

# 2015 UNIVERSAL PERIODIC REVIEW MYANMAR

Summary of findings from the consultation process  
conducted by LWF Myanmar Program



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## 1. Acknowledgements

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Finally, LWF would like to thank the team working on the overall Universal Periodic Review (UPR) project, led by Francesca Paola Traglia (Deputy Program Manager, LWF Myanmar – Project Leader) and supported by Wyne Sandy Myint (Human Rights Advocacy Consultant), Polly Newall (Independent Consultant) and Chan Ko Aung (Rights-Based Empowerment Officer, LWF Myanmar).

LWF Myanmar hopes this report will be a useful tool for all governmental and non-governmental stakeholders that are responsible for upholding the rights of people in Myanmar.

## 2. Limitations of the study of the 2015 Universal Periodic Review process in Myanmar

This consultation process has given key insights into some of the main barriers that prohibit the realization of the fundamental rights of people in Myanmar, in particular in relation to land, water, legal identity, nationality, and gender equality, it has also uncovered ways in which these barriers may be addressed.

However, as with all studies, there are some limitations which need to be acknowledged. These include:

1. The consultations with communities, government and LWF staff were limited to Yangon and LWF Myanmar project areas, due to limited capacity and involvement from other partners in data collection processes.
2. Not all target groups that LWF works with were included in these consultations, (such as persons with disabilities), and given the sensitivities surrounding the situation in Rakhine State, only LWF staff in this area took part in the consultations (internally displaced persons (IDPs) in the camps in Rakhine State were not included)
3. Due to the limited availability of government officials in Kayin State, only government officials from Ayeyarwaddy Region and Chin State were consulted for the UPR report.

### 3. Executive Summary

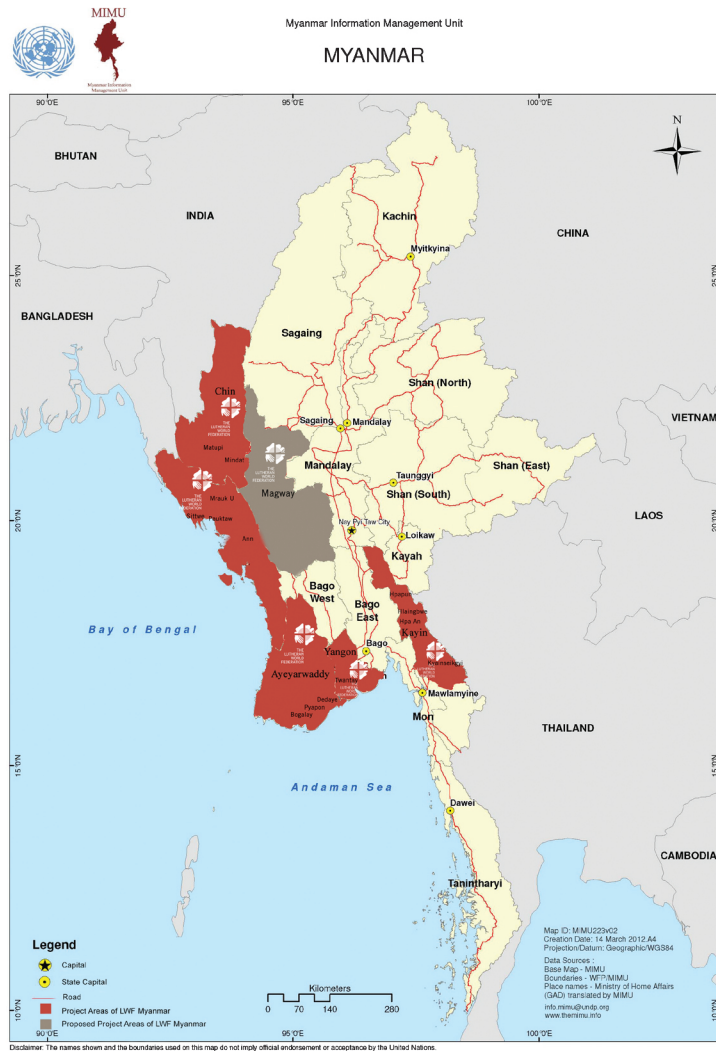
The Lutheran World Federation’s (LWF) involvement in Myanmar started in 2008 as part of an ACT (Action by Churches Together) Alliance Appeal to respond to the devastation caused by Cyclone Nargis, during which LWF Myanmar operated through its member church, the Evangelical Lutheran Church of Myanmar (ELCM).

LWF Myanmar currently has a number of active programs in Yangon and Ayeyarwady Delta Regions, Chin State, Rakhine State and Kayah State. In line with the rights-based empowerment process, which is the key strategic approach that LWF Myanmar uses, it is committed to working closely together with and strengthening the capacity of the primary duty-bearer, the government, other duty-bearers as well as rights-holders themselves.

The UPR process of the Human Rights Council has gained credibility as one of the most effective mechanisms within the UN system for achieving impact, involving the more overtly political peer pressure of other states rather than the international institutional pressure of the UN. LWF aims to leverage its unique position to engage with the UPR process in a targeted way to address key human rights issues and advocate for positive change in Myanmar, through working directly with communities, the government, partner agencies, ACT Alliance and other key stakeholders. LWF also has consultative status with the Economic and Social Council (ECOSOC), with access to its many subsidiary bodies, to the various human rights mechanisms of the United Nations, as well as special events organized by the President of the General Assembly, putting LWF in a unique position to achieve local to global impact.

In Myanmar, LWF is an active member of the Humanitarian Country Team, Gender Equality Network, Food Security Working Group, Gender Based Violence and Protection Working Groups, Education in Emergency Working Group, Humanitarian Advocacy and Communication Group, ACT Alliance Forum, INGO Forum and the Disaster Risk Reduction Working Group.

LWF Myanmar hired a Human Rights Advocacy consultant to manage the overall UPR consultation process and reporting. LWF also hired an independent consultant to provide support and guidance, to document the process, support the production of this report; and produce a manual that should guide future engagement of LWF in the UPR process globally.





Between October 2014 and March 2015, a total of 303 people (134 male, 169 female) were consulted on five issues, relating to Right to Land, Right to Water, Right to a Legal Identity, Right to Nationality and Rights of Women. These consultations were made through a series of consultation workshops, focus group discussions and individual meetings in 7 villages in Ayeyarwaddy Delta; 4 villages in Kayin State; 12 villages in Chin State; Sittwe in Rakhine State; and Yangon. Those consulted included women, men, youth groups, local government officials, LWF Myanmar staff, ACT Alliance partners and representatives from Gender Equality Network (GEN) and Land Core Group (LCG).

The 5-page LWF parallel UPR report, submitted to the United Nations on 23 March 2015, was the outcome of an analysis of primary data collected in these consultations, further supported by an analysis of existing research and documentation on the context in Myanmar and the human rights situation in the country<sup>1</sup>. In addition with support from the LWF Office in Geneva an short summary of all the findings and recommendation were condensed into an advocacy paper.<sup>2</sup>

The overall summary of findings describes the barriers or challenges and key recommendations related to right to land, water, legal identity, nationality and rights of women as presented in the 5-page LWF parallel UPR report:

## Overall Summary of Findings and Recommendations

Issue at Stake	Recommendations
<p><b>Right to Land</b></p> <ul style="list-style-type: none"> <li>• In Myanmar, 70% of the population lives in rural areas and is engaged in agriculture related activities.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• Develop a national land reform system and redistribute vacant lands to landless farming communities.</li> <li>• Develop a more simplified, effective land registration system with a clear complaints handling mechanism.</li> <li>• Conduct awareness raising campaigns in villages on the importance of land registration and certification.</li> </ul>
<p><b>Right to Water</b></p> <ul style="list-style-type: none"> <li>• The lack of an efficient governmental mechanism to monitor and assess ground water quality poses serious threats to the health of community members.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide land for the construction of reservoirs, improve infrastructure in communities and provide safe drinking water alternatives for villages with contaminated water sources.</li> <li>• 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.</li> <li>• Decentralize water management system to village administrators and provide them with necessary technical capacity to effectively run and protect public water sources.</li> </ul>

## Right to a Legal Identity

- According to UNICEF, 3 out of 10 children under 5 in Myanmar have no birth certificate.
- In Chin State 76% of children do not possess a birth certificate and 35% of children affected by armed conflict are unregistered.
- 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.
- 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

- Large number of Myanmar's population do not possess the Citizenship Scrutiny Card (CSC), which is the main document to confirm one's own legal identity and nationality in Myanmar.
- In some cases ethnic and religious minorities are discriminated against in the issuance of the CSC.
- 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.

## Rights of Women

- Although, the Myanmar government published the "National Strategic Plan for the Advancement of Women (NSPAW), 2013-2022", in 2013, so far little progress has been made to implement this strategy.
- Lack of equal access to land, education, property, employment and decision-making bodies for women (e.g. women account for only 4.42% of the members of Myanmar's National Parliament).
- 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 further violence against non-Buddhist minorities, especially women.
- Myanmar lacks legal instruments to prevent and address the issue of gender-based violence (GBV).
- 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.
- 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.

## 4. Introduction

This report is designed to support the 5-page LWF UPR report submitted to the UN on 23 March 2015. It is a description of how the UPR process is linked to LWF Myanmar's strategic approaches; a more detailed description of the methodology applied to produce the 5-page UPR report; a more detailed overview of the Myanmar context and human rights situation in the country; a more detailed analysis of the five focus issues; and a full list of recommendations to the government of Myanmar and other key stakeholders.

## 5. Purpose of the UPR process and justification for LWF involvement

The UPR is a unique process, which involves a review of the human rights records of all UN Member States. The UPR is a State driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations<sup>3</sup>.

The alternative reporting process per-se is an important tool in this, although its impact alone is limited. More important is its role in empowering national level coalitions capable of identifying issues, calling for specific changes, and working with duty-bearers to enable them to hold themselves accountable and ensure implementation.

In general, the rights-holders in communities within which LWF works are not able to access their fundamental rights that are needed for their survival such as food, water, security, livelihoods and education. These basic rights and directly addressing the key barriers to the realization of them are the focus of much of our current programming.

Certain groups have become more marginalized than others and resources have not been allocated to them (or they are being denied access to resources they have used for centuries), resulting in them becoming disempowered.

Even where legal and policy frameworks do exist, they do not function to a level where these rights are guaranteed, and with no independent system to challenge decisions and address grievances, a culture of impunity continues to prevail. Sometimes it is a question of limited capacity of the duty-bearer to implement necessary measures and deliver services. Other times it can be a lack of political will.

Through engaging with the UPR process, LWF aims to advocate for solution-oriented changes that the government can make in order to improve their respect, protection and fulfillment of human rights obligations. This is not a stand-alone project. Central to it is the aim that project activities reinforce the delivery of impact at local level through existing programs.

LWF not only works directly with communities and with local and central government through its rights based empowerment approach. LWF also has consultative status with ECOSOC, giving them access to its many subsidiary bodies, to the various human rights mechanisms of the United Nations, as well as to special events organized by the President of the General Assembly.

This positions LWF as a critical actor in linking international level advocacy to concrete and measurable change for those at the grassroots and therefore in achieving maximum impact in the lives of real people.

## 6. Overview of LWF's strategic approaches

LWF Myanmar essentially takes three strategic approaches to its work: firstly, rights-based empowerment approach, which includes both the rights holders and the duty bearers, and secondly, an integrated approach. Additionally, in an attempt to emphasize that working with duty-bearers is a key part of the rights-based empowerment approach and due to sensitivities around the use of certain language in the past, 'Working with Government Structures' became a separate approach even though traditionally it is part of the overall rights based empowerment approach.



## Rights-based empowerment approach

Empowerment is a process that draws out and builds people's capacity and confidence, both as individuals and members of families, groups and communities to achieve results for themselves. Rights-based empowerment means building up awareness on all levels, both among the rights-holders and the various duty-bearers, to respect, protect and fulfil the rights defined by the country's constitution, laws, policies, and international conventions, instruments and Millennium Development Goals (MDGs) that are ratified by the government.

LWF Myanmar continues with inclusive and participatory methods to equip people, community-based organizations and groups with the knowledge, skills and attitudes that broaden their confidence and facilitate their empowerment to take control of their lives. LWF Myanmar believes that each individual is endowed with inherent capacities that often require stimulus to emerge. LWF Myanmar tries to emphasize to individuals, community-based organizations (CBOs) and groups the importance of access to and control over resources through village-level community managed structures, including access to services and resources from the relevant government line departments at township and village levels.

Simultaneously, LWF Myanmar attempts to facilitate increased engagement with government line departments in its activities and those of the CBOs, groups and households. LWF Myanmar shares appropriate resources for programs and activities undertaken by government line departments designed to fulfill the rights of the people.

## Working with Government Structures

In line with the rights-based empowerment process, LWF Myanmar is committed to the concept of strengthening the capacity of the primary duty bearer. With its present projects, LWF Myanmar coordinates with government line departments to strengthen service delivery. Resource sharing in the form of using the technical expertise of the government line departments is promoted. In the process bonds of understanding and productive relationship are developed between rights-holders and duty-bearers when they work together on projects of mutual concern. The role of LWF Myanmar therefore is not to fill the gaps between rights-holders and duty-bearers but to facilitate the closing of those gaps. LWF Myanmar attempts to join hands with the communities to advocate with the line departments for their well-being. It is expected that the empowerment process will generate more demand by the partner communities for government services, but their advocacy work shall be non-violent.

Accepting that the government line departments have limited capacity to provide those services, LWF Myanmar strives to collaborate with the line departments to assist in fulfilling these services, where possible.

## Government Stakeholders

LWF Myanmar has been very active and successful in strengthening coordination with government departments and ministries. LWF is cooperating with the Relief and Resettlement Department; Department of Social Welfare; Progress of Border Areas and National Races Department; Department of Education; General Administration Department; Myanmar Agriculture Services: Livestock Breeding and Veterinary Department; Myanmar Red Cross Society; Myanmar Police Force; Fire Services Department; Department of Meteorology and Hydrology; and Myanmar Maternal and Child Welfare Association at State/ Region and Township level.



## Integrated approach

An integrated approach entails holistic programming that deals with all facets of people’s lives, addressing the rights and needs of individuals, groups and communities. Just as the rights-based empowerment approach aspires to fulfill rights, the integrated approach aspires to comprehensive development and encompasses the same broad agenda of well-being and life with dignity. Consideration is given to the ways in which various components inter-link with, or affect other components, situations and the environment.

## 7. Methodology

On 27-29 October 2014, LWF Myanmar conducted a UPR Workshop in Yangon with Geneva DWS and DTPW and Nepal colleagues to explore some of the issues that the LWF-led (or at that stage a possible ACT Alliance-led) report and subsequent activities might focus on. Both the local and international consultant actively participated in the workshop, as well as some ACT members.

The workshop was also an opportunity to decide on next steps, key responsibilities and timeframes, in order to complete the report and think about ways in which the recommendations may be disseminated to key stakeholders at the international level.

Following this workshop, the Deputy Program Manager, and both the local and international consultants, met on 30 October 2014 and then again on 7 November in order to formulate an action plan for Myanmar. The action plan focused on ACT involvement; issues for LWF; (including who, where and how LWF should consult), the timeframe; and key responsibilities.

The team agreed on the overall consultation process- what, where, who and how as follows:

### Issues:

- 1) Land; 2) Birth Registration; 3) Nationality; 4) Water; and 5) Gender

### Agreed locations:

Kayin:	Hpa’An
Rakhine:	Sittwe
Delta:	Pyapon
	Bogalay

Chin: Mindat

### Key agreed focus groups:

Women  
Men  
Local government  
Youth

### Agreed methodology for data collection:

It was agreed that the consultations should take the form of a focus group discussion, as follows:

Number of days in each township:	2 working days
Number of FGDs per township:	4 – 2 per day (3 hours each)
Target number of people for each FGD:	20 (to represent a cross section of people).

Given the sensitivities of some of the issues, for Rakhine it was agreed that only LWF staff would take part in the consultations.

The participants should form 5 smaller groups of 4 (max 5). One of the five issues should be assigned to each of the groups: Group 1- Land; Group 2: Birth registration and so on. Each group should then present the issue to the whole group for further input.

### Key questions:

How are you and your communities affected by this issue?

**For example,**

If there is no water supply in their village, what do they do to get water? Do they have to walk miles to get water, which is probably not safe and takes valuable time out of possible work to earn money?

What are the key reasons why these problems exist?

**For example,**

They do not have a water collection/ storage facility in their village

What are their solutions to these problems? Be specific as possible.

**For example,**

Build a water collection facility that will provide sufficient water to take the community through the dry season- for drinking, hygiene and necessary irrigation

What can the government (local or central) do to help solve the problem?

**For example,**

Invest in building or upgrading water collection points

Since there appeared to be some confusion among ACT Alliance members and partners on how they might be involved, it was also agreed in the 7 November meeting that ACT Alliance members and their partners should be given a final opportunity to be involved but that LWF should be clearer on the different options on what that involvement might look like. They were subsequently invited to a meeting on 11 November and the following agreed options were given to them in advance:

- Facilitate access to partners
- Provide input into shaping the 5 key priority issues that LWF will focus on: Land; Birth Registration/ Legal Identity; Nationality; Water; and Gender
- Provide any reports or data from research already conducted on these five issues
- Share insights from community members already gathered and documented on any of these five issues



- Participate in further data collection from communities (from 24 November to 19 December 2014)
- Participate in consultations on the key findings and draft recommendations for improvement (2-13 February 2015)
- Endorse the final recommendations and the report

11 participants attended the workshop on 11 November 2014. Unfortunately, there was not sufficient interest from ACT members and their partners, so LWF decided to continue with a five-page report alone.

Between October 2014 and March 2015, a total of 303 people (134 male, 169 female) were consulted on the five issues through a series of consultation workshops, focus group discussions and individual meetings in:

- 7 villages in Ayeyarwaddy Delta
- 4 villages in Kayin State
- 12 villages in Chin State
- Sittwe, Rakhine
- Yangon

Those consulted included women, men, youth groups, and local government officials, LWF Myanmar staff, ACT Alliance partners and representatives from Gender Equality Network (GEN) and Land Core Group (LCG).

## Delta Region Consultations

75 people in total were consulted in the Delta region.

On the first day of the field visit, the local consultant met with 13 men in the morning and 15 youth group members in the afternoon. The participants included landowners, landless persons, manual labourers, village health volunteers, elders, VDC members, and members of partner households and youth groups from five different villages. The local consultant explained the purpose of the meeting and explained the importance of the five key issues (Land, Birth Certificate, Nationality, Water, and Gender Related issues) that LWF Myanmar focuses on.

In each focus group discussion, the participants were broken into five small groups and each group was given an issue to discuss and present back to the whole group. The groups discussed the impact of the issue within the communities; the key reasons why these problems exist; the local solutions; and the role of the government. Once they had discussed and agreed in groups, they reported back to the whole group. Further discussion and sharing of individual case studies followed each presentation and were recorded by the two note takers.

On the second day, the local consultant met with 25 township-level government officials from Pyapon, Bogalay, Dedaye and Twantay Townships at the LWF Myanmar Pyapon office. The officials represented were from the Township Administrative office; Pyapon District Agriculture Department; Pyapon District Social Welfare Department; District Health Department; Bogalay District Forestry Department; Bogalay and Dedaye District Education Departments; Pyapon and Bogalay Fire Brigade Departments; Myanmar Women Affairs from Twantay and Dedaye townships; Myanmar Red Cross Society; Rural Development Committee; Twantay District Information and Public Relations Department; District Planning Department; and District Livestock Breeding and Veterinary Department.

The meeting with the township-level government officials was also an opportunity for the LWF Pyapon Team to suggest to them to put some key recommendations into the 2015 work-plan of the government departments, including areas where LWF could support. They were productive discussions in which the government officials explained their challenges in delivering the services to the communities and welcomed further recommendations and collaboration to overcome those challenges.

On the third day, the focus group discussion with 22 women was carried out in Dedaye Township.



Figure (1) UPR Consultation with government staff in LWF Pyapon office, Pyapon Township, Ayeyyarwaddy Region.

## Kayin State Consultations

68 people in total were consulted in Kayin State.

In Kayin, LWF Myanmar has been working in three different townships in Kayin– Hpapun, Kyarinn Seik Gyi, and Hlaingbwe. However, before the field visit, the Kayin Team suggested that the consultation workshops should be conducted only in Hpapun Township for security reasons and due to some limitations in access to other townships. It was agreed to run the consultation workshops with four interest groups (Men, Women, Youth, and Government Officials) from Hpapun Township. The Kayin Field Team was informed of the type of target groups, the numbers of participants per workshop, and the estimated hours per discussion in advance.

The Consultant and RBEO travelled to Hpa-an Town and gave the Kayin field team (Note takers, translators and Project Officers) a briefing before the field visit to the villages. Although it was delayed in starting, 13 men from Kwae Won and Taung Chay Yin village attended the consultation workshop in the morning. The team discovered that there was a health awareness session in the village at the same time so the workshop in the afternoon with women group members was postponed to the next day. The consultant was able to meet with 30 women's group members at Taung Chay Yin village and 25 youth group members at Pat Kyaw village. The same note takers were assigned for all consultation workshops. Translation and facilitation were crucial because most of the participants only spoke the Kayin language during the group discussions and presentations.



The local consultant did not meet the township authorities because the invitation to the government departments was delayed, and it was very short notice to inform them to attend the workshop during the weekend.



Figure (2) The Human Right Advocacy consultant explaining the key questions for each issue that need to be discussed to women group members in Taung Chay Yin, Hlaing Bwe township, in Kayin State.

## Chin State Consultations

91 people in total were consulted in Chin State. The same methodology for the consultation was used in Chin State.

The consultant and RBEO travelled to Mindat, Chin State and gave a briefing to the Project Coordinator, Project Officers, volunteer note takers and translators before the field visit. The first two consultation workshops with 30 women group members and 25 youth group members were conducted in the morning and afternoon at Won Khun village. Most of the participants only spoke the Chin Language in group discussions and presentations.

The consultation workshop with the government departments and VDC members continued at the Mindat LWF office. The local consultant conducted a workshop with 14 government officials in the morning while the Project Team was meeting with VDCs to discuss project activities. There were representatives from Township Supreme Court; Township Attorney General; Township Administration Office; District Education Department; Township Religious Affair Department; Township Agriculture Department; Township Fisheries Department; Township Human Settlement and Housing Department; Township Information and Public Relations Department; Township Social Welfare Department; and Township Planning Department at the workshop. The participants also came up with some suggestions and recommendations on joint initiatives in 2015 as part of the approach on cooperation with government structures of LWF Myanmar. During the afternoon, a consultation workshop with 22 VDC members was conducted.





Figure (3) A Youth Group member presenting gender related issues in LWF Mindat Office, Mindat Township, Chin State.

## Rakhine State Consultations

Prior to the field trip, there was some confusion over the Rakhine trip and some legitimate fears were expressed about the sensitivity of the key issues. This was discussed at length in a meeting on 26 January 2015. It was finally agreed that it would be good to get responses from LWF Rakhine colleagues- as long as they are focused on some of the key issues in the State that fall outside of the “Muslim” issue- and do not have to comment on anything else. For this reason, it was agreed that nationality would not be included (except in the context of birth registration that applies to the whole country) as it could cause unnecessary conflict. The local consultant conducted consultations with 26 LWF Myanmar staff in Sittwe.

During the consultation the following four questions were asked to the LWF Rakhine staff:

- A. What issue are effecting to you and your neighbors?
- B. What is the main problem or Issue?
- C. How can these problems be solved?
- D. What can the government do to help to solve these problems?

The 26 LWF-Sittwe staff said that the main issues facing Rakhine State relate to Land/access, birth registration/access, access to safe water and the rights of Women. They didn't want to discuss the Nationalities issue because it was a complicated and delicate issue at the time in Rakhine.

## Yangon Region Consultations

The technical advisor, U Shwe Thein, from the Land Core Group was interviewed as part of this process to gain an understanding on the progress of National Land Use Policy (Draft) and existing land rights issues and customary land tenure in Upland areas. The local consultant also interviewed Daw May Sabei Phyu, the director of Gender Equality Network, which comprises more than 100 CBOs, NGOs and INGOs and technical resource persons. The meeting focused on gender issues in Myanmar, the key reasons those problems exist and the role of the government in addressing them. They also discussed progress of the draft Protection and

Violence against Women law. The local consultant also held a consultation meeting with 12 ACT members and 18 LWF Myanmar Yangon staff members on key findings and input into key recommendations.

The local and international consultant met together with the Deputy Program Manager a further four times between January and March 2015 to monitor progress and finalize the 5-page report for submission to the United Nations. The report was compiled and sent to Geneva for consultation on 11 March and sent to the UN on 23 March 2015.

A summary of challenges, solutions and key lessons learned from each field consultation was also compiled and submitted to the Independent Consultant in order to produce a full report on the process with detailed lessons learned and manual that should guide future engagement of LWF in the UPR process, both in and outside Myanmar.

In March 2015, LWF Myanmar prepared an action-plan for 2015 to raise the Human Rights recommendations of the LWF UPR Parallel Report and for follow-up activities leading to the hearings at Human Rights Council meeting in November 2015. The action plan included the following:

- UPR introduction to Management Team
- UPR introduction to Project Coordinators
- UPR awareness workshop in LWF field offices (Delta, Kayin, Chin and Rakhine) for reflection of key finding from focus group discussions and consultation meetings
- Translation of the five-page UPR report from English to Myanmar



Figure (4) LWF Myanmar and Equality Myanmar (EQMM) introduced UPR to actalliance members and EQMM's partners in Yangon.



## 8. Overview of the Myanmar context and the human rights situation

The context in Myanmar has changed dramatically since the first cycle of the UPR of the Country. The elections in Myanmar in November 2010 – though widely seen as falling significantly short of international standards - started a remarkable process of change in the country. Key points include the convening of a largely civilian parliament in April 2011, which has since enacted a series of economic and political reforms; the signing of ceasefire agreements with all but one of the ethnic armed groups in early 2012, followed by ongoing talks surrounding a nationwide ceasefire agreement; and by-elections in April 2012 that saw Aung San Suu Kyi's National League for Democracy win 42 out of 44 seats. Aung San Suu Kyi herself took her seat as an MP in parliament in May 2012<sup>4</sup>.

Fundamental challenges remain. In a region containing some of the fastest growing economies in the world, Myanmar remains one of the poorest countries in Asia. Data about poverty in Myanmar is difficult to obtain and most of it is unreliable, but there is evidence of widespread poverty and vulnerability. Its Human Development Index rank of 149/186 (UNDP) is the lowest in the region. Where reliable data exists, it shows the country is off track to reach many of the Millennium Development Goals (MDGs). The past sixty years of largely military rule have seen very limited investment in health, education (3.25 percent and 6.26 percent of the total budget respectively in FY2011)<sup>5</sup> and other basic services for the Myanmar people across the country. It has some of the worst health indicators in Asia, and suffers among the highest rates of malaria, malnutrition (especially among children) and tuberculosis in the world. Women are believed to be poorer than men, often struggle to access healthcare in childbirth and are barely represented in public life, for example comprising less than 6% of the national legislature<sup>6</sup>.

Sustained armed conflict has caused widespread displacement. Since 2011, when the long-standing ceasefire broke down, according to OCHA<sup>7</sup>, 100,000 people have been internally displaced due to violence in Kachin and Northern Shan States. This figure includes over 50,000 believed to be living in Kachin Independence Organization (KIO)-controlled areas and over 20,000 people living in the homes of host families. Subsequent information suggests there could now be more than 120,000 since heavy fighting broke out again, sporadically between September 2013 and April 2014. In addition, an estimated half a million people are also still internally displaced in eastern Myanmar and some 128,000 people (according to UNHCR) continue to live in refugee camps in Thailand<sup>8</sup>.

In addition, inter communal violence between the Muslim population, and the Buddhist Rakhine, and discriminatory policies towards Muslim populations, have led to a segregation of many communities and a deteriorating humanitarian situation in Rakhine State. Outbreaks of inter communal violence – mostly anti-Muslim in its nature - have spread to other parts of the country.

Myanmar became a United Nations Member State having signed the Charter of the United Nations soon after it gained independence from Great Britain in 1948, binding it to the United Nations Universal Declaration of Human Rights.

Myanmar has also ratified the following United Nations Human Rights Treaties:

- Convention on the Rights of the Child (CRC) on 15 July 1991
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC) on 16 January 2012
- Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) on 22 July 1997
- Convention on the Rights of Persons with Disabilities (CRPD) on 7 December 2011

The human rights situation in Myanmar is highly complex. A pattern of widespread and systematic human rights violations has existed for many years, which to a great extent still persist, generally across the country, and which has accompanied the armed conflict situation in ethnic minority territories and the situation in Rakhine State. Heavy censorship throughout the country for much of the past 60 years has meant extremely limited access to information, as has freedom of thought, expression, assembly and association, which has seen severe consequences for those who breach these restrictions<sup>9</sup>.

As a result of these widespread violations, Myanmar has been under special procedures of the Human Rights Council since 1992, under resolution 1992/58<sup>10</sup>. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was first established in 1992 under the Commission on Human Rights Resolution 58 and extended annually. Human Rights Resolution 25/26, adopted on 15 April 2014, broadened the mandate to report on the progress in the electoral process and reform in the run-up to the 2015 election. Ms Yanghee Lee of the Republic of Korea is the 5<sup>th</sup> Special Rapporteur on the situation of human rights in Myanmar.

Although some important steps have been taken to address the situation, particularly since 2011, major bottlenecks and challenges still remain in Myanmar, particularly in reference to the fragmented legal and political framework of the country and other key factors, including social and cultural practices that continue and are likely in future to perpetuate the human rights situation, whether directly or indirectly; and prohibit advancement of the triple processes of democratic transition, development and peace<sup>11</sup>.

From 7 to 16 January 2015, the Special Rapporteur conducted her second mission to Myanmar. She expressed her appreciation to the Government for its cooperation during the visit. She held meetings with Government representatives and other stakeholders in Yangon and Nay Pyi Taw, and visited Rakhine and Northern Shan States. She visited Insein prison where she met political prisoners. She also held meetings in Bangkok, including with representatives of the Ministry of Foreign Affairs of Thailand<sup>12</sup>.

During her most recent visit the Special Rapporteur observed a growing atmosphere of fear, distrust and hostility. One example of this was the sexist personal attacks that she received from a nationalist Buddhist monk at the end of her visit. She reported a hostile atmosphere between communities in Rakhine State, with the Government justifying the confinement of many Muslims in camps as necessary for their protection. She argued that the four 'race and religion' bills, currently before parliament, will hinder Myanmar from developing into a pluralist society and instead will cement discriminatory attitudes and policies.

The report expressed the Special Rapporteur's concern about disproportionate force used by government officials against peaceful protesters; intimidation and interrogation suffered by journalists; the surveillance and monitoring of human rights defenders; the use of national security laws to limit civil society space; and the significant number of political prisoners, disapprovingly noting the recent imprisonment of at least 14 people for protesting against land confiscations<sup>13</sup>.

Important challenges remain in establishing the rule of law. Building confidence in the system of law enforcement and the judiciary will take time but must be based on the principle of accountability. Throughout her visit the Special Rapporteur was informed of the continued failure to hold state authorities accountable for serious violations of international human rights law.

While the growing economy has benefited to some extent in the country, there remain large sections of the population who have been left out. Development programs must be based on the



central pillars of poverty reduction, equitable resource sharing and non-discrimination. Unless development is carried out in a way that is equitable, with even the most vulnerable having access to improved education, health care and livelihoods, the Government risks leaving large parts of the population with legitimate grievances against the State. In a country with a long history of violent conflict, such grievances risk further disassociation from the State and extension or renewal of instability and conflict. The Government should focus on creating an empowered population, including the youth and women, to ensure that a new generation can work together to create a prosperous and stable country and reverse the current slide towards extreme nationalism, religious hatred and conflict<sup>14</sup>.

## 9. Key findings of the UPR

The key findings from the field consultations and additional research are arranged into the five issues chosen as the focus of the LWF UPR Report: Right to Land, Right to Water, Right to a Legal Identity, Right to Nationality and Rights of Women.

### Right to Land

In Myanmar, 70% of population live in rural areas and are engaged in agriculture and related activities<sup>15</sup>. The majority are smallholder farmers. The right to land is therefore a prerequisite to the right to a livelihood and an adequate standard of living.

Land issues in Myanmar are highly complex. Despite a number of positive changes in the country, Myanmar has seen an increase rather than a decrease in land rights violations since 2011<sup>16</sup>. The Myanmar National Human Rights Commission, established by the President in September 2011 to deal with a broad range of human rights issues, has noted that most of the complaints they have received are in relation to land grabs. The Government, in recognition of this problem, established two bodies to deal specifically with land disputes. These are the Land Allotment and Utilization Scrutiny Committee and the Parliament's Farmland Investigation Commission, both established in July 2012. Between that time and November 2014, more than 26,000 complaints were lodged<sup>17</sup>.

Many of these cases are related to large-scale development projects, such as dams, roads, railways, natural resource extraction and Special Economic Zones (SEZ)<sup>18</sup>. For example, farmers consulted in Kayin State, explained that about 50 farmers lost their land to a government dam project in Hpapun Township. In addition, cases of involuntary resettlements of villages as a result of the construction of military bases were also reported. LWF staff in Rakhine State described that the military confiscated land and then leased the rest back to local farmers.

There are a number of challenges that need to be understood and in turn addressed if the rights of the Myanmar people to land and land use are to be realized and protected. These challenges relate to the weak legal framework in the country relating to land and insufficient mechanisms to prevent cases of land disputes; problems faced in officially registering land in the first place; and challenges in resolving cases when they do happen.

Firstly, there are insufficient legal mechanisms in place to safeguard the rights of smallholder farmers, which represent the majority of farmers in the country. While Parliament approved the Farmland Law and Vacant, Fallow and Virgin Land (VFV) Management Law in March 2012<sup>19</sup> that has seen an improvement compared to previous laws such as recognition of non-rotational Taungya as a legitimate use of land, the law remains designed primarily to promote large-scale agricultural investment and fails to provide adequate safeguards for smallholder farmers<sup>20</sup>. The rights of farmers who practice shifting cultivation, such as in Chin State, are also further

compromised since the farmland law specifies that farmers have to continuously cultivate the land.

Furthermore, there is no legal requirement for companies that engage in large- (or small-) scale development projects to conduct environmental and social impact assessments that would require meaningful consultations with affected communities and ensure that appropriate and equitable agreements are brokered prior to implementation of the project. This is particularly but not exclusively troubling for those in ceasefire areas, where many of remaining natural resources lie. Many ethnic minority organizations oppose large-scale economic projects in their territories until inclusive political agreements are reached. Others reject these projects outright<sup>21</sup>. As written in a study from the Karen Human Rights Group in 2013, the conclusion of new ceasefires in combination with the announcement of the VFV Law, and land grabbing in conflict-affected ethnic areas, have increased tremendously<sup>22</sup>.

One of the biggest barriers to land registration highlighted in this consultation process is the limited understanding of the importance of official land registration and the implications for not doing so. Some people interviewed think it is not important to register their land as they say their land ownership is customarily recognized by all community members. Others said that they have not registered their land in order to evade tax. Aside from leaving themselves open to having their land confiscated at any time, not officially registering their land has major implications for mapping land and land use. According to the government officials from Chin and Ayeyarwaddy Delta, land classifications and the government land map do not reflect reality. It would appear that the official map of the country shows vacant land which, according to communities, they have been using for centuries. Furthermore, this would have major implications for those not holding official land registration in government records in terms of compensation for lost livelihoods<sup>23</sup> in the event of displacement.

Together with this lack of understanding of the importance of obtaining official land registration, the lack of clarity and transparency, and the inefficient and inconsistent application of processes and procedures to officially register land were also cited during consultations as some of the biggest barriers to getting land officially registered.

Among other things, this is leading to a number of cases of bribery and corruption to accelerate the process or avoid cumbersome processes. Community members consulted reported cases of farmers paying up to 100,000 kyat per acre, compared with the official registration fee of 35 to 40 kyats per acre. LWF Rakhine staff consulted also reported that some smallholder farmers in Rakhine have registered their land through the title of powerful rich farmers who can make the registration process faster and easier. This is naturally fuelling speculation that the land registration system only benefits a few influential community members who have money and connections with powerful authorities.

Limited possession of necessary documentation such as Citizen Scrutiny Cards (CSC) and household registration certificates is also a major factor in low registration rates. Those without a CSC, such as villagers in Kayin who have been displaced from their lands due to the prolonged armed conflict and lost documents, face serious issues in claiming land back and indeed registering land in the first place<sup>24</sup>. Furthermore, poor maintenance of documents at the Government Departments is compounding the issue and causing delays in land registration.

There are a number of additional challenges for women in accessing their rights to land in Myanmar. Men are customarily assigned as heads of household and are officially recognized in household registration certificates as such. During the consultations with women groups, it was also revealed that women experience difficulties to maintain control over the family land after they become divorced or if their husbands die. A number of women have described feeling

intimidated about entering government offices or court buildings to register land or resolve land disputes as these spaces were considered the domain of men, military and government and therefore off-limits to women<sup>25</sup>.

In dealing with current cases of land disputes, the sheer volume of cases to investigate and resolve is putting enormous pressure on resources of the government, and the executive branches are struggling to respond<sup>26</sup>, naturally causing significant delay in resolving cases. The Government officials consulted for this UPR admitted that insufficient human resources of the Government Departments are one of the key challenges that are delaying them from taking action on land disputes.

For example, in January 2014, the military reportedly apologized for previous land confiscations in Rakhine State as described above, pledged to stop the practice, and said it would begin to return some of the land<sup>27</sup>. However, there are still thought to be tens of thousands of farmers that have not been compensated or had land returned. The community members affected by the road construction in Rakhine who have complained have received only limited compensation in the way of relocation, rehabilitation and restitution of the land issues. Farmers consulted in Kayin State explained that the 50 farmers who lost their lands complained first to township authorities, then concerned departments and ministries, and finally to the State Government. After one year, the farmers have received no compensation for their loss.

The special Rapporteur, Ms Yanghee Lee, urged the Myanmar Government during her visit to Myanmar in July 2014 to urgently address complex land rights issues, particularly land grabbing and confiscations as well as forced evictions in accordance with human rights principles and standards. The findings revealed that the displaced local communities are facing livelihood insecurity and economic migration to urban industries and factories. It was also observed that the massive migration of unskilful young people could be one of the major factors of increasing labour exploitation, human trafficking and child labour in the country.

## Right to Water

One important component of the right to an adequate standard of living and for the health and well-being of an individual is the right to clean water. The right to clean water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water, and it must be enjoyed without discrimination. Lack of access to clean and safe water severely impedes people's social and economic development.

In Myanmar 69.4% of the population has access to safe water<sup>28</sup> but total utilization of the nation's water resources is only 5%<sup>29</sup>.

There are a number of key challenges relating to water in the country that need to be acknowledged and addressed.

Firstly, most water-related laws<sup>30</sup> and regulations were established in the early 1900s, and as such are outdated. According to the presentation "Water Management in Myanmar" at the Asia Water Management Forum<sup>31</sup>, water-related laws need to be reviewed and amended. A high-level Water Commission needs to be set up, as well as an effective National Water Policy covering water laws, disaster preparedness, efficient water use, ecosystem conservation, institutional strengthening and sectoral coordination of all relevant aspects developed and put in place. In response to this, the Government formed the National Water Resources Committee (NWRC) on 25 July 2013 to develop a Myanmar National Water Policy. According to the Water Management Department in Nay Pyi Taw, it is still in progress. As a result, several government agencies and



departments under different ministries<sup>32</sup> still operate their own programs independently and without proper coordination.

The lack of clarity and the inconsistent application of rules and regulations for maintaining, managing and monitoring water supply systems and sources; and lack of effective mechanisms to manage complaints, are serious barriers to the access and availability of safe water for all communities consulted.

In addition, the limited capacity of the Government to manage water sources and water supply systems and ensure accessible and available water sources for all communities (including those in remote locations) is also a key barrier. The lack of an efficient governmental mechanism to monitor and assess ground water quality poses serious threats to the health of community members. Consultations revealed that water sources, such as rivers, are being contaminated and polluted by waste being dumped from factories. Community members consulted in the Delta reported that the water quality was nearing hazardous levels, as a result of chemical fertilizers and pesticides being discharged into their water sources. Deforestation and mismanagement of other natural resources- by the government and communities themselves- are also having a negative impact on securing safe water sources for communities.

Additionally, it was reported by those consulted that existing water ponds in some villages do not provide enough water to cover the needs of communities over the dry season. This water shortage is, among other things, causing tension in some communities since they need to share limited amounts. While some community members have installed their own pumps to draw water from distribution pipes to ground or elevated tanks, or have built deep tube wells and water holes on their own, others are not able to afford it. Many community members who do not have these alternatives are reliant on water sources outside the community and need to collect it themselves. Consultations with women groups revealed that women are more often than not responsible for fetching water in all communities. Not only do they often have to walk long distances to arrive at a water source, often outside the community, which means less time for other work, this also poses a serious protection and security issue for women.

Where there is water more readily available, some community members consulted reported that they only received a limited amount from the authorities and have to pay bribes to the authorities to get additional water.

## Right to a Legal Identity

Birth registration is essential in realizing the right to acquire a legal identity and a nationality as stated in the Universal Declaration of Human Rights and the ASEAN Human Rights Declaration, as well as in the United Nations Convention on the Rights of the Child and International Covenant on Civil and Political Rights.

According to UNICEF, 3 out of 10 children under 5 in Myanmar (around 1.6 million children) have not had their births registered and therefore do not have a birth certificate<sup>33</sup>. While most children in Yangon are registered, 76% of children in Chin State, 43% of children in Magway and 11% of children in Mon State do not possess a birth certificate<sup>34</sup>. 35% of children affected by armed conflict are unregistered<sup>35</sup>. One teacher from Kayin State said that if they did not allow children without a birth certificate to enroll in school, the classroom would empty. According to the community members consulted whose relatives have migrated to Thailand, children born in very remote areas of Thailand struggle to obtain birth certificates. The interviews in Kayin State also revealed that many children of undocumented migrant workers and children living in non-government controlled areas are not registered.



Among other things, this has major implications for obtaining an accurate household registration certificate that is also needed to obtain a CSC that classifies a person as a citizen, associate citizen or naturalized citizen according to the 1982 citizenship law. Those without a CSC are prohibited from accessing their rights- ranging from employment to obtaining a passport, to voting, to opening a bank account, to accessing higher education. The women's group consulted in Chin State said that there are some children who cannot participate in vaccination programs because, in the absence of a birth certificate, the parents do not know their children's real birth date. Furthermore, children and young people without a legal identity are at greater risk of being trafficked for forced labor or sexual slavery.

The government has taken some steps to address the issue of low birth registration in Myanmar, particularly since 2014. According to the Vital Registration Report 2010, each reporting unit has been set up in 319 towns in urban areas and 286 townships in rural areas<sup>36</sup> to ensure that registration cards are issued to all children up to the age of 10 by the Department of Immigration and Population. UNICEF<sup>37</sup> is also working with the Ministry of Immigration and Population on a project, which was launched in October 2014, focusing on children under 5 in Chin State, Mon State and Magway Region.

Major challenges remain.

One of the biggest barriers to acquiring birth registration revealed in this consultation process is that many community members do not understand the importance of official birth registration, and therefore an official birth certificate and the implications of not having one. Most Chin villagers consulted simply said they have never seen an official birth certificate. In some rural areas of Rakhine State, many children were reported by those consulted to only hold traditional birth certificates made of palm leaves prepared by local monks. To compound this issue, the birth date on a traditional birth certificate is described in accordance with the Myanmar Calendar. Youth in Chin State mentioned that they only understood the importance of having a birth certificate when they came to apply for a CSC in order to pursue higher education at universities.

Even if community members understand the importance of having a birth certificate, there are still challenges to obtain it. The inconsistent management of the registry system by the Government Health and other Departments; and lack of effective mechanisms to manage complaints, are also major barriers.

The consultations revealed that there is a lot of confusion over who is responsible for birth registration and issuance of birth certificates. According to the Township Health Officer in the Delta, for both hospital and home deliveries, midwives and village health assistants have a vital role to play in the birth registration system. For each birth, they complete a birth information form that should result in the issuance of birth certificates within a month. Parents should apply for a birth certificate at village level within one year of the birth. Township Health Officers have the authority to approve and sign off on it. If not registered within one year and up to 5 years after the birth, parents must inform the District Health Office. After 5 years of birth, Health Departments are not able to issue birth certificates and if needed, parents can apply for one through an affidavit at the Township Supreme Court.

Community members consulted reported that many midwives, even where the system is supposedly functioning, refuse to issue birth certificates to children delivered without their direct support or when a child is born outside their assigned area. For example, a woman in Dedaye Township said that she informed the assigned midwife on the delivery date in advance. However, the midwife was travelling when the baby was due. She therefore asked another midwife from a neighboring township to help her deliver her baby. In the end, both midwives refused to issue a

birth certificate as one said the mother was not her patient and the other said the baby was born outside of her assigned area. Another woman shared cases where women from rural areas have their babies in government township hospitals but were told that birth certificates of villagers should be issued by their concerned village health assistant or midwife at village level, but when they returned to their villages, were told they should have obtained the birth certificate at the hospital.

According to the Government staff consulted, limited human and other resources to deliver services, and difficulties in accessing communities due to poor roads and infrastructure, are also major barriers to resolving the issue of low birth registration. Many children are not registered due to insufficient numbers of Village Health Workers in Delta, Kayin, Chin and Rakhine. Most rural women still depend on Traditional Birth Attendants (TBAs) in delivering their children at homes, further complicating the issuance of official birth registration.

## Right to Nationality

The right to acquire a nationality is fundamental to the legal identity of the person. The two of the most important documents in a person's life in Myanmar are the Household Registration Certificate and the CSC.

Without a CSC, people face obstacles to free movement, enrolment in higher education, and access to banking, health care, and many other everyday services and liberties. It also presents a protection issue, since those without a CSC are at greater risk of being exploited and trafficked. Due mainly to the issues relating to birth registration as explained in the previous section, large numbers of Myanmar's population do not possess the CSC even when they are legally entitled to citizenship under the Citizenship Law<sup>38</sup>. This includes but is not limited to those who live in remote and non-government-controlled areas. Furthermore, the current 2008 Constitution only refers to 'citizens' make it even more important to have one.

There are three types of CSCs issued by Ministry of Immigration and Population. Native citizens and the third generations of legal citizens are issued pink cards. Associate citizens hold green cards<sup>39</sup>, whereas naturalized citizens hold blue cards. Each card records the name, person's photo, signature, fingerprint, sex, religion, race, father's name and the CSC number of the citizen. According to 2008 constitution, only native citizens can become the President of the Republic of the Union of Myanmar.

The official procedure of applying for CSCs is that it should be processed within 28 days at a cost of 6 kyat. Applicants must submit the following, together with their application form: an original letter of endorsement issued by administrator of his or her ward or village tract where the applicant resides; a copy each of parent's CSCs/national registration cards; their original birth certificate (or a copy that is endorsed by their school); results of their blood test; four photos without spectacles; and the original household registration certificate which shows names (including the applicant's name), birthdates, and identity card numbers of all persons living in a particular house and their relationship to the head of the household. To apply for a household registration certificate, the head of household must apply personally together with the necessary documents. It mentions in the rules and regulations of the Immigration Department that there should be no charge for issuing household registration certificates<sup>40</sup>.

To attempt to address the problem of limited possession of a CSC, the Immigration and National Registration Department launched its "*Moe Pwint*" project in 2011, which aimed to provide a CSC to all individuals that were entitled to one, so they could participate in the 2015 general elections. The "*Moe Pwint*" Operation supports Mobile Units to villages especially in conflict-affected areas and remote regions. The approach sets up "a temporary 'one-stop service' with no

cost, and with all the steps involved in issuing the CSCs on the same day.” Applicants who do not have all the needed documentation are vetted by a 3-5 member committee that includes, at a minimum, the village head and the township Immigration and Population Department officer. The committee then decides whether the applicant and his/her ancestors live in the village and whether the individual is the race stated on the application.

However, significant challenges still remain.

The consultations revealed that poor awareness of the importance of having a CSC; confusion and lack of clarity of processes and procedures; limited government capacity; time and cost implications (despite the government advertising it as a one-stop service with no cost<sup>41</sup>); the lack of information about the campaigns; the inconsistent application and management of the legal registry system by the Immigration Department; and lack of effective mechanisms to manage complaints are all major barriers to ensuring everyone obtains a CSC, and at times are fueling fear and suspicion.

Some community members consulted said some mistakenly believe that it is a travel document, which is not necessary for them because they will never travel outside of their village, while others thought that it can be borrowed from others when travelling. Some of the youth consulted said they understood that CSC grants relative freedom of travel, access to high schools and universities, marriage and bank accounts but were unaware of the other benefits such as voting rights. Community members consulted also explained that the roles of women are still defined as mothers, wives, homemakers and caregivers and that parents have the perception that girls will not be associated with business and travel while men are expected to become heads of household and bread winners and where they understand the importance of having a CSC, usually prioritize registration for their son.

Some community members consulted in Chin, Kayin and Rakhine State said they were not interested in applying for a CSC as they have been historically difficult to obtain. They revealed that most had encountered delays unless they paid a bribe at every step. Although the Government announced that “*Moe Pwin!*” Project provides a free registration service, the community members consulted reported that they still have to pay for transportation and the meals of the mobile team members. Moreover, they reported that they were not informed in advance of the proposed schedule of the mobile team’s visit to their village. As a result, most migrant communities missed the chance to register when the mobile team was present.

In Chin State, consultations with women’s groups revealed that some villagers are confused about the difference between a CSC and Union Solidarity and Development Party membership cards, suggesting a perceived link to affiliation with a political party.

Some consulted reported that the lack of understanding of the requirements such as blood test, and photos to attach with the CSC application form, means the process can be delayed and community members incur unnecessary travel costs. Others mentioned challenges faced in getting birthdates and other information of family members to obtain an accurate household registration certificate. In some cases, community members have had to pay bribes to expedite the process.

The field consultations also revealed cases of direct discrimination based on ethnicity and race, as well as cases of corruption and/ or manipulation by government officials of key data. One immigration staff was reported to have refused to issue a CSC to a Bamar girl with all necessary documentation because she looked Indian. The 18-year-old girl in the Delta remains unregistered.



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, it misrepresents identities, and could limit opportunities for political representation. Non-Bamar ethnic groups and non-Buddhist religious groups are sometimes recorded as Bamar and Buddhist in their CSC. For example, Kayin titles (e.g. 'Saw' and 'Naw') are changed into U and Daw (which is formal title or form of address for a man and woman) in their name. A Kayin woman consulted shared the experience of her friend who claimed that her Kayin title (Naw) was changed to Daw in her CSC in Tanintharyi Region in 2012. She decided not to sign on it and complained to the Immigration Department concerned. She was asked to pay a bribe of 50,000 kyats if she wanted a new CSC with a Kayin title. The woman reported the case to the Minister of Karen Ethnic Affairs in Tanintharyi Region. With the support of the Minister, she received her money back and the CSC with Kayin title (Naw) the next day. Not everyone is so fortunate. Consultations also revealed that in a remote village in Tanintharyi Division, about 50 Kayin villagers were issued their CSC without their correct title (Naw& Saw). The villagers did not know how and where to complain. Similar cases were also reported in Ayeyarwaddy Delta and Chin State.

## Rights of Women:

Gender equality is an integral part of sustainable development and as such, discrimination based on sex is explicitly prohibited under almost every human rights treaty and covers all rights.

Myanmar ranked 96 out of 146 countries in the 2011 Gender Inequality Index, ahead of some regional developing member countries<sup>42</sup>. The current indicators could be indicating a high degree of gender equality in Myanmar from household to parliament level. However, in reality, there is generally poor consideration of gender-related concerns within the governance structure, policies, and social and economic sectors. Women account for only 4.42% of Members of Parliament in Myanmar's National Parliament. At the sub-national level, women account for only 2.83% of MPs at state and regional levels, 0% of administrators at township level and 0.11% of village heads<sup>43</sup>.

The Myanmar government is committed to several international policy initiatives aimed at ending gender discrimination and promoting women's participation in public life. In 1997, Myanmar became a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and is also committed to the Beijing Declaration and Platform for Action.

Moreover, in its first cycle of UPR in 2011, the Myanmar Government accepted recommendations to establish and enforce strict legislation criminalizing rape in every context including marital rape; to address violence against women and girls including domestic violence and all forms of sexual abuse; to bring perpetrators to justice; provide reparation to the victims of sexual violence involving members of the armed forces; to strengthen its national machinery to ensure gender equality; to increase its efforts to prevent human trafficking; and adopt a National Plan of Action for the advancement of the human rights of women.

In October 2013, the Myanmar government published the "National Strategic Plan for the Advancement of Women (NSPAW), 2013-2022". The Plan was developed through collaboration with concerned Ministries, agencies and organizations and is based on the 12 Priority Areas of the Beijing Platform for Action and CEDAW. These include health, education, violence against women, and institutional mechanisms for the advancement of women. It commits to comprehensive awareness raising and implementation of the Plan through sub-committees in accordance with a 5 year Operational Plan, with progress towards meeting anticipated outcomes reviewed annually.



However, little progress has been made in implementing the 12 areas<sup>44</sup> of the NSPAW and while it was a step in a positive direction, its inadequate implementation has resulted in the neglect of several key elements of the CEDAW Committee's recommendations<sup>45</sup>, which included eliminating cultural practices and stereotypes that discriminate against women<sup>46</sup> and establishing a quota system to promote women's participation.

The CEDAW committee also highlighted in their recommendations that the 2008 Constitution includes a prohibition of discrimination on the basis of sex in the appointment of Government posts or duties but adds that "nothing in this section shall prevent appointment of men to positions that are naturally suitable for men only". Moreover, it 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<sup>47</sup>.

Furthermore, Myanmar is still 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<sup>48</sup>. No specific laws exist to prevent domestic violence or sexual harassment in the workplace, and women are unable to seek restraining orders against violent men<sup>49</sup>. Gender Based Violence (GBV) is still widely regarded as a personal matter within a family by the authorities and as a result action is seldom taken. While laws relating to land do not directly discriminate against women, they do not consider or seek to accommodate women and therefore indirectly prevent women from registering land.

To compound challenges facing women in Myanmar, in 2013, a group formed to protect nationality and religion (MA-BA-THA) gathered more than 1 million signatures over a short period in support of four draft "Nationality and race protection" legislative proposals and sent the petition for review by Pyidaungsu Hluttaw in 2014 or 2015<sup>50</sup>. In response, the Government published a package of draft bills. These were related to interfaith marriage, religious conversion, polygamy and population control on 1 December 2014. Concerns have been raised that these new bills will violate women's' rights to choose their own marital partner, impinge on religious freedom, and could lead to further violence against non-Buddhist minorities, especially women, in the country<sup>51</sup>, thereby directly violating CEDAW and other international commitments of the country<sup>52</sup>.

In addition to the weak legal and political framework, there are other challenges to the realization of the rights of women in Myanmar.

Some of the communities and Government officials consulted said they simply do not know about NSPAW and Government's commitment to implement such a diverse range of issues. Others who do know about it said it was due to the lack of financial and human resources as well as poor coordination and cooperation between Government Departments to overcome practical difficulties of implementation.

During the consultations, most male participants said that they thought that women's protection, rights and welfare were issues that were only of concern to women themselves. Consultations with government officials indicated that they assumed gender issues were the sole responsibility of the Ministry of Social Welfare, Relief and Resettlement and not relevant to their work. That said, many men that were consulted also said that there were no significant gender-based violence and gender inequality issues in Myanmar, indicating a lack of understanding on what that actually means. On the contrary, women consulted gave examples of unequal wages and very limited job opportunities with no effective system to monitor.

The consultations revealed that certain social and cultural norms and practices are actively prohibiting women from accessing their rights, which need also to be understood and addressed.

In Kayin State, the men consulted said that women cannot be in leadership roles as they are very talkative; lack knowledge and confidence; and should be assigned household duties. According to Chin culture, only the son may inherit property because he is responsible for supporting the family. Therefore women are denied control over assets that can ensure financial and food security as well as social capital<sup>53</sup>.

Furthermore, some of the women consulted also said that leadership is not a position available to them. A woman consulted in the Delta said she once ran for the position of 100 Household Head as there was no man wanting this role. All villagers including the Village Administrator did not accept this, saying that it would affect men's dignity if a woman took this role. She said that if women are not given opportunities to gain experience in administration at community level, it will not be possible for them to go far to reach higher leadership positions, and most women's issues will never be raised and their decisions will never be recognized.

## 10. Key Recommendations

In order to address some of the key barriers to realizing the rights of the Myanmar people, the following section lays out some key recommendations to the Government of Myanmar and to community members.

### To the Government of Myanmar

#### General Recommendations

- 1) ratify the International Covenant on Civil and Political Rights (ICCPR) and the international Covenant of Economic, Social and Cultural Rights (ICESCR) as promised in the 2011 UPR
- 2) make necessary amendments to the Constitution to guarantee equality for all and bring it in line with the human rights commitments of the country, including refraining from using the word 'citizen' but rather 'all people living in Myanmar'
- 3) amend or abolish laws that run counter to the human rights obligations of Myanmar
- 4) ensure that amendments to and/or new legislation combat and do not increase discrimination against anyone- including women; persons with disabilities; children; ethnic and religious minorities
- 5) leverage the international technical support offered to assist in the establishment of the rule of law; and of an independent and impartial judiciary system for all
- 6) make social and environmental impact assessments a legal requirement for all development projects that would include meaningful consultations with communities
- 7) conduct awareness raising about the roles and responsibilities of each government department

#### Right to Land

- 8) undertake a comprehensive assessment of the land registry system to identify gaps at every stage, including situations that could lead to bribery and delay; and work together with non-governmental actors to develop a more simplified, effective land registration system through which all can access land registration, including a complaints handling mechanism
- 9) update and make public the land mapping and land use data it has collected
- 10) develop a national land reformation system to allocate vacant lands to landless farming communities following the approval of the national land use policies and laws
- 11) work together with non-governmental actors to promote awareness and understanding of the importance of land registration; laws and procedures relating to land- including what it should cost; and what to do in an event of a dispute

- 12) invest more resources in order to urgently solve 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

- 13) enforce the Environmental Conservation Law enacted in 2012
- 14) conduct a thorough analysis in both urban and rural areas to determine safe and unsafe water sources
- 15) develop a national water policy and legal mechanisms so as to better ensure the provision of safe water to the public, and effective water quality control, to include a complaints handling mechanism
- 16) provide land for the construction of drinking water ponds and allocate funds to improve infrastructure in communities
- 17) provide safe drinking water alternatives for villages with contaminated water sources that might include rain water collection tanks, piping systems, clean drinking water ponds and water filtration systems
- 18) work together with non-governmental actors to promote awareness and understanding of hygiene; the importance of protecting water sources; methods to minimize water wastage; the importance of preserving forests and other natural resources; water management systems and laws that underpin them; and what to do in the event of a dispute or problem
- 19) delegate authority to Village Administrators to ensure they can take action and report cases where public water sources are mismanaged and/or polluted

### Right to a Legal Identity

- 20) undertake an assessment of the birth registration system to identify gaps that exist and where problems could arise; and work together with non-governmental actors to develop a more simplified, effective birth registration system through which all can access a birth certificate, including a complaints handling mechanism
- 21) ensure adequate numbers of village health workers that can and are given authority to assist with birth registration
- 22) investigate how many children attend school without a birth certificate or with other documentation issues while they are still at school
- 23) work together with non-governmental actors including religious leaders to promote understanding and awareness of the importance of birth certificates, which should explicitly describe the link with CSC; laws and procedures relating to birth registration- including what it should cost; and what to do in an event of a dispute
- 24) ensure all efforts to address birth registration apply an inclusive approach, to include children with disabilities; children in camps; and children in remote areas

### Right to Nationality

- 25) undertake an assessment of the system to acquire a CSC, in order to identify gaps that exist and where problems could arise; and work together with non-governmental actors to develop a more simplified, effective system through which all can access a CSC, including a complaints handling mechanism to avoid cases of corruption or manipulation
- 26) work together with non-governmental actors including religious leaders to promote understanding and awareness of the importance of having a CSC; laws and procedures 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 such as a mistake in the spelling of a name on a household registration list
- 27) ensure all efforts to ensure all have a CSC apply an inclusive approach, to include persons with disabilities; people living in camps; and people living in remote areas and make necessary provision to ensure everyone knows about campaigns, such as the Moe Pwint



project for CSC registration; and can take part in said campaigns, including providing information in advance of visits to communities

### Rights of Women

- 28) work together with non-governmental stakeholders to identify key barriers to women's participation in political and public spheres
- 29) work together with non-governmental stakeholders to address these key barriers; including awareness on the importance and value of women's participation; and directly addressing and taking action against harmful cultural, social norms and practices that prevent women from achieving their rights
- 30) implement a quota system that mandates minimum 30% of women to take up decision making roles of sub-national and national governance bodies in Myanmar
- 31) develop a national mechanism to monitor women's participation in governance
- 32) implement anti human- trafficking law for both men and women
- 33) ensure that all laws relating to equal access to employment, include equal pay

## Recommendations to Community Members

### Right to Land

- 1) request relevant Government Departments to provide awareness sessions; workshops; and discussions about land laws and processes and procedures related to official land registration
- 2) cooperate with Government Departments and commit to following official procedures relating to land registration
- 3) actively participate in discussions relating to land issues; and in land mapping
- 4) keep annual tax slips as an important supporting documentation
- 5) request the Government to work together with land owners to develop a land reformation system to allocate lands for those who do not have official land registration
- 6) follow up on the land disputes submitted to the Government Departments and Township Land Investigation

### Right to Water

- 7) request relevant Government Departments to provide awareness sessions; workshops; and discussions on existing laws, policies, water-related rules and regulations of the Ministry of Agriculture and other ministries that are responsible for water management
- 8) work with the Government to conduct a thorough analysis in both urban and rural areas to determine safe and unsafe water sources
- 9) attend health education training and awareness sessions
- 10) work with the Government and non-governmental stakeholders to implement gravity water flow systems in villages where there is no operational water supply
- 11) improve management of waste in communities. For example, store rubbish in a bag in an appropriate sealed container to avoid the entry of insects, snakes and other pests
- 12) mobilize community members to build a fence for all water ponds
- 13) build latrines away from water sources to avoid contamination
- 14) work with the government to build small ponds, shallow tube well and rain water collection tanks for drinking water storage
- 15) share water resources with neighboring villages and encourage community members to save water for household use; and preserve water sources
- 16) participate in community forestry projects; and plant trees near water sources
- 17) follow the rules and regulations concerning water management made by Village Administrators and relevant Government Departments

18) inform the Government Departments concerned about all water related issues

### Right to a Legal Identity

- 19) work together with Government and non-governmental stakeholders to promote awareness about the importance of birth registration; and processes and procedures for birth registration
- 20) commit to following the procedures for official birth registration
- 21) keep a record of the birth date, month, year and time of the birth of a child and give accurate information to concerned midwives so that they can issue a birth certificate
- 22) mobilize community members to register each birth within the community
- 23) cooperate with the Village Administrator by sharing birth information
- 24) check the information on household registration certificates provided or updated by the Immigration Department and inform them immediately if any information is incorrect

### Right to Nationality

- 25) work with the Government to assist in identifying people without CSC in the village and inform the concerned Immigration Departments through Village Administrators
- 26) mobilize community members to participate in the “*Moe Pwint*” project to get registered
- 27) request Village Administrators to share the schedule of the “*Moe Pwint*” mobile teams’ visits to villages in advance
- 28) place all important documentation such as, birth certificates, household registration certificates and CSCs in a safe place, protected from water, and keep back-up of records

### Rights of Women

- 29) cooperate with the Government and non-governmental stakeholders to understand key barriers to women’s participation in political and public spheres
- 30) encourage men to attend gender awareness workshop/training
- 31) give a space and actively promote meaningful participation of women in social activities and decision making in the community
- 32) mobilize and encourage religious organizations to help educate community members on harmful social and cultural norms and practices
- 33) demand fair and equal salary for both men and women at work
- 34) encourage equal access to education for both men and women; and invest in tertiary education of both daughter and son
- 35) commit to equally sharing household duties between husband and wife, such as in cooking and washing

## 11. UPR Achieving Impact Project

### Intervention Logic

In general, the rights-holders in communities within which we work are not able to access their fundamental rights that are needed for their survival such as food, water, security, livelihoods and education. These basic rights and directly addressing the key barriers to the realization of them are the focus of much of our current programming.

Certain groups have become more marginalized than others and resources have not been allocated to them (or they are being denied access to resources they have used for centuries), resulting in them becoming disempowered.

Even where legal and policy frameworks do exist, they do not function at a level where these rights should be guaranteed, and with no independent system to challenge decisions and address grievances, a culture of impunity has been left to prevail. Sometimes it is a question of

limited capacity of the duty-bearer to implement necessary measures and deliver services. Other times it can be a lack of political will.

This project aims at taking a solution-focused approach to advocating for changes that the government can make in order to improve their Respect, Protection and Fulfillment of human rights obligations.

This is not a stand-alone project. Central to it is the aim that project activities complement and reinforce the delivery of impact at local level through existing programs.

### Overall Objective:

To strengthen access to fundamental human rights

### Specific desired outcomes:

- (1) an empowered, effective coalition or alliance, reflecting LWF priorities, is working at national level. Indicator: coalition has secured at least 1 meeting at ministerial level to present key issues included in the UPR.
- (2) recommendations in the final UPR report, reflecting our thematic priorities (including women's ability to access their rights) have been accepted by the state party (Myanmar government). Indicator: On average, recommendations on 2 out of the 5 issues (including the priority issue) we have identified are included and accepted by the state party
- (3) project activities have reinforced delivery of concrete impact at local level through existing programs. Indicator: [14,700] of [29,502] have secured access to [basic rights identified as priority issue] and duty-bearers involved in this project have contributed to that outcome by taking concrete measures to implement UPR recommendations.

### Impact

LWF takes the distinctive approach in this project of aiming to link concrete and measurable change for those at the grassroots, to our national and international level advocacy work. This ensures that the work is not about engaging with international processes simply for the sake of it or for our own profile as an INGO, but in order to achieve maximum positive impact in the lives of real people

### Main Activities

- Provide a platform for consultation on LWF UPR Submission
- Conduct a Field Study / Research for data collection
- Consult with a wide range of stakeholders
- Submit a UPR Parallel Report
- Disseminate Full Findings Report to inform Advocacy Plan and lobbying groups
- Lobby Yangon based, Bangkok based and Geneva based embassies for specific recommendations
- Identify Champions of UPR Reporting process to represent LWF in Geneva during UPR of Myanmar and organized side events in November 2015
- Present UPR accepted recommendations to stakeholders including Government
- Assist Government to find solutions for implementing UPR Recommendations
- Coordinate lobby work and advocacy amongst coalition partners
- Facilitate advocacy work of communities requesting their rights knowing the Government has made a commitment to Protect Respect and fulfill those rights through accepting their recommendations in the UPR of Myanmar in November 2015



## Donors

Thank you for the support and collaboration of Related Agencies that have made it possible to raise the voices of communities in Myanmar to the Human Rights Council, enabling them to articulate the rights at risk which they face in their daily lives.



Church of Sweden 



## 12. Annexes

### Annex 1: Acronyms

ACT Alliance	Action by Churches Together alliance
CBOs	Community Based Organizations
CEDAW	Convention for the Elimination of All Forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
CRC-OP-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
CRC	Convention on the Rights of the Child
CSC	Citizenship Scrutiny Card
DWS	Department for World Service
DTPW	Department for Theology and Public Witness
ELCM	Evangelical Lutheran Church of Myanmar
IDPs	Internally Displaced Persons
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
GEN	Gender Equality Network
GBV	Gender Based Violence
OCHA	Office for the Coordination of Humanitarian Affairs
KIO	Kachin Independence Organization
LCG	Land Core Group
LWF	Lutheran World Federation
MDGs	Millennium Development Goals
MPs	Members of Parliament
NSPAW	National Strategic Plan for the Advancement of Women
RBEO	Rights Based Empowerment Officer
SEZ	Special Economic Zones
UPR	Universal Periodic Review
UN	United Nations
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
UNDP	United Nations Development Programme
VDC	Village Development Committee
VFV	Vacant, Fallow and Virgin Land

## Annex 2: References

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Under the 1982 Citizenship Law there are two types of citizenship: (1) Native Citizenship and (2) Legal Citizenship

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<sup>39</sup> Associate Citizenship application for citizenship stated in the 1948 union Citizenship Act but the issuance of associate citizen cards (green in color) was discontinued from 1982.

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# Uphold the Rights of the Poor and Oppressed



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