

## Human Rights Issues on Highway Road Accidents in Myanmar

### Abstract

This research investigates the linkage between highway road accidents and human rights issues in Myanmar. It mainly emphasizes from the point of human rights on the weaknesses of the related highway road laws and regulations and, how the laws applied to passenger rights concerning on road accidents before and after the accidents occurred along the road. There are increasing numbers of highway road accidents in recent years for the whole country, but this research mainly highlighted on the new highway road between Yangon city and Mandalay city which is built hastily in 2005. The research conducted with qualitative and quantitative methods which include purposive sampling, semi-constructive questionnaires, constructive questionnaires and survey data, and thematic analysis to understand the depth of issue. The research explores the reasons why there are so many accidents in the said road and the underlying causes behind those accidents, the human rights issues emerged from those accidents and the State's required obligations to promote right to life and right to health of passengers as parts of fundamental human rights. This study suggests that the weakness in traffic policy and implementation in practice and State's obligation to protect human rights remain as significant barriers for the safety of passengers which further lead to the ignorance of individual rights within the law.

Keywords: Human rights, Highway Road accident, Road safety, State's obligations.

### 1. Introduction

Highway road accidents normally occur unfortunately and unintentionally due to human carelessness. The latest highway road accident statistics from the Office of Myanmar National Traffic Police show that there were 412 accidents occurred in 2014 resulting in 157 deaths and 766 serious injuries.<sup>1</sup> It is a major concern over human rights issues especially towards right to life and right to health (emergency health care) for passengers who normally face with ineffective safety procedure and unreliable saving assistance before and after the accidents. As local people do not have enough basic knowledge and awareness about on human rights as their own individual rights, they did not explore the weakness of highway road policy and implementation which have threatened human rights. Therefore, it becomes necessary to explore underlying causes behind road accidents. Then, based on the facts and reasons, it becomes an essential part to provide critical analysis on how unsafe roads, inadequate road network, lack of reliable and accessible facilities, and insufficient laws and regulations which are closely relating to the threat towards human rights especially towards " the Right to life" and " the Right to health" of human beings which have to be fulfilled by the State as its obligation. Ultimately, potential recommendations based on collected and analysed data are required to provide in this kind of human right approach research so that it would assist in the process of change for reducing and eliminating indirect threats to the human rights and potentially to happen in Myanmar in relation to highway road accidents.

Therefore, this research aims to emphasis on the relationship between highway road accidents and human rights issues in Myanmar. The main objectives of the study are to understand the related laws and regulations on highway road and to find out the indication of actual recorded road accidents numbers over ( 3 years or year to present), to understand the case handling of traffic polices and their handling procedure, to explore

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<sup>1</sup> Road Accidents Statistics on Yangon-Naypyidaw-Mandalay Highway Road (2014), Source: Head Office of Highway Police, Naypyidaw.

and analyse of the weaknesses of safety procedure and practise, to find out the relationship between the practise of rules and regulations and concern over human rights issues and to be aware of the State's required obligation to protect human rights especially the right to life and the right to health. This research will also be exploring why there are so many highway road accidents in Myanmar especially on the new highway road between Yangon city and Mandalay city and what the main causes are, what kinds of the human rights issues are currently and potentially emerging from those accidents and what the required obligations of the State are in order to foster the right to life and the right to health of passengers.

The research was conducted by using mixed methods of both qualitative and quantitative methodologies as the analysis on human rights issues in relation to road accidents needs both qualitative data such as insight and in-depth inquiry of underlying factors and explanation and quantitative data to know facts and figures about the magnitude and frequency of accidents. However, due to limitations, quantitative data were collected from secondary accurate and reliable sources such as National's Public Announcement, Traffic Police Officers, and newspapers, journals and articles. In terms of qualitative data inquiry, this research undertook an intensive study on four levels of participants such as the relevant high level officer: traffic police officers, driver license office's officers, chairperson of the Motor Vehicles and Vessels Supervising Committee and travel companies' owners, etc, possible offenders: drivers and spares, possible injured party: passengers or victim's families who were involved in road accidents, infrastructure engineers: civil engineer mainly highway road construction focusing on their practices and experiences. Moreover, in order to seek another aspect of this research, it also interviewed a key informant, a commander of the Highway Traffic Police Force of Myanmar, who is also familiar with the highway road accident cases and can give recommendations on the said high way road.

## **2. Highway Road Accidents in Myanmar**

Road accidents may be defined as a human tragedy, associated with major health problems, negative socio-economic growth.<sup>2</sup> There are increasing numbers of road accidents in Myanmar especially in the Rangoon-Naypyidaw-Mandalay highway which mainly connects the upper Myanmar and the lower Myanmar. The high number of road accidents along this road is indicative of a nationwide worsening of Myanmar's road safety record. According to official statistics, during the three years from 2012(May, 20) to 2015(June, 23), over 963 highway accidents have claimed the lives of over 394 victims.<sup>3</sup> If a road accident is to be happened, it is not a form of temporary loss. It is indeed a permanent and very great loss to the victims' families and the society. For example, even in small injuries from road accidents, people have to spend lots of medical fee mostly from their own income and family's money. As for the case of serious injuries and death, the scenarios of loss become greater. For example, that person's human physical and intellectual energy cannot be utilized fully or at all and this can negatively affect to the income generation of that person and to his family. In addition, the society

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<sup>2</sup> Arvind Kumar Maavoori, *An Activity Plan for India Road Safety* (Linkoping University Electronic Press, 2005) p. 2.

<sup>3</sup> Official Data from the Traffic Police Force of Myanmar, Head Office of Highway Police, Naypyidaw.

has to invest on a person since the time of schoolings and fees and the victims' contribution and workforce can be lost for the society when accidents occur.

**Table1. Road Accidents Statistics on Yangon-Naypyidaw-Mandalay Highway Road of Myanmar**

No.	Year	Road Accidents	Death	Injury	Remark
1	2012	103	57	186	From20.5.2012 to 31.12.2015
2	2013	259	113	662	
3	2014	412	157	766	
4	2015	189	67	540	
	Total	963	394	2114	From1.1.2015 to 13.6.2015

Source: Head Office of Highway Police, Naypyidaw.

## 2.1 Reasons for the Accidents

Road accidents in the new highway road are now major problems of the country. Reasons for the accidents may include various defaults of drivers, mechanical failure of vehicles, poor quality of the road, and bad weather.

According to some comments of individual interviewees and focus group discussion with participants, most of the road accidents are caused by various defaults of the drivers such as incompetence in driving skill, drivers' judgment errors and violation of traffic rule, ignorance and carelessness in driving, etc. Increased import of more vehicles in recent years is one of the sources of being incompetence in driving skill. Some drivers started out on the job as bus conductors and progressed to drivers after a few years. They rely on the driving skills learnt on the job, but have never received any driving training on safe driving. As they learned from other senior drivers, some are not familiar with the vehicles they drive and experience in unsafe driving. Some are negligent and careless in driving. Interview with one of the highway road infrastructure engineers, he mentions that *"the main reasons for the accident are undue diligent like falling asleep while driving, using cell phone, tiring in travel etc... and tyre puncture"*.<sup>4</sup>

Some accidents are due to mechanical failure of the vehicles. All drivers are not aware of proper vehicles maintenance. Interview with one of the drivers who discussed vehicles maintenance for highway express, he says that *"to start a highway, they usually do general preparation and observation of vehicles' conditions only with their eye sight."*<sup>5</sup> Therefore they cannot know in detail about inside mechanical parts. Another problem is that some imported vehicles are not fit for concrete highway road. For instance, interview with one of the local authorities of highway bus line discussed that *"tyres of some vehicles are already expired to use although they are new and imported recently to Myanmar"*.<sup>6</sup>

<sup>4</sup> Interview with U Pyi Phyo Xel, Executive Engineer, Highway Road Infrastructure Engineering Department, Ministry of Construction, in Naypyidaw, Myanmar (June 25, 2015).

<sup>5</sup> Focus Group Discussion with Drivers and Spares, Yangon-Naypyidaw-Mandalay Highway Road Users, in Mandalay, Myanmar (June 19, 2015).

<sup>6</sup> Interview with U Than Tun, Chairperson of the All Highway Bus Line Steering Committee, in Mandalay, Myanmar (28 May 2015).

Some accidents happen because of poor quality of roads. According to engineers involved in the project of this road, it was poorly funded and quickly built in 2005 at the time of former military regime<sup>7</sup> and few road safety measures were put in place as the transport link to the new political capital had to be completed quickly on orders of military commanders.<sup>8</sup> Focus group discussion with drivers and spares, they mention that "*some curves of expressway are very dangerous, they don't know what is wrong in road construction, and they think it may be because of poor design.*"<sup>9</sup>

Most drivers who daily drive in this road said there are so many accidents on this new road rather than on other highway roads in Myanmar. But the Mirror newspaper reported by analysing road accidents on the road that most accidents were due to driver error, with vehicle failure as the second biggest cause and only one percent of accidents were due to poor road quality.<sup>10</sup>

## 2.2 Causes behind the Accidents

There are many causes behind the road accidents. However, based on the collected data through individual interviews, focus group discussions, and key informant interview, there are three main causes behind road accidents such as poor enforcement of related highway road laws and regulations, poor vehicle inspection, and poor highway road facilities. These three main causes will be discussed in details as follows by referring to the relevant collected data.

In Myanmar, there is no specific traffic law to enforce for reducing the road accidents. There have been some related laws and regulations to the road transport such as the Road and Inland Water Transport Law (1963), the Motor Vehicles Law (1964), the Motor Vehicles Rules (1989),<sup>11</sup> and the Highway Road Law (2015).<sup>12</sup> The Road and Inland Water Transport Law and Motor Vehicles Law are comprehensive laws regulating the transport, including vehicle registration, vehicle licensing, drivers' licensing, drivers' licensing for conductors of public service vehicles, employee vehicles and goods vehicles, and other matters relating to road transport. The Motor Vehicle Rules covers goods vehicles, motorcycles, motor vehicles, road traffic, and traffic signs, etc. But the procedures are needed to modify and enforcement procedure is also poor in practice. The Highway Road Law is enacted recently in April 9, 2015. In this law, one of its objectives is provided about the safety for the user of the highway road<sup>13</sup> but in the detail provision of the said law, there is no any provision under the objectives. There is no road safety provision and any other pre-safety procedure in the law. That is the reason why there are poor enforcement and action taken effectively to the persons who violate the general road safety regulations.

<sup>7</sup> Nyine Nyine, 'Death Highway at Center of Burma's Worsening Traffic Safety', The Arrawaddy, 17 July 2013.

<sup>8</sup> 'Bus Crash on Death Highway near Naypyidaw Kills 14', The Arrawaddy, 14 May 2014.

<sup>9</sup> Focus Group Discussion with Drivers and Spares, Yangon-Naypyidaw-Mandalay Highway Road Users, in Mandalay, Myanmar (June 19, 2015).

<sup>10</sup> 'Burmese Government Blames Drivers for Most Highway Accidents', The Arrawaddy, 16 May 2014.

<sup>11</sup> Road Transport Administration Department under the Ministry of Railway Transport, *1964 the Motor Vehicles Law, 1989, the Motor Vehicles Rules and Road Directions, Road Signs and Signals* (Pressed by the Ministry of Railway Transport) (1990).

<sup>12</sup> Myanmar Law (2015).

<sup>13</sup> Section. 3 of the Highway Road Law, 2015, Myanmar Law (2015).

High accident rates are also related to poor vehicle inspection. Especially in Myanmar, this is a very big issue as there are no inspection requirements on imported or produced or currently driving vehicles. In reality, many vehicles imported to Myanmar are already being in used and rarely properly maintained. The inspection of vehicles is done only by drivers and spares before starting their journey. They have to investigate everything such as steering gears, tyres, brakes, silencers, lighting equipment, and so on by themselves. However, as mentioned above, those observations are done by traditional standards of single drivers and spares, but not with standardized safety standards. And interview with one of the officers of Road Transport Administration Department, he says that "*they have vehicle inspection board to examine every passenger bus before they start their journey. They do their inspection whether the bus has worthiness to travel highway or not, especially they are checking required materials on passengers bus (vehicles license, tyres, seatbelts, wiper, emergency hummer, etc...) and drivers (drivers' license, drinking or not, good health or not, etc...)*".<sup>14</sup> It is only examined by their eye sights. So it is just an inspection group and not liable one to access effectively standardized safety standards for travel in highway.

The needs of highway road facilities may be one of causes behind the accidents. Most of the road users said that there are a few warning signs, safety signs or light reflectors to indicate the bends in the road along the highway, while at many places there is no railing along the roadside.<sup>15</sup> In addition, too-sharp curves, stray dogs and sometimes animals nearby the villages walking on the highways, and poorly positioned concrete blocks are major factors putting highway-driving-vehicles in danger.<sup>16</sup> Having only two proper rest stops on the entire journey of highway, scrub-terrain landscape which creates boredom of drivers on the highway is a very major threat imposed to the highway drivers of this road. In addition, concrete paved highway road is another major cause of road accidents. Some drivers who use this road regularly mentioned that the rough concrete road's surface creates tyre punctures and therefore lead to many car accidents.<sup>17</sup> Especially in hotter days, the rough concrete road can contribute to flat tires and put the highway vehicles in danger due to tyre puncture.

### **3. Human Rights Implication of Highway Road Accidents**

As regard to human rights, the right to life and the right to health are fundamental human rights. The right to life cannot be attained unless all basic necessities of life including health care services are easily assessable and acquired. Conversely, the enjoyment of the highest attainable standard of health care is also required to survive of long life.

There are so many highway road accidents in the new highway road. Interview with one of the traffic police officers, he says that "*there are about 14000 vehicles and 100000 passengers passing through this road daily and they have to deal with several*

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<sup>14</sup> Interview with U Nay Lin, Director of Road Transport Administration Department, in Mandalay, Myanmar (June 23, 2015).

<sup>15</sup> Focus Group Discussion with drivers and spares, Yangon-Naypyidaw-Mandalay highway road users, in Mandalay, Myanmar (June 19, 2015).

<sup>16</sup> Ibid.

<sup>17</sup> Nyine Nyine, 'Riding the Death Highway', The Arrawaddy, 15 May 2014.

*accident cases every day.*"<sup>18</sup> Among possible different causes, road accidents occur due to poor road conditions and networks or inadequate laws and regulations and their implementation are something that human can control and manage so that the losses and threats to the road accidents' victims could be reduced and eliminated. For example, according to the focus group discussion with drivers and spares, they mentioned that "*road in bad shapes are informed, but there are only some occasional maintenance to that poor road*".<sup>19</sup> And they also said that "*some drivers, especially small private car owners, arbitrarily drive their car by themselves on the highway and they didn't know anything about rules and regulations driving in highway. No one control them on the highway and take action for their wrongful act or omission*". In these kinds of cases, if road accidents were to happen, it would not be the misfortune or carelessness of the road users. But it would become the State's and related affiliates' responsibilities that could be possibly managed. Then, it may be indirectly threatening human rights especially the right to life and the right to health.

### **3.3.1 Right to Life**

The right to life is undoubtedly the most fundamental of all Rights.<sup>20</sup> Everybody should ensure the right to life, grow and develop. It is stated in the Universal Declaration of Human Rights (UDHR), 1948 that "*everyone has the right to life, liberty and the security of person.*"<sup>21</sup> The International Covenant on Civil and Political Rights (ICCPR), 1966 also provided for the right to life that "*every human being has the inherent right to life and this right shall be protected by law. No one shall be arbitrarily deprived of his life.*"<sup>22</sup> It means that the States have to protect the right to life of the citizens who live within their jurisdiction and everyone has safeguarded his or her life against arbitrary killing.

### **3.3.2 Right to Health (Emergency Health Care)**

The right to health refers to the right to enjoyment of a variety of goods, facilities, services and conditions necessary for its realization.<sup>23</sup> It also includes the right to get emergency health care services when it is necessary. The preamble of the Constitution of the World Health Organization (WTO), 1946 states that "*the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.*" The Universal Declaration of Human Rights (UDHR), 1948 also mentioned that "*everyone has the right to a standard of living adequate for the health.*"<sup>24</sup> The right to health is recognized as a human right in the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. It is provided that "*the States Parties to the present*

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<sup>18</sup> Interview with Highway Police Col Nay Win, Commander of the Highway Traffic Police Force, Head Office of Highway Police, in Naypyidaw, Myanmar (June 21, 2015).

<sup>19</sup> Focus Group Discussion with Drivers and Spares, Yangon-Naypyidaw-Mandalay Highway Road Users, in Mandalay, Myanmar (June 19, 2015).

<sup>20</sup> Rhona K. M. Smith, *Textbook on International Human Rights* (6<sup>th</sup> edition, Oxford University Press, 2012), p. 217.

<sup>21</sup> UNDR art. 3.

<sup>22</sup> ICCPR art.6, para.1.

<sup>23</sup> Fact Sheet No.31, the Right to Health, UNHCR & WHO, UN Publishing, p.5.

<sup>24</sup> UNDR art. 25, para.1.

*Covenant recognize the right of everyone to be the enjoyment of the highest attainable standard of physical and mental health.*<sup>25</sup>

#### **4. State's Obligations to Promote Human Rights**

States have the primary obligation to protect and promote human rights.<sup>26</sup> States have to ensure a minimum level of access to the essential material components of the right to life and the right to health. There should be a national road safety strategy that is secured for the loss of life and injury in accidents. It should have sufficient funding to develop, implement, manage, monitor and evaluate actions over year by year and a national action plan which specifies actions, time frames, and resource allocation to implement the strategy, should be developed.

At international level, the obligation imposed to States in their protecting and promoting of human rights is provided in ICESCR. It is provided that each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly adoption of legislation measures.<sup>27</sup>

At national level, the State has fulfilled its required obligation to make possible effort to realize the right to life and the right to health and to take steps in promoting of human rights. The country should prepare a road safety strategy to promote the right to life and the right to health that involves transport, health, and education and law enforcement agencies. It should have the authority and responsibility to make decisions, control resources and coordinate efforts by all the relating government sectors.

To promote human rights, every State also has an obligation for respecting, protecting, and fulfilling the human rights. The obligation to respect refers to State's obligations to refrain from interfering directly or indirectly with the enjoyment of the rights; the obligation to protect refers to preventing from other's interferences to those rights and the obligation to fulfil refers to adopting suitable legislative, administrative, judicial and other measures for attaining those rights. The followings will be discussed how State can and should fulfil its obligations to promote "the Right to life" and "the Right to health" of highway road's users by taking measures and providing facilities before and after the highway road accidents.

##### **4.1 Before the Accidents**

Like mentioned earlier above, some accidents are caused not by misfortune or carelessness of drivers, but because of missing to implement and mobilize other controllable and manageable factors like infrastructure development and adequate laws and regulation systems by the States and related stakeholders. Some possible prevention that can be done before the road accidents occur are designing, building, and maintaining road infrastructure according to the International Highway standards which will be discussed in details as subtopic here. Another prevention process could be developing and implementing safety procedures and safety health care before the road accident occurs so

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<sup>25</sup> ICESCR art.12, para.1.

<sup>26</sup> Fact Sheet No.31, the Right to Health, UNHCR & WHO, UN Publishing, p.22.

<sup>27</sup> ICESCR art. 2, para.1.

that emergency health care and other assisting services could be provided on time and fast in case of accidents happening. Educating the public about road safety and regulations as well as providing road safety and regulations trainings to drivers and spares could be another possible prevention factors to raise public awareness. These possible prevention factors such as safety infrastructure, safety procedure for road, safety procedure for health, and safety education and training will be discussed in insight as below.

#### 4.1.1 Safety Infrastructure

For safety infrastructure, adequate and safe road infrastructures are very essential especially for highway users. There is an evidence of having Road Sign, Safety Sign, and Notification Sign discussed in focus group discussion with drivers. However, one of the drivers continued to mention that *“For example, there is red traffic light warning system if driving speed is more than 100 miles per an hour. However, the warning system is not usually working properly”*.<sup>28</sup> In addition, by analyzing on focus group discussion with drivers and interviewing with one of the travel company's owners, many of them blamed this Yangon-Mandalay highway for having too sharp curves and having concrete paved road which is not very suitable for tires used by those highway-driving vehicles. And the concrete road especially in hotter day creates tire puncturing.<sup>29</sup> Therefore, asphalt layer should be coded on top of that concrete layers. According to many eyewitnesses, those actions are done partly in some part of the Yangon-Mandalay highway currently. In addition, irregular maintenance is also another factor contributing to unsafe infrastructure. For instance, focus group discussion with drivers mentions that *“Road maintenance is done only occasionally. The quality of that highway road isn't compatible with Highway Road Standards. Some curves are very dangerous”*.<sup>30</sup> Therefore, it is a very important State's obligation for providing regular maintenance, adequate and proper road signs and safety signs, notices and so on.

#### 4.1.2 Safety Procedure for Road

For safety procedure for road, having standardized and systematic vehicle inspection should be done ahead of highway journey. For instance, there is an evidence of *“having inspection control in the past. But later, this happens only occasionally”*<sup>31</sup> according to focus group discussion with drivers. Therefore, regular inspection control should be provided as a State's level for checking required materials such as good tyres, fire extinguishers, emergency exit, emergency hammer (for glass bakers), wiper, signal, seat belt and so on. In addition, whether drivers follow rules and regulations established by Road Transport Administration Department under the Ministry of Railway Transport should be monitored closely by traffic officers. Speed controls are essential to avoid accidents. Government should provide reliable speed control system. Those speed control system should not be just an alarm, but should include consistent and accurate monitoring and controlling system as well as should take action on over-speed vehicles effectively.

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<sup>28</sup> Focus Group Discussion with Drivers and Spares, Yangon-Naypyidaw-Mandalay Highway Road Users, in Mandalay, Myanmar (June 19, 2015).

<sup>29</sup> Interview with One Working in the Transformation Industry Operating in Mandalay Region, Myanmar (June 19, 2015).

<sup>30</sup> Focus Group Discussion with Drivers and Spares, Yangon-Naypyidaw-Mandalay Highway Road Users, in Mandalay, Myanmar (June 19, 2015).

<sup>31</sup> Ibid.

### 4.1.3 Safety Procedure for Health

In Myanmar, inadequate public health infrastructures for road accidents lead to inaccessible and unavailable roadside medical assistance along the road. Only one medical aid station founded by Red Cross is existed near 115 Miles Rest Camp. Basic first aids and other emergency health care awareness are not possessed and acquired by general public. The standardized free access numbers for calling emergency medical help are not reliable in reality. For example, during the focus group discussion with drivers, some mentions that *“There is an emergency phone number called ‘1880’ for calling when emergency occurs. However, we can’t really contact through this number”*.<sup>32</sup> Therefore, providing more health care centres on the road at least 20 miles from one another is a very important State’s obligation for Myanmar.

### 4.1.4 Safety Education and Training

It is important for road-users to be educated about road safety from as young an age as possible.<sup>33</sup> Road safety education should be given first to the children and high school students as well. Because it gives the motivation to the children and students, if they are start to follow the safety aspects is good for the whole country growth. Most of the road accidents were happened in the highway crossing areas and in the small road connecting near the rural areas. In developing countries, most of the village people are unaware of the road safety and the road accidents and lack of knowledge about road safety rules and regulations as well. They should also be given road safety education by community teaching.

Road safety training reduces the injuries fatalities and major accidents. Road Transport Administration Department sometimes gives training to the drivers to know more rules and regulations for road safety. Drivers and spares should have special training for highway drive first. They should have road safety training and emergency health care training also.

## 4.2 After the Accidents

After the accidents occur, there are also some activities and policies implementation that can be done by the States to protect the human rights of the victims and to assist to them from having great losses. Those activities and law enforcement by the State after the accidents occurred are providing pre emergency health care services, investigation of road conditions as a potential source of road accidents, promoting effective traffic police handling procedures, and taking and applying judicial measures. All those activities and legal actions will be discussed specifically accordingly with subtopics below.

### 4.2.1 Pre Emergency Health Care Service

There is no stand by emergency health care service. According to focus group discussion with drivers and spares, existing emergency health care service is quite

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<sup>32</sup> Focus Group Discussion with drivers and spares, Yangon-Naypyidaw-Mandalay highway road users, in Mandalay, Myanmar (June 19, 2015).

<sup>33</sup> Dowing, A. J., Baguley, C. J. & Hills, B. (1999). Road Safety in Developing Countries: An overview. Overseas Centre. Transport and Road Research Laboratory, Crowthorne, Berkshire, United Kingdom.

unreliable due to difficult to contact in case of accidents happen. Therefore, if accidents are actually occurred and informed to the nearest traffic police station, the traffic police become main actors in sending the injured persons to hospitals of the nearest town or village<sup>34</sup> rather than taking a lead role by emergency health care service. The Government should provide mobile emergency health care service team including well trained medical staffs. They should be trained and motivated to care for the accident victims. The hospitals nearby the highway should establish a full equipped and staffed for emergency. The ambulance personnel and hospital staff especially those in casualty section should be trained on how to give first aid to injured people and how to handle different types of injuries and victims. Moreover, pre emergency health care system should be decentralized in order for providing emergency health care service on the spot and accessing required urgent medical treatment.

#### **4.2.2 Investigation of Road Condition as a Potential Source of Road Accidents**

Highway Road Investigation Board should be well organized and should check regularly after the accidents. According to focus group discussion with drivers and spares, little road maintenance is done on the Yangon-Naypyidaw-Mandalay highway road. Especially linking to rights to safe travel by all passengers, it is an essential State's obligation to provide safe road with adequate road signs and infrastructures. This also includes regular monitoring and investigation of road condition by appropriate technicians and engineers. Interview with one of the highway road infrastructure engineer, he recommends that *"the Government should provide more sufficient fund to maintain the road regularly and sometimes redesign and reconstruct when it is necessary. And they also have to install some highway road facilities and sometimes to repair or replace some broken road signs, safety signs, rumble strips, speed warning sign, speed control device, etc."*<sup>35</sup>

#### **4.2.3 Effective Enforcement on Police Handling Procedures and Implementation**

In most developing countries, traffic polices are generally less well-trained and equipped to deal effectively with road safety violations. As Myanmar is one of the developing countries, it is the same as other developing countries. There are so many road safety violations on the highway such as *"motor cycling in highway road, using highway road as rural crossing road by animal drawn carts, crossing highway road negligently not only by people but also by animals, driving arbitrarily and driving wrongfully on road sides, driving carelessly by neglecting and sometimes abusing other road users, etc."*<sup>36</sup> But there is no effective actions taken immediately because there is no enough traffic polices to enforce or to control these violations. Although there is a police station after every 6 miles along the road side, polices arrive only to the spots when the accident are actually occurred. So the government should improve the conditions of police force,

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<sup>34</sup> Focus Group Discussion with Drivers and Spares, Yangon-Naypyidaw-Mandalay Highway Road Users, in Mandalay, Myanmar (June 19, 2015).

<sup>35</sup> Interview with U Pyi Phyo Xel, Executive Engineer, Highway Road Infrastructure Engineering Department, Ministry of Construction, in Naypyidaw, Myanmar (June 25, 2015).

<sup>36</sup> Focus Group Discussion with Drivers and Spares, Yangon-Naypyidaw-Mandalay Highway Road Users, in Mandalay, Myanmar (June 19, 2015).

instituting better working conditions, supply required equipment and pay them well (to deter corruption).

Therefore, it becomes a very essential State's responsibility to increase the amounts of Highway Police's population and workforce as well as to promote and mobilize effective police handling procedures in dealing with Highway road accidents. In order to achieve effective handling procedures, it is important to assign and impose specific job description and duties to highway traffic police. This has surely to be done with assistance from the State and relevant stakeholders so that implementing of handling procedures can be done on the spot, on time, and successfully.

#### 4.2.4 Judicial Measures

As judicial measures, the careless drivers who committed causing death in accident shall be punished by the criminal law, section. 304A (causing death by negligence) of the Penal Code of Myanmar.<sup>37</sup> If any property is destroyed in the accident due to an act or omission of the said person, he shall pay compensation for loss by section. 23 of the Motor Vehicles Law.<sup>38</sup> And the Department of Road Transport Administration Department also issue direction from time to time and remediation to road accidents can be done through precise enforcement of action taken to criminals according to its directions. According to their direction, they will revoke licence for defined period depending on the seriousness of the accidents. But if the drivers made more than three persons death during the accidents, their licences may be revoked the whole life and they cannot have a chance to drive in highway road again.<sup>39</sup> And in an interview with one of the traffic police officers, he recommends on judicial measures that *"For reducing road accidents, prevention, investigation, and taking actions should be done in continuity and intensive manners."*<sup>40</sup>

In relation to right to life, it can be recommended to carry out preventive section by collecting data and records. Some preventive measures could be (1) testing driving skills through driving license and vehicles license (2) testing physical ability of driver by testing sleeplessness, tiredness, unhealthiness, and drinking alcohol with alcohol level measuring tool (3) investigating vehicle's condition for tyre, brake, the whole body, required materials in emergency case, etc... and (4) investigating of breaking of laws and regulations like driving carelessly, not following rules and regulations, over speed driving and so on. Moreover, the government should review legislation regarding related highway road law of the country. There should be included a statutory provision for road safety in the respective law. Moreover, there should be a specific traffic law in Myanmar to control the vehicles on the roads and should be given a statutory mandate to train the drivers and spares who can actually involve in reducing the road accidents.

In investigating and taking action section, it should try to improve the related laws such as Criminal law, Motor Vehicles Law and Motor Vehicles Rules, Highway Road Law which are used in investigation and taking actions towards criminals for effective and immediate enforcement.

<sup>37</sup>The Penal Code of Myanmar, 1861, Burma Code (Volume. IX) p. 1.

<sup>38</sup>The Motor Vehicles Law, 1964, the Revolutionary Council Laws (Volume. I) p. 467.

<sup>39</sup>According to the Directive. 11/14- Revocation of Driving Licenses issued by the Road Transport Administration Department, Ministry of Rail Way Transport.

<sup>40</sup> Interview with Highway Police Col Nay Win, Commander of the Highway Traffic Police Force, Head Office of Highway Police, in Naypyidaw, Myanmar (June 21, 2015)

In relation to right to health, section.1 of the Fatal Accidents Act of 1855 says that injured, effected, or dead victims shall take their case to court in order to get compensations for the loss that they suffers due to someone's mistakes, carelessness, and faulty actions.<sup>41</sup> However, such laws for the rights of the injured victims or the family members of dead victims from road accidents for getting financial compensation for medical treatment or refined medical treatment are not provided formally in related highway law. Even the Fatal Accidents Act of 1855 itself has rarely been implementing in practice. It is especially provided for person in tort in other words it is for law of tort. Most compensation given to victims or victims' families is mostly in a form of informal social responsibilities taken by bus line travel company's owners, bus line social associates, and the all highway bus line steering committee board.<sup>42</sup> Therefore, in order to make those compensational forms especially for medical treatment more effective, legal channels should be improved in order to ensure the right to health by the victims.

## 5. Conclusion

In conclusion, the frequent road accidents happening on the Yangon-Naypyidaw-Mandalay Highway road are mainly occurring due to human default, mechanical failure, poor road quality, and bad weather. However, from the perspective of seeing beyond those visible factors, the collected data suggests the underlying causes behind those road accidents as partly due to poor law enforcement, poor vehicles inspection, and poor highway road facilities. This highway road is the only highway road connecting upper and lower Myanmar, yet travellers and the public has no other options apart from this road despite knowing potential dangers from road accidents. For that case, the most fundamental human rights such as the right to life and the right to health (emergency health care) of those travellers and especially to road accidents' victims are indirectly threatened.

In order to ensure those human rights of right to life and right to health of its general public, prevention activities before road accidents and remediation functions after the road accidents should be done by the State. As for preventive actions before the road accidents, highway road should be built or upgraded according to international standards for highway roads; reliable communication systems and helps shall be provided and all safety road signs must be designated, location marked including international colour code by a trained specialist appointed by the road highway authorities; and opening regular road safety education and training courses. As for mitigation and remediation process after the road accidents, the State has an obligation to uphold, mobilize, improve and ensure pre-emergency health care services; adequate investigation systems of road conditions for finding real causes of road accidents and provision of maintenance; traffic police's handling procedure and implementation; and adequate judicial measures in an effective, timely, and consistent manner. But those obligations cannot be fulfilled only by a single Government department or single shareholders. All the activities should and have to be done with active and frequent collaborations of multi-stakeholders under the guidance and with the direction of the State so that individual's human rights are ensured and

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<sup>41</sup> The Fatal Accidents Act, 1855, Burma Code (Volume .VIII) p. 8.

<sup>42</sup> Interview with U Than Tun, Chairperson of the all Highway Bus Line Steering Committee, in Mandalay, Myanmar (28 May 2015).

safeguarded in relation to highway road users. In order to fulfil those requirements, the government should have the outlines of a road safety program, including a high-level committee that brings together all of the relevant ministry departments such as transport, construction, health, police, etc.

In additions, the finding from collected data also suggest that the most challenging task to tackle potential threats to human rights in relation to road accidents is not due to inexistence of related road laws and regulations. However, it is because of little awareness and utilization given to those laws by the public at ground level and by the implementers at the policy level. That inadequate enforcement towards the existing laws leads to weakness in policy and practical implementation in dealing with road accidents. Some examples could be failure to take legal actions effectively to the criminals who broke the highway road laws.

Therefore, it draws an important role of the State to provide effective and specific Traffic Law to enact as well as to reassess, modify, and improve existing related laws to road safety. This is not to say other procedures and activities like State's provision of emergency health care services or highway road infrastructure or other measures are not important tasks for the State to advocate. For mitigation and eliminating road accidents and its subsequent potential threats to human rights of accidents' victims especially on the said Highway Road in Myanmar, it is the State's sole and essential obligations to improve and implement both judicial measures/enforcement and other actions mentioned throughout the research so that individuals' right to life and right to health (emergency health care) are ensured and safeguarded.