is necessary.

III. Capacity-building and technical assistance

The UNCT promotes international human rights standards and principles as a common UN value in dialogue and interactions with national actors. The UNCT supports the GoUM's implementation of the Conventions to which Myanmar has committed, in areas including forced labour, discrimination against women, child soldiers, freedom of association and the Geneva Conventions. The UNCT is committed to help build capacity in Myanmar and to facilitate access to knowledge and expertise on human rights. The UNCT promotes the ratification of the

international instruments, particularly those related to refugees,⁹ reducing and preventing statelessness,¹⁰ the Convention on the Rights of the Child (CRC) Optional Protocols and the Convention on the Rights of Persons with Disabilities. The UNCT has a responsibility to assist the GoUM fulfil its obligations and build capacity, mechanisms and institutions capable of effectively responding to reported violations of human rights in a manner consistent with Myanmar's international obligations.

The UNCT also advocates for substantial increase in public investment in order to provide affordable and accessible basic social services, including education and health. UNCT further calls for increased international assistance and funding to address socio-economic challenges in Myanmar, as well as for unrestricted UN agency operations in Myanmar.

The UNCT has identified the following areas where its members and their partners have the capacity to further the realization of human rights and to provide technical assistance on human rights issues in Myanmar.

1. Recognising that there are few institutions in Myanmar that are independent and strong enough to ensure that citizens have the capacity to exercise their rights, it is necessary to establish or develop mechanisms so that citizens can assert their rights enshrined in the Constitution. The establishment, in accordance with the Paris Principles, of a National Human Rights Commission with offices in each state/division with a mandate to provide comprehensive solutions to human rights and justice concerns is a fundamental first step.

2. To ensure obligations and responsibilities under international law are well understood, training and capacity building on protection and human rights at national and regional levels, especially with parliaments, regional legislatures and justice institutions, is essential. Developing a deeper understanding in relation to the Convention on the Elimination of Discrimination Against Women (CEDAW), Security Council Resolutions (SCR) covering Children Affected by Armed Conflict 1612, 1182 and 1888, the CRC, International Labour Organisation (ILO) Conventions and the Universal Periodic Review are priorities. Needs-assessments, contingency planning, National Plans of Action, Minimum Standards for Protection, Codes of Conduct and planning of strategies for programme implementation and funding and analysis using a human rights based approach will lead to identification of common priority areas for action.

3. GoUM is committed to SCRs relating to Children Affected by Armed Conflict and by the end of June 2010, the Government had notified the UN Country Task Force of the release of 329 former child soldiers since 2006. UNCT is able to provide assistance to the GoUM to put in place tighter mechanisms to prevent the recruitment of children and to demobilise unconditionally all children who participate in any capacity in its armed forces or those of non-state armed groups operating in Myanmar. UNCT can work to finalise an Action Plan with the GoUM, in line with international standards under the SCR1612 and 1882 framework. The UNCT and its child protection partners who aim to prevent recruitment, to release and demobilise children and to end the culture of

⁹ Convention Relating to the Status of Refugees, 1951

¹⁰ Convention Relating to the Status of Stateless Persons, 1954 & Convention on the Reduction of Statelessness, 1961

impunity for those who perpetrate grave violations against children in armed conflict, can monitor and report on implementation of the Action Plan. Additionally by providing assistance to the GoUM departments responsible for birth and national registration, UNCT can help strengthen systems to facilitate age verification at time of recruitment.

4. To conform with the commitments of the GoUM to the CRC, a number of child laws need to be reformed including the age (16) of a child as defined under the Child Law,¹¹ the age (7) of criminal intent, minimum permissible ages for various forms of child work, corporal punishment, support to child victims and adoption. And adherence to the existing Child Law should result in bail for children in contact with the law and the separation from adults of children in police or correctional custody. Professionals in contact with children, including judges, attorneys, police, probation officers, social workers, teachers and members of Township Committees on the Rights of the Child, should obtain additional training on the Child Law, child rights and child protection and child sensitive reporting mechanisms should be established. To support initiatives in the best interests of the child undertaken by the CRC committees at State, Divisional, Township and community levels, the National Child Rights Committee with inter-ministerial government representation and representatives of child focused civil society organizations need to convene and to meet regularly.

5. Noting that there are disparities in the application of the Child Law¹² and commitments made under the CRC¹³ in relation to education, particularly for the very poor, residents of remote areas, children with disabilities, children from mobile families and orphans, there is a need to strengthen the development of appropriate strategies to implement the four goals of Myanmar National Action Plan for Education 2003-15. An increase in the education budget is a pre-requisite to the establishment of special schools, the integration of children with special needs and disabilities, pilot initiatives such as free school meals, cash transfer options for the poorest families to buy school uniform and stationary, incentives for trained teachers in remote areas and to address both hidden costs associated with education, early drop out of children and retention of quality teachers.

6. Noting that the Child Law¹⁴ consistently with the CRC¹⁵ provides that every child has the right to enjoy health care provided by the State and that much success has been achieved but also noting that these achievements are overshadowed by the high prevalence of child malnutrition, estimated at 32 per cent, initiatives need to be taken so additional resources are made available to improve maternal and infant nutrition and immediate and exclusive breastfeeding promoted. Additional deployment of midwives and modification of regulatory mechanisms to ensure that pharmacies are staffed with adequately trained paramedics, quality drugs are accessible and dispensed through pharmacies and measures taken to address high rates of maternal mortality are also required.

7. Recognising the escalating casualty rate resulting from antipersonnel mines in Myanmar¹⁶ and their impacts on refugees who wish to return, women and children as well as other civilians, the UNCT and

¹¹ The Child Law, The State Law and Order Restoration Council Law No. 9/93 14th July, 1993

¹² Article 20 (a) Every child shall: - (i) have opportunities of acquiring education; (ii) have the right to acquire free basic education (primary level) at schools opened by the State;

¹³ CRC Articles 28 & 29

¹⁴ Article 19(a) Every child has the right to enjoy health facilities provided by the State

¹⁵ CRC Article 24

¹⁶ The ICRC Annual Report 2009 Myanmar at p 210; 1,048 prostheses provided for mine victims in Myanmar.

humanitarian partners can work on the development of a framework to improve the situation. The framework may be based upon the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997; the Convention on Cluster Munitions 2008, and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and their respective Protocols. Permission for local humanitarian agencies to carry out mine risk education, the mapping of mine-affected areas and victim assistance are initial fundamental steps towards developing a long term joint strategy that will alleviate this problem and ensure the safety and security of all civilians.

8. Within the framework of Statelessness Conventions,¹⁷ the UNCT seeks to build a common understanding of the issues related to the causes, impacts, responses and prevention of statelessness. As a result of large eastern, southern and western borders, pre-colonial and colonial migration, multi- ethnic groups with diverse cultures and languages, returnee and displaced populations, the issues relating to citizenship and statelessness are complex. Further, some people and communities have difficulty registering births, obtaining birth and national registration certificates or other related documentation. This reduces their capacity to gain access to land, property, licences, higher education and their fundamental freedoms are limited. Therefore, the UNCT seeks to identify strategic partnerships with GoUM through UN agencies, INGOs and NGOs to stabilise communities and develop plans of action to implement strategies for the prevention of and response to statelessness. To prevent and reduce statelessness, every child within Myanmar should be issued with a birth certificate by local authorities. And every eligible child who has reached his/her 10th birthday should receive an identity card as a national citizen of the Union of Myanmar.

9. Consistently with the Beijing Platform for Action and the obligations of Myanmar under CEDAW and following consultations between GoUM, UN, I/NGOs and civil society, the draft National Plan of Action for the Advancement of Women 2011- 2015 will soon be submitted to the Cabinet. This National Plan of Action outlines interventions and anticipated results in key areas to promote gender equality, the protection of women and the promotion and realization of women's economic, social, civil and political rights. The Plan focuses on capacity building, strengthening mechanisms to ensure equal access to resources and services, and women's participation in development and decision-making processes. In order to better protect and promote the human rights of women, the UNCT supports the immediate approval of the Plan as a framework for the rights-based approach towards addressing issues related to women and gender, gender equality and women's empowerment. The establishment of a Secretariat to oversee and monitor the implementation of the Plan and the allocation of sufficient financial and human resources and strengthening institutional capacities to ensure effective implementation of the plan are also essential.

10. Discrimination against women and girls, who in some areas are confined to the home, not allowed in public for education, economic activities, or the most basic community participation must be removed to ensure compliance with CEDAW. Community and official practices such as domestic violence, the harassment of women

¹⁷ Convention Relating to the Status of Stateless Persons, 1954 & Convention on the Reduction of Statelessness, 1961

during night checks of homes, checks of women's abdomens during marriage permission applications and demands that women demonstrate breast-feeding during birth registration of their children are unacceptable. The Establishment of 'Women and Child Protection Units' within every police station with specialized trained police to ensure sensitive handling of all cases related to children and women, will ensure progress. Women's participation in community affairs should be promoted and capacity building and empowerment activities such as training on leadership, negotiation, communication skills, legal rights and gender concepts and the development of practical guidelines for establishing effective committees involving women.

11. As a signatory to ILO Convention 29, the GoUM is working with the ILO to eliminate the use of forced labour. Under the authority of a 2002 Understanding and a 2007 Supplementary Understanding the ILO is charged with providing technical assistance to operationalize the recommendations of a 1997 Commission of Inquiry and with operating a mechanism under which complaints can be lodged with the ILO on alleged use of forced labour. The GoUM responds positively to training and awareness raising proposals for GoUM and military personnel concerning the law and practice on forced labour including underage recruitment into the military. The GoUM High Level Working Group responds efficiently to complaints submitted. Notwithstanding, complaints continue to be received. A more proactive approach is required. Reports suggest a reduction in the use of forced labour by the civilian authorities in some parts of the country. The use of forced labour in part reflects a weakness in macro-economic governance and policy application. The GoUM has indicated its intent to draft a Trade Union Act to give effect to the principles contained in the Constitution and its obligations under ILO Convention 87 on Freedom of Association. In January 2010, the GoUM consulted with the ILO on the proposed concepts and principles for the legislation and on the application of the Convention.

12. The GoUM, UN and civil society currently collaborate to develop the protection framework for Myanmar nationals identified as trafficked. However, bilateral return mechanisms between Myanmar and primary destination countries for trafficking need to be strengthened and the availability of viable integration or reintegration options for returned victims expanded. GoUM and its partners need to increase the involvement of a greater number of local NGOs in implementing the Myanmar Five-Year National Plan of Action to Combating Human Trafficking. Based on the ongoing efforts by the GoUM, further partnering and technical assistance from UN and civil society will help develop an appropriate administrative framework and operational responses to increasing offers of protection to be extended to vulnerable and exploited cross-border migrants.

13. Although it is reported that the population of Internally Displace Persons (IDP) in Myanmar may be up to 500,000 limitations on access to parts of the country where most of the reported displacement occurs have made it difficult for the UNCT to verify this number and to assist the GoUM in meeting the needs of these IDPs. Protecting the rights of IDP in all phases of displacement based on international humanitarian and human rights law requires a high degree of participation from the entire spectrum society, including local communities, civil society, minorities, rural populations and preventing discrimination is fundamental to a human rights-based approach towards displacement. Conscious of the need for outreach and inclusion UNCT can ca focus on developing the capacity of the government to fulfill its duty to realize the human rights of internally displaced in accordance with the Guiding

Principles on Internal Displacement. UNCT encourages new legislatures to integrate the Guiding Principles and the standards contained therein into national policies and legislation.

14. Myanmar is among those countries in Asia that are heavily affected by the HIV epidemic. The response to AIDS has made good progress in scaling up targeted prevention services for female sex workers and providing treatment for people living with HIV. However, provision of good coverage of antiretroviral treatment to those in need and intervention services for injecting drug users and men who have sex with men are still challenging. Although progress has been made, UNCT considers it important to continue to work with GoUM on major issues for people living with HIV especially stigma and discrimination.

15. Pursuant to the Millennium Declaration adopted by the General Assembly, UNCT wishes to work with the GoUM in supporting the achievement of the MDGs and therefore urges both the national authorities and the international community to strengthen their efforts through increased funding to Myanmar and to renew their commitment to the Paris Declaration and Accra Agenda for Action.