

Protection of Child Rights under Myanmar Laws

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Abstract

In societies around the world, ensuring the survival of children is always given high priority. Children and youth are the future of any country. In Myanmar, children account for around one-third of the total population of over 53 million. Children have the rights to be protected from harm, abuse and neglect. Children have the rights to advocate for themselves and to express their opinion, including in the security and maintenance of their safety and well-being. Although the best interests of the child are not yet defined, every decision must be made first and foremost when making decisions for the child.

Key words: Child Rights Protection, Convention.

Introduction

“Rights” are things that every child should have or be able to do. All children have the same rights. These rights are listed in the UN Convention on the Rights of the Child. Almost every country has agreed to these rights. All the rights are connected to each other, and all are equally important. Sometimes, we have to think about the rights in terms of what is the best for children in a situation, and what is critical to life and protection from harm. As you grow, you have more responsibilities to make choices and exercise your rights. Popular wisdom in Myanmar says: “Children are our precious gems”. This is not only a declaration, it is a truth. The people of Myanmar love their children.

Material and Methods

The material and methods of paper are as follows:

- UN Conventions
- 2008 Constitution
- Myanmar Laws

Aims and Objective

The aims of the paper are as follows;

- to prevent of abuse, neglect, exploitation and violence against children,
- to protect of children who are experiencing hurt or are at risk of harm,
- to restore and reintegrate of children who have been exposed to neglect or abuse back into their families and communities.

Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) was adopted by the General Assembly of the United Nations on 20 November 1989. The CRC entered into force in 1990 and is now the most widely ratified human rights treaty in history. The CRC sees human rights as a method to address and ultimately solve problems using the ‘best interests of the child’ as a guiding principle. Every child is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The CRC is guided by four overarching principles set out in General Comment No. 12 (2009). They are intended to strengthen both the understanding of children’s rights, and to influence how children’s rights are protected by State and families.

1. Non-Discrimination (Art.2): children should not be denied their rights because of discrimination.
2. Best Interests of the Child (Art. 3): when making decisions about children, the best interests of the child should be the most important criteria.
3. Survival and Development of the Child (Art 6): the life and survival of the child should be of the utmost importance to States in their activities, and they are obligated to ensure children develop into healthy adults.
4. Respect of the views of the child, or rights to participate (Art 12): children should be able to participate in decisions that concern them according to their age and maturity.

Myanmar acceded to the Convention on 16th July 1991. With reservations on articles 15 and 37 and it became a State Party to the Convention on 14th August 1991. In order to implement the rights of the child embodied in the CRC, the Child Law was

promulgated on 14th July, 1993 and the reservations were also withdrawn on 15th October 1993.

Definition of the Child

According to Collins English dictionary, a juvenile is a child or young person who is not yet old enough to be regarded as an adult. Juvenile activity or behavior involves young people who are not yet adults. A juvenile or child means a person who has not completed eighteen years of age.

According to International Law, a “child” means every human being below the age of 18 years. Today this is a universally accepted definition of a child which comes from the United Nations Convention on the Rights of the Child (UNCRC).

The Article 1 of the UNCRC mentions that “For the purpose of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.

There are different ranges of age demarcation for the term of child under the various areas of law in Myanmar.

In section 2 of the Young Offenders Act is provided that a child means: (a) a person under (a specified age) means an individual who has not attained that age. (b) a person between (specified age) means an individual who has attained the lesser age but has not attained the greater. (d) “Training school” means a school established or certified under this Act being a “junior school” if for the reception of persons under 14, a “senior school” if for the reception of person between 14 and 16 and a “borstal school” if for the reception of persons between 16 and 21.

The Savings Certificates Act (1947), section 2 (a) is provided that “minor” means a person who is not deemed to have attained his majority under the Majority Act.

In Myanmar, some of labour laws are provided the definition of child or minor who is under the age of 15 years, such as The Children (Pledging of Labour) Act (1933), The Mines Act (1923), The Workmen’s Compensation Act (1923), The Oilfield (Labours and Welfare) Act (1951), The Factories Act (1951),

The Apprentices Act (1850), for better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments, by which, when they come to full age, they may gain a livelihood. It is enacted as apprenticing of child between ten and eighteen years.

In section 2 of the Child Marriage Restraint Act (1929) is provided that “Child” means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age.

But it should be noted that if a boy above 18 years of age marries a girl under 14 years of age with or without the consent of her parents, he offends against the provision of the Child Marriage Restraint Act and exposes himself to punishment.

The girl under 20 years of age and not a divorcee or widow, the consent of her parents or guardian is requisite for a valid marriage. This consent may be expressed or implied and consent subsequently given will validate the marriage ab initio.

Of the above laws, only the Workmen’s Compensation Act (1923) and the Factories Act (1951) are used, and the rest of the laws are repealed. This is to show the age of the child.

In section 3 (b) of the new Child Rights Law (2019) is provided that “Child” means a person who has not attained the age of 18 years. In Myanmar, the previous old law is the Child Law, 1993 provided that “Child” means a person who has not attained the age of 16 years; (Section 2(a)). Youth means a person who has attained the age of 16 years but has not attained the age of 18 years; (Section 2 (b))

The 1993 Child Law (2014 Amendments) of Myanmar, for example, defines a child as a person aged under 18, while for statistical purposes, the United Nations defines a child as a person aged 0-14 and a youth as a person aged 15-24 (United Nations, 2008).

Under section 3 of the Anti-Trafficking in Persons Law (2005) is provided that “child” means a person who has not attained the age of 16 years, and “Youth” means a person who has attained the age of 16 years but has not attained the age of 18 years.

In section 2 of the Early Childhood Care and Development Law (2014) is provided that “early childhood” means that is from birth to age of eight years.

In the Myanmar context, a juvenile or minor or child is any person who is below the age of 15 years. However, the Myanmar Penal Code specifies that a child cannot be charged for any crime until he has attained ten years of age. Nothing is an offence which is done by a child above 10 years age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on the occasion.

In section 3 of the Majority Act (1875), is provided that a person shall be deemed to have attained his majority when he shall have completed his age of 18 years and not before, and, a person for whom a guardianship is appointed by the court shall be deemed to have attained his majority when he shall have completed his age of 21 years and not before.

However, Section (2) (a) of the Majority Act specifically excludes the issues under the family law from its purview as follows;

“Nothing herein contained shall affect the capacity of any person to act in the following matters (namely) – marriage, dower, divorce and adoption; the religion or religious rites and usages of any class of person”. Where there is a conflict between the enacted law and the customary law, the enacted law will prevail.

Hence, to ascertain the definition of the child for the purpose of marriage and adoption, we have to be guided by the Myanmar customary law.

Under Myanmar customary law, a Myanmar Buddhist youth of any age can enter into a valid

marriage without the consent of his parents or guardians when he attains puberty i.e. physically competent to marry. Except in the case of widows or divorcees, a girl under 20 years of age cannot contract a valid marriage without the consent, either express or implied of her parents or guardians. A boy reaches his majority when he attains puberty and a girl child, except in the case of widow or divorcee, reaches her majority when she completes 20 years of age for the purpose of marriage under Myanmar customary law.

The child definition above mentioned generally analyses that a child means a person who has not completed 18 years of age.

Related Child Rights Myanmar Laws and UN Organizations

While parents may always love their children, opinions on how they should be protected, what rights they should have, and what type of work they can do, change according to how society views children and childhood. Centuries ago, some children could be forced into hard labour, face criminal charges as adults, and were often married as adults.

In Myanmar, every child has the rights care and protected not only national laws but also UN Organizations, such as ILO, WHO, UNICEF, ASEAN and others organization.

Protection under UN Organizations

Myanmar is in a time of continuing transition, providing new opportunities for the realization of child rights and welling, but also many challenges. Considerable progress has been achieved as the Government of Myanmar works to realize and improve health care, education, water and sanitation, protection, and budgets for the country's children and communities.

In Myanmar, children account for around one-third of the total population of over 53 million. Children require security in addition to progress in development. More than two million children and 5-17 years remain out of school, and an estimate 232000 child with disabilities - two thirds of the total with disabilities- do not attend school.

Poverty remains the major contributing factor in the large numbers of children in Myanmar who are out of school and working, often in hazardous conditions.

Migration is a major part of life in Myanmar, and children who migrate to follow their families or for education are more vulnerable to exploitation.

An estimate 20 per cent of children and adolescents work, with half under the minimum working age.

The chances of survival of children and women have risen. The births of many more children are being registered, helping to safeguard their future chances in life. Children belong at the heart of the Myanmar Sustainable Development Plan introduced in 2016 (strategy for 2016-2030), this plan with the support of UNICEF. The plan, together with its

supplementary indicators framework, presents a great opportunity to put children at the center of long-term development.

Myanmar has ratified ILO Convention No.182 on the worst forms of child labour in December 2013. Since then collaboration to combat child labour between ILO and Myanmar started at not only in policy and legislation areas, but also in terms of the actual implementation of those policy in the ground, which includes the adoption of the first National Action Plan (NAP) on Child Labour in 2019, which includes the list of hazardous work prohibited to children under 18 as required by the Convention. On June 8, 2020 Myanmar ratified ILO Convention 138 on the minimum working age.

Companies may employ persons under 18 to the detriment of their health, development, education or family life. Children living in rural areas were more vulnerable to entering work, especially in agriculture, due to higher poverty rates and lack of access to health care and education. Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative.

In Myanmar, child labour was mostly seen in agricultures, factories, tourisms, ICT companies, tea shops, beer stations, and restaurants. Child labour are not accepted (ILO Conventions 138 and 182 and to the UN Convention on the Rights of the Child). No person shall be employed at an age younger than 15 (or 14 where the national law so allows) or younger than the legal age for employer if this age is higher than 15. The company must take the necessary preventive measures to ensure that it does not employ anyone below the legal age of employment.

All legal limitations on the employment of persons below the age of 18 years must be followed. We acknowledge that according to the UN Convention on the Rights of the Child, a person who is a child until the age of 18. We recognize the rights of every child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Child labour deprives children and adolescents from a normal childhood, exposing them to moral, health and social risks. It prevents them from education, studying normally and also from developing skills and abilities to their highest potentials. Child labour is a serious violation of human rights and fundamental rights and principles at work, thus representing a barrier to decent work.

The ILO is thus urging partners to join efforts that build on the respective ILO Conventions and Recommendations, the UN Convention on the Rights of the Child and protect all children in or at risk of child labour and ensure that they are a priority in the COVID-19 response.

Myanmar has ratified the so-called "child soldier treaty", formally known as the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-

OPAC). The significance of this protocol is that it bars the states from using children under the age of 18 for military purpose; it also requires states to make sure all armed groups distinct from (state) armed forces ensure there is no military use of children under the age of 18. The protocol was adopted by the UN General Assembly on May, 2000 and entered into force on Feb, 12, 2002. Myanmar is the 169th country to ratify the protocol.

The UN and the Myanmar Government signed a Joint Action Plan to end the recruitment and use of children in June 2012, and the Myanmar government signed the CRC-OPAC in 2015. Since then, the military has discharged children from service in several releases. The Tatmadaw allowed 1,579 soldiers under the age of 18 to resign between 2014 to March 2019. Children suffer from grave violations related to armed conflict between the Tatmadaw and ethnic armed groups, particularly in Kachin, Shan and Kayin states. In accordance with the Action Plan, suspected minors should be identified and released immediately without conditions. Poverty is a key driving factor of underage recruitment in Myanmar. Resources are required for sustainable reintegration services that include economic opportunities through education and vocational training.

Myanmar ratified the Convention on the Rights of the Child in 1991, and enacted the Child Law in 1993. However, the original law had no provisions regarding the military use of children. The Union Parliament passed amendments to the law in July 2019 introducing a new chapter on children and armed conflict. Sections 63 and 64 of the Child Rights Law bar the Tatmadaw and not-state armed groups from recruiting and conscripting children under the age of 18 years.

Protection under Myanmar Laws

Protecting children from violence is one of the most important duties of both State and family. Every child has a right to protection from abuse, neglect, violence and exploitation. In Myanmar, every child is protected under many laws; such as Constitutional Law, Code of Criminal Procedure, Labour Laws, the Anti-Trafficking in Person Law, Educational Laws, especially is the Child Rights Law, 2019.

The Constitution of the Republic of the Union of Myanmar (2008), in chapter VIII, sections 345 to 390 is provided that citizen, fundamental rights and duties of the citizens. Especially, mothers, children and expectant women shall enjoy equal rights as prescribed by law.

In section 488 (1) of the Code of Criminal Procedure (1898), if any person having sufficient means neglects or refuses to maintain his legitimate or illegitimate child unable to maintain itself, the Court may order him to make a monthly allowance not exceeding K.50,000 in the whole. (2015 Amendment Law)

The Anti-Trafficking in Person Law (2005) is provided that the Central Body and relevant Working Groups, shall give and carry out special protection of trafficked victims, women children and youth; such as their dignity, identification, necessary security and assistance, send them back to their parents, other suitable and secure protection, freedom of expression of their desire and freedom of choice according to their age and maturity, special arrangement for remedy of their physical and mental damage, giving vocational education based upon education and technique and medical examination and medical treatment with their consent and give protection by keeping confidential the information relating to them.

In National Education Law (2014) every child has the rights to education are provided that related to early childhood care and development education from birth to age eight, preschool is age 3 to 5, kindergarten is 5 year old. Basic education that every citizen must learn, the Nation designates as “free and compulsory education”. A special education program was the establishment of schools which have special programs to teach disabled children.

Now globally, the COVID-19 pandemic continues to claim lives and livelihoods. And the crisis is battering essential services that secure the education and protection of children, often with deadly costs.

In Myanmar, the socio-economic impact of COVID-19 could affect public financing and result in a reduced level of services provided by the Government. Thus, with the COVID-19 outbreak still unfolding and as the Union Parliament examines the supplementary budget, the importance of allocating sufficient resources to address the short and long-term impacts of COVID-19 on children’s health, well-being, development and prospects cannot be stressed enough. Education can encourage students to become advocates for disease prevention and control at home, in school, and in their community by talking to others about how to prevent the spread of viruses. Maintaining safe school operations or reopening schools after a closure requires many considerations but, if done well, can promote public health.

The protection of children and educational facilities is particularly important. Precautions are necessary to prevent the potential spread of COVID-19 in school setting.

The Child Rights Law, 2019

In 23rd July 2019, Myanmar has finally enacted a new law to protect the rights of children. This law is fully enacted to the rights of child. It is included 30 chapters and with 121 sections.

Every effort by the Union Government has targeted socio-economic development and the rule of law in the country. In other words, current efforts would result in a superior heritage for the country’s next generation, who are now children.

Hence, for our next generation the new Child Rights Law was written, and is consistent with the United Nations Convention on the Rights of the Child

and is to be adaptable to changing situations in the country.

There must be rules within the new Child Rights Law to implement the rights of our children. Before the law, every child must have equal opportunities. Therefore, the rules which will be drafted soon must guarantee granting equal rights and benefits for every child in different areas.

Consistent with the United Nations Convention on the Rights of the Child, which Myanmar has ratified, the law defines a child as anyone younger than 18 and provides all children born in Myanmar have the right to birth registration.

This is important, but other shortcomings need to be addressed. Myanmar should revise the law to provide all children with the right to a nationality and not be stateless – therefore, full citizenship rights.

The State recognizes that every child has the right to survival, development, protection and care and to achieve active participation within the community. Every child has the inherent right to life and the parents or guardian shall register the birth of the child in accordance with law. Every child shall have the right to citizenship in accordance with the provisions of the existing law.

Hence, we should pay more attention to issues related to the care and punishment of children, when the rules are drafted. At the same time, child adoption must be allowed without deviation from the country's existing rules and regulations.

It is also necessary to have clear tasks for implementing the rules of the new Child Rights Law, which sets higher standards for safeguarding the rights of children in all circumstances, and these directives should be in line with the law.

We need to take into account the role of the parents and relatives whom children rely on. Only then can we enforce the legal framework and achieve the success of the policy of the Union Government.

Children are the most important and vulnerable part of society. We used to focus on institutional care, but now we are aiming to branch out to alternative care. The process is not easy, but if everybody is dedicated and willing to protect the nation's children, it is not impossible.

Children in conflict with the law will have their rights protected by the lawyers, police, prosecutors, judges and social service providers. Children need strong and skilled defenders to fight for them from the earliest possible moment after arrest, and their cases must be handled differently from adults.

The new law stated that detention of children should be a last resort and called for alternative means of punishment for juveniles. The authorities currently detain children awaiting trial, and there is a lack of expertise in the area of child development. There was also a need to design and implement mechanisms for alternative sentencing.

Myanmar law still has a long way to go in its treatment of children who commit crimes. The new law raises the age of criminal liability from the ridiculously low 7 years to 10 years. Even with the

change, Myanmar is one of the lowest ages of criminal responsibility for children of any country in the Association of Southeast Asian Nations (ASEAN). The UN Committee on the Rights of the Child has called on governments to set the minimum age of criminal responsibility at 12 or higher.

The Child Rights Law provides new protections for children in conflict with the law, but there needs to be a collaborative effort to implement those protections. The majority of children detained in Myanmar do not have a lawyer to defend them. That is why we are committed to expanding access to high-quality legal aid and providing specialised training in juvenile justice.

Myanmar has ratified the United Nations Convention on the Rights of the Child, which includes four core principles- non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the view of the child.

The Child Rights Law, Pyidaungsu Hluttaw was passed in July, 2019, appropriately sets 18 as the minimum age of marriage, regardless of gender. Child marriage is hard to track in Myanmar. Now Myanmar should create a national action plan to end all child marriage, aligning implementation of the law to Target 5.3 of the 2030 UN Sustainable Development Goals. Relevant ministries should work together and develop a comprehensive plan containing measurable benchmarks and clear timelines.

The child rights law now sets the minimum age of employment at 14 years and forbids children from doing dangerous forms of labour. But the Ministry of Labour, Immigration and Population still needs to finalize a hazardous jobs list. The International Labour Organization estimates a million children are employed in underage and often dangerous work in Myanmar. A jobs list has been circulating for a considerable time, and should be finalized in consultation with unions, civil society groups, child rights advocates, and employers.

The following child is a child in need of care and protection:-

- (1) one who has no parents or guardian;
- (2) one who is in the custody of a cruel or wicked parents or guardian;
- (3) one who is employed by worst form;
- (4) one who is stayed on street;
- (5) one who is faced a case in court;
- (6) one who is sexual exploited;
- (7) one who is trafficked;
- (8) one who is divorced or separated parents;
- (9) one who is suffered AIDS disease or his parents is suffered AIDS disease;
- (10) one who earns his living by begging;
- (11) one who is employed in production, selling and transportation a narcotic drug or a psychotropic substance;
- (12) one who is of unsound mind or is afflicted with a contagious disease;
- (13) one who is of so depraved a character that he is uncontrollable by his parents or guardian;

- (14) one who is suffer affected by Act of God or arm conflict;
- (15) one who is poverty and disabled;
- (16) one who is determined as such from time to time by the Ministry.

Every child is protected not only enacted laws by the State but also parents and teachers. And also every child is studied of enacted laws of the State and lived in accord with law.

Every child shall abide by the ethics and discipline, according to his age, such as upholding and abiding by the law, obeying the advice and instruction of parents or guardian and teachers, abiding by the school discipline, work discipline and community discipline, cherishing and preserving the race, language, religion, culture, customs and traditions concerned with him, abstaining from taking alcohol, smoking, using narcotic drug or psychotropic substances, gambling and other acts which tend to affect the moral character.

Parents, teachers and guardians shall give guidance to ensure that the practice of abiding by the ethics and discipline above mentioned is infused into the children.

The fundamental responsibility of the parents is designed to protect children from all forms of harm, abuse and neglect.

Myanmar's Child Rights Law has filled an important gap in the law but reforms still need to be enacted and implemented.

No law is perfect. But we did our best in enacting the law, and now need to again do our best in creating the rules of the law.

We are going to protect child rights in the interests of children, and not for the benefits of others. The value of human society depends upon how it protects its children.

We believe that child protection requires everyone to take responsibility and that every child matters. We recognize that the care, protection and welfare of a child are paramount and that all children have the right to be protected from all types of harm.

As we fight the impacts of COVID-19 together, we must provide additional protection for children so they are not put in a situation where they are forced into the most dangerous forms of labour, that push them to miss school and impair their health and well-being.

We need integrated approaches that strengthen child protection systems and simultaneously address poverty and inequity, improve access to and quality of education and inform and mobilize the public to respect children's rights.

Conclusion

In conclusion, every child has the right to be safe and protected from all forms of harm, including, but not limited to, protections from physical, emotional, and sexual abuse as well as from neglect and negligence. Moreover, every child has the right to be informed of, and to understand, the child rights law

and procedures. Despite all the challenges, the future for children in Myanmar holds much promise. With continued and increased commitments and budgets for the children who are the country's future. Myanmar can achieve its wider national goals for growth and prosperity and fulfill targets for the Sustainable Development Goals by 2030. By implementing the rights of the child recognized in UNCRC, 1990 and the Child Rights of Law, 2019, taking the public awareness, cultivating the best behaviours and surrounding, growing up under the proper care and proper facilities, educating them on account of State and Voluntary Social Workers and non-governmental organization, we will see the high generation in the future. The relevant Ministry will also have to provide the child rights rule and some of the provisions of this law, such as Marriage, Adoption and Citizenship, are different from other laws. Therefore, when making rules, it is necessary to clearly state the differences.

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