Affecting Women and Children in ASEAN: A Baseline Study

Violence, Exploitation, and Abuse and Discrimination in Migration
Myanmar
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
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Formal Name: Republic of the Union of Myanmar
Capital City: Naypyidaw

Source: CIA - The World Fact Book
### Population
- Male: 26,844,857 (2011)
- Female: 27,154,947 (2011)
- Both sexes: 53,999,804 (2011) 54,584,650 (July 2012)

### Life expectancy
- Male: 62.91 years
- Female: 67.71 years
- Both sexes: 65.24 years (2012)

### Age structure
- 0-14 years: 27.5% (male 7,560,859/female 7,278,652)
- 15-64 years: 67.5% (male 18,099,707/female 18,342,696)
- 65-over: 5% (male 1,184,291/female 1,533,599) (2011)

### Sex ratio
- at birth: 1.06 male(s)/female
- under 15 years: 1.04 male(s)/female
- 15-64 years: 0.99 male(s)/female
- 65 years and over: 0.77 male(s)/female
- total population: 0.99 male(s)/female (2012)

### Religions
- Buddhist 89%, Christian 4% (Baptist 3%, Roman Catholic 1%), Muslim 4%, animist 1%, other 2%

### Ethnic groups
- Burman 68%, Shan 9%, Karen 7%, Rakhine 4%, Chinese 3%, Indian 2%, Mon 2%, other 5%

### Functional literacy rate
- Male: 93.9%
- Female: 86.4%
- Both sexes: 89.9% (2006)

### National poverty line
- 376,151 kyats per adult per year (2010)

### Percentage of population living below the national poverty line
- Around 25% (2010)

### Gross Domestic Product per capita
- $1,300 (2011)

### Net enrolment ratio in secondary schools
- Male: 49
- Female: 50^4 (UNICEF 2005-2009)

### Migration rate
- Net: -0.3 migrant(s)/1,000 population (2012)

### Number of citizens working overseas
- Male:
- Female:
- Both sex: in estimation around 3 million

### Number of foreign workers in country
- Male:
- Female:

### Percentage of female-headed households
- 20.8%

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3. Ibid.
| Labour force participation rate | Male: 85%  
Female: 63% (2009) |
|---------------------------------|----------------------|
| Unemployment rate               | Male: 1.5%  
Female: 1.9%  
Both Sex: 1.7% (2010)  
Both Sex: 5.7% (2010) |
| Proportion of unpaid family workers | Male:  
Female: |
| Fertility rate                   | 2.23 children born/woman (2012) |
| Maternal mortality rate          | 240 deaths/100,000 live births (2008) |
| Infant mortality rate            | total: 47.74 deaths/1,000 live births  
male: 54.51 deaths/1,000 live births  
female: 40.57 deaths/1,000 live births (2012) |
| Legal definition of 'child'      | ‘Child means a person who has attained the age of 16 years’ Chapter 1 section 2 (a) of Child Law 1993 |
| Age of maturity                  | 18 years old |
| Marriageable age                 | 20 years for women and at puberty for men according to the customary law.  
Above 14 years according to the Buddhist Women Special Marriage and Succession Act of 1954. |
| Age of consent                   | 14 years old for female (According to the definition of ‘with or without her consent, when she is under fourteen years.’ Under the Penal Code 375 that defines ‘rape.’) |
| Age of criminal responsibility   | 7 years old |
| Minimum age of employment        | 13 years old |
| Minimum age for military recruitment and participation | 18 years old |

8 Open unemployment rate (past six months) (that is defined as 'the percentage of the labour force aged 15 and above who do not work during the above time prior). HLHCA Project Technical Unit, 'Integrated Household Living Conditions Survey in Myanmar (2009-2010).
9 CIA World Fact Book
10 Under section 23 of the Parliamentary Election Act of 1948 (Act No. 65 of 1948), 'it is prescribed that every citizen who lives in the constituency and has attained 18 years of age has the right to be enlisted in the election list.' Committee on the Elimination of Discrimination against Women (CEDAW), Initial Report of States Parties (Myanmar), CEDAW/C/MMR/1, 25 June 1999.
A. OVERVIEW

This Baseline Study examines prevalence of violence, exploitation, and migration affecting women and children in Myanmar; their root causes and aggravating practices and their impact. It also studies the State’s de jure responsibilities and national policies in this regard. Assessment is also made on relevant national policies, implementing and monitoring mechanisms, complaint process, protection and rehabilitation programs, and the State’s prevention strategies. The Study also examines the role of non-state actors, their prevention programs, and how they monitor and cooperate with the State and other non-State actors in addressing violence, exploitation and the negative impacts of migration as they affect women and children in Myanmar.

This literature review is conducted based on sources from the UN organizations, government data, academic journals, NGOs’ reports and the media. The following table gives an overview of the major sources that this Study has used.16

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<th>Reports of other UN Human Rights mechanisms</th>
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16 See detailed references of documents at footnotes and bibliography sections.
## Other Non State Actors: reports of UN organizations, regional body, International organizations and national organizations


## Government Related Data

- Myanmar Maternal and Child Welfare Association (MMCWA), 2001; Central Body for Suppression of Trafficking in Persons and Myanmar’s Anti-Trafficking Unit (MATU) cited in UNIAP; Myanmar Women's Affairs Federation (MWAF).

## Reports conducted in cooperation of Government and UN organizations


## Reports of other Governments


## Academic Journals, thesis and books


## International and National Human Rights Organizations


## Individuals

- Risser, 2007; Than Myit Oo, 2011; Elizabeth Pender, 2009 (GenCap Experience); Gerard Smith, 2010; Chaw Chaw, n.d. etc.

## The Media

This study mainly consults the Concluding Observations (CO) of the CEDAW and CRC Committees as these two treaty bodies are tasked to monitor the implementation of the State's international de jure responsibilities to protect women and children. They provide an overview of the progress the State has made and the areas the State needs to improve in its effort of eliminating violence, exploitation and the negative impact of migrating affecting women and children. While the Government data on prevalence of such problems rarely exists, human rights reports and trafficking-related reports of the US Department of State, international and national human rights organizations, and shadow reports submitted to the CEDAW and CRC Committees provide detailed accounts of human rights violations of women and children.

To maintain a balance between a scarcity of the Government's data and a large number of data provided by human rights organizations, the review also consults the other sources such as academic papers, articles; State reports submitted to the CEDAW and CRC Committees and the Human Rights Council under the Universal Periodic Reviews; reports conducted by the State and the UN in cooperation; reports of other UN human rights mechanisms such as Special Rapporteur on the situation of human rights in Myanmar and reports of the Secretary General on 'children and armed conflict' and 'conflict related sexual violence'; and papers and articles of individual scholars.

While the majority of the sources are dated not later than 2005, three academic sources and one government related source are dated before 2005 since a recent study on the same issues is not available within the purview of this review. The State's report to the CEDAW and CRC Committees and the Human Rights Council and some reports of other UN sources such as UNICEF and UNIAP provide the State's policies and programs that are in planning process or under implementation to eliminate violence, exploitation and effects of migration on women and children.

Reports of INGOs and NGOs provide activities of non-state actors in Myanmar. This Study mainly consults the information provided by the Myanmar Information Management Unit (MIMU) that provides the information of which INGOs and NGOs are working in what areas and in what places in Myanmar. The number of local groups that are working on various issues at grass roots level is reportedly increasing. Some of them are also working on the issue of violence and exploitation of women and children. In spite the fact that this review could not identify all of them given the lack of official database on their activities, the growing number of such organizations is quite.

This review also uses information provided by the media such as Newspapers, Magazines and on line database for the most current update on the issue since such information cannot be found in a report format yet. Especially the media reflects current developments in Myanmar, which has been undertaking a series of political, economic and administrative reforms since 2011 after decades of economic mismanagement, political instability and armed conflicts in ethnic border areas.17

Given this backdrop, this Study strives to capture the latest update on the issue of violence, exploitation and migration affecting women and children as much as possible. While this Study concerns existing literature that present the situation until this point in time, there is much hope that forthcoming literature might be able to present more data on improvement of the country's human rights records, especially relating to women and children issues.

In Myanmar, women represent 51.54% of approximately the 55 million of population.18 The population of children under the age of 18 is approximately 37.87%.19

According to the existing literature, common forms of gender-based violence in Myanmar include domestic violence, especially related to spousal abuses; sexual harassment at work and in public; and rape, mainly in armed conflict affected areas.

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19 2006 data: ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee,’ 2011"
Main concerns on violence against children include corporal punishment at home and school; vulnerability of children to sexual abuse, trafficking and worst forms of child labour; risk of degrading treatment or punishment and poor living condition in pre-trial detention of children in conflict with law; risk of statelessness and inadequate or lack of access to health care and education facilities of Rohingya children in Northern Rakhine State; and the negative impact of armed conflicts, forced evictions and relocation on internally displaced children.

The reports also indicate that there is a prevalence of exploitation of women and children, both at the international and national level. Internationally, women and children are reportedly trafficked mainly to China, Thailand and Malaysia. At national level, forms of exploitation include forced labour, child labour, child prostitution and child soldier recruitment. Migrant women and children are also reportedly subjected to various forms of abuse and discrimination, such as very low remuneration, hazard working conditions and fear of arrest and deportation especially in Thailand and Malaysia.

While gender based violence is much related to the traditional and cultural stereotypes of women, various forms of violence, exploitation, abuse and discrimination against women and children in different contexts are mainly rooted in armed conflicts, poverty and racial discrimination. To eliminate such human rights violations, the government has taken de jure responsibility through ratification of the four human rights treaties: the CEDAW Convention; the CRC Convention; the Optional Protocol to the CRC on the Sale of Children, Child prostitution and Child pornography and the Convention on the Rights of Persons with Disabilities (CRPD). To fight against trafficking, the State has acceded to the United Nations Convention against Transnational Crime and its Protocols. The State has also adopted national polices and enacted laws such as the Child Law, the Anti-Trafficking in Persons Law and the National Plans of Action for advancement of women and for children.

According to the State's reports, such organizations and Ministries as National Human Rights Commission, MMCWA, MWAF, the National Committee on the Rights of the Child, the Anti-Trafficking Unit (ATU) and the Anti-Trafficking Task Forces (ATTFs), the Ministry of Social Welfare and the Ministry of Home Affairs are identified as the implementation and monitoring bodies of the State's national policies against violence and exploitation of women and children.

In its implementation, protection and prevention strategies and activities, the State cooperates with the UN organizations, INGOs and NGOs that are working on women and children protection projects. The literature on activities of the UN, INGOs and NGOs imply that they have been mainly providing assistance and support to the State’s programmes in a manner of cooperation rather than monitoring or influencing the State's polices and implementation, especially in sensitive issues such as gender-based violence in armed conflict affected areas. However, the UN organizations such as UNFPA and UNICEF have much contributed to drafting National Plan of Action for child protection in emergencies and National Plan of Action for the Advancement of Women (2011-2015). Regardless of some challenges and constraints, the UN country task force and the ILO Supplementary Understanding (SU) mechanisms have also shaped some progress in the State's national strategies and implementation programme in eradication of exploitation and abuse of women and children specifically forced labour and minor recruitment.

The Study indicates that the State has recently put more effort in solving problems of human rights violations faced by women and children in other countries especially in Thailand and Malaysia, including the formation of protection committees for Myanmar migrants. However, regarding national policies, implementation, monitoring, protection, prevention of abuses against of Myanmar migrants in various host countries, the information is still lacking. This is partly due to inadequate laws, policies and institutions to protect large numbers of Myanmar overseas workers, especially those who are unskilled.

Other challenges in the State's effort to eliminate violence, exploitation and the negative impact of migration affecting women and children include inadequate financial and human resources; corruption; the need to improve rule of law; the need to establish an independent and transparent judiciary system; and the need to strengthen institutions and build up capacity of those who are involved in protection and promotion of the rights of women and children. Hopefully, the reform process of the country will be able to encompass measures to overcome such barriers to a better future for the vulnerable women and children of Myanmar.

20 More about National Human Rights Commission, see B (3) (a).
B. VIOLENCE

1. Description Of The Problem

a. Prevalence of Violence

Introduction

There is a lack of government data on violence against women and the CEDAW Committee pointed out that the State needs to exert effort to collect data on the extent of various forms of violence against women, its root causes and impact, disaggregated by age and ethnic groups.21 In the UNFPA report, it is also noted that lack of data amounts to the invisible nature of gender based violence (GBV) issue and ‘it has become normal for many gender gaps and inequalities to be overlooked by both national and international organizations working in Myanmar’s development sector.”22

The Myanmar National Committee for Women’s Affairs (MNCWA) and the Myanmar Women’s Affairs Federation (MWAF) have done a few studies on the issue. However, the scopes of those studies were limited and there is a need for more in-depth research on GBV.23 The UN organizations in cooperation with the Government recently conducted two assessment studies on the impact of Cyclone Nargis on women and the report also includes GBV issues in the Cyclone affected areas.

Similarly, The US Department of State and the CRC Committee noted that accurate statistics on child abuse were not available.24 According to the government, the problem was not significant, although some international NGOs believed the problem was more widespread than the government acknowledged.25

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23 Ibid.

24 Committee on the Rights of the Child (CRC), 'Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Union of Myanmar,' CRC/C/MMR/CO/3-4, 3 February 2012, para. 59. (Hereafter ‘2012 Concluding Observations of the CRC Committee’)


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 Violence Against Women

Violence against women prevails in various forms such as domestic violence, sexual harassment at work and in public across the country. According to some studies in Cyclone affected areas in Yangon and Ayeyarwady Division, it indicates the prevalence of GBV and there are also numerous NGO reports on rape cases in ethnic minority areas especially where there were armed conflicts.

Forms of gender based violence across the country:

i) Domestic violence

There is scant literature and reports on the extent of domestic violence, forms and its impact on women. However, the CEDAW Committee and the US State Department recognized a problem of widespread domestic violence including spousal abuse.26 Feedback from discussion workshops organized by women’s groups along Burma’s borders since 2004 also confirmed the problem.27

According to a most recent report released by Palaung Women’s Organization (PWO), there is a high prevalence of domestic violence in the rural areas of northern Shan State where the vast majority of the Palaung population live. The study was conducted through interviews with 617 respondents consisting of both female and male from four townships in the area from November 2009 to March 2010.28 Ninety per cent of respondents have experienced or seen physical violence within families in their community.

According to academic research done in Myanmar in 2001,29 27% of a sample of 286 married women in the Chanmayetazan Township of Mandalay, experienced physical assault and 69% experienced psychological aggression in a one-year period.30 Although the study

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29 Although this academic study on domestic violence in Myanmar is not a recent one, it is mentioned here since a recent similar academic study on the issue could not be found.

could not be generalized due to some limitations such as the overrepresentation of lower and middle class household women in the sample, it generally indicates the existence of the problem. The findings of the study were in accordance with those of the MNCWA that minor psychological aggression and physical assault were most frequently reported, whereas severe forms of psychological and physical abuse were less frequently reported.\(^{31}\)

Although above-mentioned studies were mostly related to spousal abuse, there is no data on marital rape. It might possibly be due to the lack of awareness on the issue since there is no such law that penalizes marital rape in Myanmar.\(^{32}\) There is also no study on other types of domestic violence such as maid abuse although there are some anecdotes of such incidents.

ii) Sexual harassment at work and in public

Given the paucity of data, except for an academic study dated in 2002 and MWAF study dated in 2004, information in this section mainly contain anecdotes from ethnic human rights groups and media sources.

At a consultation workshop held in preparation of the recent CEDAW shadow report by Women of Burma, women and girls interviewed revealed their experience relating to how they had been touched and groped sexually by men on crowded buses and other public places.\(^{33}\) Recently there have been increasing anecdotes of many women who experienced sexual harassment on the Yangon’s bus networks and highways especially during the rush hours. Thanks to organizers of a campaign, ‘whistle for help’, some women raised their voices against such abuses happening for many years to many women.\(^{34}\) It is only during this current political situation that such kind of campaigns could be organized. The campaign aimed to raise community awareness and encourage women to raise their voice when they experience sexual harassment on buses and the community to give protection to those women.\(^{35}\) The campaign pamphlets said ‘Please go and help the women who blow whistle and let’s stop this unacceptable behaviour.’\(^{36}\)

According to a campaign committee member cited in the Myanmar Times, girls and women are usually too afraid or shy to report about experience. She said:

> Over the past 30 years I myself faced this awful event sometimes and I always thought it was my fault, and kept silent even though I hated it so much. I am now over 40 so …\(^{37}\)

From what she said, various implications can be withdrawn. Women survivors of sexual abuses kept silent because it might be the fact that there was a lack of effective mechanisms that can take action against it and give them protection or it might be the Myanmar culture that a good woman is supposed to be docile, submissive and not to be aggressive (See B.1.b and B. 3. C.)

The above-mentioned events suggest that there might be unreported cases of sexual harassment and rape cases.

The US State Department 2010 report also made that point.\(^{38}\) According to a study by the Myanmar Women’s Affairs Federation (MWAF)\(^{39}\) cited in a report of UNFPA Myanmar, it was revealed that in 17 states and divisions of Myanmar, there were 209 reported cases of sexual assault in 2001 and 338 cases in 2004 respectively.\(^{40}\) However, it was not clear as to context (home, work or public), causes, and impact. The UNFPA report noted that ‘this study provided fascinating introductory information’, but need more in-depth study as the CEDAW Committee suggested.

Regarding sexual violence at work, an academic study conducted in 2001\(^{41}\) found out that there was widespread sexual harassment at workplace, mostly committed by a co-worker; and that even the less severe form of sexual harassment had the possibility to inflict negative impact on the survivors.\(^{42}\) The study used tailor sampling and

\(^{31}\) Khin Win Shwe 2002 cited in \textit{Ibid.}

\(^{32}\) See more detail in assessment of national law section, however marital rape is mentioned in a recent study conducted by the UN and the government (See also at Women’s Protection Technical Working Group, ‘Women’s Protection Assessments: Post Cyclone Nargis, Myanmar’, May, 2010, accessed November 14, 2011, http://reliefweb.int/node/361181.)


\(^{35}\) \textit{Ibid.}

\(^{36}\) \textit{Ibid.}

\(^{37}\) \textit{Ibid.}


\(^{39}\) The MWAF is regarded as one of the extension of government structures. (See at Concluding Observations of the CEDAW Committee, para. 16)


\(^{41}\) A recent similar academic study was not available yet due to the scarcity of data on GBV.

recruiting methods to maximize representativeness within the constraints of time and resources. Survey questionnaires were translated to Myanmar and four groups of female employee in Mandalay participated: 130 (48%) were University faculty; 38 (14%) were government employees; 71 (26%) were company employees; and 24 (9%) were nurses. According to a study of women workers from urban garment factory, there were cases of both physical and verbal sexual harassment of female workers by foreign males who were in superior positions in factories. The study said that such cases were left unreported due to fear of survivors that they might lose their jobs and dignity in the community.

iii) Gender based violence in Cyclone Nargis affected area

Concern over gender based violence in the Cyclone Nargis affected areas in Yangon and Ayeyarwady Division was raised in the concluding observation of the CEDAW Committee. Both initial and complementary assessments facilitated by Women's Protection Technical working group and the Ministry of Social Welfare, Relief and Resettlement, identify such issues as rape, emotional abuse, verbal abuse, sexual harassment, physical assault, domestic violence including marital rape, being forced into early marriage, sexual exploitation as security and safety problems faced by women and girls both before and after Nargis. The initial 2008 assessment was conducted immediately after Nargis in 16 townships in Yangon and Ayeyarwady Divisions. The sample size was 4,841 respondents; 50.1% were female and 49.9% were male. The complementary assessment was done after one and half years in two townships and one sub-township in Ayeyarwady Division with the sample size of 600. The methods applied include focus group discussions (FGD) and a one-on-one survey questionnaire.

iv) Gender based violence in ethnic minority areas

Rohingya Women

Numerous reports have mentioned about human rights violations faced by Rohingya minority in Rakhine state. According to the CEDAW Committee, Human Rights Watch (HRW), the Arakan Project, and the Irish Centre for Human Rights types of violence against Rohingya women include severe restrictions on their freedom of movement; restricted access to medical care, food and adequate housing; forced labour; and restrictions on marriages and pregnancies. Those reports of human rights violations appear to come from credible sources. For instance, the Irish Centre for Human Rights conducted numerous confidential meetings with individuals from several organizations working on the ground in North Arakan State and gathered multitude testimonies from individual members of the Rohingya minority in and around refugee camps in Bangladesh. In the government response to the recommendations contained in the concluding observations of the Committee following the examination of the combined 2nd and 3rd periodic report of Myanmar on 3 November 2008, it was mentioned how the government has provided access to health and education in the northern Rakhine State. However, it did mention that development in education, economic, social, and health sectors are low. According to a recent survey conducted by the United Nations Development Programme (UNDP) in cooperation with the Government’s Ministry of Planning and Economic Development, the United Nations Children’s Fund and the Swedish International Development Agency, Rakhine State was the second poorest with a rate of 43.5 per cent after Chin State with 73.3 per cent among 14 regions and States in Myanmar.


50 Irish Centre for Human Rights, ‘Crimes against Humanity in Western Burma’

51 See more detail in Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ‘Information provided in follow-up to the concluding observations of the Committee: Response by Myanmar to the recommendations contained in the concluding observations of the Committee following the examination of the combined second and third periodic report of Myanmar on 3 November 2008,’ CEDAW/C/MMR/CO/3/Add.3, 2 September 2011.

52 IHLCA Project Technical Unit, ‘Integrated Household Living
Ethnic Minority Women Affected by Armed Conflicts and Extractive Industry

According to ethnic women's rights and human rights groups and testimonies of women survivors at the International Tribunal on Crime against Women of Burma, the government armed forces committed rape against ethnic minority women in conflict affected areas.53 The US Department of State noted that some armed ethnic groups may also have committed conflict related abuses including torture, killing and rape. However the scale might not be as big as the government army.54 A recent RFA media broadcast mentioned about rape cases committed by soldiers of Kachin Independence Organization (KIO) in Kachin State. The survivors included 2 women and 2 girls of 15 years old.55

A report of Kachin Women’s Association documented 15 cases of rape and sexual violence committed by the army soldiers, police security guards from Asia World Company involved in construction of the Myitsone Dam66 from 10 June to 9 August, 2011 in Northern Shan State and Kachin State.57 The survivors included 17 women between the ages of 20 to 50 years and 16 girls between the ages of 9 to 13 years. At least in 8 cases, survivors were subsequently killed.58 According to the latest report of the Secretary General on conflict and sexual violence, as many as 32 women and girls throughout Kachin State were allegedly raped by the Tatmadaw Kyi (government armed forces) between June and August 2011.59 The report said ‘according to the Government there were four cases of rape in Shan State and one case in Kachin State in 2011; punitive action has been taken against the perpetrators.”

Women’s League of Burma, in their shadow report submitted to the CEDAW Committee,61 mentioned that there were altogether 875 rape survivors including 161 girls under 18 years old from 1989 to 2006. Perpetrators were the army soldiers including high-ranking officers from commander to corporal level and some of them were State Peace and Development Council (SPDC) authority. According to those reports, there might be unreported rape cases due to inaccessibility and unwillingness of the survivors and the community members who feel shameful to talk about sexual abuse.

In those reports, it was noted that the incidents happened while the survivors were travelling outside their villages or on farms or even in their homes. In some cases, women were forced to work in army-owned rubber plantations or deployed to secure the areas around the development projects like constructing the Yadana gas pipelines during the day.62 During the night, they were forced to serve as sexual slaves. Cases of human rights violation including rape in the ethnic areas due to extractive industry like oil and gas projects can be seen more in various reports of Earthrights International.63

On the other hand, the government has been rejecting such allegations of rape cases as mentioned in the government’s responses during the review process on Myanmar by the


56 Construction on the Myintsone dam has been temporarily stopped by the current government for 5 years.


58 Ibid., in some of the cases, while two or three girls and women are on their way home or on the farm, they were raped. However, this may have been recorded as a single case in some instances. That is why the number of survivors outnumbered the number of cases. (For more detail, see ibid.)


60 Ibid.

61 Women of Burma, ‘CEDAW Shadow report Burma,’ 70.


Working Group on the Universal Periodic Review (UPR) that 'the allegations of sexual violence against ethnic women and children are baseless.' The Second and third periodic reports of Myanmar on the implementation of CEDAW, the government mentioned that it conducted field investigations in response to allegations of 175 rape cases in the southern, eastern and northern parts of Shan State committed by army soldiers as reported by The Shan Human Rights Foundation (SHRF) and the Shan Woman's Action Network (SWAN) and found out that 38 cases were old cases, 135 cases were unreal and only two cases were true. The two perpetrators, an army officer and one other rank, in the two cases were prosecuted and given ten-year sentence each and dismissed from the Army.

In the above two reports of the government, discrepancy can be noted that while the State’s UPR report denied the cases, the State’s CEDAW report has already admitted occurrence of such cases. However, it seems that the government’s investigation undermine the extent of problems that have happened to the ethnic women by taking action against 2 cases out of 178 cases. While the act of investigation is welcoming, it is also questionable regarding the independent and transparent nature of investigation team, which consisted mainly of government officials. On the other hand, the UN entities such as the Special Rapporteur on the Situation of the human rights in Myanmar, the CEDAW Committee and the international human rights organizations such as Human Rights Watch raised their concern over sexual and other forms of violence against women and girls in ethnic areas including Shan, Kachin, Kayin, Chin, Mon, Karenni, Arakan, Palaung states and those areas where women are vulnerable and marginalized.

Without genuine ceasefire and restoration of peace, safety of ethnic minority women is still at high risk. Even after peace has been restored, it will take some time to relieve the physical and psychological impact of atrocities suffered by rape survivors. Recent developments in peace negotiation process between the government and ethnic minority armed groups have earned a hope for a better future for women in ethnic minority areas. The report of the Secretary General on ‘conflict related sexual violence’ mentioned that ‘the new Government has recognized the negative effect which five decades of armed conflict has had on ethnic minorities and has committed itself to addressing their grievances as well as promoting and protecting human rights.’ However, human rights violations directly related with the extractive industry in those areas and across the country have already endangered security of women’s lives, as mentioned in reports of Earth Rights International.

Violence Against Children
In the most recent CRC Committee’s concluding observation released on 3 February 2012, it was mentioned that:

while noting that the 1993 Child Law contains various provisions on violence against children, the Committee remains concerned about the widespread violence against and abuse of against children …

Concern about violence against children is related to corporal punishment at home and in school; Children in poverty and vulnerable situations including children in street situations, children with disabilities, orphans, children in prison and children in conflict with law, children from ethnic and religious minority especially Rohingya children, displaced children affected by conflict, forced eviction and land confiscation.

i) Corporal punishment at home and school
One major concern regarding violence against children is related to corporal punishment at home and in school. The CRC committee raised its concern that corporal punishment continues to be socially and legally acceptable. Given a scarcity of data on the issue, the two studies done by the UNICEF are often cited as the

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66 See more at Ibid.
69 Security Council, ‘Conflict-related sexual violence, para. 41.
70 See supra note, 63.
71 2004 Concluding Observations of the CRC Committee, at paras. 38 and 49; 2012 Concluding Observations of the CRC Committee, para. 53.
most credible sources. However, there are anecdotes of corporal punishment at home or school or alternative care settings.

In an article in *The Myanmar Times* entitled ‘Corporal punishment ‘common practice’: author,’ anecdotes of children who were beaten up by parents or teachers are recorded, including an event where a student from a student hostel in Pyin Oo Lwin was even beaten to death by her teacher. According to a recent report of PWO, 58% of respondents claimed that physical violence and verbal aggression were used as disciplinary measures by parents in the Palaung rural areas of northern Shan State.

In a 2001 comparative study of 10,073 children, aged 9-17 years across East Asia and the Pacific by UNICEF and Research International Asia (Thailand) 40% of the children surveyed in Myanmar reported that their parents had beaten them; 12% revealed that it was difficult for them to talk to teachers because they were afraid of being beaten by the teachers. In a 2002 study by UNICEF, 17% of children surveyed in four peri-urban townships revealed that teachers beat them at school. Respondents included both primary and secondary schools and out of school children and face-to-face interviews and focus group discussions were used.

ii) Children in vulnerable situations: Street children, orphans, abandoned, sexually abused children and children in poverty

In its two concluding observations in response to the Second Periodic Report and the consolidated Third and Fourth Periodic Reports of the State, the CRC Committee raised its concern at the lack of reliable information on the number of street children in all townships and causes of the phenomenon. Children who are affected by poverty, broken families or affected by conflict or forced relocation might end up in the street situation. They are also exposed to various forms of exploitation including trafficking; worst forms of child labour and sexual abuse (see more detail in exploitation section). With lack of data on the issue and its root causes, an attempt to solve the problem cannot be effective.

The CRC Committee has been reminding the State about the importance of collecting data relating to domestic violence, including physical and sexual abuse and the neglect of children. According to a study conducted by the UN in coordination with the government in 2000 on the issue of sexually abused and exploited children, girl children who were trafficked or engaged in sex industry voluntarily at their young age came mainly from troubled families that were poor and uneducated. Before they entered the sex industry, some of them were raped by their stepfather or boyfriend or friend of a family member. And some of them just simply saw it as a way to ease their family’s financial woes.

The CRC Committee mentioned that poverty rate is persistently high among children. Furthermore, the Committee is concerned about the significant income disparities between urban and rural areas and between regions. For instance, compared to the national average of 10% food poverty, the Eastern Shan State and the Chin State have 20% and 40% respectively in terms of food poverty. In addition, the Committee is concerned about serious gaps in the supply of safe drinking water especially in schools and the rural areas and inadequate sanitation facilities, which affect the health and retention of children in school.

According to the Committee, it is worrisome that there is the lack of information on the resource allocated to the implementation of the Poverty Alleviation Plan for 2011-2015. However, it might be possible that the with the on-going reform process in the country, resources allocated to social services might be increased and efforts to alleviate poverty might be more effective in future. (See more on implementation section).

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73 Palaung Women’s Organization (PWO), ‘Voices for Change,’ 16.


75 UNICEF cited in Global Initiative to End All Corporal Punishment of Children.

76 ‘2004 Concluding Observations of the CRC Committee,’ para. 74 and 75; ‘2012 Concluding Observations of the CRC Committee,’ para. 87.
Due to poverty, conflict or natural disasters\(^{84}\) or various other reasons, children are deprived of a family environment. Although they are cared for at institutions administered by the Department of Social Welfare, the CRC Committee raised its concern over the inadequate living standard provided by these institutions\(^ {85}\) (See B. 3. c.)

### iii) Children affected by HIV/AIDS and children with disabilities

Children who live in poverty and who are vulnerable to sexual abuse and other forms of exploitation have more risk of being infected with HIV/AIDS and of being disabled due to malnutrition or other complications. For instance, according to the UNAIDS, in Myanmar, around 18% of female sex workers are infected with HIV.\(^ {86}\) According to the UN’s study mentioned earlier on the issue of sexually abused and exploited children\(^ {86}\), all the female sex workers who were under the age of 18 years became sex workers mainly due to poverty.

Even though the government has adopted priority strategies to respond to orphans and vulnerable children infected and affected by HIV, the CRC Committee raised its concern about inadequate resources in their implementation (See B. 3. c.) Regardless of the plan, lack of means for effective implementation can amount to negligent treatment. It is also similar in the case of children with disabilities especially, those from rural and remote areas.\(^ {88}\)

According to a survey of Human Rights Foundation of Mon Land, in one village alone in Ye township, Mon State, there are at least 10 to 15 disabled children out of a population of 6,000.\(^ {89}\) According to the report, children in the eastern and southern border areas are vulnerable to landmines and malnutrition. They pointed out that disabled children in the region face discriminatory attitudes due to lack of community awareness and lack of social services including access to an inclusive education in spite of the government's plan which has been concentrated mainly in cities.\(^ {90}\)

### iv) Children in prison and children in conflict with law

According to the State's combined Third and Fourth Periodic Reports to the CRC Committee, a female prisoner is allowed to keep her child with her until the child reaches 4 years of age under normal circumstances, or up 6 years of age if necessary. Children can learn poems and basic language at pre-primary schools established in prisons.\(^ {91}\) It also stated that Myanmar Maternal and Child Welfare Association (MMCWA) and the Department of Social Welfare provide necessary facilities to children who are born to female prisoners.\(^ {92}\)

On the other hand, in the shadow report of the Child Rights Forum of Burma (CRFB) to the CRC Committee, former political prisoners recounted their experiences on how infants and young children with their mothers in prison were denied right to adequate health care, everyday stimuli and educational material for their social and psychological wellbeing, and nutritious food.\(^ {93}\) Their mothers were also denied assistance during childbirth. The CRC Committee also mentioned its concern regarding this issue.\(^ {94}\) However, it is hopeful that the current reform-minded government will improve the situation since there is already a policy to give protection to such children.\(^ {95}\)

Children who are in conflict with the law are in vulnerable situations due to reportedly ill-treatment in prisons. The CRC Committee expressed its concern about a high number of children in pre-trial detention and the reports that they were physically punished.\(^ {96}\)

Another category of children who are at risk of torture, inhumane or degrading treatment or punishment are child political prisoners.\(^ {97}\) Since many political prisoners have been released, child political prisoners might have already been freed. However, a few political prisoners still

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\(^{85}\) '2012 Concluding Observations of the CRC Committee,' para. 55


\(^{87}\) Supra note, 78.

\(^{88}\) '2012 Concluding Observations of the CRC Committee,' at para 61.


\(^{90}\) Human Rights Foundation of Monland, 'The Plights of Burma's Disabled Population.'

\(^{91}\) 'Myanmar's Report to the CRC Committee,' para. 119

\(^{92}\) Ibid.

\(^{93}\) Child Rights Forum of Burma, 'CRC Shadow Report Burma.'

\(^{94}\) '2012 Concluding Observations of the CRC Committee,' para. 21

\(^{95}\) 'Myanmar's Third and Fourth Periodic Reports to the CRC Committee, 2011, para 119

\(^{96}\) '2012 Concluding Observations of the CRC Committee,' para. 90, 91

\(^{97}\) '2012 Concluding Observations of the CRC Committee,' para. 51, 52.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

remain in prisons. According to interviews with former child political prisoners who were detained between 1994 and 2007, they were subjected to unlawful arrest, detention and torture for their involvement in peaceful demonstrations, their membership in a high school union and their perceived association with rebel groups. As the government starts to open up, it is hoped that students’ right to freedom of association might not be restricted as in the previous regime. Hopefully, detention of children or any person for their political belief will be prevented.

v) Rohingya Children

Despite the process of reform in Myanmar, the situations of Rohingya children are still worrisome due to their statelessness and a subsequent lack of access to health and education. According to the shadow report of the Arakan project submitted to the CRC Committee, an estimated 40,000 Rohingya children are reportedly unregistered and more than 60% of children aged between 5 and 17 have never enrolled in school. The Rohingya community has an estimated illiteracy rate of 80%.99

As government authorization is required for marriage, Rohingya women who become pregnant without official marriage authorisation often resort to illegal abortions, resulting in many maternal deaths.100 Some reportedly deliver the baby secretly in Bangladesh or abandon their babies there. Even for legally married couples, as the result of ‘two-child policy’, third or fourth children are left unregistered or registered with another legally married couple.101 According to the latest report of the Special Rapporteur, the border security force, the Nasaka, has not issued marriage permissions since August 2011.102

Whether children are registered or unregistered, they are stateless under the 1982 citizenship law. Lack of citizenship consequently renders them vulnerable to various forms of discrimination including travel restrictions and contempt and discriminatory treatment of the local Rakhine and Burmese. As the result, they have been reportedly denied their basic rights of access to nutritious food, health care, education, survival and development.103

vi) Children affected by conflict

In spite of recent ceasefire efforts and agreements between the government and the respective ethnic rebel groups, the sufferings of children from the impact of prolong conflicts in ethnic areas have been extensively reported. Children were reportedly subjected to serious abuses, such as recruitment of child soldiers, rape, and indiscriminate use of anti-personnel landmines by both the government armed forces and non-state armed ethnic groups.104

Citing Karen Human Rights Group (KHRG) reports, CRFB said that there were 32 incidents of children ranging from the age of 2 months old to 17 years old injured, killed or subjected to violence by soldiers of the armed forces in Karen State and East Bago Region from March 2006 to April 2010.105 Civilians including children were killed at ‘shoot on sight areas’ due to such circumstances as indiscriminate fire on villages, hiding sites, farm field huts and fields; deliberate destruction of civilian settlements including schools and hospitals and torture of persons suspected of having links with or supporting opposition forces. Several organizations including the Free Burma Rangers, Women and Child Rights Project (WCRP), KHRG and Back Pack Health Worker Team (BPHWT) documented cases of child landmine survivors.106 WCRP reported 7 cases of children killed or maimed caused by undetected landmines used by all parties in conflict in civilian areas in Mon state between 2007 and 2009.107 According to the report the secretary general on children and armed conflict:

There were a number of media reports in 2010 of children being killed or maimed during skirmishes involving the Tatmadaw, DKBA, KNLA, KA or Mon Pyi Thit, or by landmines and unexploded ordnance. In a verified case, on 31 March 2010, two boys under the age of 10


100 Chris. Lewa, ‘North Arakan.’

101 Ibid.

102 Human Rights Council, ‘Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea

103 ‘2004 Concluding Observations of the CRC Committee,’ at paras. 64, 27, 34 and 35. ‘2012 Concluding Observations of the CRC Committee,’ at para 93. The Arakan Project, ‘Issues to be raised concerned the situation of stateless Rohingya Children in Myanmar.’


106 Ibid.

107 Ibid.
accidentally detonated an unexploded round from an M-79 grenade launcher while playing in Hlaingbwe Township in Kayin State. One of the boys died instantly, whereas the second boy was seriously injured.108

One impact of conflicts suffered by children in rural areas and ethnic regions is limited access to education and health care due to inadequate provision of such facilities or destruction of the existing facilities.109

According to the US Department of State, the mortality rate of children-IPDs in conflict areas was significantly higher than in the rest of the country.110 Similarly, CRFB points out that infant mortality and under-5 mortality rate are higher, at 73 per 1,000 births and 138 per 1000 live births, in internally displaced communities of eastern Burma based on BPHWT’s recently published figures. Whereas, according to BPHW’t infant mortality rate and under 5 mortality rate at the country level are at 54 per 1,000 births and 71 per 1,000 live births.111 According to the government’s third and fourth combined report to the CRC Committee, infant mortality rate is 49.7 per 1,000 live births and under-5 mortality rate is 66.1 per 1,000 live births in 2003.112

There have been a number of academic articles on limited maternal health services and inadequate health assistance to the IDP population including land mines victims in eastern Myanmar.113 The CRC Committee also expressed its concern over the very high number of IDP children and families and their limited access to clean water, inadequate sanitation, food, shelter, health and education.114

As mentioned earlier, conflict related abuses suffered by children and women should end with the ceasefire agreements. However, even after the conflicts ended and ever-lasting peace has been restored, as Karen Human Rights Group (KHRG) suggested, human rights abuses directly related to increase in industrial, business or development projects might have worsened.115

vii) Children affected by forced evictions and relocation

For the purpose of extractive industry and large-scale development projects, families have been forcefully evicted from their homes and it has negative impact on children regarding access to clean water, sanitation, food, shelter, health and education. The CRC Committee expressed its deep concern on the issue and urged the government to end forced evictions and to guarantee the rights and well-being of those internally displaced children.116

The Earth Rights International has been doing field research in the areas where extractive industry projects are under construction and recorded human rights violations including extensive land confiscation, forced relocation and a subsequent loss of livelihood (See also ‘prevalence of exploitation’ at section C.1.(a). The Special Rapporteur also raised his concern for the people in ethnic regions such as Rakhine State, Kayah State, Kachin State, Kayin Kachin where massive extractive industry were on completion or under construction or under planning process.117
Various forms of gender-based violence against women in Myanmar are rooted in cultural factors. Infiltration of Brahmin culture in Myanmar society can be seen in some societal stereotypes and attitudes that relegate women to a subordinate position. In Brahmin culture, women are regarded as the inferior sex and their gender-specific bodily functions (menstruation and childbirth) are identified as dangerous and polluting to male purity. Even though Myanmar does not have some extreme forms of gender discrimination such as female infanticide and honour killings as in some other Asian countries, traditional and cultural norms are imposed on women, fostering and perpetuating gender stereotypical attitudes and male domination in all walks of life in Myanmar society – regardless of religion or ethnic origin.

Two ethical values i.e. 'Shame' (Hiri) and 'Fear' (Oattapa) are equally applied to men and women. People are reminded to be shameful and afraid of committing such kind of actions. However, when these values are interpreted regarding women's behaviour, influence of the 'Brahmin culture' can be seen and women are expected to be 'good' by being modest, submissive and obedient in serving her husband and relatives.

For instance, having sex outside marriage is traditionally regarded as shameful and brings disgrace on the woman and her family. It is seen as the social stigma and consequently damages a woman's dignity and reputation. This is reflected in the cases of women who feel ashamed to report sexual harassment and rape cases, and consequently fosters a culture of silence. The CEDAW Committee noted that a culture of silence fosters 'impunity' due to unreported and underreported cases and it is exacerbated by weakness in law enforcement and access of survivors to justice. Such impunity has increased sexual violence against women in ethnic areas, especially conflict related crimes committed by the members of armed forces.

Furthermore, it was noted that military expansion in the ethnic areas whether in war zones or non-conflict areas has reportedly exacerbated the situation. Sexual violence against women and girls was allegedly used as a strategy to 1) punish local communities accused of supporting rebels; 2) to humiliate and demoralize ethnic resistance forces; and 3) to establish control over lands and resources of the ethnic peoples. In a summary report of 24 stakeholders' submissions to the Universal Periodic Review by the Office of the High Commissioner for Human Rights and the Special Rapporteur's report to the Human Rights Council, concern was raised over the culture of impunity and practice of widespread and systematic use of rape.

In addition, in some ethnic areas, a culture of male domination, fear and violence is supposedly normalized in militarized societies. It seems to be handed down as a legacy of long term armed conflicts.

Aside from end of armed conflicts and restoration of peace, other factors such as law enforcement and access to justice need to be improved.

In non-conflict areas such as in Northern Rakhine State, gender-based violence on minority Muslim women

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122 See also Women of Burma, CEDAW Shadow Report: Burma,' 28-29.
124 '2008 Concluding Observations of the CEDAW Committee,' para. 22.
125 '2012 Concluding Observations of the CRC Committee,' para. 86-87, raised its concern on prevalence of sexual violence against young girls and encouraged the State to strengthen law enforcement; '2008 Concluding Observations of the CEDAW Committee,' para. 22-23.
127 Women of Burma, 69-70.
128 Ibid, 69-74
is reportedly compounded by the practice of racial discrimination and ‘highly conservative traditions and a restrictive interpretation of religious norms, which contribute to the suppression of women’s and girls’ rights.132 All these factors seem to be reinforced by poverty and economic crisis, as found out in the study of PWO. According to the study, families suffered from economic crisis in the Palaung areas due to the State’s monopoly of the local’s livelihood (tea industry) and a subsequent increase in opium cultivation and addiction. It said, ‘[m]ales resort to physical violence as a means of expressing their anger and frustration with their situation.’133

It seems that poverty and financial difficulties are the common factors that have increased domestic violence especially between man and wife in other parts of the country as well. According to a study conducted by the Myanmar National Working Committee for Women’s Affairs (MNWCWA) and an academic study in 2002, the commonest causes of domestic violence are inadequate financial provision for the family, excessive and habitual drinking, disharmony with in-laws in the extended families, and adultery.134 Even though these available data are quite old, according to the PWO’s study, which was a recent one, they are valid until today.

Root Causes and Aggravating Practices of Violence Against Children

It seems culturally acceptable that parents or teachers beat a child with the purpose of admonition for the benefit of the child. This is also stated in the Child Law as such.135 According to the government, it is under review process to amend the clause to end the practice of corporal punishment.136 In spite of that, as what Aung Thein Kyaw, one of the country’s first writers to publish a book about parenting, told the Myanmar Times, violence against children particularly physical abuse, is ‘common practice’ and ‘many schools and institutions still use canes to inflict punishment’137 regardless of the government directives that corporal punishment should not be used at schools.138

Although study on the root causes of such practice at homes in Myanmar families has not been done, some anecdotes said that parents under financial stress and ignorance tend to use corporal punishment.139 Moreover, poverty itself becomes a form of negligence and maltreatment when it is widespread and disproportionally affects children’s health, education and development. Thant Myint Oo portrayed the extent of poverty and its impact on children as follows: ‘a third of all Burma’s 60 million people are living on $1 a day or less, and at least as many were living on only a little more. Millions were malnourished and millions of children were stunted in their growth.’140

c. Impact of Violence

Generally it can be concluded that violence against women and children has negative impact on survivors both physically and mentally based on the available studies in this review. According to Palaung Women Organization (PWO), as a result of prolonged physical and mental abuses, some women survivors of domestic violence suffered from physical and psychological disorder.141

Domestic violence also destroyed stability of family unit and it has negative impact on children. Children suffered from depression and shame of the social stigma of family problems. As the result, some dropped out of schools and run away from the family. It perpetuates a culture of violence in the mindset of those children who are exposed to domestic violence in their daily life.142

Similarly, a study on sexual harassment at work place found that ‘gender harassment was associated with a variety of negative outcomes (psychological, physical

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132 ‘2008 Concluding Observations of the CEDAW Committee,’ para. 22 and 42; Irish Center for Human Rights, ‘Crimes against Humanity in Western Burma.’
133 PWO, ‘Voices for Change’, 5
135 See Article 66 (d) of the Child Law (1993).
136 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 272.
138 Global Initiative to End all Corporal Punishment of Children, ‘Myanmar.’
141 Palaung Women’s Organization (PWO), ‘Voices for Change,’ 6, 30. See also Nilar Kyu, and Atsuko Kanai, ‘Prevalence, antecedent causes and consequences of domestic violence in Myanmar,’
142 Palaung Women’s Organization (PWO), ‘Voices for Change,’ 6 and 30.
and work related). According to anecdotes of women who were subjected to sexual harassment on public buses, they mostly suffered psychological problems such as fear, shame, regret and confusion about the incident happened to them.

Out of many reports on rapes cases in conflict affected areas, a few studies have documented its impact on survivors and one of them is the study of Women's League of Chin Land. According to its 2007 report that recorded testimonies of 38 rape cases of Chin women, both physical and mental effects were revealed; one suffered deep psychological trauma such as crying constantly; one got pregnant and died in childbirth; one was contracted with sexual disease transmission including HIV, AIDS and one was subjected to blame, discrimination and moved away from the native place to avoid social stigma and became refugees.

Regarding discrimination against Rohingya women in Rakhine State, specifically the requirement of marriage authorization, has resulted in damaging women's reproductive health, such as abortions and maternal death, in addition to barriers in access to health care due to restrictions of movement.

A profound negative impact of various forms of violence against children has been reported by CRFB in its CRC shadow report, 'The plight of children under military rule in Burma.' Children's physical growth and intellectual development has been negatively affected and especially conflict-related damages are egregious resulting in death of children in some cases. Human Rights Education Institute of Burma (HREIB) stated effect of rape on young girls in its report:

Physically, girls may be subject to uncontrolled bleeding, internal injury, sexually transmitted infections and gynaecological complications. Psychologically, child victims may endure nightmares, loss of sense of self-worth, paranoia, and intimacy issues as they mature into adulthood. Counselling is extremely limited and children who suffer from post-traumatic stress disorder and situational depression typically do not get the help that they desperately need.

In severe cases children have been unable to physically recover from the rape and have consequently died.

The survivors of sexual violence were also subject to being stigmatized by their communities and, consequently, some girls and their families were forced to leave their homes and communities. Some often found it difficult to marry due to their stigmatized identities and in some cases, those young expecting mothers had to deal with unwanted pregnancies.

CRFB also detailed suffering of IDP children such as lack of health services, malnutrition and being deprived of education. Asian Research Center also did a study on the impact of armed conflict on Burmese children in Thailand. The study found out that children suffered varying degrees of distress due to exposure of killings of family members, and relatives and separation from families as they run away from conflicts and live in refugee camps. They were also subjected to the fear of being arrested and forced back across the border due to their illegal status in Thailand.

2. De Jure State Responses

a. Bases of State Responsibility

International Treaty Mechanism

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<td>The Convention on the Rights of Persons with Disabilities</td>
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143 Nilar Kyu, and Atsuko Kanai, ‘The Prevalence, Antecedents and Consequences of Sexual Harassment in the Myanmar Workplace.’
144 Cherry ‘Thein, ’Whistle Campaign a Hit on City Buses,’
145 The Women’s League of Chinland (WLC), ’Unsafe State,’ 14-5.
146 Ibid.
147 Chris Lewa, ‘North Arakan.’
148 CRFB, ‘CRC Shadow Report Burma.’
150 Ibid.

Regional Declarations

2004 Declaration on the Elimination of Violence against Women in the ASEAN Region
1988 Declaration of the Advancement of Women in ASEAN Region
1993 Vienna Declaration and Programme of Action
1995 Beijing Platform for Action
1997 ASEAN Vision 2020

In its concluding observation, CEDAW committee encouraged the State to take measures to eliminate violence against women and to include information on such measures and their progress and results. It also recommended that 'the State party should take due account of Security Council Resolutions 1325 (2000) on women and peace and security and 1820 (2008) on sexual violence in armed conflict. The State was encouraged to put in place an action plan for the full implementation of those resolutions, taking into account article 2, article 4, paragraph 1, articles 5, 7 and 8 of the Convention.'

The CRC Committee also encouraged the State to ratify the following:

2) Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment;
3) Rome Statute on the International Criminal Court;
4) Convention on Cluster Munitions;
5) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime;
6) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;
7) 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 (with Protocols I, II and III);

b. National Policies against Violence

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<th>Laws On Violence against Children</th>
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153 ‘2008 Concluding Observations of the CEDAW Committee,’ para. 25.
154 Ibid.
155 ‘2012 Concluding Observations of the CRC Committee,’ para. 52, 58, 82 and 84.
c. Assessment of State Polices

Violence Against Women

**Rape**

The US Department of State noted that by law, rape is penalized and law enforcement is crucial. In its assessment of the penal law against rape, it states that:

If the victim is under 14 years of age, the act is considered rape with or without consent. In such cases the maximum sentence is two years' imprisonment when the victim is between ages 12 and 14, and 10 years' to life imprisonment when the victim is under 12. Spousal rape is not a crime unless the wife is under 14.156

The law provides circumstances where consent cannot be presumed:

… when her consent has been obtained by putting her in fear of death or hurt; with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.157

**Domestic Violence**

There are no special laws and provisions specifically against domestic violence or spousal abuse (including spousal rape).158 However, there are laws that penalize offences that cause bodily harm against another person. The prison terms range from one year to life, in addition to possible fines.159 In cases where women sustained injuries and filed a report, police generally take action, although police in general are reluctant to act in domestic violence cases.160 The CEDAW committee urges the State to ensure that all forms of violence against women including, domestic violence and sexual abuses constitute a criminal offence.161

**Sexual Harassment**

According to the assessment of the US Department of State 2009 human rights report, sexual harassment is prohibited by the penal code and the penalty is fine or up to one year's imprisonment. It was also noted that information on the prevalence of the problem is unavailable because these crimes were largely unreported.162 It seems that the US Department of State refers to the Penal Code 509 although there is no usage of ‘sexual harassment’ in its provisions, it says:

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be beards, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.163

**Polygamy**

CEDAW Committee noted that polygamy is discouraged but not prohibited by law.164 Although Myanmar Buddhist men customarily married more than one wife, recent Myanmar societies feel that a man should marry only one woman.165 Nilar Kyu described how the society discourages polygamy:

Parents and relatives would not allow their daughters, sisters, or nieces to marry men who are already married. Myanmar women are also afraid to become a second wife. Becoming a second wife may be likely to happen when married men who wish to have more than one wife try to hide their true marital status. When the women learn the truth about their marital status, they feel sadness or complain, which may lead to conflicts and violence.166

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156 US Department of State, ’2009 Human Rights Report: Burma’; Penal Code, 376, Chapter XVI.
157 Penal Code, 375, Chapter XVI.
159 The Penal Code. 319 to 338 , Chapter XVI.
161 ’2008 Concluding Observations of the CEDAW Committee,’ para. 23.
163 Penal Code, 509, Chapter XXII.
166 Ibid.
CEDAW urges the State party to amend civil, religious and customary laws that discriminate women in relation to marriage and family relations and other discriminatory customary practices especially in ethnic communities in order to be compatible with the Convention.167

Discrimination

According to the CEDAW committee, the 2008 Constitution does not effectively guarantee substantive equality in accordance with the definition of discrimination mentioned in article 1 of the CEDAW convention. In spite of the fact that the Chapter 8 of the 2008 Constitution formally indicates sex as a ground of discrimination in the appointment of government posts, it adds that ‘nothing in this section shall prevent appointment of men to the positions that are naturally suitable for men only.’168 The Committee pointed out how the Constitution includes discriminatory provisions:

The Constitution also includes provisions guaranteeing that the Tatmadaw (military), which may consist mainly of men, will be entitled to one fourth of the seats in each house of the legislature (110 out of 440 seats). The Committee is further concerned that the Constitution includes repeated references to women as mothers, which may reinforce the stereotype that a woman’s primary role is that of a mother and that women are in need of protection.169

The committee urged the State to incorporate provisions of the CEDAW into the constitution and other appropriate legislation and amend the definition of discrimination to be in accordance with article 1 of the Convention.170

Violence Against Children

Corporal punishment

By law, corporal punishment is permitted in the home, schools and alternative care settings.

Article 66 (d) of the Child Law (1993, revised 1999) prohibits ‘wilful maltreatment of a child, with the exception of the type of admonition by a parent, teacher or a person having the right to control the child, which is for the benefit of the child.’171 However, according to the government, this clause is to be amended.172

Article 89 of the Penal Code, states that, with certain provisos, that

... nothing which is done in good faith for the benefit of a person under twelve years of age xxx, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person.173

Under article 45 of the Child Law, corporal punishment is prohibited as a sentence for crimes by children below the age of 16 years; and under Rule 100 of the Rules of the Child Law (2001) for children aged 16-17.174 There is no provision for judicial corporal punishment in the Penal Code. However, corporal punishment is lawful as a disciplinary measure in prisons under the Prisons Act (articles 46, 47, 50, 51 and 53), including children under the age of 16.175

Although there are government directives that prohibit corporal punishment at school, it does not seem to be implemented effectively and the Committee raised its concern about that.176 The CRC Committee encouraged the State to repeal provisions of the Child Law and the Penal Code that authorize corporal punishment and prohibit corporal punishment in all settings, including the family, penal institutions, and alternative care settings in accordance with the Committee’s general Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.177

167 ‘2008 Concluding Observations of the CEDAW Committee,’ para. 46 and 47.
168 Ibid., para. 10.
169 Ibid.
170 Ibid., para. 8 and 9.
172 Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011; para. 272.
174 Article 45 of the Child Law cited in Ibid.
175 Article 46, 47, 50, 53, Chapter XI of the Prison Act cited in Ibid.
176 ‘2004 Concluding Observations of the CRC Committee’ at paras 38 and 39. ‘2012 Concluding Observations of the CRC Committee,’ para. 54.
177 Ibid.
Children in Conflict with Law

Persons below the age of 16 years and youth at the time of the commission of the crime for which death penalty was prescribed are not be sentenced with the death penalty, however, children between 16 and 18 years are treated as adults under the penal law. The CRC Committee recommended Myanmar to recognize that all persons below the age of 18 are entitled to special protection and specific rights as enshrined in the Convention.

Although the issuance in October 2010 of the Protocols on Child Friendly Police Investigations is a progress, the fact that the minimum age for criminal responsibility is age 7 is a concern. It is far too low than the international standard and the CRC Committee recommend that the State party raise the age of criminal responsibility to an internationally acceptable age, and in no case, below the age of 12 years. The Committee raised its concern over the lack of a provision in the Child Law to ensure legal assistance to the Juvenile offenders and the legal sanctions imposed on children who commit statutory offences such as begging.

While in detention, Child Law section 52(a) provides that a child or youth should not to be kept together with adult prisoners. Child law 3 (f) gives provisions that a separate trial of a juvenile offence shall be enable; this takes account of the age of juvenile person and desirability of promoting their rehabilitation.

Children in Vulnerable Situations

According to the CRC Committee, the State needs to undertake the necessary changes in legislation and policies to incorporate the principles of non-discrimination to ensure the rights of 'children in vulnerable and disadvantaged situations such as children from ethnic and religious minority groups (including Rohingya children), children from remote and border areas, internally displaced children, children in street situations, children affected by HIV/AIDS, children with disabilities, orphans and children in situation of poverty.

Furthermore, the Committee recommends that the State needs to address gaps in the current citizenship legislation, which lead to Statelessness of children born within the country's territory or to nationals of the country living abroad. Discriminatory provisions such as different categories of citizenship and indication of ethnic origin on identity cards need to be removed.

Overall Assessment on Policies and Legislations to Protect Children from Violence, Abuse and Neglect.

The CRC Committee recommends that the State needs to provide adequate legal provisions and regulations to protect all children victims and/or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation and trafficking; in accordance with the Convention and the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council Resolution 2005/20 of 22 July 2005). The state needs to develop a national comprehensive strategy to prevent and address all forms of violence against children in accordance with the United Nations study on violence against children (A/61/299), and the outcome and recommendations of the Regional Consultations for South Asia (held in Islamabad, 19-20 May 2005).

While the CRC Committee takes note of the efforts undertaken by the State party to amend the Child Law (1993), provisions and principles of the Convention still need to be incorporated into the domestic law.

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180 Ibid., para. 26.
181 '2012 Concluding Observations of the CRC Committee', para. 90.
182 '2004 Concluding Observations of the CRC Committee', para. 76 and 78; '2012 Concluding Observations of the CRC Committee', para. 90.
183 '2004 Concluding Observations of the CRC Committee', para. 76.
185 Child Law Section 3(f) in Ibid., para. 39.
186 '2012 Concluding Observations of the CRC Committee', para. 35.
187 Ibid., para. 41 and 42.
188 Ibid.
189 Ibid., para. 92.
190 Ibid., para. 60.
191 '2004 Concluding Observations of the CRC Committee', para. 7; '2012 Concluding Observations of the CRC Committee', para. 9 and 10.
3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

Myanmar National Human Rights Commission

There have been some criticisms regarding the establishment of Myanmar National Human Rights Commission (MNHRC) on 5 September 2011.192 The CRC Committee raised its concern based on such factors as 'the absence of a law establishing the Commission; the status of the members of the Commission, who are government and former government officials; the current financial resources of the Commission that do not ensure its independence and efficiency.'193 Recently, the parliament has decided not to allocate budget to the MNHRC on the ground that its formation 'does not conform to the constitutions and existing laws.'194

Myanmar National Committee for Women's Affairs (MNCWA); Myanmar National Working Committee for Women's Affairs (MNWCWA) and Myanmar Women's Affairs Federation (MWAF) have been established as the National Mechanism to implement the 12 tasks set down by the Fourth World Conference for the advancement of women.195 The Myanmar Women's Affairs Federation (MWAF) was formed in 2003 in order to implement the policy of the MNCWA at the grass-roots level. The president and the general secretary of MWAF are members of MNCWA. MWAF is partly funded by the Government and also gets funds from some small-scale business, fund-raising ceremonies and activities from well-wishers and volunteers. Human resources of MWAF are mainly voluntary members from the various Ministries.196

While the CEDAW committee took note of the activities of MNCWA and MWAF,197 the committee was concerned about the high prevalence of violence against women and girls, and expressed its regret for 'the lack of information on mechanisms and remedies available to survivors of sexual violence as well as measures to bring perpetrators to justice.'198 Human Rights Council and the General Assembly also urged the State to undertake a full, transparent, effective, impartial and independent investigation into all cases of human rights violation including rape.199

The National Committee on the Rights of the Child

The National Committee on the Rights of the Child (NCRC) was formed on 30 March 1993 and its working committee was established on 17 June 1997. It was reactivated recently after being inactive for a long period.200 State, Regions, District and Township level committees were also set up for the same purpose. Voluntary social welfare officers were assigned in 10 States and Regions.201 However, it seems that there is still a concern regarding its sustainability, its mandate and the resources allocated to it.202 In addition, effective and systematic collaboration among the different ministries is still lacking in the implementation of activities related to the Convention. Only a small number of operational bodies have been established at township level and the decentralization process is not yet in place in all states, divisions and districts.203

b. Complaints Process

Myanmar National Human Rights Commission (MNHRC)

MNHRC has received 1,000 complaints since its establishment in September 2011.204 According to the Chairman of the MNHRC, 'a lot of issues have been reported such as land disputes, alleged malpractices in the health sector and complaints about government


193 '2012 Concluding Observations of the CRC Committee,' para. 15.


196 CEDAW, 'Responses to the List of Issues and Questions with Regard to the Consideration of the Combined Second and Third Periodic Report: Myanmar,' para. 15.

197 '2008 Concluding Observations of the CEDAW Committee,' para. 20 and 22.

198 Ibid., para. 24.


200 '2012 Concluding Observations of the CRC Committee,' para. 11.

201 Human Rights Council, 'National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Myanmar,' para. 46.

202 '2012 Concluding Observations of the CRC Committee,' para. 11.

203 Ibid.

According to the Chairman, they could not do so. There is rare information on whether those complaints were solved or not, and it seems too early to make an evaluation on the performance of the MNHRC. According to the Chairman, they could not do investigations on alleged human rights violations in conflict areas due to sensitivity during the transitional period and peace negotiation process of the country.

MNHRC’s complaint process is supposed to give access to justice to survivors of human rights violations. The MNHRC stated that ‘any citizen may send complaint to the Commission’ when his or her fundamental rights in the Constitution of the Republic of the Union of Myanmar are violated. It stated that the citizens had to mention the necessary facts so that the commission could deal with the complaint effectively. Matters should not have been brought before, or be under, or have been finally decided by a court. The Commission would investigate the cases and contact the concerned person, company or government department. The Commission would tell them to change if they need to change and if they didn’t listen, the Commission would send a letter to the president advising him to take action.

The Myanmar Women’s Affairs Federation (MWAF)

Complaints about gender-based discrimination can be lodged with the MWAF. Groups at the Central, State, Division and District levels screen the letters of complaint and forward them to the department concerned for necessary action. According to the follow up report of Myanmar to the Committee’s concluding observations, the concerned authorities receive the complaints and investigate the cases and take action against offenders according to the law. It stated that in 2010, from 1 January to 31 August, the Ministry of Home Affairs received 503 complaints:

Among them 101 complaints which are not correct are abolished and 199 complaints were taken into action. 203 complaints are still being investigated. According to investigation and complaints by women survivors, it is found that (7) Military officers, 99 other ranks who committed sexual abuse have been accused and they are given severe punishment by Military Act.

The report mentions that in some cases, MWAF provides free legal assistance and advice to complainants. It seems that the complaint process is also free of charge to complainants, but it is not clear whether MWAF have sufficient resources in terms of finance and personnel to provide such kind of services. Information is lacking regarding whether MWAF is staffed with adequate gender experts in carrying out counselling services. There is also no information provided regarding whether MWAF can afford protection to persons filing complaints.

Although the CEDAW committee recognizes that complaints about gender-based discrimination can be lodged with the MWAF, it is concerned about the lack of more comprehensive and effective legal system in receiving complaints especially from ethnic women and access to justice. There is also no information on accessibility of women survivors of abuse to the MWAF and the reliability of the MWAF complaint mechanism.

According to Women’s Protection Technical Working group survey report on Post Nargis Cyclone assessment, out of 600 respondents, only about 9% or 6.7% of the respondents said that survivors of violence could go for help to the MWAF or police. Meanwhile the majority consider mothers (25%) and community leaders (50%) as the main people who provide support for survivors of violence. According to the result, MWAF’s complaint mechanism seems less accessible to survivors of violence in those areas. However, the study lacks the information on why it seems so.

Even though the CEDAW shadow report by Women of Burma does not give a comprehensive assessment on MWAF’s complaint mechanism, a testimony of one domestic abuse survivor seems to indicate that MWAF might need to

205 Ibid.
207 Ibid.
209 Ibid.
210 CEDAW, ‘Responses to the List of Issues and Questions with Regard to the Consideration of the Combined Second and Third Periodic Report: Myanmar,’ para. 21.
211 CEDAW, ‘Responses to the List of Issues and Questions with Regard to the Consideration of the Combined Second and Third Periodic Report: Myanmar,’ para. 12.
212 Ibid.
214 Women’s Protection Technical Working Group, ‘Women’s Protection Assessment,’ 20, 73.
be staffed more by gender experts. A 32-year-old woman from Phar Saung Township, Karenni State who ran away from her abusive husband said that she did not want to take her case to the MWAF. She had seen many incidents of domestic violence faced by women in her area and the MWAF members were allegedly not supportive. Sometimes the blame was reportedly put on women who were battered and those women were treated as ‘bad’. The CEDAW Committee said the State needs to provide a more comprehensive and effective legal system for receiving complaints, especially from women of ethnic groups so that women survivors of violence have effective access to justice.

Complaint Mechanism for Children

According to the third and fourth periodic reports submitted by Myanmar to the CRC Committee, children can make a complaint in accordance with the Child Law. Regarding the protection of children from abuse and neglect, section 13(c) of the Child Law prescribes that a child shall be given the opportunity to make a complaint, be heard and defend him or herself in the relevant government department, organization or court either personally or through a representative in accordance with the Law in respect of his rights.

The National Committee on the Rights of the Child (NCRC) is the body to pursue complaints on acts committed against children. Child survivors of military recruitment and forced labour can make a complaint at ILO complaints mechanism for the elimination of forced labour.

c. Protection and Rehabilitation

Protection and Rehabilitation of Women Survivors of Violence

The MWAF had 59 counselling centers in 2005, 77 in 2006, and 71 in 2007 throughout the country for women suffering from violence. In 2008, 60 counselling centers were operated and counselling services were given to altogether 416 women affected by domestic violence. A report stated that domestic violence cases were often handled by the counselling centers, reported to the MWAF and transmitted to the appropriate units. Of the several thousand cases brought to the attention of the MWAF every year during the period 2005 to 2007, approximately half had been referred to the departments concerned for legal action.

However, the information does not include what kinds of cases were provided with free legal assistance and how many were successfully prosecuted. Furthermore, there is no information on types of support and advice. According to the CEDAW Committee’s remark, survivors of sexual violence were forced to report to the police immediately prior to seeking health care, and women survivors were less likely to seek psychological, medical and legal support. The CRC Committee suggested the State adopt measures for ensuring women and girl survivors of sexual violence have access to justice, and recovery and reintegration programmes.

Protection and Rehabilitation of Children Survivors of Violence

Children in Vulnerable Situations

The Department of Social Welfare (DSW) is providing essential social care and protection to children who are in need of special protection, such as orphans, street children, abused children, working children, and handicapped children. The staffs of the institutions and those who are involved in taking care of children have been given awareness-training courses on prohibition of all kinds of child abuse.

According to the UNICEF, young juveniles are being provided with basic education courses and

217 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 269.
218 ‘2012 Concluding Observations of the CRC Committee,’ 5 (b).
220 Committee on the Elimination of Discrimination against Women (CEDAW), ‘Summary record of the 865th meeting (Chamber A),’ CEDAW/C/SR.865 (A), 2009, para. 3.
221 CEDAW, ‘Information provided in follow-up to the concluding observations of the Committee,’ 2011, para. 15.
223 ‘2008 Concluding Observations of the CEDAW Committee,’ para. 22.
224 ‘2012 Concluding Observations of the CRC Committee,’ para. 86, 87.
225 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ at para 124.
226 Ibid., 273.
vocational training by the youth correctional and rehabilitation centers under the Department of Prison.227 From 2006 to 2010, 1,074 convicted juvenile offenders have been given education classes ranging from kindergarten to Grade 9.228 The institutionalized children who have completed one year and behaved well during the period are reintegrated into their families. Probation officers make field visits to wards, townships, families and relatives of the children and reintegration process for them is carried out.229

However, the CRC Committee and a 2006 report of UNICEF found that children with various problems and needs, such as children with disabilities, survivors of abuse and exploitation, those affected by HIV/AIDS, and those with behavioural problem and street children, are placed together in one place.230 The 2006 UNICEF report pointed out the limited capacity of the staff and a lack of professional social workers, both in public and private institutions. The situation seems to have not improved yet.231

Protection, safety, health and wellbeing of children in these residential care facilities do not meet the criteria laid out in the Minimum Standards of Care for Children in Residential Care Facilities. Majority of children living in residential care facilities in private institutions have one or both parents alive and over half of all children were brought to the facilities by their parents or relatives. UNICEF points out that such practice is not in line with the United Nations Guidelines for the Alternative Care of Children which state that ’the removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary for the shortest possible duration and take into account the views and best interest of the child.’232

The CRC Committee also raised its concern about ’the increase in the number of children in residential care facilities and lack of regulation of private and religious organizations that run residential institutions for children,’233 It also said that there were reported cases of physical abuse of children in residential institutions and encouraged the State to ensure private run residential institutions are registered and provide quality of care and to adopt measures to de-institutionalize and reintegrate children into their communities.234

Children in Conflict with Law

According to the third and fourth periodic reports of Myanmar submitted to the CRC Committee, Juvenile courts have been established in Yangon and Mandalay and juvenile offences were tried separately in accordance with Section 3 (f) of the Child Law, with the objective of reforming the character of such children.235 The judges in other townships have been entrusted with special powers to try juvenile cases. The numbers of cases tried by juvenile courts up to 2001–2006 are 69,646 cases in total.236 According to the CRC Committee, in spite of such progress in the administration of juvenile justice, there are areas needed to improve to ensure protection of children in contact with law. This include the system and situation of pre-trial detention; preventing abuse and ill-treatment of those children; ensuring adequate human, technical and financial resources to establish specialized juvenile courts in all regions; and ensuring juvenile justice administrative system is in accordance with the Convention and with other relevant standards.237

Children in ethnic minority areas

In its third and fourth periodic reports to the CRC Committee, the State mentioned development programs undertaken by the Ministry of Progress for Border Areas and National Races and Development Affairs, including educational and health facilities for children in ethnic minority regions.238 However, according to the assessment of the CRC Committee, the State needs to improve its programs for marginalized children in ethnic minority areas.239 The State needs to remove barriers in

229 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 125.
232 Ibid.
233 ‘2012 Concluding Observations of the CRC Committee,’ para. 55, 56.
234 Ibid.
235 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 258.
236 Ibid.
237 ‘2012 Concluding Observations of the CRC Committee,’ para. 91, 92.
238 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 319-330.
239 ‘2012 Concluding Observations of the CRC Committee,’ para. 93, 94.
realizing its programs to protect the rights of children. For instance, many Rohingya children in Northern Rakhine State do not have access to birth registry system. This is in spite of the establishment of Modified Vital Registration System (MVRS) to register a large number of children born of parents who were unable to obtain marriage authorization in the northern Rakhine State and the plan to conduct a nation-wide population census in 2014.\textsuperscript{240} Difficulty of access to the registry system is mainly associated with bureaucratic inefficiencies such as corruption, in addition to the remaining existence of the practice of aiming to reduce the number of Rohingya children through the marriage restriction order in that area.\textsuperscript{241}

\textit{Children Affected by Conflict}

Information on sufficient protection and rehabilitation programs for children affected by the conflict, in particular child combatants, unaccompanied internally displaced persons and refugees, returnees and landmine survivors, is still missing in the State’s report.\textsuperscript{242} The Committee recommended the State party to develop a comprehensive system of psychosocial support and other assistance to these children in collaboration with NGOs and international organizations while ensuring their privacy. Measures to be taken include reintegration of the affected children into the education system, including through non-formal education program and the restoration of school buildings and facilities and the provision of water, sanitation and electricity in conflict-affected areas.\textsuperscript{243}

\textbf{d. Prevention Strategy}

\textit{Preventive Measures to Protect from Violence Against Women}

The working group formed at the grass-root level under the MWAF conducted educational talks on violence against women as preventive measure. In 2008, MWAF provided 4051 educational talks on violence.\textsuperscript{244} The MNCWA has disseminated the concluding observations to members of MNFWA, respective ministries, departments and NGOs for follow up actions.\textsuperscript{245}

Due to lack of data on the extent of various forms of gender-based violence, it is difficult to evaluate the outcome of those educational talks. The CEDAW Committee encouraged the State to adopt comprehensive education program through formal and non-formal ways to eradicate gender based stereotypes, discriminatory attitudes and practices in all areas of the country including the rural and remote areas. The judiciary and law enforcement officials at all levels need to be trained on the provisions of the Convention and related domestic legislation.\textsuperscript{246}

\textit{Prevention of Violence Against Children}

Ministry of Social Welfare, Relief and Resettlement in partnership with UNICEF, local and international NGOs have been conducting awareness programmes on the CRC and child protection at the national, state, divisional and township levels. The message of the CRC has been discussed with departmental officials, members from social organizations and community members through training programs, mass media, and workshops.\textsuperscript{247} The National Committee on the Rights of the Child, the Department of Social Welfare and UNICEF have published and distributed the message of the CRC and the Child Law through brochures, posters, hand-outs and calendars.\textsuperscript{248} According to the national report to the Human Rights Council under UPR process, Human Rights Education lessons are taught at primary, middle, high school and university levels.\textsuperscript{249}

However, according to the assessment of the CRC Committee, awareness programs need to be systematic, sustained, widespread, participatory, and reach out to all walks of life in the country.\textsuperscript{250} Effective advocacy programs need to be developed to influence policies and programs and to mobilize communities. For that purpose, a comprehensive data collection and analysis need to be made regarding assessment of the situation of children

\textsuperscript{240} Ibid., para. 43, 44.

\textsuperscript{241} Ibid.

\textsuperscript{242} See more detail at ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011.’

\textsuperscript{243} ‘2012 Concluding Observations of the CRC Committee,’ at paras. 67; ‘2012 Concluding Observations of the CRC Committee,’ para. 84, 83.

\textsuperscript{244} CEDAW, ‘Information provided in follow-up to the concluding observations of the Committee: Response by Myanmar,’ para. 15.

\textsuperscript{245} CEDAW, ‘Responses to the List of Issues and Questions with Regard to the Consideration of the Combined Second and Third Periodic Report: Myanmar,’ para. 8, 9.

\textsuperscript{246} ‘2008 Concluding Observations of the CEDAW Committee,’ para. 21 and 13.


\textsuperscript{248} See more detail in ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 14-27; UNICEF East Asia and Pacific Regional Office, ‘Alternative Care for Children.’

\textsuperscript{249} Human Rights Council, ‘National Report,’ at para 94, 111.

\textsuperscript{250} ‘2012 Concluding Observations of the CRC Committee,’ at paras. 25-28, 53.
disaggregated by age, sex, geographic location, ethnicity and socio-economic background; and assessment of progress achieved in the realization of child rights. Furthermore, the involvement and participation of the whole society, including children, need to be ensured in the design and implementation of preventive strategies against violence and other forms of abuse. In addition, as the CRC Committee and the CRFB suggested, deeply rooted socio-economic factors that incur violence against children need to be removed and a comprehensive data analysis will help in doing so.

4. Role of Non-State Actors

a. Assistance to Survivors

Assistance to women survivors of violence

According to the advisor of the Gender Standby Capacity Project (GenCap) to Myanmar, due to the sensitive political nature of the gender-based violence (GBV) issue, before Nargis hit and until the beginning of 2009, GBV prevention strategies and holistic service programs for the violence survivors ran by both national and international partners, rarely existed. It was less likely that women impacted by GBV would come forward to seek support due to barriers.

According to the information compiled by Myanmar Information Management Unit (MIMU) about the Women and Children Protection Projects under Implementation by Sub-sector at State/Region Level, there is no record of organizations currently working on 'sexual and gender based violence sub-sector' at State/Region Level. According to the MIMU information, a local NGO, Thingaha, is working on GBV at village level in Ayeyarwady Region. However, information on its program is not available. Even though it is not included in the MIMU information, Norwegian Church Aid is also working on gender-based violence in Myanmar.

According to the evaluation report at the end of the UNFPA Second program of Assistance to Myanmar 2007-2011 (CP2), UNFPA focused on gender equality in response to gender issues emerged from cyclone Nargis, including Reproductive Health (RH) services, community-based interventions on women's empowerment. The program included assisting services, research and advocacy related to women's protection issues such as GBV.

UNFPA and the members of the RH/HIV technical working group implemented Minimum Initial Service Package (MISP) for Reproductive Health in Crisis Situations in the Nargis affected areas to prevent and respond to sexual violence. They distributed RH Kits throughout the affected area and gave hundreds of trainings on the MISP, GBV, gender and psychosocial care to over 3,000 people throughout the country.

The UNFPA and donors supported the post Nargis community projects that helped create women-friendly spaces. These spaces provided 'a previously unavailable avenue to address GBV issues' and responded to the urgent livelihood needs of some of the vulnerable women in a post Nargis context. They also provided microfinance assistance to women. Psychosocial counselling was provided to women to help overcome their traumatic experiences and depression during and after Nargis.

According to the government's follow-up report to the concluding observations of the CEDAW Committee, INGOs such as UNHCR, UNFPA, UNICEF, WHO, AFC Malteser, AZG and Care Myanmar are working in Rakhine Region for the development of Rohingya women including access to health and education.

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251 Ibid., para. 24.
252 Ibid., para. 54 (d).
253 Ibid., para. 86.
260 CEDAW, 'Information provided in follow-up to the concluding observations of the Committee', para. 2-7.
Assistance to Children Survivors

According to the information compiled by the MIMU about the Women and Children Protection Projects under Implementation by Sub-sector at State/Region Level, local NGOs and INGOs like UNICEF, World Vision, Save the Children and Karuna Myanmar Social Services (KMSS) are currently working on the following sub-sectors regarding child protection: carrying out awareness raising protection issues; child friendly spaces; awareness raising child protection-child rights, human trafficking; community based protection groups; people with disabilities; and registering separated unaccompanied children. No organizations were mentioned working on sub-sectors of family tracing; human rights monitoring and protection of internally displaced people. However, recently, the UN organizations such as the World Food Program and UNICEF were allowed to give assistance to IDP in Kachin Region. On those border areas, community based organizations such as Karen Department of Health and Welfare (KDHW), and the Backpack Health Worker Teams (BPHWT) have been providing health care assistance to internally displaced people for some years.

In response to street children in Myanmar, World Vision has been providing drop-in centers and hostels along with community-based prevention programmes in 4 key locations outside Yangon and Mandalay.

According to the country program report of the UNICEF, these programs have been carried out:

1) Providing education, vocational training and recreation activities for vulnerable children and youth, including street children and working children;

2) Providing technical assistance to further improve the juvenile justice system and protect children in conflict with the law pursuant to the Convention on the Rights of the Child and other international standards;

3) Strengthening communities and institutional caregivers capacity to assist children deprived of parental care; and working with partners and communities to facilitate the return, protection and reintegration of displaced, trafficked and exploited children and women.

In response to cyclones Nargis and Giri, organizations like UNICEF, World Vision and Save the Children provided emergency strategies including strengthening mechanisms for the protection of separated and unaccompanied children; family tracing and reintegration; support for vulnerable children; provision of psychosocial support through child friendly spaces and the strengthening of community support mechanisms to protect children.

Private and religious institutions are also providing residential care systems for vulnerable children. However, as mentioned earlier, the recent findings indicate that these residential care facilities fall short of Minimum Standards of Care for Children in Residential Care Facilities.

b. Prevention Programs

Prevention of Violence Against Women

UNFPA leads policy dialogue and advocacy on developing the National Plan of Action for Advancement of Women 2011-2015. UNFPA supports capacity building of the staff of the Department of Social Welfare (DSW) on gender equality concepts and provision of gender awareness training to women and girls at DSW institutions. As part of the advocacy work, through the GTG, UNFPA developed and published a Gender Briefing Kit in 2010 to provide a better understanding on the meaning of gender equality in a culturally sensitive way both in Myanmar and in the global context.


267 See more detail at supra text accompanying supra note 247.

Local organizations like Thingaha, Gender and Development Initiative and the NGO Gender Group are working on awareness-raising campaigns. Since 2008, NGO GG commemorates the 16 Days Activism till now and organized Men's Forum on Violence, White Ribbon Day, and Competition on Impromptu speech. Given more favourable environment to organize civil society groups in this transition period, some activists organized a whistle for help campaign to protect women from sexual harassment on public buses.

Prevention of Violence Against Children

UNICEF has been raising awareness among community members and community-based organizations about means of preventing abuse, exploitation, trafficking and neglect. UNICEF has also produced documents related to child protection such as the 'Training Manual on Child Protection' and the 'Training manual on Awareness Building on Child Abuse, Neglect and Exploitation for Key Community Members.'

Organizations such as Association Francois-Xavier Bagnoud (AFXB), UNICEF, World Vision and Save the Children are also carrying out awareness raising of child protection issues in Ayeyarwadi, Chin, Kachin, Mandalay, Mon, Shan North, Yangon.

**c. Monitoring and Cooperation**

NGOs and the government have increased their cooperation in the area of gender and child protection issues in response to Nargis, even though such coordination programs have already existed before the Nargis. The women protection sub cluster (WPSC) system was implemented with the focus on issues that include gender-based violence. The sub cluster was implemented with the cooperation of UN agencies, INGOs, LINGOs and representatives from the Department of Social Welfare (DSW) and the Myanmar Women's Affairs Federation (MWAF). In June 2009, the sub cluster on protection of women was transformed into a Women's Protection Technical Working Group (WP TWG). The UN Country Team's Gender Theme Group (GTG) was re-established.

The Ministry of Social Welfare Relief and Resettlement (MSWRR) developed a draft National Plan of Action for the Advancement of Women 2011-2015 in accordance with CEDAW and the 12 areas of the Beijing Platform for Action. This was achieved with the support and advice of the Women's Protection Technical Working Group (WP TWG) and the Gender Theme Group (GTG) led by UNFPA. 12 Ministries, UN agencies and NGOs were involved.

In 2010, UNFPA and DSW conducted three awareness-raising workshops on CEDAW and gender in Southern Shan State, Mandalay Division and Yangon Division for 140 senior officers of the DSW and other relevant Departments. The GTG supported gender training within UN agencies to ensure gender mainstreaming in developing the UN strategic framework and national strategic plans. The GTG plans to assist the particular Ministries in implementing the draft National Plan of Action for the Advancement of Women.

In its country programme document 2011-2015, UNICEF enumerated its achievements in cooperation with the government and other stakeholders in child protection issue during 2006 to 2010:

Minimum standards on care, such as the protection of children in residential care and of working children, have been developed in partnership with relevant Ministries. Once issued as directives, these standards could provide an additional protective framework. Two separate juvenile courts were established in Yangon and Mandalay to try juvenile cases in 20 townships in Yangon City Development Area and 5 townships in Mandalay City Development Area.

A UN Country Team monitoring and reporting mechanism on children affected by armed conflict has been operational since June 2007 and is in regular contact with the relevant government departments on prevention of recruitment of minors. Thus far twelve training sections have been conducted on international humanitarian law and Myanmar child law for military officers.
UNICEF and NGO partners have assisted in reintegration of more than 300 children released, including those released under ILO’s forced labour mechanism. Discussions are underway towards signing of a national action plan. In collaboration with the Department of Social Welfare, UNICEF took a leadership role in establishing an Inter-Agency Working Group for Social Protection of Children, which provides a platform for discussing issues and strategies for reducing socio-economic vulnerabilities and risks to children and their families.\textsuperscript{280}

UNICEF co-led the Protection of Children and Women Cluster with Save the Children and entered into a new partnership with Department of Relief and Resettlement, and the General Administration Department during the emergency response following cyclone Nargis. Emergency interventions paved the way to expand a range of child protection activities and geographic coverage leading to greater collaboration and coordination amongst key government and NGO partners at the national and sub-national levels. The first National Plan of Action for child protection in emergencies was drafted, which guided a national child protection system, with improved policies, regulations and services.\textsuperscript{281}

UNICEF has been closely working with the Department of Social Welfare as well as other organizations like Save the Children; World Vision; Enfants du Monde (EMDH); Association Francois Xavier Bagnoud (AFXB); Myanmar Red Cross Society; Rattana Metta (a Buddhist organisation); National Young Women Christian Association; Yangon Kayin Women Baptist Association; Myanmar Nurses Association; Catholic Bishop Conference of Myanmar and the Myanmar Council of Churches. One of the key achievements of the cluster work in cooperation with partners included establishment of a database on separated and unaccompanied children, which was essential for family tracing and reunification.\textsuperscript{282}

5. Progress Indicators and Challenges

\textbf{Progress Indicators}

As noted by the CEDAW and CRC Committees, there is lack of a comprehensive data on the outcome and impact of the government’s policies and programs in reducing gender-based violence and violence against children. Even if there might be some internal reports making impact assessments on specific programs by NGOs, such kind of reports were not accessible yet during the preparation of this Study. No information is available as to whether there is decrease or increase in the number of incidence of violence against women and children.

According to the government’s follow-up report to the concluding observations of the CEDAW Committee, in 2010 from 1st Jan to 31 August, ‘7 Military officers, 99 other ranks who committed sexual abuse have been accused and they were given severe punishment by Military Act.’\textsuperscript{283} It is a progress that military personnel who have committed rape were prosecuted even though the number is likely far lower than the number of perpetrators. Such government official data also validates incidents of rape cases that were denied by the government as mere accusations from the opposition groups.\textsuperscript{284}

\textbf{Challenges}

The establishment of a number of agencies and organizations that focus on women’s issuers is welcoming; however, there have been some restrictions and hindrances in effectively implementing programs pertaining to women’s issues.\textsuperscript{285} Key barriers include 1) insufficient budget allocations from the State despite their policymaking, coordinating and implementation responsibilities; 2) making them up exclusively of voluntary members; and 3) lack of information on their mutual relationships.\textsuperscript{286} The CEDAW Committee raised its concern regarding inadequate knowledge of women’s rights and gender equality issue in all branches of the Government and among the law enforcement authorities at all levels.\textsuperscript{287}

Similarly, while the development of the National Plan of Action for Children is welcoming, key barriers in effectively implementing programs under the National Plan are insufficient allocation of human and financial resources and corruption.\textsuperscript{288}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{280} \textit{Ibid.}
\item \textsuperscript{282} \textit{Ibid.}
\item \textsuperscript{283} CEDAW, ‘Information provided in follow-up to the concluding observations of the Committee,’ para.12.
\item \textsuperscript{285} ‘2008 Concluding Observations of the CRC Committee,’ para.16.
\item \textsuperscript{286} \textit{Ibid.}, para. 16.
\item \textsuperscript{287} \textit{Ibid.}, para. 12.
\item \textsuperscript{288} ‘2012 Concluding Observations of the CRC Committee,’ para. 13, 19, 20.
\end{itemize}
\end{footnotesize}
Other areas of concern raised by the CRC Committee included lack of sufficient coordination of the various sectoral plans of actions, such as the National Child Health Strategic Plan (2010-2014), the National Strategic Plan for Adolescent Health, and the National Plan of Action (2003-2015) ‘Education for all’ with the National Plan of Action for Children; inadequate dissemination of the National Plan and lack of proper mechanism to monitor its implementation.289

6. Recommendations for Further Study

A summary of what is not known

1. Accurate statistics on various forms of child abuse, root causes and impact were not available.
2. Data on the extent of various forms of violence against women and its root causes and impact, disaggregated by age and ethnic groups, as the CEDAW committee pointed out.
3. Lack of data on prosecutions and convictions of perpetrators of various forms of sexual violence against women.
4. Lack of sufficient information on mechanisms and remedies available to survivors of sexual violence as well as measures to bring perpetrators to justice.
5. Insufficient information on the protection and rehabilitation of children affected by the conflict, in particular child combatants, unaccompanied internally displaced children, refugees, returnees and landmine survivors.
6. No assessment data on how far progress has been made in the State’s policies and programs, what are the weaknesses, strengths and challenges.

Areas of controversy

Two main areas of controversy regarding violence against women and children are rape cases in ethnic minority areas and discrimination and maltreatment against Rohingya women290 and children291 in Northern Area of Rakhine State. Discrepancies are between the reports of the Government and those of the national and international human rights organizations, the UN entities such as the CEDAW and CRC Committees and the Special Rapporteur on the situation of human rights in Myanmar.

Recommended areas for data collection and further research

A comprehensive data collection and an in depth analysis need to be made on various forms of violence against women, root causes and impact, disaggregated by age and ethnic groups and assessment on the State’s policies and programs in the elimination of violence against women.

A comprehensive data collection and an in-depth analysis need to be made regarding assessment of the situation of children disaggregated by age, sex, geographic location, ethnicity and socio-economic background; and assessment of progress achieved in the realization of child rights.292

C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

From data of the UN organizations, ILO, Human Rights Watch, the US State Department and other human rights organizations, prevalence of exploitation of women and children in Myanmar can be seen both at the national and international level.293 At the international level, exploitation is mainly related to trafficking of both women and children. At the national level, it mainly concerns forced labour, land confiscation, child labour, child prostitution, and child soldier recruitment.

Exploitation of Women and Children from Myanmar at International Level

Table 1 and 2 give a general overview of the pattern of international trafficking of women and children from Myanmar, including source regions in Myanmar, destination countries, and sectors where trafficked persons are exploited. According to Myanmar Anti-

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289 Ibid., 13.
290 See supra notes accompanying supra texts, 49-52.
291 See supra notes accompanying supra texts, 100-104.
trafficking Unit (as cited by UNIAP), there were a total number of 155 trafficking cases involving forced marriage (85 cases), forced prostitution (19 cases), forced labour (13 cases), and child trafficking (8 cases) in 2009. In those cases, China is the main destination countries followed by Thailand and some other countries such as Malaysia, South Korea and Macau. According to Kachin Women's Association Thailand (KWAT), 163 women and girls mainly from Kachin State and northern Shan State were trafficked to China between 2004 and mid-2007. Majority of the trafficked persons, including girls as young as 14, were sold to marry Chinese men from eastern provinces. Thant Myint-U also mentioned about trafficking of women from Myanmar to China in his book, 'Where China meets India.'

According to another ethnic women's organization, Palaung Women's Organization (PWO), there were altogether 72 cases of actual and suspected human trafficking mainly to China between March 1999 and February 2011. Those trafficked included 95 females and 15 males, aged between 3 months and 33 years old. They are mainly from the Palaung area of Northern Shan State.

In some cases, those trafficked were tricked into believing they were getting a good job. In other cases, they voluntarily migrated with the expectation of having a better life. However, due to unscrupulous smugglers and brokers, they end up in being exploited at destination countries to pay off debt bondages they are charged as service fees in crossing the borders. Reports of the US Department of States, Solidarity Centre and Human Rights Watch mentioned about the vulnerabilities of 'voluntary' migration that can lead to 'involuntary' servitude. A study conducted by the Institute of Population and Social Research (IPSR) from the Mahidol University depicts similar situations of women, girls and boys from Myanmar in Thailand. While some of them were trafficked into Thailand, some of them voluntarily crossed the border to look for a job and they had to face various forms of exploitation, including forced labour and rape.

296 Thant Myint-U, Where China Meets India, 110-111.
299 Mahidol Migration Center (MMC), Snap Shot Stories from Invisible Victims of Trafficking in Thailand. Salaya: Institute for Population and Social Research, Mahidol University 2011.
Table 1. International Trafficking of Women and Children from Myanmar:
Sources, destination and sectors involved

<table>
<thead>
<tr>
<th>Source regions of women and children survivors of trafficking</th>
<th>Destination countries</th>
<th>Sectors where trafficked survivors are exploited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yangon Division, Mandalay Division, Northern Shan State, Kachin State, Bago Division, Mon State, Magway Division, Kayin State, Bago (West) and Ayeyarwaddy</td>
<td>Predominant destination in 2009 84.4% of survivors assisted by MATU trafficked to China, 9.8% of those to Thailand Destination countries in general Malaysia, South Korea, Macau</td>
<td>Sex industry, factories, plantations, domestic work, fishing boats in Thailand Forced marriage in China In Thailand and Malaysia, trafficked children are forced to do begging, hawk in streets, work in agriculture and small-scale industries</td>
</tr>
</tbody>
</table>

Sources: UNIAP, Asia Regional Trafficking in Persons Project (ARTIP), the U.S. Department of States

Table 2. International Trafficking of Women and Children from Myanmar:
Means, patterns, transit points and routes to transit points

<table>
<thead>
<tr>
<th>Means and patterns employed by traffickers</th>
<th>Transit points</th>
<th>Routes to transit points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffickers and organized criminal groups generally based in destination countries but may be linked to recruiters, brokers, carriers or others (including relatives) in Myanmar Brokers operate at the transport points and also at the village level recruiters who are known and trusted by the family of survivors persuade potential survivors by giving promises of high paying employment Some girls trafficked into Chin are taken by means of deception, but increasingly they are informed of marrying Chinese men without being informed of possible difficulties and left with few options</td>
<td>Myanmar to Thailand • From Kengtung and Tachileik in Myanmar to Mae Sai, Thailand • From Myawaddy in Myanmar to Mae Sot, Thailand • From Kawthaung in Myanmar to Ranong, Thailand • From Thanbyuzayat, Myanmar through the Three Pagodas Pass to Bangkok via Sangkhlaburi and Kanchanaburi • Sometimes from these points through to Malaysia • Myanmar to China • From Muse, Myanmar to Rulli, Yunnan Province, China • From Lweje, Myanmar to Jeng Feng and Rulli, Yunan • Province, China</td>
<td>From central dry zones areas (Mandalay, Sagaing and Magway) and Delta areas in Myanmar to Mae Sot in Thailand via Kawkreik and Myawaddy From Yangon and the surrounding areas in Myanmar to Mae Sot via Hpa-an and then Myawaddy</td>
</tr>
</tbody>
</table>

Sources: UNIAP, Asia Regional Trafficking in Persons Project (ARTIP), the U.S. Department of States

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300 Central Body for Suppression of Trafficking in Persons cited in UNIAP, 'Mekong Region.'
301 2009 data of MATU cited in Ibid.
Exploitation of Women and Children from Myanmar at National Level

Forced Labour and Land confiscation

Forced labour has been known as a widespread form of labour exploitation in Myanmar for many years especially in the ethnic regions and rural areas. Forced labour mainly stems from two major events in the country: conflict related activities and development projects activities. As mentioned earlier, although forced labour can be terminated with the end of conflicts, there is still threat of expansion of massive infrastructure projects and extractive industry that usually do not take into consideration of the wellbeing of the indigenous people.

Conflict related forms of forced labour mainly concern being forced to carry military supplies as porters or sweep for landmines or build roads. The CRC Committee expressed its deep concern about the use of forced labour of children ‘in support of military garrisons or military operations and of non-State armed groups, in activities such as portering, sentry or guard duty and camp security fence construction, in particular in ethnic or religious minority regions.

According to the CRFB, civilian porters from villages and from detention centers including children reportedly were forced to work in harsh conditions by the military. They were allegedly deprived of adequate food and medical assistance and often beaten and killed in the case of failing to perform the task.

According to a study conducted in Chin State, cited in US Department of States, 92% of over 600 households surveyed mentioned at least one episode of a household member subjected to forced labour. Most of the incidents were reportedly committed by the military. The civilian representatives of the military or Village Peace and Development Council were responsible for some cases. Burmese police and Chin ethnic forces were reportedly responsible for a minority of cases. According to Chin Human Rights Organization (CHRO) cited in the CRFB, children under 18 were among people from 16 different villages in the Cikha Township who were forced to work on repairing the road between Cikha and Tonzang towns under the order of the State Peace and Development Council Tactical 1 Commander of that time in late 2006 and 2007.

Women and Child Rights Project (WCRP) also found that villagers were allegedly forced to work for the military throughout Mon State in building army barracks, police stations, roads, state schools, clearing land, breaking and carrying rocks and other tasks. Most of the time, villagers had to send one of their children as adults had to go to their regular job to get income for their family.

Recent reports of the Special Rapporteur on the situation of human rights in Myanmar also raised his concern on the reported cases of forced labour and property confiscation committed by both the military and non-state armed groups in conflict affected areas especially Kachin, Shan and Kayin States. They also raised concern over the reported cases of land confiscation, forced relocation, forced labour, natural resource exploitation due to infrastructure projects and large-scale energy related projects.

The Special Rapporteur in his report dated September, 2010 said that the ILO complaint mechanism for forced labour had received 451 complaints since February 2007. According to the recent news, the ILO branch in

308 Radio Free Asia, the Irrawaddy, CHRO, WCRP, Karen Human Rights Group (KHRG) and Assistance Association for Political Prisoners of Burma (AAPP) cited in CRFB, 20-21.
312 See more detail in WCRP cited in Ibid., 19-20.
Yangon said 506 complaints have been received related to forced labour since the beginning of 2010 and it is more than double the number seen during the previous three years. According to the ILO, the increase in complaints is mainly related to ‘awareness-raising activities’ that increase peoples’ awareness of their rights and made complaints accordingly. The ILO said forced labour complaints they had received were mainly caused by two reasons: ‘a lack of proper funding for projects demanded from rural authorities,’ and ‘the main problem involved adults and youngsters pressed into working for the army.’ According to the 2011 'Trafficking in Persons Report of the US Department of States, the trend of the complaints received by the ILO during the year ‘indicated a trend of forced farming, accompanied by threats of fines, loss of farmers’ land, and imprisonment for those refusing to comply.’ US department of State noted that local government authorities committed such kind of exploitation for the benefit of the military, defence-owned commercial interests, and large private corporations.

Numerous reports of Earth Rights International (ERI) have also documented forced labour and land confiscation cases committed by corporations in collusion with the military. For instance, according to ERI’s documentation, in many incidents, villagers within the Yadana pipeline corridor were reportedly forced to porter goods for soldiers, provide security for the pipeline, or forced to construct military buildings, or forced to provide sentry duty to guard the structures against their will, sometimes directly over the Yadana pipeline or related infrastructure. According to a recent report of the ERI in 2011, villagers from villages in Rakine State and Magway Region that lie in the path of ‘Burma-China pipelines’ that were under construction had lost their farmlands with little compensation or no compensations in some cases.

Labour Exploitation Committed by Private Enterprises

Private enterprises such as garment factories, shoe factories, rural agriculture and informal sector are said to have exploited labour of workers by not providing enough salaries, requiring workers to work long hours without overtime payment in poor working conditions. In some cases, workers were dismissed for being absent from work for more than three days due to sickness.

Although protests were very rare under heavy-handed rule of the former military regime, nowadays, people tend to practice staging protests for being violated their fundamental rights. Recently, according to the media, over 2000 workers from a shoe factory in Myanmar held a strike for demanding their salaries that their employer cut for holidays in January and also for increasing their low salaries. A number of strikes also took place demanding wage increases or other benefits at privately owned factories in Yangon industrial zones in 2010. The newly enacted labour organization law was recently enforced and workers are said to have rights to organize unions and stage protests. (See C. 2. b.)

Child Labour and Child Prostitution

According to a recent survey conducted by the UNDP and the government, Child labour participation rate (ages 10-14) between the poor and non-poor is at 18% and 10% respectively. The study suggested special attention is needed on this incidence, given the much higher rates of child (aged 10-14) labour force participation among the poor. This raises questions about the possible intergenerational transmission of poverty and poverty traps, as proved by low enrolment rates for those poor working children at 11.6%.

Child labour can be seen in such sectors as food-processing, street-vending, refuse collecting, light-manufacturing industries, restaurants, teashops, family agricultural activities, and large-scale development projects in the


317 Ibid.


319 Ibid.


322 See more detail in ERI, ‘The Burma China Pipelines.’
extractive and energy industries.329 The CRC Committee raised its concern about the dangerous and hazardous working conditions of those sectors and the persistent economic exploitation of children, including low wages and working the same hours as adults, the absence of systematic labour inspections.330 Children in vulnerable situations such as homeless children, street children, children affected by armed conflicts or disasters have a high risk of being exploited.331 US Department of State cited a case submitted to ILO in which 100 boys ages 13 to 15 were reportedly forced to work at a horticultural plantation and held in a barracks at night.332

Young girls are also vulnerable to be trafficked into sex industry. Some of them are also reportedly engaged in sex work voluntarily for their survival. Young teenage girl prostitutes were reportedly found in Yangon and Mandalay.333 In most cases, internal trafficking of women and girls occurred from poor agricultural and urban centers to areas such as trucking routes, mining areas, military bases, industrial areas and borders with Thailand and China where prostitution flourished.334 Sex workers are said to be highly vulnerable to sexual exploitation due to lack of their legal status and cultural and social sensitivities. According to a qualitative study conducted by the Center for International Health, Curtin University of Technology in 2002,335 at that time, the number of sex workers was approximately between 5,000 and 10,000 and 100 brothels in Yangon.336 According to the study, nearly one third of the 39 female sex worker respondents reported ‘previous imprisonment for offenses related to sex work as well as fear of harassment, sexual exploitation, violence and gang rape.’337 ‘The study also found that they were also highly vulnerable to HIV infection.

**Child Soldier Recruitment**

Another concerned area for child labour exploitation is regarding child soldier recruitment. Although the international community notes the efforts of the government to prevent and halt the recruitment and use of child soldiers, they have also raised their concern about the reports of continuation of child soldier recruitment both by the military and the non-State actors.338 According to the report of the Secretary-General, the armed wings of ethnic minority groups such as Democratic Karen Buddhist Army (DKBA), Karen National Union/ Karen National Liberation Army (KNLA), Karen National Progressive Party/ Karrnni Army (KA), Shan State Army-South (SSA-S) and Shan National Population Liberation Organization, the United Wa State Army (UWSA) also committed underage recruitment.339

The CRC Committee notes that there are proximately thousands of underage soldiers in Myanmar.340 ILO mentioned that they received 194 complaints for recruitment of child soldiers in 2010 and it was more than two-fold over 2009.341

According to the Secretary-General’s report, lower rank or field level officers in the armed forces, particularly Tatmadaw Kyi, mainly committed child recruitment since they were ordered to recruit more soldiers to replace desertions of men in the army.342 Mostly the recruitment occurred in areas close to recruitment centers in the Yangon and Mandalay Divisions, but also at the township and village level.343 Soldiers reportedly paid

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330 '2012 Concluding Observations of the CRC Committee,' para 69.
333 Ibid.
336 Ibid.
340 '2012 Concluding Observations of the CRC Committee,' para. 81.
341 US Department of State, 'Trafficking in Persons Report 2011: Burma.' The report doesn't mention whether increase in number is due to increase in incident or increased awareness of the ILO complaint mechanism.
civilian brokers and they also used deceit, intimidation, coercion through village administration, threats with imprisonment, abduction and violence. Children of urban poor, orphans, and children on the streets and in railway stations and young novice monks were mainly targeted. Subsequent to cyclone Giri in 2010, there were reports of underage recruitment in cyclone-affected areas.

b. Root Causes of Exploitation and Aggravating Practices

Nexus of Forced Labour, Forced Migration and Trafficking

Decade-long armed conflicts on border areas, political instability and economic mismanagement of the former regime serve as main driving forces behind cross-border trafficking and internal trafficking, including forced labour, and underage recruitment as human rights organizations such as CRFB, ICSW, PWO, KWAT and the US Department of State have asserted. Poor economic conditions and human rights violations forced many to seek employment in neighbouring countries through both legal and illegal means where they are vulnerable to trafficking as mentioned by the CRFB and Pearson regarding the link between forced migration, exploitation and trafficking.

A trafficking report of PWO has depicted such situation. According to the report, the increased militarization in the region has reportedly caused forced labour, child soldier recruitment, arbitrary taxation, large scale confiscation of land – mainly farms and tea plantations for army camps and military plantations. Local people were allegedly forced to sell their tea to military supported companies at very low prices. Falling prices coupled with high inflation and the lack of alternative earning opportunities aggravated the situation. As a result, there was an increase in the incidence of trafficking in recent years. Majority of the survivors were young women who were in search of work for the survival of themselves and their families.

Aside for the above-mentioned, the current trend of increased infrastructure projects and extractive undertakings have resulted to loss of farmlands and livelihoods, especially in rural and ethnic areas. Consequently, people are more vulnerable to forced migration, trafficking, and labour exploitation in hazardous working conditions and negative environmental impacts.

The Special Rapporteur on the situation of human rights in Myanmar expressed its concern over the negative impact of such projects compounded by lack of consultation with local people and lack of rules and regulations that protect environment and the wellbeing of local people.

Similarly, the CRC Committee raised the same issue on the absence of a legislative framework regulating the prevention of, protection against and reparation of the adverse impacts of activities by private and state owned companies, mainly in the extractive and large-scale energy-related sectors. The Committee is concerned about the negative impacts of such activities, including child labour exploitation, compounded by lack of enforcement of labour laws and Child Law, in addition to the deep rooted socio-economic factors that push children into the workforce.

Aggravating Factors

Instead of targeting at root causes, some policy directives put to restrict the movement of young people with the purpose of halting trafficking appear to have exacerbated the situation. For instance, according to the CRFB, since 1997, a directive of the SPDC Regional Commander has forbidden unaccompanied young women between 16 and 25 in Eastern Shan State to travel to the Thai border. Issuing passports was also made difficult and costly for women. The CRFB pointed out that such policy directives have just increased the problem. Lack of legal ID cards

345 US Department of State, 'Trafficking in Persons Report 2011: Burma.'
346 US Department of State, 'Trafficking in Persons Report 2011: Burma.'
347 US Department of State, 'Trafficking in Persons Report 2011: Burma.'
349 PWO, 'Stolen Lives.'
350 Ibid., see also at the prevalence section above.
352 See reports of Earth Rights International, supra note, 63.
353 UN General Assembly, 'Report of the Special Rapporteur,' 16 September 2011, para. 68.
354 '2012 Concluding Observations of the CRC Committee,' para. 86.
355 Ibid.
or travel documents, proper knowledge about their destinations, and limited survival and language skills have rendered young women vulnerable to the increased reliance on unscrupulous brokers and being tricked into trafficking. The US Department of State also noted that lack of identification documents and restriction of movement of certain ethnic minority groups including Rohingyas, make them more vulnerable to trafficking.

One aggravating factor that pushes children in an exploited situation is that for some decades, the government has failed to allocate significant resources to protect the rights and welfare of children as the US State Department noted. As mentioned in the earlier section, although the government is increasing its expenditure on education and health, the long-term absence of adequate budget on social services during the past decades have already affected children and their parents. Destitute parents with lack of means of earning enough income to send their children to school and without social protection mechanisms, had to take their children out of school to work in factories and teashops or to beg or place them in orphanages. As a result, an increasing number of children with few or no skills have been working in the informal economy or in the street and exposed to drugs and petty crime, risk of arrest, trafficking for sex, labour exploitation, and HIV/AIDS.

Those children are also more vulnerable to underage recruitment. Based on the 2009 report of the Secretary General, it seems that there was confusion in the army regarding contradicting instructions to find new recruits while being told not to recruit children at the same time. The order to find new recruits appears to be much concerned with a high desertion of armed forces. According to Karen Human Rights Groups (KHRG) cited in the CRFB, recruitment officers might have been compelled to ensure regular enlistment of new recruits to cover desertions and maintain an estimated 350,000 to 400,000 strong military. A similar situation might be relevant to non-state armed groups as well. However, the issue seems to be more visible with the armed forces given the size and expansion of the military during the past decades.

c. Impact of Exploitation

**Forced Labour and Forced Eviction**

In his report on human rights situation of Myanmar, the Special Rapporteur stated that 'violations of land and housing rights result in poverty, displacement and ruined livelihoods, but also the destruction of cultures and traditional knowledge.' It can be called 'a vicious circle' for those who survived forced labour and forced eviction either due to armed conflicts related activities or extractive industry. Their economic and social rights were violated and they were left in a desperate situation to flee forced labour and poverty. Consequently they were vulnerable to trafficking and exploitation in trying to seek work for their survival. In such scenario, it can be seen that they are in a situation of 'double exploitation' in their own country and in perhaps other people's countries. To cite the CRFB and Pearson as mentioned earlier, it is again the linkage between forced migration, exploitation and trafficking.

Some survivors of forced labour might have suffered physical and psychological trauma due to the reportedly abusive and hazardous conditions they had to face while portering and sweeping landmines for the army; some have allegedly lost their lives. According to a research conducted by the University of New England, Armidale, Australia on the Thai-Burma border in the Sangkhlaburi District in Thailand, 'many stories of extraordinary suffering' were heard from the migrant communities at the study sites relating to the effects of forced labour, forced eviction and other conflict related atrocities. The research also found various health problems widespread in the poor migrant communities such as tuberculosis, malaria, parasitic diseases, and respiratory and gastrointestinal conditions.

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356 CRFB, ‘CRC Shadow Report Burma.’
359 Ibid.
363 UN General Assembly, ‘Report of the Special Rapporteur,’ 16 September 2011, at para 64, see also at the ‘prevalence section.’
367 Ibid., 43 and 44.
Survivors of Trafficking

Trafficked persons face psychological and physical trauma. The US Department of State says that trafficked women and girls faced sexual and physical abuse by their traffickers, poor nutrition, and unsanitary conditions. As the result, they were contracted with diseases, including tuberculosis and HIV/AIDS. According to a woman survivor who was sold as a sex slave, 'her experiences have left scars on her that will never heal. She was raped and may have contracted HIV.'

Sometimes, discriminatory attitudes of the community have also compounded sufferings of trafficked survivors. According to the KWAT, girl trafficked survivors who manage to get back to home face the community's discrimination and lack of understanding. A similar finding was found by the PWO that documented how local community members assume that trafficked women have been doing sex work. Family members do not want them to be back to home since their daughters bring 'shame' on the family. As the result, it is difficult for the survivors to return to a 'normal' life. They are often traumatized and isolated with loss of trust in others, even their relatives.

As a result of stigma, women are also unwilling to seek medical help for sexually transmitted diseases contracted after being trafficked. Even if they can overcome their shame, it is difficult for them to afford the cost of medical treatment. For people with HIV, the stigma is even worse, and some communities will not accept them back to live in their village.

Child Labour and Child Soldier Recruitment

Child Rights Committee raised its concern over economic exploitation and sexual exploitation of children at young ages and its negative impacts on their health, education and development. According to the recent study of the UNDP and the government, enrolment rates for child labour participants (aged 10-14) is significantly lower than other non labour participants at 11.6% and 78.3% respectively. It indicates that children in the labour force lack access to education and consequently, are likely to be trapped in a poverty circle.

The negative impact on child soldiers is worrying. Experiences they faced were quite atrocious, according to the narratives of former child soldiers in a report of the CRFB. Their tasks included combating, portering, scouting, spying, guarding camps and cooking and they were reportedly subjected to 'beatings, abuse, ill-treatment, inadequate diet and the arbitrary deduction of salaries.' They were also allegedly forced to 'commit crimes against civilians accused of supporting rebel groups.' Their attempts to escape were also faced with arrest and imprisonment and in some cases, were reportedly beaten to death as a punishment. Given a paucity of data on the negative impact of their direct involvement in armed conflicts, a comprehensive study is required to make an analysis of impact on those children and consequently provide them with effective rehabilitation and reintegration strategies.

2. De Jure State Responses

a. Bases of State Responsibility

The following table shows Myanmar's ratifications of International Treaties against trafficking in persons:

<table>
<thead>
<tr>
<th>The United Nations Convention against Transnational Crime and its Protocols</th>
<th>Date of Accession (a)</th>
<th>Reservation</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Nations Convention against Transnational Organized Crime</td>
<td>30 March 2004(a)</td>
<td>Articles 16, 35</td>
</tr>
<tr>
<td>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</td>
<td>30 March 2004(a)</td>
<td>Article 20</td>
</tr>
</tbody>
</table>

369 Mahidol Migration Center (MMC), Snap Shot Stories,'43.
372 '2012 Concluding Observations of the CRC Committee,' para. 21 and 85.
374 Ibid.
376 Ibid.
**The United Nations Human Rights Treaties**

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Year of Ratification</th>
</tr>
</thead>
</table>

* Accession (a)

2. Myanmar made reservations on obligations to refer disputes relating to the interpretation or application of respective convention or protocol to the International Court of Justice.377

**International Non-Treaty Instruments against trafficking in persons**

1. Guidelines on the Protection of Child Survivors of Trafficking (UNICEF Trafficking Guidelines) the application of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to survivors of trafficking and persons at risk of being trafficked
2. United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking
3. 1993 Vienna Declaration and Program of Action
4. 1995 Beijing Platform for Action
5. 1996 Declaration and Agenda for Action
7. 2001 Global Commitment adopted at the World Congress against Commercial Sexual Exploitation of Children
8. 2007 Global Initiative to Fight Trafficking (GIFT)
9. Regional Non-Treaty Instruments against trafficking in persons
10. 1985 ASEAN Foreign Ministers Joint Statement on the Problem of Drug Abuse and Trafficking
11. 1993 ASEAN Plan of Action for Children
12. 1997 ASEAN Declaration on Transnational Crime
13. 1997 ASEAN Vision 2020
14. 1998 Manila Declaration on the Prevention and Control of Transnational Crime
15. 2001 Declaration on the Commitments for Children in ASEAN
16. 2002 Joint Declaration of ASEAN and China on Cooperation in Non-Traditional Security Issues

**Regional Legal Cooperation And Memorandum Of Understanding Against Trafficking**

**Regional Legal Cooperation**

Ratification of Association of South East Asian Nations (ASEAN) Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (AMLAT) (2006)

**Regional Memorandum of Understanding (MOU)**

MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region (COMMIT) (2004)

**Bilateral MOU**379

1. MOU between Myanmar and China on Cooperation to Combat Trafficking in Persons (2009)
3. MOU between Myanmar and Thailand on Cooperation to Combat Trafficking in Persons (2008)


378 For legal cooperation measures against trafficking, see also at ASEAN; ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases.’ 2010.

The AMLAT provides the legal basis for ASEAN countries to undertake mutual legal assistance for transnational offences. ILO Conventions against forced labour

<table>
<thead>
<tr>
<th>Convention</th>
<th>Ratification Status</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eight ILO fundamental conventions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forced Labour Convention, 1930 (no. 29)</td>
<td>Ratified</td>
<td>4 Mar 1955</td>
</tr>
<tr>
<td>Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)</td>
<td>Ratified</td>
<td>4 Mar 1955</td>
</tr>
<tr>
<td>the Abolition of Forced Labour Convention, 1957 (no. 105)</td>
<td>Not Yet (NY)</td>
<td></td>
</tr>
<tr>
<td>Worst Forms of Child Labour Convention, 1999 (no. 182)</td>
<td>NY</td>
<td></td>
</tr>
<tr>
<td>Minimum age convention, 1973 (no. 138)</td>
<td>NY</td>
<td></td>
</tr>
<tr>
<td>Discrimination (Employment and Occupation) Convention, 1958 (no.111)</td>
<td>NY</td>
<td></td>
</tr>
<tr>
<td>Equal Remuneration Convention, 1951 (no.100)</td>
<td>NY</td>
<td></td>
</tr>
<tr>
<td>Right to Organise and Collective Bargaining Convention, 1949 (No. 98)</td>
<td>NY</td>
<td></td>
</tr>
<tr>
<td>Other Conventions related to labour rights protection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C1 Hours of Work (Industry) Convention, 1919</td>
<td>ratified</td>
<td>14 Jul 1921</td>
</tr>
<tr>
<td>C6 Night Work of Young Persons (Industry) Convention, 1919</td>
<td>ratified</td>
<td>14 Jul 1921</td>
</tr>
<tr>
<td>C11 Right of Association (Agriculture) Convention, 1921</td>
<td>ratified</td>
<td>11 May 1923</td>
</tr>
<tr>
<td>C14 Weekly Rest (Industry) Convention, 1921</td>
<td>ratified</td>
<td>11 May 1923</td>
</tr>
<tr>
<td>C15 Minimum Age (Trimmers and Stokers) Convention, 1921</td>
<td>ratified</td>
<td>20 Nov 1922</td>
</tr>
<tr>
<td>C17 Workmen's Compensation (Accidents) Convention, 1925</td>
<td>ratified</td>
<td>16 Feb 1956</td>
</tr>
<tr>
<td>C18 Workmen's Compensation (Occupational Diseases) Convention, 1925</td>
<td>ratified</td>
<td>30 Sep 1927</td>
</tr>
<tr>
<td>C19 Equality of Treatment (Accident Compensation) Convention, 1925</td>
<td>ratified</td>
<td>30 Sep 1927</td>
</tr>
<tr>
<td>C26 Minimum Wage-Fixing Machinery Convention, 1928</td>
<td>minimum</td>
<td>21 May 1954</td>
</tr>
<tr>
<td>C42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934</td>
<td>ratified</td>
<td>17 May 1957</td>
</tr>
<tr>
<td>C52 Holidays with Pay Convention, 1936</td>
<td>ratified</td>
<td>21 May 1954</td>
</tr>
<tr>
<td>C63 Convention concerning Statistics of Wages and Hours of Work, 1938</td>
<td>ratified</td>
<td>24 Nov 1961</td>
</tr>
</tbody>
</table>


381 As of March, 2012.


385 IOE, 'Country Baselines.'

According to ILO Declaration Annual Review 2010-2011 cited in International Organization of Employers (IOE), the Government of Myanmar stated that the new States Constitution adopted in May 2008 reflects the Government's intention to ratify C. 105 and ILO should cooperate with Myanmar in ratifying all ILO fundamental Conventions.

Even though ILO members states have not ratified the Convention, they will be required for the first time in 2001 to report on their situation with regard to respect for the principle of the abolition of the worst forms of child labour (182) and the efforts they have made to this end.
under the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998. They will be given opportunity to request technical assistance from ILO. CRC committee also urged Myanmar to consider ratifying and implementing the ILO Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) and to continue cooperation with ILO for the elimination of forced labour.

International instrument to protect children in armed conflicts

The CRC Committee and the report of the Secretary General on children and armed conflict in Myanmar encouraged the government to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and to align national legislation and practice accordingly. Under UN Security Resolution 1612, governments and non-state armed groups have responsibility to report on the status of children in armed conflicts. Unfortunately, however, Myanmar has not ratified the long-awaited joint action plan under Security Council resolution 1612 (2005) (on children in armed conflict).

b. National Policies against Exploitation

Law and Policies Against Trafficking and Sexual Exploitation

1) Anti Trafficking in Persons Law (2005)
2) Control of Money Laundering Law in 2002
3) Mutual Assistance in Criminal Matters Law in 2004
4) Five-Year National Plan of Action to combat Human Trafficking (2007-2011)
5) Constitution of the Republic of the Union of Myanmar Section 358 (The Union prohibits the enslaving and trafficking in persons)
6) Section 65 (a), 66 (a) (b) (f) of Child Law against sexual exploitation
7) Section 372 of the Criminal Law (Selling minors for purpose of prostitution); Section 373 of the Criminal Law (buying minors for purpose of prostitution)
8) Section 3710 of the Criminal Law (Habitual dealing in as slaves)
9) Section 370 of the Criminal Law (Buying or disposing of any person as a slave)
10) The Mutual Assistance in Criminal Matters Law is for cooperation in judicial matters in the region, which are related to the Anti-Trafficking in Persons Law.
11) Sources: UPR state report, CRC/C/MMR/3-4, ASEAN 'Update and Supplement to the 2006 Study'

Law and Policies Against Forced Labour and Labour Exploitation

1) Section 374 of the Criminal Law (Unlawful Compulsory Labour)
2) Order No. 1/99 of 14/05/1999 and its Supplementing Order of 27/10/2000
3) Employment Restriction Act, 1959
4) Employment Statistics Act, 1948
5) Employment and Training Act, 1950
6) Factories Act, 1951
7) Minimum Wages Act, 1949
8) Payment of Wages Act, 1936
9) Shops and Establishments Act, 1951
10) Social Security Act, 1954
11) The Leave and Holidays Act, 1951
12) Trade Disputes Act, 1929
13) Workmen's Compensation Act, 1923
15) Policies against underage recruitment
16) Recruitment of children under 18 into the military is illegal under Military instruction 1/131/ye 1 (ka) dated 2 Oct 1997 and the War Office Council Directives No. 13/73, 8/74 and 8/75.

387 '2004 Concluding Observations of the CRC Committee,' para. 69; '2012 Concluding Observations of the CRC Committee,' para. 86.
388 '2012 Concluding Observations of the CRC Committee,' at para 82; Security Council, 'Report of the Secretary-General, 1 June 2009,' para. 72.
389 UN General Assembly, 'Promotion and Protection of Human Rights Situations and Reports of Special Rapporteurs and Representatives: Situation of Human Rights in Myanmar/A/65/368, 15 September 2010, para. 79.
390 'Myanmar's Third and Fourth Periodic Reports to the CRC Committee, 2011,' para. 288.
391 Reports cited in sources has not identified preventive, protective and curative legislation
392 IOE, 'Country Baselines.'
c. Assessment of State Policies

Anti-Trafficking Related Laws

According to the UNIAP and IOM reports, national anti-trafficking laws of several countries including Myanmar comply with the UN Trafficking Protocol. They cover all aspects of trafficking, including trafficking in men, women and children, domestic and international trafficking, and trafficking for all forms of exploitation.394

Under Section 24 of the Anti-Trafficking in Persons Law, the penalty for trafficking in persons especially women, children and youth is ranges 10 years to life sentence and may also be liable for a fine. Under Section 25, the penalty for trafficking in persons other than women, children and youth is 5 to 10 years, and may also be liable to a fine.395 Under Section 26, fraudulent adoption and marriage for the purpose of committing trafficking in persons and ‘causing obtaining unlawfully the necessary documentary evidence documents or seal for enabling a trafficked survivor to depart from the country or enter into the country’ can be punished with a minimum of 3 to 7 years and may also be liable to a fine. Under Section 27, making use of a trafficked survivor to the purpose of pornography is an offence with a penalty of 5 years to 10 years, and may also be liable to a fine.396

The Anti-trafficking Law also gives provisions regarding protecting dignity, physical and mental security of women, children and children trafficked survivors (section 11 and 12). Section 16 provides special protection of women, children and youth survivors and necessary assistance.397

However, according to UNIAP, under section 13(a) (b) of the Anti-Trafficking in Persons Law (2005) in Myanmar, limited protection is offered to specific categories of survivors from prosecution.398 The combined second and third periodic reports of the State to the CEDAW committee mentioned that the Law ‘shall determine whether or not it is appropriate to take action against the trafficked victims for any other offence arising as direct consequences from trafficking in persons’.399 Since prostitution is illegal in Myanmar and punishment is 1-5 years, with liability of a fine,400 trafficking survivors who were forced into the sex industry, might possibly be subjected to prosecution. Such limited protection of survivors from prosecution of trafficking related offences might possibly discourage survivors in the prosecution of their exploiters. UNIAP stated that ‘the criminalisation of victims of trafficking for status related offences (most typically, illegal work and illegal migration) continues to be a problem in some GMS countries.’401 The CRC Committee also raised its concern about the alleged prosecution of children engaged in prostitution and encouraged the State to ‘ensure that victims of sexual abuse and exploitation are not criminalized.’402

Regarding laws related to anti-trafficking in person law, under clause (2), subsection (a), section 5 of the Control of Money Laundering Law, 2003, the law applies to the offences of ‘illegally converting, transferring, concealing, obliterating or disguising of money and property obtained from the commission of trafficking in and smuggling of women and children’. Under subsection (c), section 22 of the Narcotic Drugs and Psychotropic Substances Law, making use of the child who has not completed the age of 16 years in the commission of the offence, is liable to a maximum punishment provided for such offence.403

Laws Against Child Prostitution

Child prostitution is prohibited under section 372 and 373 of the Penal Code with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to a fine.404 Section 65 (a), 66 (a) (b) (f) of the Child Law also put some penalties for offenses related to child prostitution and child pornography.405

Although section 16 (a) of the Child Law prescribes that ‘in order that every child shall not be subjected to arbitrary infringement of his honour, personal freedom and security, relevant Government departments and organizations shall provide protection and care in accordance with the Law,’406 the CRC Committee noted that provisions in the Child Law


395 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 286.

396 Ibid., para. 277.

397 Ibid., para. 102,103 and 104.


399 CEDAW, ‘Second and Third Periodic Reports of the State Party,’ para. 83, subsection e.


402 ‘2012 Concluding Observations of the CRC Committee,’ para. 87.

403 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 98 and 99.

404 Ibid., para. 96 and 97.

405 Ibid., 271, 276.

406 Section 16 (a) of the Child Law (1993).
regarding the protection of children survivors of commercial and sexual exploitation is inadequate and recommended that the State should ‘amend the Child Law to protect children from commercial and sexual exploitation.’

Laws Related to Child Marriage

According to the customary law, the legal age of marriage is 20 years for women and at puberty for boys. However, The Buddhist Women Special Marriage and Succession Act allow Buddhist girls above 14 years to marry non-Buddhist men depending on parental consent. The CRC Committee raised its concern that there is no minimum legal age of marriage for boys and the marriage age for girls with parental consent is as young as 14.

Policies Related to Birth Registration, Nationality and Adoption

According to the third and fourth periodic report of the State to the CRC Committee, as stipulated under the section 9 of the citizenship law, birth registration is made accessible to every child and Modified Vital Registration System (MVRS) has been implemented in urban and rural Areas of the entire country. On the other hand, the CRC Committee noted that there are a large number of children including Rohingya children who are unregistered due to unawareness or lack of effective implementation. Consequently, children of some ethnic minority groups including Rohingya children are vulnerable to exploitation.

In Myanmar, the Child Law and the 1939 ‘Registration of Kittima Adoptions Act’ allow adoption with regulations that protect children’s interests and also prevent exploitation and trafficking. However, the CRC Committee raised its two main concerns: ‘ensuring that provisions on adoption conform fully to the principles and provisions of the Convention’; and ‘the absence of a thorough agreed monitoring system of adoptions.’

3. Implementation, Monitoring and Enforcement

a. Implementing and Monitoring Mechanisms

Cross Border Trafficking

The Central Body for the Suppression of Trafficking in Persons mandated under the Anti Trafficking in Persons Law (2005), was established in 2006 and chaired by the Minister for Home Affairs. The Body consisted of the Deputy Attorney General as Deputy Chairman, the Deputy Minister of Home Affairs, the Deputy Minister of Social Welfare, Relief and Resettlement, the Director General of Myanmar Police Force as Secretary and heads of relevant Government Departments and Organizations, representatives from the Non-Governmental Organizations and relevant experts as members.

The Anti-Trafficking Unit (ATU) at the central level and the Anti-Trafficking Task Forces (ATTFs) at the provincial level, located in 22 townships are special units for prosecution. The human resources for prosecution include the Myanmar Police Force members, prosecutors and judges. According to the UNIAP report published in 2010, special courts dedicated to hearing trafficking cases were to be established that year. The vast majority of the investigators of ATU and ATTFs have undertaken specialist human trafficking training.

The establishment of a number of Border Liaison Offices (BLOs) at the China and Myanmar border areas facilitates informal police cooperation. Some positive results have been recorded regarding the conduct of a small number of joint investigations, exchanges of intelligence and faster repatriation of survivors. Myanmar is also involved in the regular meeting of the heads of the specialist police anti-trafficking units throughout ASEAN under the

407 '2012 Concluding Observations of the CRC Committee,' para. 57 and 58.
408 Social Institutions and Gender Index (SIGI), 'Gender Equality and Social Institutions in Myanmar.'
409 Ibid.
410 '2012 Concluding Observations of the CRC Committee,' para. 26; '2012 Concluding Observations of the CRC Committee,' para. 33 and 34.
411 'Myanmar’s Third and Fourth Periodic Reports to the CRC Committee,' 2011, para. 55 and 62.
412 '2012 Concluding Observations of the CRC Committee,' para. 43.
413 See Chris Lewa, 'North Arakan.'
414 'Myanmar’s Third and Fourth Periodic Reports to the CRC Committee,' 2011, para. 133 and 134.
415 '2004 Concluding Observations of the CRC Committee,' para. 47;
Heads of Specialist Units Process (HSU) that continues to exchange intelligence on specific human trafficking cases.\textsuperscript{422} Under the Anti-Trafficking in Persons Law in 2005, 179 trafficking offenders were reportedly convicted in 2006, 301 in 2007, 342 in 2008, 429 in 2009\textsuperscript{423} and 234 in 2010\textsuperscript{424} respectively.

On the other hand, regarding the statistics issued by the government, the US Department of State was quite sceptical in its report by stating that ‘these statistics include cases of abduction for adoption, rather the human trafficking.’\textsuperscript{425} The scepticism of the US Department of State was based on the fact that throughout the former regime the country lack rule of law and an independent judiciary coupled with lack of transparency in the justice system, the limited capacity of the prosecution officers, corruption and lack of accountability.\textsuperscript{426} The other scepticism about the anti-trafficking measures taken by the government was also based on the similar concerns.

CRFB also raised its concern that the anti-trafficking measures taken by the government did not address the root causes of trafficking and consequently the effectiveness of these measures was questionable.\textsuperscript{427} The CEDAW Committee and KWAT mentioned some cases in which the 2005 anti-trafficking law has been allegedly abused and some innocent people have been falsely charged with trafficking.\textsuperscript{428} According to KWAT, out of 70 documented trafficking cases, in only 6 cases, traffickers were reportedly brought charges by the police. And out of 6 cases, in 4 cases, the accused were allegedly escaped by bribery and in 2 cases, the women accused were falsely charged.\textsuperscript{429}

\textit{Internal Trafficking: Forced Labour and Labour Exploitation in Private Sectors}

Under the Supplementary Understanding (SU) mechanism, the government is monitoring forced labour cases in cooperation with ILO.\textsuperscript{430} Upon receipt of an allegation, the Liaison Officer first makes an objective assessment of the case and then submits it to the Government Ministerial Working Group, chaired by the Deputy Minister for Labour for further investigations. The WG is headed by the Director General of the Department of Labour and comprised of officials from related departments. Upon receipt of a complaint the WG instruct enquiry team to investigate the case and recommend appropriate action to seek for legal redress for the survivor and punishment for the perpetrator. Throughout the process, the liaison officer is reportedly accorded a close contact with the Government to ensure appropriate enquiry tactics and resultant decisions commensurate with the crime.\textsuperscript{431}

ILO submitted 354 cases of forced labour complaints to the government for action in 2010. 161 cases were resolved while 159 cases were pending resolution and 34 cases were closed with an ‘unsatisfactory outcome.’\textsuperscript{432}

Regarding workers’ labour rights’ violations in private sectors, according to the State’s report to the Human Rights Council under the Universal Periodic Review, the Ministry of Labour is the responsible body to ensure labour rights. The report said that signing an employment contract is practiced to prevent disputes between the employer and the employee. When a dispute arises, it is settled through a tripartite mechanism consisting of the Township Workers’ Supervisory Committee with an official from the Ministry of Labour as its secretary, the employer or his or her manager and the employee.\textsuperscript{433} In future, it is expected that with the enforcement of the new Labour Organization Law, labour disputes and strikes might be prevented through ‘social dialogue, creation of relationships between employees and employers,’ before resorting to strikes as the last tool.\textsuperscript{434}

However, in the State report to the Human Rights Council, the role of the Ministry of Labour is portrayed merely as that of a negotiator between workers and employers when there are disputes and strikes organized by the workers. No information is mentioned regarding systematic labour inspection mechanisms that monitor employers especially in private sector to ensure the existing Labour Laws are being practised. The US Department of State, the CRC Committee and the CEDW Committee noted...
lack of such mechanisms.435

Internal Trafficking: Child Soldier Recruitment

The State's UPR report mentioned that the Committee for the Prevention against Recruitment of Minors for Military Service was established in 2004. In 2007, the Work Committee, the Monitoring and Reporting Task Force and the Reintegration and Rehabilitation Task Force were formed.436

According to the UN observations and the experience of ILO, from late 2009 onwards, the four main recruitment units in Yangon appeared to be applying a more rigorous screening mechanism and rejected underage recruits whereas other more remote or less rigorous centres reportedly accepted those rejected underage recruits in a number of cases.437 However, one progress of the government mechanism on recruitment monitoring process is recognized in the report of the Secretary General that:

It was brought to the United Nations notice that the Directorate for Military Strength in Nay Pyi Taw holds a database of children rejected by recruitment units and who are not included in the lists of released children shared with the task force. This measure has been put in place to ensure that underage recruits rejected in one unit are not brought elsewhere for recruitment.438

Although the government has made some progress in cooperation with the UN country task force on monitoring and reporting and putting some stringent measures in some recruitment units, the Secretary General and the Special Rapporteur noted that the discharge of children from the army was mainly based on reactive approach in response to complaints rather than a more systematic proactive approach.439

Similarly, according to the 2009 report of the Secretary General, although the Government's Working Group for the elimination of forced labour dealt expeditiously with a specific ILO complaint with firm evidence such as clear identification of details and specific location of the recruit, the government did not take proactive action to investigate and seek out children in the army even when released children confirm the presence of other children in their units. The report urged the government to have a substantive discussion on a cooperative, expanded working procedure to supplement the existing ILO mechanism with a more developed and open monitoring function.440

The government accepts the principle that underage recruits should not be charged with desertion and those who were charged should be discharged from prison on the basis of their illegal recruitment and until April 2011, 7 imprisoned underage recruits have been released from prison. In spite of that, reports of the arrests of young ‘deserters’ have continued. 441 The report of the Secretary General noted the lack of the government's proactive approach in this regard to identify such ‘deserters' currently imprisoned and discharge them accordingly. The government also need to grant access by the UN country task force on monitoring and reporting to non-state armed groups and military training centers and operation units of the army.442

In spite of such weakness in the government's effort in eliminating child soldiers recruitment, it is hopeful that in future, the government's mechanisms can be enhanced in cooperation with the UN country task force after signing the pending plan of action to prevent the underage recruitment of children into the armed forces. According to a recent report of the Special Rapporteur, the plan of action was almost ready for signing.443

Internal Trafficking: Child Labour and Child Prostitution

The earlier section has mentioned how the government needs to adopt an effective labour inspection mechanism to investigate and prosecute violations of the Child Law and the Labour laws. Regarding measures against sexual exploitation, according to the State's report to the CRC Committee, 'police officials have been trained and

438 Ibid., para. 41.
assigned to different states and divisions to surveillance tourists from abusing and exploiting children and tourism related crimes while ensuring their safety.'444 While noting the effort the government is making to prevent sexual exploitation including a plan to organize a special police force for child protection, the CRC Committee stated the need to ensure the adequate measures to take in holding perpetrators of child sale, trafficking and abduction accountable for their offences given the persistence of sexual exploitation of children in the country particularly in urban areas for the purpose of prostitution.445

b. Complaints Process446

Cross Border Trafficking

The Myanmar Women's Affairs Federation (MWAF) receives complaints from women survivors of violence and trafficking and these complaints can be referred to the authorities concerned for taking action. (See also B. 3. b.)

Internal Trafficking Complaint Mechanism: Forced Labour; Child Soldier Recruitment

Under a Supplementary Understanding (SU) between the Government and ILO, Myanmar resident citizens can lodge complaints alleging the use of forced labour. According to the ILO Yangon, ‘this complaints mechanism is designed to allow genuine survivors of forced labour, with the assistance of the ILO Liaison Officer, an opportunity to seek redress and/or remedies from the government authorities in full confidence that no retaliatory action will be taken against them.’447 It states that if circumstances are appropriate, survivors should make an initial complaint through their Local Government Representative at village, township or district level or make enquiry at the local recruiting centre. However, in such circumstances as local authorities are the alleged perpetrators or survivors feel unhappy at the response they receive, they can contact the ILO Liaison Officer to make their complaint. A third party can also make a complaint to the ILO for survivors.

Under the SU, complainants, survivors and other persons associated with the submission of a complaint are protected from harassment, prosecution or any other form of reprisal or retaliation. The Liaison Officer is granted a free and confidential access to the survivors, the complainant(s), his/her representative(s) or any other relevant person(s) to verify that no such retaliatory action has been taken against them.448

On the other hand, in reality, the SU does not seem to be able to protect survivors and complainants of forced labour. The 2011 report of the US Department of States mentioned that in a prominent case, local authorities made politically motivated harassment, including lengthy interrogations, of forced labour complainants. There was no intervention of central government in that case and it presumably discouraged additional forced labour complaints.449 The ILO also made a similar comment on a gap between the ‘acceptance in principle and the practical situation on the ground’ and limitations that the ILO liaison officer had to face in conducting his field missions.450

Child Labour Exploitation and Child Prostitution

Regarding exploitation and abuse of children, as mentioned in the earlier sub-section of ‘Complaints Process’ under the section of ‘Violence against Children,’ complaints can be lodged at National Committee on the Rights of the Child and also on National Human Rights Commission. (See B. 3. b.)

c. Protection and Rehabilitation

Cross Border Trafficking Survivors

According to the ASEAN report, the ATU and ATTFs have developed relationships and cooperation with survivor support agencies and as the result, the level of support provided to survivors has been improved.451 ATTF conduct survivor identification according to criteria for survivor identification established by the Central Body for the Suppression of Trafficking in Persons and the follow-up services accordingly.452

444 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 278.
445 ‘2012 Concluding Observations of the CRC Committee,’ para. 88 and 89.
446 See also the section under ‘Complaint process’ of ‘Violence against women and children’ about explanations on complaint process of the recently formed national human rights commission.
447 ILO, ‘Forced Labour Complaint Mechanism.’
448 Ibid.
449 See more details in US Department of State, ‘2011 Trafficking in Persons report.’
450 ILO, ‘The Cost of Coercion: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,’ 2009. 73.
451 ASEAN, ‘Update and Supplement to the 2006 Study,’ 14.
452 UNIAP, ‘Mekong Region Country Datasheet,’ ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011.’
According to the State report to the CRC Committee, the Department of Social Welfare has been carrying out programmes on repatriation and rehabilitation in collaboration with the Myanmar Women's Affairs Federation (MWAF), United Nations agencies such as UNICEF and the United Nations Inter-Agency Project on Human Trafficking (UNIAP), INGOs such as World Vision (Myanmar) and SC (United Kingdom). The report said that the Department was providing trafficked women and children with necessary health care, social counselling, formal education and vocational training. In addition, it said MWAF was also providing funds for investment, seeking jobs and reunification of the victims with their families and the follow-up services. The staffs from the Department of Social Welfare were also being given training on repatriating the trafficked women and children systematically.

Although the US State Department recognized the government's effort to provide protection and rehabilitation, the department raised its concern about limited funding for survivors' rehabilitation and subsequent substandard services. According to the Department, repatriated survivors had to stay in the government's training centers for a minimum of two weeks, and if there were no guardians for the survivors to be taken care, survivors had to stay often longer in 'these centers where they were confined contrary to international norms of victim protection'. Although NGOs were sometimes allowed to assist survivors in government shelters, the government did not still allow NGOs to operate shelters for trafficking survivors. Although survivors were encouraged to assist in the investigation process and accorded with the right to file civil suits against traffickers, accessibility of victims to legal assistance appeared to be constrained by lack of financial support of the government. According to the head of the police force's Department against Transnational Crime cited in the Irrawaddy, 'some human trafficking survivors in Burma have become traffickers themselves, especially due to insufficient support in rehabilitation or a lack of jobs.'

Protection of Children in Vulnerable Situation

See section 'Children in vulnerable situations' under 'Protection and Rehabilitation' section of 'Violence against women and children.'

Child Soldier Rehabilitation

According to the State report to the Human Rights Council, programmes on disarmament, demobilization and reintegration (DDR) has been carried out since 2002 and 374 underage recruits were discharged and handed over to respective parents/guardians. The Secretary General's report said, 'in 2010, 184 children received reintegration support from UNICEF, Save the Children, World Vision and other child protection partners, in support of the Ministry of Social Welfare, Relief and Resettlement.'

It appeared that those protection activities of the government did not reach child soldiers in the non-state armed groups and the CRC Committee urged the State to extend them to non-State cease-fire groups. The State needs to take proactive approach to 'identify all children within the ranks of the armed forces, register and demobilize them with full family tracing, reunification and reintegration support from UNICEF and other child protection partners.'

d. Prevention Measures

Prevention from Cross Border Trafficking

According to the government, Myanmar has made 'significant efforts' in terms of international, regional and bilateral cooperation measures against trafficking. Criminal justice officials from Myanmar participated in regional workshops and meetings on combating against trafficking in persons such as the 2007 ASEAN Workshop on Criminal Justice Response to Trafficking in Persons

453 'Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 304 (b)
454 Ibid., para. 295, 296 and 299.
456 UNIAP, ‘Mekong Region Country Data sheet,’ for government's assistance program to survivors.
457 US Department of State, 'Trafficking in Persons Report 2011: Burma.'
461 '2012 Concluding Observations of the CRC Committee,’ para. 82.
462 Ibid., 82 (c).
and in the drafting of the Practitioner Guidelines that emerged from the Workshop. A significant proportion of specialist investigators from Myanmar have completed the ASEAN Training Program on Trafficking in Persons for Specialist Investigators. The police in Lao PDR and Myanmar have conducted devolved training courses by using the ASEAN training materials for recently appointed investigators at the ATU/ATTFs over the past three years. In keeping with ASEAN’s approach, each course was individually customised for each of the six GMS countries. The ASEAN Training Program on Trafficking in Persons for Front Line Law Enforcement Officials (ASEAN FLO course) has strengthened frontline officials’ ability to: ‘recognise human trafficking when they are confronted with it; more accurately identify survivors; provide survivors with increased protection and support and enhance cooperation between frontline officials and specialist investigators.

The 2011 trafficking report of the US Department of State also noted the government’s awareness campaigns through billboards, flyers, and public talks during the reporting period and publishing of a brochure on trafficking in conjunction with ILO, and disseminating widely throughout the country. According to the government, the MWAF has been carrying out awareness-raising programmes on trafficking and disseminating ‘knowledge about the laws that protect women through media to all Myanmar women.’ The report also said that the MWAF has been lending micro credit loan to the poor women at the respective State and Region in addition to giving the psychosocial support for vulnerable women in Nargis affected area.

On the other hand, given the account of widespread prevalence of trafficking both internally and internationally, such preventive and awareness measure did not seem to reach women and children in remote ethnic areas. Lack of educational opportunities and language barriers in those areas compounded the situation as mentioned in the KAWAT’s report. According to the assessment of CRFB on such awareness programs, those initiatives did not reportedly reach out to all communities and did not focus on root causes of the problem.

Prevention from Internal Trafficking

According to the government, in cooperation with the ILO liaison officer, the ILO Working Group led by Deputy Minister for Labour comprising of the representatives from Supreme Court, Attorney General Office, Ministry of Foreign Affairs, Ministry of Home Affairs disseminate the Principles and Rights at work (PR) around the country. The Department of General Administration also collects statistics and other information relevant to the PR. According to the government, the Order No.1/99 and its Supplementing Order prohibiting the requisition of forced labour had been translated into many languages such as Kachin, Kayar, Kayin (Pole, Sakaw), Mon, Shan and Chin (Tetain, Hacha, Matubi, Mintub), and subsequently transmitted to the relevant states and divisions of the country.

It seems that these awareness programs have positive outcome. According to the ILO liaison officer, the increase in forced labour complaint in 2010 indicates increase in people’s awareness in their rights to make complaints to get access to redress and justice. In spite of that, as mentioned in the prevalence section, due to the increasing trend of investment, large scale extractive industry and infrastructure projects of foreign and local companies have been incurring exploitation of local people in the forms of forced labour and forced eviction. Such kind of human rights violations were allegedly committed by those companies with the complicity of local authorities.

According to the report of International Organization of Employers (IOE), the government has identified areas to cooperate with ILO such as:

- Training courses should be provided by ILO for capacity enhancement of the responsible governmental institutions; collaboration between ILO and Myanmar for the ratification of Core Conventions needs to be continued; to facilitate the realization of the PR in Myanmar, ILO technical cooperation would be needed in the following

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464 See more detail in ASEAN, 2008, 14.
465 Training materials are developed by ASEAN through Senior Officials Meeting on Transnational Crime, SOMTC with the support of ARTIP.
466 Gerard Smith, ‘The Criminal Justice Response.’
467 Ibid.
468 Ibid.
471 Ibid., para. 55.
472 KWAT, ‘Eastward Bound.’
473 CRFB, ‘CRC Shadow Report Burma.’
474 IOE, ‘Country Baselines.’
475 Ibid.
476 Democratic Voice of Burma (DVB), ‘Burma to Stamp Out Forced Labour by 2015.’
areas: (1) awareness-raising, literacy and advocacy; (2) assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the PR; and (3) sharing of experiences across countries/regions.\(^{477}\)

In the area of prevention of child soldier recruitment, there appears some improvement in the government's cooperation with the ILO. According to UN sources cited in the US State Department, access to military recruitment centers was increased during the year, and training courses were conducted for military and civilian officials.\(^{478}\) The government report to the Universal Periodic Review also mentioned that numerous education talks on prevention against recruitment of minors for military service were provided to regiments and military recruitment units from 2004 to 2010 in cooperation with the Committee in collaboration with ILO, International Committee of the Red Cross (ICRC), (UNICEF), and INGOs. In collaboration with ILO, UNICEF, Save the Children and World Vision, high-level officials from the Ministry of Defence and other ministries concerned attended workshop on prevention of under-age military recruitment in May 2010.\(^{479}\)

Given the continuation of recruitments of minors, the knowledge received from awareness program still needs to be effectively put in practice to prohibit the practice of minor recruitment effectively. The CRC pointed out that disciplinary measures need to be strengthened, systematized, institutionalized so that everyone involved in child soldier recruitment are prosecuted by independent and impartial courts.\(^{480}\)

4. Role of Non-State Actors

(See also B.4. for more information on which program areas INGOs and NGOs are working on at State and Regional Level).

a. Assistance to Survivors

UNIAP identified the following international and national non-governmental organizations as key anti-trafficking non state actors in Myanmar:

- UN Agencies and Projects such as United Nations Children's Fund (UNICEF); United Nations Office on Drugs and Crime (UNODC); United Nations Inter-Agency Project on Human Trafficking (UNIAP); United Nations Development Programme (UNDP); United Nations Population Fund (UNFPA); and International Labour Organization (ILO);
- NGOs such as Asia Regional Trafficking in Persons Project (ARTIP); World Vision Myanmar; Save the Children Myanmar; Association Francois-Xavier Bagnoud (AFXB); Myanmar Women's Affairs Federation; Myanmar Maternal and Child Welfare Association; Myanmar Council of Churches; Myanmar Baptist Convention; Young Men's Christian Association (YMCA); Young Women's Christian Association (YWCA) and Inter-governmental Organisations such as International Organization for Migration (IOM) and Japan International Cooperation Agency (JICA).\(^{481}\)

In the earlier sections, a brief account on assistance programs of some organizations such as World vision and UNICEF to trafficking survivors and former child soldiers have been mentioned.

b. Prevention Programs

According to the US Department of State, international and local NGOs are offering poverty alleviation and educational programs designed to counter trafficking.\(^{482}\) As mentioned earlier, organizations such as ILO and UNICEF have been carrying out policy advocacy programs and dissemination sections preventing trafficking and forced labour.

c. Monitoring and Cooperation\(^{483}\)

With the support of the Asia Regional Trafficking in Persons Project (ARTIP), the United Nations Inter-Agency Project on Human Trafficking (UNIAP), the United Nations Children's Fund (UNICEF), and the

\(^{477}\) IOE, 'Country Baselines.'

\(^{478}\) US Department of State, 'Trafficking in Persons Report 2011: Burma.'

\(^{479}\) Human Rights Council, 'National Report,' para. 50.

\(^{480}\) '2012 Concluding Observations of the CRC Committee,' para. 82(a) and (d).

\(^{481}\) UNIAP, 'Mekong Region Country Datasheets.'

\(^{482}\) US Department of State, '2009 Human Rights Report: Burma.'; See also more at previous section of 'Prevention Strategy.'

\(^{483}\) See also cooperation and monitoring mechanism of ILO and Myanmar in the previous section of monitoring and implementation.
United Nations Office on Drugs and Crime (UNODC), cross-border enforcement cooperation with China was enhanced through Border Liaison Offices (BLOs). In 2009, the UNIAP, UNICEF, ARTIP, the International Organization for Migration (IOM), Save the Children, World Vision Myanmar,484 and Association Francois-Xavier Bagnoud (AFXB) contributed significantly to signing of the Memoranda of Understanding on anti-trafficking in persons between Myanmar and Thailand and Myanmar and China.485

In the area of minor recruitment, a UN country task force on monitoring and reporting was established in 2007 and is cooperating with the government in preventing child soldier recruitment in spite of some constraints such as getting full access to recruitment centers, military camps and training centers.486

According to the reports of the Secretary General and the Special Rapporteur on Human Rights Situations in Myanmar, progress has been made in the action plan negotiations between the government and the country task force on monitoring and reporting to end minor recruitment by the armed forces specifically, Tatmadaw Kyi, and the action plan was ready to be signed.487

5. Progress Indicators and Challenges

As noted earlier, the government has made some progress in anti-trafficking activities especially regarding cross-border trafficking. ASEAN and the US Department of State noted the improvement in the capacity of the criminal justice system to differentiate human trafficking and human smuggling cases with the establishment and operation of the Central Body, together with increased training.488 According to the government, 173 cases of trafficking have been investigated, and 234 offenders were convicted in 2010.489 Four police officers, who were members of the Anti-Trafficking Task Force in Mawlamyaing taking money from Burmese attempting to gain employment overseas, were punished. One police captain was forced to retire; two police lieutenants were demoted and one policeman lost one year’s seniority.490

While the US State Department noted a degree of progress in fighting trafficking, it pointed out some barriers in such progress. Punishment on corrupted government officials in dealing with trafficking was still insufficient and some of the government statistics reportedly included cases of abduction for adoption, rather than human trafficking.491

In the area of eradicating child soldier recruitment, some progress has been acknowledged.492 According to the government, actions have been taken against 108 military personnel as perpetrators of ineligible recruitments.493 The US Department of State also noted some progress in this area:

Authorities took unprecedented action against members of the military involved in child recruitment. An army captain was sentenced to one year of hard labour in a civilian prison for his role in child recruitment. Two enlisted soldiers were sentenced to shorter terms in a military prison, and two non-commissioned officers received stronger administrative punishments than were reported in the past.494

Regardless of some progress the government has made in these areas, the U.S. State Department raised its concern about alleged complicity of government officials in forced labour cases and alleged harassing and detaining some forced labour complainants for making accusations against officials who had forced them into labour.495 It was compounded by lack of transparency in the justice system in which ‘police can be expected to self-limit investigations when well-connected individuals are involved in forced labour cases.’496 As noted by the CRC Committee and US Department of State, challenges in fighting trafficking and other forms of exploitation, included corruption, lack of accountability of local government officials,

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484 See also World Vision Myanmar, ‘Strengthening Community to be a Better Environment for Children: Annual Report,’ 2009.
490 Ibid.
491 Ibid.
492 UN General Assembly, ‘Promotion and Protection of Human Rights Situations,’ 15 September 2010, para. 82.
496 Ibid.
497 Ibid; ‘2012 Concluding Observations of the CRC Committee.’
lack of rule of law and an independent judiciary.497 As mentioned earlier, it is hopeful that the reform process might improve rule of law and strengthen the judiciary system in the future.

6. Recommendations for Further Study

A summary of what is not known

1) Government data on extent and types of internal trafficking, root causes, impact
2) Progress indicators in fighting against trafficking (number of conviction and assistance to trafficked victims and long term rehabilitation and integration)
3) Effectiveness in implementation of the State's policies and programs to eliminate exploitation of women and children, especially mechanisms and measures put in place to ensure access of justice to survivors of exploitation

Areas of Controversy

The main area of controversy on the issue of exploitation of women and children is between the Government’s report and the 2011 Trafficking in Persons report of the U.S. Department of State. The US Department of State placed Myanmar at Tier 3 for not making significant efforts to comply with the minimum standards for the elimination of trafficking. Although the U.S. Department of State recognized the fact that the government has adopted some measures to address cross-border sex trafficking, it asserted that 'the government has not demonstrated serious and sustained efforts to clamp down on military and local authorities who are themselves deriving economic benefit from forced labour practices.'498

The Central Body for Suppression of Trafficking in Persons, the Union Myanmar of Home Affairs, strongly rejected the 2011 TIP Report and stated that Myanmar has made 'significant efforts and achievements' in terms of international, regional and bilateral cooperation measures against trafficking.499 However, in their response, the Central Body did not mention internal trafficking, such as forced labour issue and child soldier recruitment. Regardless of such shortfall, it is hopeful that the situation might be improved later since the Government has pledged to eliminate forced labour by 2015 and increase cooperation with the ILO and other national and international partners.500

Recommended areas for data collection and further research

1) Collect data on incidents of various forms of forced labour and exploitation including land confiscation, forced farming and labour exploitation in private sectors; make an in-depth analysis on their root causes, impact
2) Analysis on the existing laws, policies and programs in eliminating exploitation of women and children; their weakness, strength and areas needed to be improved especially barriers in ensuring access of justice to survivors of various forms of exploitation
3) Analysis on impact of conflict on children especially former child soldiers and IDP children; assessment of programs on their rehabilitation and full reintegration into their communities
4) Analysis on impact of various forms of labour exploitation of children and assessment of policies and programs to prevent, protect and eliminate exploitation of children

D. ABUSE AND DISCRIMINATION IN MIGRATION

Given recent developments in Myanmar and the protection measures the government has recently adopted, the situation of migrant workers in neighbouring countries, especially in Thailand, seems to have improved. It is hopeful that with political stability and economic development in Myanmar, people will have more employment opportunities at home. According to the media, the Thai Real Estate Association (TREA) is currently facing severe labour shortage and has incurred delays in several housing construction plans because many Burmese construction workers returned to Myanmar during the flood devastation in Thailand in 2011. They never came back as they have found job opportunities in Myanmar.501 This event suggests that host countries will have to change their policies to attract cheap migrant labour so that the problem of labour shortage can be solved. Consequently, it is very likely that they will relax their former harsh and draconian

498 US Department of State. 'Trafficking in Persons Report 2011: Burma.'
499 Central Body for Suppression of Trafficking in Persons, 'Response to Trafficking in Persons Report 2011.'
500 Democratic Voice of Burma (DVB), 'Burma to Stamp Out Forced Labour ‘by 2015’.
rules to control and suppress the influx of illegal migrant workers. It is also hopeful that literature on migrant workers from Myanmar in Thailand might capture latest developments soon. However, it seems a bit too early to make a comprehensive assessment on the impact of such developments. This Study has been carried out based on the findings of the existing literature on vulnerability of migrant workers from Myanmar.

1. Description of the Problem

a. Prevalence of Abuse and Discrimination in Migration

Situation of Women and Children Migrants in Thailand

In Thailand, it is estimated that there are about 2 to 3 million documented and undocumented migrant workers employed by about 200,000 Thai or Foreign employers\(^5\) in 'dirty', 'dangerous', 'difficult and demanding' sectors, such as construction, factories, fishing, agriculture, domestic work, and other local industries such as animal husbandry and shops.\(^5\) According to registration from 15\(^\text{th}\) June 2011 to 15\(^\text{th}\) September 2011, out of over 900,000 registered migrants, over 600,000 are from Myanmar.\(^5\) According to Caetotte and others cited in Kabeer, the percentage of female registered migrants in Thailand has grown from 30% in 1998 to 45% in 2005.\(^5\) In estimation, 70% of migrant workers in factories in the Tak Province were women from Myanmar.\(^5\) Based on the 2006 data of National Coalition Government of the Union of Burma (NCGUB), approximately 200,000 Burmese children were living in Thailand and many of them were working.\(^5\) In estimation, 20% of the migrant workforce consisted of children aged 15 to 17 years of age.\(^5\)

Both documented and undocumented migrants from Myanmar including women and children were reportedly subjected to various forms of abuses committed by local authorities, police and employers. Such abuses and maltreatment of migrant workers and impunity of human rights violators have been well documented.\(^5\) By means of quantitative surveys and qualitative in-depth interviews with migrants, employers and authorities concerned, various forms of abuses and discrimination recorded by above mentioned studies included the following:

1. difficulty in obtaining registration; raid of local authorities;\(^5\)
2. control of employers who withhold original work permit of the migrant; threat of deportation; long working hours with underpayment;\(^5\)
3. harsh working conditions;\(^5\)


509 According to CPPCR, police raids usually took place in the early morning and during these times due to the rush to escape, children could be separated from their families. Due to worry about sleeping in their huts at night, those who hide and live temporarily in the forest were at risk of malaria and nutritional problems. See CPPCR, 'Feeling Small,' 38.

511 According to CPPCR's survey, 78.8% of respondents working in the factory earned between THB 54 to 125 a day which still fell below the minimum wage at that time (THB 147); 28; See also Kyoko Kusakabeand Ruth Pearson, 'Transborder Migration,' 19 and 20.

512 No protective equipments are provided and have to be purchased by the worker at factors where there is no safety standard. Rest times and holidays are denied especially when there are deadlines to meet orders and medical leave may not be permitted. If days off are permitted, they maybe unpaid or sometimes deducted from wages as 'fines' for taking day off.
4. lack of rest;
5. physical and verbal abuse;
6. sexual violence against women and girls;
7. denial of the employer to give compensation to the employee for work related injuries;
8. domestic servitude especially for women and young girls with a small salary and abusive and restrictive working conditions, lack of freedom of movement and communications;\(^{513}\) and
9. forcing the female employee to leave their job for becoming pregnant while working in the factory.\(^{514}\)

Children were often subjected to the worst forms of labour by being exposed to hazardous chemicals in factories and agricultural areas and harsh working conditions in fishing boats.\(^{515}\) According to Aung, Hpound and Jessadachat, in 2010 alone, at least 25 cases were documented in which migrants, including two young children, were killed due to acts of suppression by the police and other security actors.\(^{516}\)

According to a study of the Committee for Promotion and Protection of Child Rights (Burma) (CPPCR), migrant families were also subject to the control of landlords and neighbours. Some landlords charged them higher rental fee and some neighbours took away their properties. Some local communities complained about them to the police and scolded them if they make a noise. They were also subjected to threats by motorbike gangs.\(^{517}\)

According to the estimation of Burma Workers’ Rights Protection Committee (WRPC) cited in NCGUB, about 500,000 legal and illegal Burmese migrant workers and refugees including women and children were residing in Thailand, regardless of their status, can be registered and a birth certificate can be obtained.\(^{518}\) In spite of that, there were still some barriers for unregistered parents to go to the Thai Municipal office to get birth registration for their children. They were unaware of importance of birth registration or were often reluctant to do so due to language barriers or fear of Thai authorities.\(^{519}\)

In theory, undocumented migrants and their dependants could have access to Thai hospitals. According to the Thai Ministry of Health (MOH), medical services were provided to migrants on humanitarian grounds and the Mae Sot Hospital (MSH) would spend 50 million THB on healthcare for migrants in 2007.\(^{520}\) In spite of that, some migrants were reluctant to go to public hospitals due of fear of arrest and deportation.\(^{521}\)

### Situation of Female Domestic Workers from Myanmar in Singapore

Out of 170,000 foreign domestic workers in Singapore, Burmese maids occupied 6% of the work force and their earning were SGD 300 (equivalent to USD 208) as of February 2008.\(^{522}\) According to 2005 HRW report, well-being of foreign domestic workers in Singapore including those from Indonesia, Philippines, Sri Lanka and Burma, were dependent on the mercy of their employers. Except some fortunate maids, HRW’s study found out that in general, maids were subject to various forms of abuse and discrimination including poor working conditions, social isolation, and sexual abuse, physical and verbal abuse, exorbitant debts owed to employment agencies, prolonged confinement indoors, long working hours, no weekly rest days and low wages.\(^{523}\) However, according to the media, maids in Singapore will get weekly day off soon when the newly drafted legislation enter into force next year.\(^{524}\)

### Situation of Migrants in Malaysia

According to the estimation of Burma Workers’ Rights Protection Committee (WRPC) cited in NCGUB, about 500,000 legal and illegal Burmese migrant workers and refugees including women and children were residing in Malaysia.

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\(^{513}\) Studies have found out that the majority of domestic workers are prohibited to make contact with friends and family and using and receiving phone calls (Punpuing, 17; CPPCR, 69-70; Elaine Pearson et al. ‘The Mekong Challenge.’)


\(^{515}\) HRDU, NCGUB, FTUB cited in CPPR, ‘Feeling Small,’ 12.

\(^{516}\) Soe Lin Aung, ‘Situating (In) Security.’

\(^{517}\) CPPCR, ‘Feeling Small,’ 37.

\(^{518}\) Ibid., 13.

\(^{519}\) Ibid., 39.


\(^{521}\) Ibid.

\(^{522}\) Irrawaddy cited in National Coalition Government of the Union of Burma (NCGUB), ‘The Situation of Migrant Workers,’ 1018.


Malaysia as of December 2008. According to Xinhua, migrants from Myanmar accounted for the majority of 1.84 million migrant workers in Malaysia. Burmese migrant workers were found to work in restaurants, factories, rubber plantations, and construction sites.

The alleged maltreatment of Burmese migrants, refugees and asylum seekers including women and children has been recorded in reports of non-governmental organizations (NGOs), International NGOs, Malaysian print, television media and testimonies of Burmese refugees who have resettled in the United States.

Thousands of Burmese reportedly lost their legal status because employers withheld passports or refused to pay their return airfare. Women workers were also subjected to sexual abuse committed by employers or co-workers. All Burmese migrants regardless of their registration status and refugees who have registered with the UNHCR were subject to raid, torture and arrest by authorities and members of People’s Volunteer Corps (RELA). Human Rights Groups have recorded abuses committed by the RELA members including ‘beatings, canings, rape and theft.’ According to testimonies of escaped victims, after raid and arrest, they would be detained for indefinite periods in notorious detention centers or handed over to traffickers in Southern Thailand if they could not afford to arrange payment to the authorities. Women and girls would be sold to brothels, hotels or domestic servitude in Southern Thailand.

**Burmese Female Migrants in Dubai**

Through the media, some cases of labour exploitation of Burmese female migrant workers were reported. Employers of some restaurants in Dubai committed a breach of contractual agreement on salary and working hours and asked female workers each day to work two to three hours more than agreed time in the contract without overtime payment.

**Chin Ethnic Migrants in India**

Chin ethnics in western provinces of Myanmar crossed the border to India’s eastern states such as Mizoram in 2008, to escape from famine and work in farming, road construction, and other odd jobs in India. Female migrants were subject to the incidents of sexual and gender based violence and killing. The nationalist student group, the Yong Mizo Association, also subjected them to clampdown.

**b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices**

Since Myanmar is still transitioning into a democratic country, decades of military regime still have its impact on the issue of migration and other things. Until recently, civil armed conflicts, economic deterioration, and chronic unemployment had been push factors that made migrant workers work in exploitative situations out of desperation for survival. As Bosson expounded, harsh social and political realities have brought this kind of population movement squarely into the field of forced migration, even though the immediate cause of leaving home can also be described in economic terms. Given those underlying factors within the context of Myanmar, migrants were vulnerable to traffickers, and forced or bonded labour, and sexual
exploitation. According to the CPPCR’s interview with children migrants in Thailand, they had to face danger on their attempt to cross the border. One child was sent to Thailand with a ‘carry’, a service that transports people to Thailand for a fee. Carrys can use unscrupulous means to bring children to the brothel or bar. For some children, during their journey on foot along the winding Daw Na mountain road in Myanmar, they had to pay bribes at checkpoints to be able to continue their journey.

The absence of labour protection laws is also one of the reasons that facilitate labour exploitation. In Singapore, there was no legal provision for foreign domestic workers that enable them to be entitled to weekly day off among other labour’s rights. Just recently the government drafted a new legislation that will provide weekly day off to domestic workers. The bill is still awaiting full approval from the parliament and it is expected to be passed and will come into force on 1 January 2013. Without the legal basis, for many years, as Kabeer said, female migrants were subjected to ‘the intersection of several axes of inequality, including gender, ethnic minority status and ambiguous legality.’ Although in Singapore abusive employers were punished, a foreign domestic worker was in a disadvantaged position to make complaints against employers due to unequal power relationship with her employers who had the power to repatriate at any time during the contract.

In Thailand, most of the protections under the Labour Protection Act 1998 do not apply to workers in agriculture, domestic work and fishing boats (local or migrant) and it gives no incentives to employers to adhere to standard labour practices. Employers also were not aware of their responsibilities and obligations to migrant workers under Thai labour laws and under the migrant registration policy. It was compounded by their discriminatory attitudes that foreign migrants do not deserve the same rights as Thai workers. Even some government officials had such discriminatory attitudes on labour rights of migrant workers according to findings of an academic study.

Other underlying factor of abuses and discrimination in migration is concerned with governments’ draconian policies against illegal migrant workers. Both in Thailand and Malaysia, illegal migration is included as a matter of national security concern along with refugee inflows, drug trafficking, and illegal deforestation. In Malaysia, members of the RELA were given ‘the right to bear and use firearms, stop search and demand documents, arrest without a warrant, and enter premises without a warrant,’ out of suspicion of someone being illegal migrants or terrorists and any undesirable person. Under this warrant, the RELA members were given impunity for their violent actions against migrants and refugees.

However, under Malaysia’s immigration law, immigrants can be allowed a temporary stay and seek employment during their stay. During the first week of June 2011, an announcement was made that all foreign migrant workers needed to register for legal work permits starting from July 11. Since then, migrants noticed an increase in arrest and suppression on illegal migrants to push them to register. However, migrants became suspicious of the process due to exorbitant costs and lack of guarantees from Malaysia’s Ministry of Labour to protect the registered workers’ labour rights or to ensure that illegal migrants who came out and registered would not be deported back home or the Thailand border.

In Thailand, one of the measures taken to put control over the movement of migrant workers is demonstrated in provincial decrees in five provinces. Citing concerns for ‘national security’, ‘security of society’, or ‘safety of life and assets’, the decrees put the measures to violate basic rights of both documented and undocumented migrant workers, such as restriction on the use of mobile phones, motorcycles and cars.

With the purpose of meeting labour demand of Thailand’s growing industry, the government started to develop its immigration policy in 1992 by using the cabinet resolution under ad hoc type of policy formulation. From 1992 until recently in June, 2011, the registration process was

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539 Nikolas Win Myint, ‘Migration and Trafficking.’
540 Kate Hodal, ‘Singapore’s maids to get a day off.’
541 Naila Kabeer, ‘Footloose’ Female Labour, 13.
542 HRW, ‘Maid to Order.’
544 Ibid.
545 Vasu Srirarathonbul, ’Controlling Migrant Workers: Thailand’s Perspective’, 159.
547 Irrawaddy cited in NCGUB, ‘The Situation of Migrant.’
548 Congressional Research Service cited the US senate, ‘Trafficking and Extortion of Burmese Migrants.’
550 HRW, ‘From the Tiger to the Crocodile.’
opened for couples of rounds. Every registration process had a chilling effect on undocumented works as it was designed to 'prevent and suppress irregular migration (before, during and after registration) as mentioned in Cabinet resolution of 26 April 2011.\textsuperscript{552}

However, as mentioned in the introduction, with the latest updates in Myanmar and looming labour shortage in future for Thailand's industries, it is very likely that the government might relax its harsh policies on undocumented migrants and streamline the registration process accordingly. The recent registration process was streamlined at one-stop service centers provided at 17 provinces, in spite of the fact that the process was still the same as the previous registration in the remaining provinces.\textsuperscript{553}

In the past, the migrant registration system was said to be daunting to migrant workers who lack knowledge in the highly complicated bureaucratic steps and Thai language skill. Most migrant workers had to rely on their employers or various cheating methods of brokers.\textsuperscript{554} Brokers or employers might over-charge them and in some cases, the migrant workers who wanted to be registered but were not recommended by their employers had to hire a Thai as a proxy employer through brokers with higher fees. The system also restricted migrant workers' right to change employers and rendered migrant workers subjected towards the labour exploitation of employers who had inordinate control over their documentation status.\textsuperscript{555} Employers would not register their employees or reported to police with false accusation and ask for deportation order.

In addition to migration policies that facilitated abuse and discrimination in migration, other factors such as economic downturn put more strain on such abusive conditions. In Thailand, after the economic crisis, when the government wanted rice mills to switch away from their use of Burmese migrant labour to Thai workers, mill owners were ordered to use 50 kg bags to attract Thai workers while migrant workers were required to raise 100 kg rice bags.\textsuperscript{556}

Regarding child labour, an exacerbating factor that ignores or encourages exploitation of child's labour is related to the attitudes of migrant families and Thai people. Without seeing the practice as a problem, employers and migrant families have used and abused child labour jeopardizing children's future educational opportunities and development.\textsuperscript{557}

Some racial stereotypical attitudes towards Burmese migrants might also have justified abuse and discrimination. Since Thailand has never been subjected to the European colony rule, to formulate Thai nationalist discourse as a unifying ideology (especially following the 1932 power transfer from the absolute monarch to civilian rule), the long-held mythology of a kingdom under siege of Burma in the 16th century was revived in textbooks, and disseminated through plays, short stories, films and popular culture. The Burmese were portrayed as the colonial aggressors and Thai leaders who guarded against the colonial aggressors as liberators from the Burmese colonial forces.\textsuperscript{558} The portrayal of Burmese as the national enemies in Thai nationalist discourse had some precarious repercussions. The general public's attitudes towards Burmese migrants, who consist of the majority of the migrant population in Thailand, have been indifferent at best and discriminatory at worst.\textsuperscript{559}

\textbf{c. Impact of Abuse and Discrimination in Migration}

Impact of abuse and discrimination in migration within the context of Thailand has been reported in numerous reports mainly on health and education related issues.

\textit{Health}

Lack of knowledge in reproductive health rights among female teenagers has increased teenage pregnancy and in 2007, 5.1% of deliveries at Mae Tao Clinic (MTC) were by girls less than 18 years of age.\textsuperscript{560} Such factors as poverty, fear about the deportation of pregnant workers, difficulty in accessing health services, illegality of abortion in Thailand, social and economic pressure, work related pressure, have affected women. This was resulted in premature labour, delivering without a skilled birth attendance, delivering low birth weight babies, and resorting to unsafe abortion.\textsuperscript{561} As a result, the Thai Ministry of Health recorded that among migrant pregnant women, complications for abortions were 2.4 times higher than for the local population and HIV/AIDS prevalence rate among pregnant migrant

\textsuperscript{552} IOM, 'Migration Information Note.'
\textsuperscript{553} Ibid.
\textsuperscript{554} HRW, 'From the Tiger to the Crocodile.'
\textsuperscript{555} Ibid.
\textsuperscript{556} Wickramasakeracited in Naila Kabeer, 'Footloose' Female Labour,' 13.
\textsuperscript{557} CPPCR, 'Feeling Small,' 67.
\textsuperscript{558} Soe Lin Aung, 'Situating (In) Security.'
\textsuperscript{559} Ibid.
\textsuperscript{560} CPPCR, 'Feeling Small,' 50.
\textsuperscript{561} Ibid.,13.
women was higher at 4.3%, compared with 2% among pregnant Thai women.562

According to a study cited in Kabeer, 50% of all adult migrants interviewed lack basic knowledge of HIV/AIDS and the same study found out that 55% of infants had not been immunized.563 Children suffer from malnutrition, acute respiratory tract infection, malaria, diarrhoea, worms, deformities, skin diseases, and anaemia due to inadequate treatment and poverty in Burma and Thailand. The absence of care by parents who just neglect their children with pressure of work and making money for daily survival compounded the situation.564 A study conducted by the Shoklo Malaria Research Unit (SMRU) in Tak Province in Thailand found out that ‘fear of arrest’ was a reason unique to Burmese migrants in study for not having children immunized by their parents; other factors such as not remembering immunization appointments and needing to work can be seen as well. According to SMU, some parents from Myanmar said they were afraid that Thai police might arrest them on their way to the clinic or at the clinic.565 One effect of lack of access to health facilities for migrants was the rising danger of re-emerging previously controlled diseases such as lymphatic filariasis in Thailand via Shan migrant workers.566

Abuse and discrimination has not only affected children’s physical health, but psychological wellbeing as well. Sometimes, it has also endangered children’s lives due to an abusive environment where fighting was widespread in both verbal and/or physical nature, within families; between children; spouses; neighbours; student gangs; Burmese and Thai; and Burmese and Karen.567 Migrant children are also subjected to risk of being trafficked and recruited by gangs due to being out of school and on the streets.

Education

Although migrant children, in theory, have access to education, less than 16% of registered migrant children are in Thai’s education system, according to


567 CPPCR, ‘Feeling Small,’ 13 and 47.

the Foundation for Rural Youth (FRY).568 As Proctor, Sanee and Taffesse pointed out, if greater numbers of unregistered migrant children were taken into consideration, the vast majority of migrant children still lack access to education specifically to the Thai state schools.569 Although the 2005 education policy gives rights to education to every child regardless of their legal status, hindrances in its effective implementation are much related to discriminatory attitudes towards migrant communities, among other barriers.570 In spite of the fact that there has been increased awareness regarding the rights of migrant children because of the civil societies’ advocacy program, some barriers still exist. These include limited educational budgets, linguistic and cultural differences and refusal of school management to accept migrant children, either due to lack of awareness of the government educational policy or discriminatory attitudes towards migrant communities in general. Due to fear of deportation, unregistered migrants dare not ask for access to government services, while registered migrants do not know their rights or even if they know, they might simply not be able to afford to send their children to school and rather send to work to contribute to the family income.571

Majority of children who lack the Thai formal education system go to migrant schools that are informally established by local migrant communities and there are around 88 migrant schools with an estimated 15,855 students and 981 teachers.572 Those schools face challenges such as lack of official recognition by the Thai education authorities and insecurity of migrant teachers who are themselves undocumented and lack of mechanism to ensure good quality education. Consequently, further


educational opportunities are shunned away from those children. In spite of non-formal educational program of civil societies for the working migrant children (see AlertNet 2010), there have been problems fulfilling the needs of those children.

2. De Jure State Responses

a. Bases of State Responsibility

Myanmar has not ratified any international treaty related to protection of migrant women and children such as International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Convention Concerning Decent Work for Domestic Workers (No. 189) (CPRMW). However, according to the State's UPR report, the State is observing CPRMW with the purpose of signing it. Based on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007), Myanmar has pledged to prevent abuse and discrimination in migration. A Memoranda of Understanding (MOU) on appointment of workers and cooperation was signed between Thailand and Myanmar on 21 June 2003.

b. National Policies against Abuse and Discrimination in Migration

Literature on Myanmar national policies against Abuse and Discrimination in Migration rarely exists. This might probably be due to the decades of neglect of the previous military regime on the issue, as Htoo Chit, Executive Director of Thailand-based Grassroots Human Rights Education and Development, remarked. However, the former regime did enact ‘Law Relating to Overseas Employment’ in 1999, and it seems that it is the only legislation put in place to protect migrant workers’ rights. According to the government’s statement in a parliament session, policies to protect migrant workers have been adopted through the respective embassies of Thailand and Malaysia.574 In accordance with the MOU between Thailand and Myanmar, the government has adopted a nationality verification (NV) process to produce a temporary passport and provide migrant workers a legal status. The purpose is to protect workers from abusive working conditions and ensure that their labour rights are on equal terms with Thai workers. The process has been operating since July 2009.575

c. Assessment of State Policies

Literature assessing state policies of migrant protection is very rare. The Overseas Employment Law allows establishment of overseas job hunting agencies. Licensed agencies are required to take responsibilities of the workers as to their labour rights in foreign countries, in accordance with the Foreign Employment Law (99) [Section 25, Subsection (d)]. Under the Law, employment agencies are also prohibited from malpractices and there have been some arrests of such agencies over the years.577 It seems that the government’s current policy of national verification (NV) and issuing temporary passport is successful. According to anecdotes, Burmese migrants who have successfully registered for temporary passports have gained rights such as freedom of movement without restriction and access to health care facilities; it has been an encouragement for more registration for the temporary passport.578 Starting from July, 2011, the validity of temporary passport has been extended from 3 years to 6 years.579 On the other hand, the government’s policies aiming for restricting illegal migrants and trafficking might have had some repercussions. It is hopeful that such kind of policies can be amended soon in the reform process. According to a paper of Social Environmental Research Consultant (SERC), Myanmar law prohibits males under the age of 18 and females under the age of 25 from travelling abroad without a legal guardian and it said that such restriction alone ‘put young people in a position of having no choice but to migrate illegally.’580


576 ‘21st Day Session of Pyidaungsu Hluttaw Held,’ The New Light of Myanmar

577 See more in the section of 3(a) ‘Monitoring Mechanisms’ under the ‘Literature on Migration of Women and Children.’


580 SERC, ‘A Comparative Picture of Migration, 8.'
do not speak Burmese were more susceptible to deceitful brokers with promise to provide accompanied travel and paying jobs.581 Nikolas Win Myint also pointed out the need to remove root causes, such as alleviating poverty and reducing economic pressure, instead of stopping movement.582

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

Embassies of Myanmar in host countries such as Malaysia and Thailand are the ones that need to take care of migrant rights issues. According to the government, organizations for protection of Myanmar workers were formed in Malaysia and Thailand in 2009.583 However, there is no information on what mechanisms have been put in place in Myanmar embassies in other host countries such as in Singapore or in Dubai. It seems that Myanmar embassies in those countries might respond to complaints of migrant worker rights violation on ad hoc basis.

The deputy labour minister of Myanmar and the Myanmar ambassador leads the Protection Committee for Myanmar migrant workers in Thailand.584 Recently, the Myanmar embassy in Bangkok appointed a labour affairs official to provide assistance to migrant workers with workplace issues and rights.585 As already discussed, under the 2003 MOU between Thailand and Myanmar, the government has been issuing temporary passports to Myanmar migrants in Myawady, Kawthoung and Tachilek in Myanmar and Ranoun, Bangkok and Chiang Mai, Surat Thani, Samut Sakhon and Tak provinces in Thailand.586 According to the government, from 10 July 2009 to 28 February 2011, temporary Myanmar passports and identity cards have been issued to 408,160 workers.587

According to the government, the Ministry of Labour has an overseas employment division and the Ministry of Foreign Affairs, the Ministry of Home Affairs and the Ministry of Immigration and Population are working closely as a task force.588 Necessary actions have been taken against employment agencies and brokers that violate existing laws. In 2008, the Department of Labour warned 110 licensed employment agencies that used clandestine methods in sending female migrants abroad that they could lose license or face imprisonment. The intention of the department of labour was to curtail labour exploitation in destination countries, especially of female migrants.589

According to the information from a discussion in parliament last year, altogether 14 overseas employment agencies that violated licenses’ provisions were terminated. A total of 17 cases of brokers that sent workers overseas illegally were charged. Seven cases were charged due to lack of overseas employment licenses.590 According to the government, under the MOU between Myanmar and the Republic of Korea, Myanmar has been sending national workers with Employment Permit System (EPS) since 2009.591 While measures taken against unscrupulous employment agencies are welcoming, in some cases, rules and regulations were reportedly sidestepped through bribery.592

According to the Minister of labour, Myanmar does not have adequate institutions to protect migrant workers’ rights effectively. The Minister said more bilateral agreements need to be signed and the signed MoUs and MoAs need to be upgraded so that they can guarantee the interests of Myanmar workers.593

b. Complaints Process

It seems that migrant workers can lodge complaints against violations of their rights at respective Myanmar embassies in host countries. Evaluation reports on such

581 Ibid.
582 Nikolas Win Myint, ‘Migration and Trafficking.’
583 ‘21st Day Session of Pyidaungsu Hluttaw Held,’ The New Light of Myanmar
587 ‘21st Day Session of Pyidaungsu Hluttaw Held,’ The New Light of Myanmar.
588 Ibid.
590 ‘21st Day Session of Pyidaungsu Hluttaw Held,’ The New Light of Myanmar
591 Ibid.
593 The New Light of Myanmar, op. cit.
mechanisms are very rare and it seemed that during the previous regime, the issues of migrant workers were reportedly side-lined or ignored. However, as previously discussed, policy shift has been seen in this area. According to the news, the Myanmar embassy in Thailand has been working on protection of migrant workers’ rights in cooperation with the local workers' rights groups. However, information regarding how migrant workers can lodge complaints against abuse cases at Myanmar embassies in respective host countries is still missing.

c. Protection and Rehabilitation

In a recent meeting between Myanmar Deputy Minister of Labour and the Thai Minister of Labour, the Myanmar government stated that it will provide more assistance to migrant worker. The two parties have also discussed on such issues as reopening of a comprehensive registration process for unregistered Myanmar migrants in Thailand; establishment of nationality verification (NV) centers in central regions of Thailand; and ensuring the social security benefits for Burmese workers who have passed NV. According to the media, the newly appointed official has begun meeting with migrant worker groups and has started assessing the situation.

In a recent case, Burmese Association of Thailand (BAT) in collaboration with two Thai NGOs and the newly founded Protection Committee for Myanmar migrant workers successfully provided legal assistance to 127 Burmese migrant factory workers to receive their allowance from their employers who first refused to pay. Due to flood threat, those workers needed money for food and transportation in October last year and they asked for their September allowance from their employers. Since September 2009, more than 2,700 illegal workers detained at immigration camps in Malaysia were sent back to Myanmar as result of the cooperation between the two authorities.

d. Prevention Measure

According to the State UPR report, the government has been holding public awareness programs such as talks and seminars on human rights issues including migrant workers’ rights in cooperation with international and national human rights experts since 2000. However, there is a lack of information relating to awareness raising programs for migrant workers in such areas as contents of labour contracts, legal rights, procedure for invoking redress and procedure for migration for women who wish to migrate independently or recruitment agencies.

4. Role of Non-State Actors

a. Assistance to Victims

In Thailand, some Burmese organizations are providing support to migrant workers with the support of ILO and Thai NGOs. Some of such organizations include Yang Chi Oo Workers’ Association (YCOWA), Burma Labour Solidarity Organization (BLSO), the Federation of Trade Unions-Burma (FTUB), Grassroots Human Rights Education and Development (HRDF), the Committee for Promotion and Protection of Child Rights (Burma) (CPPCR), FTUB mentioned a need of more NGOs to work on migrant worker issues. According to FTUB's 2006 data, monks and religious persons were the main external sources of comfort for migrant children and young women. (See also C.3.a for information on INGOs and NGOs providing assistance to trafficked survivors.)

b. Prevention Programs

Some of the above mentioned organizations like Grassroots Human Rights Education and Development (HRDF) are raising awareness of migrant workers’ rights

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596 IOM, 'Migration Information Note.'

597 Nay Thwin, 'Burma Appoints Labour Official for Thailand.'

598 'Burmese Migrant (127) Received Estimated (3) Millions Baht for Their Allowance!,' Democracy for Burma.

599 '21st Day Session of Pyidaungsu Hluttaw Held, 'The New Light of Myanmar'


601 Elaine Pearson et al., 'The Mekong Challenge,' xxvi.
with the support of ILO and NGOs, and with Thai labour and legal groups.

c. Monitoring and Cooperation

As mentioned above, some Burmese NGOs based in Thailand are cooperating with some Thai NGOs and ILO in providing support and raising awareness of rights of migrants. They are now starting to cooperate with the newly established mechanisms of the Myanmar embassy to protect workers’ rights.602

According to the Minister of Labour, they are cooperating with IOM to be more efficient in their work. According to the Minister, ‘everyone in favour of the interests of migrant workers is urged to render assistance and hold talks for institutional development and cultural change.’603

5. Progress Indicators and Challenges

There is no report on progress indicators and challenges in the government’s activities regarding migrant issues. However, generally, as mentioned earlier, such factors as anecdotes of success in the national verification process and issuing temporary passports604 and the government’s prosecution of unscrupulous employment agencies can be seen as the progress the government has made.

Based on the existing literature, main challenges can be seen in such areas as lack of adequate legal framework, mechanisms and institutions in addition to lack of the government’s data on migrant abuse and discrimination.

6. Recommendations for Further Study

A summary of what is not known

1) Lack of data compiled by the government on the number of skilled and unskilled migrant workers of the country; assessment on their situation; root causes of abuse and discrimination; and their impact.

2) Lack of information on measures and mechanisms put in place with clear mandates and resources to safeguard the rights of migrant workers both inside and outside, especially regarding mechanisms established at Myanmar embassies in other destination countries, except in Thailand.

3) Scarcity of information on bilateral cooperation with other destination countries on migrant issues, except Thailand.

Recommended areas for data collection and further research

1) Collect data on the number of skilled and unskilled migrant workers of the country; make an assessment on their situation; root causes of abuse and discrimination; and their impact.

2) Make an analysis of the existing laws and policies, their weaknesses, strengths and shortfalls in relation to protecting the rights of migrant workers.

3) Make an evaluation on the existing mechanisms and progress and barriers in the implementation of the safeguard of migrant workers’ rights.

4) Study best practices and lessons learned in the region and around the world in the area of protecting migrant workers’ rights, and how they can be applied within the context of Myanmar.

602 See 'Burmese migrant (127) received estimated (3) millions Baht for their allowance!, 'Democracy for Burma, 2011.

603 '21st Day Session of Pyidaungsu Hluttaw Held,' TheNew Light of Myanmar.

604 Jaloon Htaw, ‘Successful Migrant.’
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