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**Economic, Social and Cultural Rights of Minorities and other Marginalized/Vulnerable
Groups**

Submitted by: The Lutheran World Federation (LWF)

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The Lutheran World Federation (LWF): Founded in Lund, Sweden, in 1947, is a global communion of 144 churches in the Lutheran tradition representing over 72 million Christians in 79 countries. LWF has a consultative status with ECOSOC since 1952. The Lutheran World Federation Myanmar (LWF Myanmar) is a country program of LWF- Department for World Service (DWS) that has been working since 2009 with marginalized and disadvantaged communities. LWF Myanmar focuses its community-based efforts in the areas of emergency preparedness and response, livelihoods and food security, water, sanitation and hygiene, disaster risk reduction and human rights.

Summary

1. This submission is based on primary data collected through field surveys, focus group discussions and individual interviews. 16 consultations took place between November and December 2014 with women, men, youth groups, and local government officials, LWF Myanmar staff, Action by Churches Together (ACT) Alliance partners and representatives from Gender Equality Network (GEN) and Land Core Group (LCG). A total of 303 people (134 male, 169 female) from Yangon, Ayeyarwaddy, Kayin, Chin and Rakhine States/Regions were involved in the development of this report.
2. The report documents key findings and key recommendations relating to the following issues: right to land, right to water, right to a legal identity, right to a nationality and rights of women.
3. Myanmar has ratified the UN Convention on the Rights of the Child (CRC), the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC), the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

1. Right to land

4. In Myanmar, 70% of the population lives in rural areas and is engaged in agriculture related activities. The majority are smallholder farmers living in the countryside. In many areas of the country, rural livelihoods are under threat as smallholder farmers are being displaced from their land due to large-scale land confiscations. Myanmar has seen an increase in land rights violations since 2011.¹ The Government, in recognition of land issues, established two bodies to deal specifically with land disputes. The Land Allotment and Utilisation Scrutiny Committee and the Parliaments's Farmland Investigation Commission were both established in July 2012;² between 2011 and November 2014, more than 26,000 complaints were lodged³ but the executive branches are struggling to respond to the volume of cases involving land grabs and disputes.⁴
5. According to the farmers consulted, the main concerns relating to land distribution and utilization lie in the lack of clarity of relevant laws and transparency, and a lack of enforcement of existing regulations. There is no consistent application or monitoring of the rules and procedures for registering land or resolving cases of land disputes, particularly in cases of large scale development projects or military bases, which is fueling a general climate of suspicion and widespread allegations of

¹ Land Disputes Leading Cause of Human Rights Complaints By NOBEL ZAW / THE IRRAWADDY| Wednesday, November 12, 2014

² Myanmar Oil & Gas Sector-Wide Impact Assessment (SWIA)

³ The Eleven, "Handling of thousands of land disputes unsatisfactory: Commission" (27 September 2014)

⁴ The Irrawaddy, "Parliament Sets Deadlines for Government to Resolve Land Disputes" (20 February 2014)

corruption and irregularities.⁵ In January 2014, the military reportedly apologized for previous land confiscations, pledged to stop the practice, and said it would begin to return some of the land.⁶ However, there are still believed to be tens of thousands of farmers that have not been compensated or had land returned.

6. To compound these issues, those without a Citizenship Scrutiny Card (CSC), such as villagers in Kayin who have been displaced from their lands⁷ due to prolonged armed conflict and have lost documents, face serious issues in reclaiming land⁸ and/or registering land in the first place.
7. The rights of farmers such as those in Chin State, who practice shifting cultivation, are further compromised since the existing farmland law specifies that farmers have to continuously cultivate the land.

2. Right to water

8. Though 69.4% of the population of Myanmar has access to safe water total utilization of the nation's water resources remains at a mere 5%.⁹ Ambiguous laws and their inconsistent application, managing and monitoring water supply systems and sources remain serious barriers to access and availability of safe water for all communities consulted.
9. The lack of an efficient governmental mechanism to monitor and assess ground water quality poses serious threats to the health of community members. The field survey conducted shows that water quality is endangered by existing practices and violations, such as factories discharging waste into water sources such as rivers, which causes pollution and threatens the well-being of neighboring communities.¹⁰
10. Existing reservoirs in some villages do not provide enough water to cover the needs of communities over the dry season, which forces them to rely on water sources outside the community. The field survey conducted with local communities reveals the lack of mechanisms or infrastructure in place to address this issue. Community members must resort to coping mechanisms such as: collecting water themselves by small boat or motorcycle and sharing the cost, and sometimes paying bribes to the authorities to get additional access to available water.

⁵ Please find the case studies under ISSUES 1: ACCESS TO LAND section of the LWF Myanmar Summary Report of UPR Consultations_2015

⁶ Mizzima, "Vice President defends land seizures by Tatmadaw" (12 May 2014).

⁷ The findings from the interview with GEN and Land Core Group; please find the detail information in LWF Myanmar Summary Report of UPR Consultations_2015

⁸ Please find the case studies under ISSUES 1: ACCESS TO LAND section of the LWF Myanmar Summary Report of UPR Consultations_2015

⁹ WATER MANAGEMENT IN MYANMAR Presentation at ASIA WATER MANAGEMENT FORUM on 29th October, 2012 in Seoul, Korea by Bo Ni, Director Watershed Management Division, Forest Department, Ministry of Environmental Conservation and Forestry

¹⁰ Please find the case studies under ISSUES 2: ACCESS TO SAFE WATER section of the LWF Myanmar Summary Report of UPR Consultations_2015

11. In addition, Myanmar currently has no functioning system to process complaints about the discriminatory legal frameworks, policies and practices that actively prevent equal access to safe water.

3. Right to a Legal Identity

12. According to UNICEF, 3 out of 10 children under 5 in Myanmar had no birth certificate.¹¹ While most children in Yangon are registered, 76% of children in Chin State do not possess a birth certificate and 35% of children affected by armed conflict are unregistered.¹² Among other things, this has major implications for obtaining a Citizen Scrutiny Card (CSC) which is the main document confirming the legal identity of an individual.
13. Although the government has taken some key steps since 2014 to address this issue and improve the birth registration system at all levels, challenges still remain. The field survey conducted showed that major barriers to birth registration are: poor awareness of the importance of birth registration and a birth certificate; limited government capacity; time and cost implications and the inconsistent management of the registry system by the Government Health Department and other responsible departments.¹³ Furthermore, community members consulted reported that many midwives, even where the system is functioning, refuse to issue a birth certificate to children delivered without their direct support or when a child is born outside their assigned area.

4. Right to Nationality

14. Due mainly to the issues relating to birth registration, a large number of Myanmar's population do not possess the CSC even when they are legally entitled to one under the Citizenship Law.¹⁴ This includes, but is not limited to, those who live in remote and non-government-controlled areas.¹⁵

¹¹Myanmar's first Birth Registration Week Launched: <http://www.unicef.org/myanmar>

¹² Article 7 CRC deals with birth registration in strong terms "shall be registered immediately after birth". The importance of this registration cannot be underestimated and major campaigns have been conducted and are carried out to promote immediate registration at birth. This registration is crucial for the other rights mentioned in article 7: the right to a name and the right to acquire a nationality. The wording of art.7 in this regard is similar to art.15 (1) UDHR and art.24 (3) ICCPR, but article 7 contains a second paragraph explicitly requiring States Parties to ensure the implementation of this right.

¹³ Please find the case studies under ISSUES 3: ACCESS TO BIRTH REGISTRATION section of the LWF Myanmar Summary Report of UPR Consultations_2015

¹⁴The 1982 Citizenship Law which is still in effect contains special provisions for ethnic groups who came into the country after the beginning of the first Anglo-Burmese War. Citizenship Report Council of State can determine whether an ethnic group is national or not. Under the 1982 Citizenship Law there are two types of citizenship: (1) Native Citizenship and (2) Legal Citizenship

¹⁵In line with, and as an elaboration of art.5 UDHR (everyone's right to a nationality + no arbitrary deprivation nor denial of nationality) and art. 24,3 ICCPR (every child has the right to acquire a nationality) the UN Convention on the rights of the child (CRC) contains specific provisions in article 7 and 8.

15. The Immigration and National Registration Department launched its “*Moe Pwint*” project in 2011, which aims to provide a CSC to all individuals that are entitled to one so that they can participate in the 2015 general elections. Challenges still remain to achieve this, particularly due to poor awareness of the importance of having a CSC; lack of clear procedures on how to obtain CSC; limited government capacity; time and cost implications (despite the government advertising it as a one-stop service with no cost¹⁶); the lack of information about the campaigns; and inconsistent application and management of the legal registry system by the Immigration Department.
16. The field survey also revealed cases of direct discrimination based on ethnicity and religion, as well as cases of corruption and/or manipulation by government officials of key data. One immigration staff member was reported to have refused to issue a CSC to a Bamar girl with all necessary documentation because she looked Indian. Another interviewee reported concerns among non-Buddhist and non-Bamar minorities over incorrect information printed in the ‘race’ and ‘religion’ sections of their CSCs. This has serious implications on census data, as it misrepresents identities, and could ultimately limit opportunities for political representation.

5. Rights of Women

17. In October 2013, the Myanmar government published the “National Strategic Plan for the Advancement of Women (NSPAW), 2013-2022.” However little progress has been made to implement this strategy, largely due to the lack of financial and human resources as well as poor coordination and cooperation between Government Departments to overcome the practical difficulties of implementing the 12 areas¹⁷ of the NSPAW.
18. Social and cultural norms traditionally consider men as the decision-makers and still prevent women from having equal access to land, education, property, employment and decision-making.¹⁸ This also has implications for women’s participation in public and political life. Women account for only 4.42% of the members of Myanmar’s National Parliament. At the subnational level, with women accounting for only 2.83% of MPs at state and regional levels, 0% of administrators at township level and 0.11% of village heads.¹⁹
19. Additionally, concerns have been raised that new bills on interfaith marriage, religious conversion, polygamy and population control will violate women’s rights to choose their own marital partner, impinge on religious freedom, and could lead to

¹⁶The interview answers of the Government’s Immigration Minister, U Khin Yee at *Karen News* <http://karennews.org/2012/09/id-card-program-begins-in-eastern-burma.html/>

¹⁷Women and Livelihood, Women Education and Training, Women and Health, Violence Against Women, Women and Emergencies, Women and the Economy, Women and Decision-Making, Institutional Mechanisms for the Advancement of Women, Women and Human Rights, Women and the Media, Women and Environment and The Girl Child)

¹⁸Please find the case studies under ISSUES 5: ACCESS TO GENDER EQUALITY section of the LWF Myanmar Summary Report of UPR Consultations_2015

¹⁹Women’s Participation in Subnational Government of Myanmar by Paul Minoletti, June 2014

further violence against non-Buddhist minorities, especially women, in the country,²⁰ thereby contravening CEDAW and other international commitments of the country.²¹

20. Myanmar is lacking legal instruments to prevent and address the issue of gender-based violence. Marital rape is only criminalized if the wife is younger than fourteen years of age.²² No specific laws exist to prevent domestic violence or sexual harassment in the workplace, and women are unable to seek restraining orders against violent men²³. Gender Based Violence (GBV) is still widely regarded as a personal matter within a family by the authorities, and as a result intervening action is seldom taken.

Recommendations for Action by the State under Review

Based upon the above analysis, we call upon the government of Myanmar to consider the following recommendations:

Legal Framework

- Ratify the International Covenant on Civil and Political Rights (ICCPR) and the international Covenant on Economic, Social and Cultural Rights (ICESCR) as promised in the 2010 UPR.
- Make necessary amendments to the Constitution to guarantee equality for all and bring it in line with the human rights commitments of the country, refraining from using the word ‘citizen’ but rather ‘all people living in Myanmar’.
- Amend or abolish laws that run counter to the human rights obligations of Myanmar.
- Request international technical support in the area of protection and promotion of human rights and the establishment of the rule of law and an independent judiciary system.
- Make social and environmental impact assessments a prerequisite legal requirement for all development projects.

Right to land

- Develop a national land reform system and redistribute vacant lands to landless farming communities.
- Develop a more simplified, effective land registration system with a clear complaints handling mechanism.
- Conduct awareness raising campaigns in villages on the importance of land registration and certification. The information should include what it should cost; who

²⁰ Statement of Women’s Groups and CSOs on preparation of draft Interfaith Marriage Law on 9th May 2014

²¹ Sixty-ninth session Agenda item 68 (c) Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives , Distr: General 23 September 2014

²² Myanmar Laws And CEDAW :The Case for Anti-Violence Against Women Laws by GEN, January 2013

²³ “If they had hope, they would speak” by Women’s League of Burma, November 2014

is responsible for issuing documentation; and what to do in the event of a dispute. This could be done in collaboration with civil society organizations, village administrators and the agricultural department.

- Start the processing of returning lands that have been confiscated by the military to the respective farmers as already agreed by the military.²⁴
- Urgently resolve current land disputes; and for cases where farmers can produce official documentation of their land ownership, give their land back or provide appropriate compensation.

Right to water

- Provide land for the construction of reservoirs, improve infrastructure in communities and provide safe drinking water alternatives for villages with contaminated water sources including rain water collection tanks, piping systems, and water filtration systems.
- Adopt a national water policy and legal instruments so as to better ensure the provision of safe water to the public, and effective water quality control, including a complaints handling mechanism.
- Promote awareness and understanding of protection of water sources, reduction of water waste, and preservation of forests; ensure the dissemination of information to all communities on water management systems, as well as laws and regulations related to water.
- Decentralize water management system to village administrators and provide them with necessary technical capacity to effectively run and protect public water sources.

Right to a Legal Identity

- Develop a simplified, effective birth registration system through which all can access a birth certificate, including a complaints handling mechanism.
- Raise awareness on the importance of birth certificates (including the link with the CSC) and promote understanding of laws and procedures relating to birth registration.
- Ensure all efforts to address birth registration and CSC include children with disabilities; children in and out of school; children in camps; and children in remote areas.

Right to Nationality

- Develop a simplified, effective system through which all can access a CSC, including a complaints handling mechanism.
- Work together with non-government actors including religious leaders to promote understanding and awareness of the importance of having a CSC; laws and procedures

²⁴ In January 2014, the military reportedly apologized for previous land confiscations, pledged to stop the practice, and said it would begin to return some of the land.

relating to birth registration and CSC, including what it should cost; who is responsible for issuing them; and what to do in an event of a dispute or problem.

- Make necessary provision to ensure everyone knows about and can take part in related campaigns, such as the Moe Pwint project.

Rights of women

- Develop a national action plan against harmful cultural, social norms and practices that prevent women from fully enjoying their human rights. This should include adoption and promotion of policies that combat gender-based violence.
- Work together with non-governmental stakeholders to identify key barriers to women's participation in political and public spheres.
- Implement a quota system that mandates a minimum of 30% of decision making positions, in the sub-national and national governance bodies, are women; and develop a monitoring mechanism to ensure follow up and compliance with this regulation.
- Adopt and implement anti human-trafficking laws for both men and women.
- Revise all legal instruments related to equal access to employment to include equal pay for women.