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MYANMAR:
Limitations and Violations of Children's
Rights in Orphanages

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Abstract

Currently, Myanmar and its inhabitants are experiencing military, economic, religious and geopolitical conflicts in almost all the regions of the country. This is clearly demonstrated on the map of the restricted areas in Myanmar, which has been divided by different colors depending on the level of danger in the region. Some of the zones are completely restricted to foreigners, which corresponds to one of the Asian pillars and its inherent principals of noninterference, cultural relativism and significance of sovereignty.

Consistently in the issue, military conflicts are affecting first the most vulnerable groups of people, leaving a dramatic mark on them and on the development of future generations. International human rights observers have remarked a rising trend in the quantity of the disadvantaged victims, especially orphans in the region.

Religion has played a significant role in establishing moral rules in the Asian understanding of morals and dignity. Most citizens of Myanmar are inclined to their traditions and practice them regularly in their daily life. There is a wide variety of pagodas and temples in this region, and Buddhism, Hinduism, Christianity and Islam brought their own influence into the lives of the orphans in Myanmar, as most of them live and are supervised by monks or nuns in the monasteries.

An alarming increase in the number of orphans in Myanmar has a negative affect on these children's lives, depriving them of their childhood and hope for dignified future. Whereas in some other parts of the world there is an idea that aims to move away from the orphanage system and to adapt a family stay system instead, such is not the case of Myanmar. This scenario is naturally connected to the economic situation and current conditions of the population in the country.

This thesis will investigate situation of children in Myanmar, under the scope of reports of the UNICEF, Save the Children and other NGOs/INGOs. There we will take into consideration legal decisions and documentations, and relevant international institutions' data (UNICEF, UNDP, NGOs/INGOs) to witness the situation of children's rights violations, especially the access to health and reports about orphans' birth registration (namely as regards those aged from 2 to 16) and data from the different international organizations that work in this field. We will see, then the real current situation from the realistic and critical prospective.

The focus is on the Monastic School, 'Zayar Thiri' where I conducted an initial investigation considering the present-day state of the orphanages and the various human rights implications. The emphasis will be given on two spheres: access to health, and the birth registration of orphans who are aged 2 – 16 years old and who lost their parents during the conflict in the Shan State and other conflicts in Myanmar. Consequently, 90 girls, victims of an arduous situation in Myanmar, do not have any documents of their birth registration, and hence no access to health and education. Unfortunately, this situation leads to child trafficking, child labor, child marriage and other forms of violation of children's rights.

It is crucial and urgent to answer these questions and move towards a possible solution: What is the current situation with the orphans in Myanmar? What has already been done by the UN, Save the Children and other NGOs/INGOs in Myanmar in this context? What is the main reason of non-existence of birth registration? What is the potential of the DNA test to find relatives of the orphans? Why is the state not providing basic life standards for the orphans?

Who is responsible for that? (for example, on nutrition in emergency, they only receive rice twice per day, and no education and access to health are guaranteed). What can be done to improve the standards of life for the orphans in Myanmar?

KEY WORDS:

Convention on the Rights of the Child; Asian Values; UNICEF; Orphans; Right to Health; Housing; Education; State's Obligations; Religion; Poverty; Birth Registration; Deprivation of liberty

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List of Abbreviations

CPW - Child Protection Worker

CPWG - Child Protection Working Group

CRC - UN Convention on the Rights of the Child

CRC - Committee UN Committee on the Rights of the Child

CSO - Civil Society Organizations

DNA - Deoxyribonucleic acid

ECCD – Early Childhood and Development

ECPAT - End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic Social and Cultural Rights

ILO - International Labor Organization

INGOs - International Non-Governmental Organizations

LNGOs - Local Non-profit Organizations

MHAA - Myanmar Health Assistant Association

NGOs - Non-Governmental Organizations

SDGs - Sustainable Development Goals

UDHR - Universal Declaration of Human rights

UPR – Universal Periodic Report

UNESCO – United Nation Educational, Scientific and Cultural Organization

UNICEF - UN Children’s Fund

UNODOC - UN Office on Drugs and Crime UNSDSN UN Sustainable Development Solutions Network

VSO - Volunteer Service Overseas

WB - World Bank

WHO - World Health Organization

Definition of terms

Family based care: care provided by the extended family, kinship or foster care.

Forced Labor: All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Full adoption: Relationship that creates a new parental bond between the adopter and the adopted child and cuts all ties with the adopted child's original family, except where the spouse's child is adopted (unlike simple adoption).

Human Trafficking: Trade of humans for the purpose of forced labour, sexual slavery, commercial sexual exploitation for the trafficker or others and other forms of exploitation.

Modern Slavery: Practices that restrict freedom of movement, control of personal belongings and lack of informed consent and full understanding of the nature of the relationship between parties. It involves trafficking of children and forced child labor.

Medical Torture - describes the involvement of, or sometimes instigation by, medical personnel in acts of torture. Medical torture overlaps with medical interrogation if it involves the use of professional medical expertise to facilitate interrogation or corporal punishment, in the conduct of torturous human experimentation or in providing professional medical sanction and approval for the torture of prisoners. Medical torture also covers torturous scientific (or pseudo-scientific) experimentation upon unwilling human subjects.

Non-family based care: Orphanages, institutional and residential care.

Orphanage: Non-family based care setting, part of the State's child protection system. Orphanages' states: care settings governed by the State, as execution of their duty to provide an appropriate child protection system, duty to protect children from exploitative practices and the duty to prevent children's rights violations within their jurisdiction.

Orphanage Volunteerism: Industry that offers volunteering projects in orphanages or institutional care. It gives voluntarists the opportunity to have direct contact and interaction with children living in the orphanage.

Orphan Well-being Index (OWI) or the Child Development Index (CDI) is an index combining performance measures specific to children - education, health and nutrition - to produce a score on a scale of 0 to 100. A zero score would be the best. The higher the score, the worse children are faring.

Paper orphans: Term that appeared within the inter-country adoption sphere to refer to children with a false record appearing as having deceased parents, thus, adoptable.

Simple adoption: is the creation, by court order of a parent-child relationship (or filiation) between 2 persons (the adopter and the adoptee). It enables adopted persons to retain all of their rights and obligations in their family of origin, including hereditary rights

Volunteer: Individual willing to perform voluntary work and invest his or her time, energy and money in projects with the potential to be beneficial for the local communities and worthwhile for themselves.

Introduction

Through the ages Myanmar has been experiencing its ups and downs from being the largest empire in the history of Southeast Asia, to the one of the smallest economies in the world today. For more than a century Burma was a British colony, which brought changes in the governmental structure, as well as shift in religion and mentality of the locals. Burma and its citizens experienced the longest running civil war ever known. Only in 2010 did the military regime ended, and slowly and carefully Myanmar started opening its doors for the foreign community.

Southeast Asia contains 60% of the world's population, with its own variety of nations, cultures, religions and traditions. Myanmar, previously known as Burma, is a country of contrasts. The existence of the caste system is hitherto depriving people of the chance for the development in all its significances and taking away a possibility to have prosperous future. It is the biggest Buddhist center in the world with its strong own moral and a variety of restrictions. Nevertheless, continued violations of human rights take a big place in this multicultural region.

Despite the fact that Myanmar is one of the first United Nations member states to adopt the UDHR (and ratified the Convention on the Rights of the Child more than twenty-nine years ago), children are still deprived of basic standards of life. Currently, according to the recent statistics on the situation with the orphans in Myanmar, there are 280 orphanages, which became a shelter for more than 36.000 orphans. A big number of the orphanages are not registered, which means that the number of children without parents is even higher than the official numbers.

It is important to note that Myanmar is one of the sustained members of the ASEAN.¹ Therefore, it is strongly sharing the ideas and values within ASEAN Human Rights Declaration, by bringing so much attention to the safe drinking water and clean environment, dismissing the emergent aspects, for instance, lack of education, access to health and absence of the birth registration.

In our day Myanmar is experiencing military conflicts in almost each state. There are conflicts between religious groups, political opponents, economic, geographical conflicts, opium, gold and other wars. This is continuously bringing and aggravating a massive poverty, inequality, illiteracy, discrimination and even the genocide in the Rohingya State. Consequently, the most vulnerable groups of people are additionally marginalized and enjoy less and less protection.

A comprehensive work needs to be done in the investigation of the number of orphans and orphanages in Myanmar, to make an action in providing an emergent help for children deprived of the access to education, health, birth registration and, what is the most important, love. Myanmar can learn from the practices and experiences of Europe and the USA, for example, to change the system from the orphanages to the family care, which could positively impact future generations.

¹ The Association of Southeast Asian Nations (ASEAN) is a regional intergovernmental organization comprising ten countries in Southeast Asia, which promotes intergovernmental cooperation and facilitates economic, political, security, military, educational and sociocultural integration among its members and other countries in Asia.

In the conclusion, I will investigate and summarize all the data and knowledge I have collected by conducting research on the situation of orphans in Myanmar and suggest what could be done, changed or added to the national law, policies and practices. This thesis suggests that, with the working partnership of the government, civil society and international institutions, significant changes can be brought towards improvement of the basic standards of health and birth registration avoiding continued violations of children's rights in Myanmar.

1. Overview of the Myanmar participation in International Conventions

1. History, culture and religion of the country. Investigation of the current number and life of orphans in Myanmar.

Myanmar is a country in the Southeast Asia with the neighbors of Bangladesh, Thailand, China and Laos. Its population is of more than 54 million people, with the majority of Buddhist religion, but also with Islam, Hindu, and Christianity religions. It is a Unitary Parliamentary Constitutional Republic. Currently there is an ongoing genocide in Rohingya State and military conflicts in the almost each State of the country which is introduced on the map: Armed conflict zones (based on opium, gold, territory and religion).² Annex (1)

Myanmar's GDP per capita is \$172, when in the neighbor Thailand for instance this number is reaching \$2,542 and in Cambodia \$282. These numbers introduce Myanmar's economy and shows that this country is one of the poorest among neighbors, despite being one of the biggest countries in the South East Asia. One of the reasons of the low economy in Myanmar is the continued conflicts.³

Furthermore, 50% of Burmese children live in poverty. According to the Hunger Map(2019), provided by the World Food Program (WFP), in Myanmar 14,9% of the population do not have enough food.⁴ It is important to emphasize that children without birth registration were not included in this statistics as there is no data available of how many of them are in Myanmar.

The rampant increase in the number of orphans in Myanmar is negatively reflected in these children's lives, depriving them of their childhood, basic human rights and the hope for a brighter and better future. Notwithstanding a widespread concept of family care system which is adopted in many countries throughout the world, this is not the case with Myanmar, where the orphanage system is still very prevalent. This scenario is naturally connected to the economic situation and current conditions of the population in the country. Moreover, the majority of the orphan children are institutionalized as a result of the bad governing, lack of policy and reforms, but mostly due to the poverty. Another serious aspect worth noting is the further aggravation of the situation as a consequence to the occurrences of natural disasters. The most significant in recent times occurred in 2008 when cyclone Nargis destroyed Myanmar, and many children lost their parents. Currently most of the orphans are from Kachin State, Chin State, Shan State, and Yangon. The orphanage which I am studying accommodates children from the all over Myanmar, but mainly from the Shan State. Mostly, these children lost their parents because of military conflicts, poverty, convictions for drug trafficking, and mental illness and unsuitability to provide a proper care for their children. Year by year the number of orphans in Myanmar is increasing. That is prompted by the fact that the economy is

²Human Rights Council, Report of the independent international fact-finding mission on Myanmar, A/HRC39/64, 12 September 2018

³ The sources are Asian Development Bank, "Facts & Figures", 1998

⁴ World Food Program (WFP) - WFP was established in 1963¹ after the 1960 Food and Agriculture Organization (FAO) Conference, when George McGovern, director of the US Food for Peace Programmes, proposed establishing a multilateral food aid programme. The WFP was formally established in 1963 by the FAO and the United Nations General Assembly on a three-year experimental basis. In 1965, the programme was extended to a continuing basis. WFP's Hunger Map depicts the prevalence of undernourishment of the population of each country in 2016-2018.

unstable, as Myanmar is still not fully open for the cooperation with foreign countries nor for the investment. Another factor is continuing violations in Rakhine State, where children are massively losing their parents. Furthermore, the current COVID-19 pandemic brought more poverty and suffering to the population, and consequently the number of the disadvantaged children increased. From the positive aspects, we must highlight that the State started to issue birth registration for some orphans.

As mentioned above, Myanmar is a country which is still in the process of transitioning to democracy. There is still a lot to be improved towards increasing the well-being of children. However, we can notice certain improvements in different fields, such as education, health care, access to water and sanitation- even though Southeast Asia has a very high percentage of the child mortality. We must highlight, though, the rise of children and mother's survival rate in Myanmar. And one of the biggest issues of the absence of the birth registration is being slowly being addressed by providing these documents for more and more children. Myanmar Sustainable Development Plan 2018 draws more attention to the immerging problems with peace, social protection, inequalities, health and education of children in the country. This cooperation between Myanmar and the UN has an aim to improve child's protection, development, and wellbeing, and thus to ensure better future for everyone.⁵

2. Number and conditions of orphans and orphanages in Myanmar

Statistically the biggest number of the world's orphans is in Asia – 61 million by the year of 2015.⁶

In Myanmar, more than 460,000 of children were affected by conflicts, and also by natural disasters. More than half of the child population live in poverty. Over a million children are out of school, especially children with disabilities. The main reason why children do not go to school is poverty. Children are compelled to work as they have to support their families. Moreover, due to the current crises, there are many migrant children who are the most vulnerable and hence experience exploitation.

More than 200,000 children live in the monasteries without their parents and nearly 700,000 children live in the extended family.⁷

There are two different types of the orphan children: single orphans – children who have lost one parent; and double orphan – children who have lost both of their parents. For children who lost one of the parents, chances to find relatives are much higher than for double orphans, as such support practice is almost absent in Myanmar.

⁵ Myanmar Sustainable Development Plan/ The Government of the Republic of the Union of Myanmar/ Ministry of Planning and Finance, 2018-2030

⁶ UNICEF – For 70 years, UNICEF has worked to improve the lives of children and their families. Despite remarkable challenges around the world, UNICEF staffers fight for the rights of every child seeking safe shelter, nutrition, protection from disaster and conflicts, and equality. Press center, orphans statistics, 16 June 2017.

⁷ UNICEF, Children in Myanmar, The situation of children in Myanmar an overview, 2019

In view of this, I would like to bring your attention to the Monastic School, 'Zayar Thiri' where I had previously conducted a field-research in regards to the current situation with the orphans and the human rights issues. The focus was on the two spheres: access to health, and the birth registration of orphans who are girls, aged from 2 to 16 years old and who have lost their parents during the conflict in the Shan State and other conflicts in Myanmar.⁸ Consequently, 90 girls, victims of the arduous situation in Myanmar, do not have any documents of their birth registration, and hence no access to health and education. Unfortunately, this situation leads to child trafficking, child labor, child marriage and other forms of violation of children's rights. (Annex 2)

Within this work, I observed the orphans' conditions at the Monastic School 'Zayar Thiri', for one year in 2017. Once a week, volunteers and I visited this orphanage to provide English classes through various activities. Additionally, this presented a good opportunity for those orphans to communicate with the outside world, giving them a chance to express themselves, their needs and concerns.

The first impression of the conditions in which the girls were living was shocking. They were living outdoors, without clean water, hygiene products and toilets, most of them without basic clothing, like shoes. There were unsanitary conditions, a lot of infections and mold. These orphan children live in poverty without having their basic needs satisfied. What's more, they live in hunger.

There were only two main nuns who were tasked to take care of the 90 orphan girls. The place did not have any protection and no fence. Consequently, there were a lot of stray dogs which transmitted various diseases including rabies. According to the WHO, every year ten thousand people die by being infected by rabies, most prominently in Asia and Africa. A high percentage of victims are children, around 40% of whom are under the age of 15.⁹

Moreover, another danger for the orphan's health is Dengue. The disease is spread by a mosquito bite and, as Myanmar is hot and humid, the number of mosquitos, along with the disease they transmit, is extremely high. According to the investigation, conducted by the Dengue Fever Prevention and Control Program 123 people died from dengue in 2018 in Myanmar.¹⁰

Orphans are a population at great risk, as they do not have proper housing with mosquito nets and there are no precautionary measures aimed at protecting them.

Article 12.2(a) of the International Covenant on Economic, Social and Cultural Rights outlines the right to maternal, child and reproductive health. Mother's reproductive health is directly interdependent, interrelated and influences the fetus in the womb. For this reason, in Myanmar

⁸ The Shan people are the largest ethnic group in Shan State and the second largest in Myanmar. In 1947, the Panglong Agreement was negotiated between Aung San, a prominent founding father of Myanmar, and Shan leaders, which would have given the Shan the option to split from Myanmar a decade after independence if they were unsatisfied with the central government.

⁹ WHO - Home/ Newsroom/ Fact sheets/ Detail/ Rabies/ Key Facts, 21 April, 2020

¹⁰ Dengue Fever Prevention and Control Program – Vector Borne Disease Control Program under Department of Public Health to develop such a timely costed “National Strategic Plan for Dengue Prevention and Control 2016-2020.

people count the age of a baby starting from the point of the women to get pregnant.¹¹ The main goal of the Article 12.2(a) is to explain and obliged the state to provide all necessary sources to reduce stillbirth rate, infant mortality for the healthy development of the child. Necessary help needs to be provided for the family planning pre-and post-natal care, including access to information.

As observed, several children living at the monastery reported serious problems with their health. “My ear hurts so much and I have a terrible headache, and when I asked for the help from our main nun she did not answer anything.” Said Htet, a 7- year-old orphan. After asking for permission from the main nun, Htet was brought by us to hospital where she was diagnosed with Meningitis.

During the time of volunteering at that monastery, we found donors who helped build a house with all necessary facilities, water, electricity, and others. Once a week a nurse would come and make a health check to the children. Also, we organized that a teacher of Burmese conducted classes twice a week. That gave a chance to the children to be literate. Furthermore, they obtained a chance to communicate with other people, which is very important during the preparation for their future life when they become adults and leave the monastery. A few international volunteers were helping with providing English classes through a variety of activities.

The monastery also had a lack of food issue. Girls receive a portion of rice only twice a day. As within the Buddhist tradition, there should be no more than two meals a day, breakfast and lunch, but no dinner — explaining this by the fact that the feeling of hunger has a good impact on the spiritual development of a person.

There are donations occurring at least once a week, whereby sweets and toys are brought for the children. Occasionally, those girls are lucky to receive some food from volunteers and donators.

During the day, these orphan children work by walking from one shop to another and asking for food and money. When they come back, they give it all to the main nun, who is responsible to decide where to spend these funds. These children are forced to beg by being convinced that this is part of the Buddhist religion and traditions.

Another concern in these orphanages was the sudden disappearance of the girls. During my stay there, I would make an inquiry about the girls that were no longer there, and the response from the nuns was that it was no of our business. The orphan girls with whom I have worked are under the risk of being kidnapped, sold to the slavery, forced to prostitution, child marriage, or to become soldiers. In fact, we must bear in mind that, according to the information presented in the UNICEF book “Eliminating Violence Against Children” (2007),¹² around 1.8 million children worldwide are sexually exploited in prostitution and pornography and many of them were kidnapped and sold into these activities.

¹¹ Myanmar or Burma, officially the Republic of the Union of Myanmar is a country in Southeast Asia. Myanmar is bordered by Bangladesh and India to its northwest, China to its northeast, Laos and Thailand to its east and southeast, and the Adaman Sea and the Bay of Bengal to its south and southwest. With a size of 676,578 square kilometers. Myanmar is the largest of the Mainland Southeast Asian states by area. As of 2017, the population is about 54 million. Its capital city is Naypyidaw, and its largest city is Yangon (Rangoon). Myanmar has been a member of the Association of Southeast Asian Nations (ASEAN) since 1997.

¹² UNICEF Handbook for Parliamentarians, № 13, Eliminating Violence Against Children (2007).

Despite the existence of the international legally binding instruments to help children and prohibit any of the worst forms of child labor — for instance Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour — these occurrences still take place. Many children in Myanmar fall victims of trafficking or forced to sexual work and to other forms of abuse. Constantly, girls and boys that are exploited in prostitution suffer from physical and psychological violence and, if they ask for help they may be treated as criminals.¹³

Additionally, it is important to highlight the current situation of the inhuman treatment and torture in Myanmar. Frequently, the victims of the torture are children, children who lost their family, children in detention, refugees and orphans.

Moreover, the number of victims as a result of the military and other forms of conflicts in the country is growing, especially among children. A Justice Trust (JT) investigated that Tatmadaw within the continuous armed conflicts is perpetrating killings, raping of women and girls; torture, forced labour; pressure on children to participate in the military conflicts, and enforced disappearances.^{14 15}

According to the Human Right Watch, in 2018 in Bangladesh and Myanmar there were continuous cases of torture and ill treatment. More than 4500 of Rohingya refugees (among which, several children) were abused, tortured and raped on the Bangladesh - Myanmar border.¹⁶

In the recent work done by Manfred Nowak, ‘The United Nations Global Study on Children Deprived of Liberty’, Manfred Nowak stated that Deprivation of Liberty is deprivation of childhood, an indisputable statement. The main issue is that most of the orphan children are completely separated from the outside world. Furthermore, they are deprived of liberty without having committing any crime, most of the time they are not allowed to leave the walls of the orphanage (in the case of the Myanmar, children are allowed to leave the orphanage except when they are sent to beg on the streets). The situation is dramatic because these children are isolated from their peers, and these conditions do not allow orphans to fully develop physically nor morally.

One of the biggest shortcomings is that these orphans do not receive love, no one spends time with them by giving care like their parents would do. No one would read for them a fairytale

¹³ Economic and Social Commission for Asia and the Pacific Sexually Abused and Sexually Exploited Children and Youth in the Greater Mekong Sub region: A qualitative assessment of their health needs and available services/ST/ ECAP/UN/New York/2000

¹⁴ Justice Trust MM- a legal non-profit organization, that partners with lawyers and activists to strengthen communities fighting for justice and human rights.

¹⁵ The Tatmadaw is the official name of the armed forces of Myanmar (Burma). It is administered by the Ministry of Defense and composed of the Army, the Navy and the Air Force. Auxiliary services include the Myanmar Police Force, the People's Militia Units and until 2013 the Frontier Forces, locally known as Na Sa Kha.

¹⁶ Human Right Watch- Country Report, Myanmar, 2019. A nongovernmental organization, established in 1978, New York

or sing a lullaby or give a necessary hug before they go to sleep. In fact, most of the orphanages are overcrowded in Myanmar, which makes it more difficult to provide personal support to each child.

Naturally, this lack of personal support leads to negative consequences for the further life and development of orphans. That is why, in the majority of developed countries, orphanages are replaced or in a process of replacement by family-based care.

Despite all that, there are also some positive efforts and attempts from the state to stabilize the situation and bring necessary protection and care for the children in Myanmar.

Since 2016 Myanmar government has been working, in cooperation with UNICEF, on the SDGs and implementing the Sustainable Development Plan (2018- 2030). From 2016 to 2018 UNICEF highlighted the importance of the issuing birth registration and death reregistration. Even though, social protection of children, especially the orphan - children as the most vulnerable group, is underlined at the SDP.

Social protection is very relevant now, when access to education, health, food within the right to be heard and self-determination are limited in Myanmar. Another important key of the SDP is the rural wash strategy. Since Myanmar is an agricultural country, many of the monasteries-orphanages are based in the rural areas. Thus, clean drinking water and also access to water in general are crucial aspects. They foster a sustain harvest and, thus, providing food for the people and also helping the country's economy. As currently we are experiencing an unprecedented pandemic crisis, it is extremely substantial to spread awareness of the importance of the maintaining hygiene, where water plays the main role. Recently, UNICEF and the Ministry of Social Welfare, Relief and Resettlement have released a set of comic books to raise awareness of COVID-19 among children. UNICEF has developed a set of nine comic books to convey simple messages for children on what COVID-19 is and how they can protect themselves from it.¹⁷ Moreover, the Community and Family Services International (CFSI) have spread 2000 masks among most vulnerable groups in Rachain State.¹⁸

3.The role of the National and International institutions, INGOs and Local NGOs in the orphan-children protection in Myanmar

Currently there are more than sixty NGOs and also a high number of international institutions working in Myanmar, such as: The United nations, The Office of High Commissioner of Human Rights, European Union Delegation, Save the Children, Committee of the Red Cross and others.

The United Nations as the main engine of the progress in assisting to establish peace, development and human rights in Myanmar

¹⁷ UNICEF, Child Protection, E-bulletin: COVID-2019, 12 June, 2020

¹⁸ Family Residences and Essential Enterprises, Inc. (FREE), founded in 1977, benefits and proudly supports more than 4,000 individuals with intellectual/development disabilities, mental illness and traumatic brain injury. Source UNICEF Myanmar, Child Protection, E- bulletin, COVID -19, 12 June, 2020

The United Nations support the Government in developing and fulfilling the Myanmar Sustainable Plan. The aim is to realize four main pillars: socio-economic development; peace-building; humanitarian action and human rights.¹⁹

The UN implements six main platforms in Myanmar:

- More than one million of Burmese people receive assistance from the UN.
- The UN team works on the establishing peace in the country.
- Social protection is a priority within the 2012-2015 Strategic Framework.
- Livelihoods and Food Security Trust Fund (LIFT) and Three Millennium Development Goal Fund (3MDG) are managed by the UNOPS.^{20 21 22}
- National Action Plan for Food and Nutrition Security (2016-2025) is a product of the cooperation of the UN with the Government in 2015. The main aim is to reach the zero hunger goal in Myanmar.²³
- The UN in Myanmar supports development, by introducing human rights as the main aspect to sustainable development.

The Sustainable Development Goals are promoted by the UN in Myanmar.²⁴ As current situation in Myanmar is very difficult because of military conflicts, corruption, all forms of violation of human rights, starvations, illiteracy, and others, all of these bring more asperities

¹⁹ The United Nations supports the Government and civil society partners in the context of the Myanmar Sustainable Development Plan as they strive to implement Myanmar's reforms and transitions through four main pillars: socio-economic development; peacebuilding; humanitarian action and human rights. This support is guided by the principles of inclusiveness and sustainability as well as rooted in internationally agreed principles and standards.

²⁰ The Livelihoods and Food Security Fund (LIFT) is a multi-donor fund set up in 2009, having recently marked its ten-year anniversary. LIFT aims to strengthen the resilience and sustainable livelihoods of poor households by helping people to reach their full economic potential. This is achieved through increasing incomes, improving the nutrition of women and children, and decreasing vulnerabilities to shocks, stresses and adverse trends.

²¹ Following the decision by four donors, Switzerland, Sweden, the United Kingdom and the United States of America, to continue pooling funding in 2019-2023 to support the Myanmar health sector, the Access to Health Fund has been established as the follow-on mechanism from the Three Millennium Development Goal (3MDG) Fund, which operated for six and a half years and delivered around USD 308 million from 2012 to 2018. The estimated Access to Health budget is USD 215 million for five years.

²² The United Nations Office for Project Services (UNOPS) is an operational arm of the United Nations, dedicated to implementing projects for the United Nations System, international financial institutions, governments and other partners around the world. The organization's global headquarters is located on the UN City campus in Copenhagen, Denmark.

²³ On behalf of the Ministry of Health, the Department of Health for spearheading the formulation of the third National Plan of Action for Food and Nutrition (2011-2016) of the Republic of the Union of Myanmar (RoUM).

²⁴ The Sustainable Development Goals (SDGs) are a collection of 17 global goals designed to be a "blueprint to achieve a better and more sustainable future for all". The SDGs, set in 2015 by the United Nations General Assembly and intended to be achieved by the year 2030, are part of UN Resolution 70/1, the 2030 Agenda

in the cooperation between the UN and the government. The relationship between the UN agencies and the government of the Union of the Myanmar needs to be improved.

Some of the SDGs are particularly important for children, such as the following SDGs: number 1. No poverty; 2. Zero hunger; 3. Good health and wellbeing; 4. Quality Education; 5. Clean water and sanitation. All these goals need to be more practiced in Myanmar, especially among orphanages.

The UN agencies are working towards peace and security to provide better standards of life for everyone without discrimination of any type. Almost each UN Agency brings the government's attention to the urgent issues including the most vulnerable groups in a society.

The Office of High Commissioner of Human Rights

OHCHR promotes awareness and understanding of human rights. The main responsibility of the OHCHR is to support Government, analyze and work on the improvement of legal acts, justice, elections, to assist in the implementation of the international human rights and spread awareness of the rights of individuals.

The main goal of the OHCHR is to fulfill human rights in the society. In Myanmar it cooperates with the Government, parliament, judicial organs, official representatives of police and prisons. The OHCHR also cooperates with NGOs, National Human Rights Institution, civil society and UN partners.²⁵

The Food and Agriculture Organization (FAO) helps Myanmar in ensuring six main goals: Increased agricultural production to enhance food security; Improved food safety and quality; Sustainable management of natural resources and the environment; Land use and land management improvements; Human resource development and institutional capacity building; Rural livelihoods improvement; Preparedness for and mitigation of disasters and climate change.²⁶ As it was mentioned before, lack of food is a substantial issue especially among mothers, children and elderly people in Myanmar. Therefore, FAO is applying programs and making steps together with the government to increase production of agriculture to provide enough food for everyone. Giving importance of the smart use of natural resources is a significant component of the sustained agriculture and food production. People in the rural areas who work in agriculture sector and others are suffering from the lack of support of the government, clean drinking water and education. Moreover, polluted environment leads to the climate change and droughts or vice versa floods. This affects harvest and, as a result, increases hunger in the country.

FAO has recently conducted the investigation on the impact of the COVID on agriculture, aquaculture and fishing communities in Mandalay, Ayeyarwady, the Yangon Regions, and

²⁵ Myanmar National Human Rights Commission - under sections 4 and 9 of the Myanmar National Human Rights Commission Law, the Myanmar National Human Rights Commission was formed with the following persons with the aim of uplifting and protecting the fundamental rights of citizens included in the constitution of the Republic of the Union of Myanmar.

²⁶ FAO and the Government of Myanmar share a long history of cooperation since Myanmar became a Member State in 1947. The FAO Representation was established in 1978 and Ms. Xiaojie Fan, a national of China, has been the FAO Representative in Myanmar since September 2016.

Chin and Rakhine States.²⁷ FAO offers a support to the government in the rehabilitation of the villages and its inhabitants affected by the pandemics.

International Labor Organization (ILO), established in 1919, organizes the cooperation of the government, entrepreneurs and workers. ILO works with standardization of the labour, ensures high and safe standards of work for both men and women.

Furthermore, ILO works towards ending child labour in Myanmar.²⁸ Through Myanmar Program on the Elimination of Child Labour (My- PEC) ILO targets to decrease the number of children at the labour market. Myanmar ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) in 2013, but there is still no established mechanism which would control child labour. ILO reported the situation of this problem in Myanmar in 2015. Due to this report, the awareness on violations of children's rights increased among the society. Dialogue with the government was established. The ILO programme Support the Children Rights through Education, Arts and the Media (SCREAM) became available in Myanmar language which is successfully used by the National Organizations.

Another important achievement made due to the cooperation between ILO and the government of Myanmar is the establishment of the complaints mechanism, which empowers the victims of the forced labour (in many cases children, refugees, orphans, religious minority groups) to be heard and receive necessary assistance.

Since 2016, ILO has been implementing a project focused on bringing children to school and providing them with good education, as it also works towards decreasing the number of children in the labour market.

New Country Program Document (CPD), 2018. The main idea is to establish governance and sustainable peace and sustainable growth. This program is afflicted with the 17 Sustainable Development Goals. Also, the economy of Myanmar is growing as a result of the cooperation UNDP with the government, and foreign investment. Economic development positively affects the quality of life of the orphan - children, by bringing better standards of life, education, food, health care, and attention of the international community within the international volunteers who help in different sectors including orphanages.

United Nations Children's Fund (UNICEF) office has been presented in Myanmar for more than 70 years. Actively working with the Government, UNICEF helps in establishing policies that increase development and wellbeing of the Myanmar's children.

Moreover, UNICEF in cooperation with the government and the Ministry of Health provide vaccination and other precursory measures to eliminate and decrease number of the children with the HIV/AIDS. As the number of the premature deaths is high in Myanmar, UNICEF

²⁷ FAO Myanmar/News/COVID-19 impacts on agriculture, aquaculture, and fishing communities in selected regions and states in Myanmar/21 July, 2020

²⁸ The ILO first established its Liaison Office in Myanmar in 2002 under an Understanding between the Government of the Union of Myanmar and the International Labour Office . The main role of the Liaison Officer was to support efforts for the elimination of forced labour in the country and implement strategies to address its root causes.

organizes trainings for nurses and doctors, namely by providing training on how to use new equipment.

UNICEF takes part in the global Scaling Up Nutrition movement by working with the government and other partners. The main idea is to raise investments in nutrition. Lack of nutrition is a common issue in Myanmar especially among disadvantaged children. UNICEF cooperates with several ministries, NGOs and volunteers to highlight the importance of the improvement and awareness of the nutrition and also how the lack of nutrition affects early childhood development.

Government of Myanmar together with UNICEF created the National Social Protection Strategy in 2014, where the social work is the main strategy.

UNICEF together with the Government is also working towards improving the data on children in institutions and implementing necessary policies. In 2017 the Guidelines on Minimum Standards of Care and Protection for children in institutions was written. Moreover, the first national foster care regulations were improved. Small foster care program was established in Yangon and Mandalay.²⁹

European Union Delegation in Myanmar

The EU Delegation is new in Myanmar in comparison with the UN, for example. By establishing its office in 2013 in Yangon, within the main goal to create relationship between EU and The Union of Myanmar, implementing political dialogue, development and humanitarian help³⁰, EU helps Myanmar in its way to democracy. Within the cooperation with government and ministries, EU brings to Myanmar human rights principles and values. The European Humanitarian Aid and Civil Protection (ECHO) provides an assistance for victims of conflicts, violence, epidemics, and natural disasters. Currently, in cooperation with the UN, it organizes projects to provide necessary assistance to the children who were affected by COVID-19. It also contributes in education sector, support with food, health and safety.

Non-Governmental Organizations:

Save the Children is an NGO, which office was open in Myanmar in 1995. It develops programs to deal with the most difficult issues in the sphere of helping children in the country, namely, to satisfy basic health and nutrition, to make sure that all children are secure from the violation, and to support in providing high standard education for the children. It also gives assistance to the families living in poverty, to ensure that all children have the opportunity for a better future.³¹

²⁹ UNICEF/ Programm/Child Protection/Keeping children safe from harm, Myanmar, 2017

³⁰ In Myanmar, a fully-fledged EU Delegation was opened in 2013 and is located in Yangon. The Delegation's main tasks are to strengthen EU-Myanmar relations by engaging in political dialogue, supporting development and delivery of humanitarian aid, overseeing trade issues and promoting cultural exchange.

³¹ The Save the Children Fund,^[2] commonly known as Save the Children was established in the United Kingdom in 1919 to improve the lives of children through better education, health care, and economic opportunities, as well as providing emergency aid in natural disasters, war, and other conflicts. After a century, it is now a global movement made up of 29 national member organizations which works in 120 different countries.

Save the Children gave the necessary help to the workers who have lost their jobs during COVID 19. This support gave a chance for the development and better wellbeing of the families with children.

Moreover, Save the Children collects data and writes reports about children who suffer from the war or other forms of conflicts in Myanmar. One of the recent reports, named, 'Stop the War on Children', Save the Children emphasized the importance of protecting children from the hostilities.³²

The Red Cross is one of the first and leading humanitarian organizations in Myanmar.³³ It has begun to work in Myanmar in 1920. Its main aims are to improve health and increase the standards of living of the most vulnerable. The Red Cross in Myanmar has these main goals: Water and Sanitation, Restoring Family Links, Health Care, Disaster Management and Risk Reduction, First Aid and Safety, Child Protection Project.

The Red Cross in Myanmar works on the child's protection in 22 cities within the Child Protection Policy by spreading awareness of the importance of the promotion children's rights and elimination of violence against children across the country.

In the year of 2011 over 210,000 of Myanmar citizens received child protection help from the Myanmar Red Cross. More than 100 child soldiers were rejoined with their families.

The Human Right Watch

Human Rights Watch works towards elimination abuses and bring perpetrators to justice. Furthermore, cooperates with activists towards fulfilling human rights.

The recent World Report (2020), investigates the current situation of the ethnic groups among which are Rohingya people.³⁴ The possible ways to return refugees home were discussed as well. The importance of the National Verification Card for the refugees is also discussed in this report. Conflicts between ethnic groups and Myanmar's military lead to forced displacement. Furthermore, freedom of expression is underestimated. The role of the International Court of Justice and the International Criminal Court in the investigating crimes against Rohingya people is emphasized in this report.

Human Rights Watch implements eight main platforms in protecting children's rights in Myanmar.³⁵ Principally: attacks on education, child labor, child soldiers, education, intersex children, juvenile justice, orphans and abundant children as also refugees and migrants.

³² Save the Children, News, 'ALL WARRING PARTIES IN MYANMAR MUST KEEP CHILDREN PROTECTED AND SCHOOLS OUT OF THE LINE OF FIRE', 14 February, 2020

³³ The International Red Cross and Red Crescent Movement is an international humanitarian movement with approximately 97 million volunteers, members and staff worldwide which was founded to protect human life and health, to ensure respect for all human beings, and to prevent and alleviate human suffering.

³⁴ World Report 2020 is Human Rights Watch's 30th annual review of human rights practices around the globe. The 652- page volume reviews human rights practices and trends in nearly 100 countries.

³⁵ Human Rights Watch (HRW) is an international non-governmental organization, headquartered in New York City, that conducts research and advocacy on human rights. The group pressures governments, policy makers, companies, and individual human rights abusers to denounce abuse and respect human rights, and the group

In the recent article from the Human Rights Watch dedicated to the urgent problem and impact of the COVID-19 on children, it was reported that ³⁶ more than 1,5 billion children in the world? were out of the school because of the pandemic. Some of them have online education, but half of the world does not have an Internet access. Children in developing countries are the most vulnerable - among them, some are even more exposed, such as orphans, children in the conflict zone, refugees and others who do not have access to the Internet and, consequently, no access to education at all. Therefore, many children are left behind with no schooling during the COVID 19 pandemic crisis. But the most dangerous situation is that many human rights defenders and observers are not able to continue monitoring the situation, which leads to the increase of the violation which will be unpunished. As a result, the orphan-children who depended on the volunteers, who provide them with food, medical assistance and education, are left behind.

Furthermore, there are other NGOs which are especially aimed at protecting children in Myanmar, namely:

The Mudita Foundation Aung Mae Oo ³⁷

This is one of the biggest orphanages in Myanmar, monastic-education center for more than 2500 children. This center as many others does not receive any support from the government. The Mudita Foundation Aung Mae Oo provides food, shelter and education for children. Many of them do not have any name or identity, some do not speak local dialect which brings more difficulties to understand their needs. This NGO has projects with the international volunteers in the fields of education, ecology and health. Moreover, it gives and opens new opportunities and chances for a better future for children in Myanmar.

Global Care NGO ³⁸

This organization works with children from the Chin State and Kachin State, helps children who have lost their parents due to continuous religious conflicts by being minority- Christians. Global care provides shelter, clothing, food and an education for children in need. In 2013 this

often works on behalf of refugees, children, migrants, and political prisoners. Human Rights Watch in 1997 shared in the Nobel Peace Prize as a founding member of the International Campaign to Ban Landmines and it played a leading role in the 2008 treaty banning cluster munitions.

³⁶ Save the Children, Article, 'COVID-19's Devastating Impact on Children', April 9, 2020

³⁷ The Mudita Foundation. The word "mudita" is an ancient Pali term, which can be translated as "delighting in other people's well-being and happiness". The most common example of mudita is the selfless joy that parents feel as they watch their child grow and accomplish things life. At Mudita association, we work to improve living conditions of underprivileged and orphaned children, so that they too can live a happy and fulfilling life.

³⁸ Global Care, for nearly 40 years, has pioneered initiatives supporting vulnerable children and young people in Africa, Asia, Eastern Europe and Central America, through education, vocational training, feeding and welfare care. Working through grassroots Christian groups worldwide, we deliver effective long-term solutions, leading to independence and self-sufficiency.

NGO experienced pressure to change location by being threatened together with these ethnically vulnerable children.

Myanmar Children's Foundation (MCF)³⁹

MCF helps children in the rural areas of the Ayerwaddy Delta and the Mon State, Kachin, Sagaing and Rakhine states as well as the Mandalay Division. By working in the Buddhist monastic schools, they have also created classroom and dormitory buildings. The main goal of this NGO is to provide shelter, access to education, health, water as also financial support for the families in need.

Local NGOs in Myanmar:

30 years after the end of the military regime (1962), since 1990, local NGOs started their work towards promoting human rights to satisfy basic needs and high standards of life for the people in Myanmar.

Furthermore, there were established three specific groups of NGOs. The first encompasses local NGOs (LNGOs) which work inside the country and must have a registration with government. The second encompasses international NGOs or INGOs operating through Memoranda of Understanding (MOU) with the government.⁴⁰ And the last ones are organizations controlled by the government, which the main goal is to promote government's policy. NGOs are financed by governments, foundations, business or private persons. Sometimes NGOs are called civil societies. In Myanmar the non-profit organizations are categorized according to their ethnicity, religion and size.⁴¹

Civil Societies in Myanmar are working separately from the military. Their main focus is to improve the life of its community through humanitarian and development projects. Most of these organizations are not registered with the government. The majority of LNGOs operate on the behalf of the central authorities, therefore, there is no official data on the number of LNGOs in Myanmar. Nevertheless, the Capacity Building Initiative (CBI) estimated that in 2004 there were 86 LNGOs. Today there are approximately 200 LNGOs in Myanmar.^{42 43}

³⁹ Founded in the State of California in January 2007 by Max Harrington, Rita Montes Martin and Susan Steinbach, the Myanmar Children's Foundation (MCF) is a non-political, non-religious charitable organization dedicated to helping the children of Myanmar, one of Asia's poorest and most economically isolated countries.

⁴⁰ A memorandum of understanding (MoU) is a type of agreement between two (bilateral) or more (multilateral) parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is often used either in cases where parties do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement. It is a more formal alternative to a gentlemen's agreement.

⁴¹ Humanitarian Practice Network/HPN/Article/Local NGOs in Myanmar: vibrant but vulnerable/by Kim Wallis and Carine Jaquet/ September/2011

⁴² The concept of CBI was started early 90s when pioneers of INGOs such as Save the Children (UK & US) and World Vision came into Myanmar. These organizations initiated together with UNICEF a program to build and enhance skills and knowledge of Myanmar. The concept of CBI was started early 90s when pioneers of INGOs such as Save the Children (UK & US) and World Vision came into Myanmar.

⁴³ Humanitarian Practice Network (HPN), Article, "Local NGOs in Myanmar: vibrant but vulnerable/ by Kim Wallis and Carine Jaquet/September 2011.

After the cyclone Nargis in 2008, the number of the LNGOs increased.⁴⁴ Despite the limitation by the government, the access to the damaged areas by the cyclone, together with the Ministry of Social Welfare and international community a lot of work had been done in providing first aid and necessary goods for the victims of the cyclone.

A high number of the LNGOs are located in the eastern Myanmar, as it is closer to Thailand. Some of these LNGOs are based in Thailand, which helps Myanmar to access help from the Western donors. Large national and international organizations help smaller community organizations with funds as also with legal framework. The most important is that LNGOs were able to gain the trust of communities, which provide necessary information and support to maximize the productivity of the LNGOs. Another positive aspect is that most of the funds for the LNGOs comes from religious groups and private foundations, it brings more freedom and versatility to LNGOs.

Despite all positive aspects, there are also lot of difficulties which LNGOs are facing in Myanmar. Within the political dynamic in Myanmar, many of the LNGOs are working underhand. These circumstances lead to the limitation of the communication and cooperation between different actors as also disinclination of trust and access to the information among LNGOs. Moreover, these conditions unable to plan ahead, as the situation is unstable in Myanmar. Political environment led to the fact that people in Myanmar receive the lowest level of aid per person. Another impact of the current politics in Myanmar is that most of the LNGOs are unregistered. LNGOs in Myanmar are active but vulnerable. Therefore, there are more challenges in investigating and reporting the conditions in the institutions in the country.

Within my own experience in cooperation with Local and International NGOs in Myanmar, I can make a conclusion that most of the LNGOs are controlled by the government and military. All this pressure is not obvious and direct - most of the time it is veiled. This limits LNGOs of achieving their goals and accomplish their mission.

I believe that a better communication, understanding and dialogue has to be established between state, LNGOs and civil society. Furthermore, it will bring peace and security, and help to achieve the full fulfillment of human rights as also basic standards of life in Myanmar.

Myanmar National Organizations:

Myanmar Health Assistant Association

Myanmar Health Assistant Association (MHAA), was established in 1953. And by 2019 it has opened more than 307 branches in 76 townships. MHAA cooperates with six international institutions and has eleven partners in the field of health.⁴⁵

⁴⁴ Extremely Severe Cyclonic Storm Nargis was an extremely destructive and deadly tropical cyclone that caused the worst natural disaster in the recorded history of Myanmar during early May 2008. The cyclone made landfall in Myanmar on Friday, 2 May 2008, sending a storm surge 40 kilometers up the densely populated Irrawaddy delta, causing catastrophic destruction and at least 138,373 fatalities.

⁴⁵ Myanmar Health Assistant Association was established in 1953 along with the government's program to have rural health care professionals in the shortage of medical professionals after expatriate doctors left the

The main goal of the MHAA is to make high standards of public health accessible for everyone, via prevention and control of diseases. The MHAA works with high standards, including: accountability, integrity, respect on human dignity, professionalism and non-discrimination.

MHAA is providing trainings to promote health literacy and healthy behavior among society.

MHAA has projects on elimination of Malaria, on nutrition programs in conflict zones, and on prevention and reducing tuberculosis in Myanmar.

The latest Five Years Strategic Plan (2019-2023), in cooperation with the Ministry of health and Sport addresses the importance to improve quality and accessibility of the public health services.⁴⁶

In my opinion, it is necessary to establish a mechanism in providing access to public health for the orphan children by providing health trainings for caregivers at the orphanages in Myanmar. Moreover, health check need to be provided for all children at least once a month. All these steps will help to raise a healthy generation, without leaving anyone behind.

Myanmar Child Protection Working Group (CPWG)

CPWG, works at the national and sub-national levels. The main aim of the CPWG is to strengthen the partnership, prognostication and responsibility of international humanitarian aid.⁴⁷ The CPWG is focusing on the public education on fire and safety, protecting children from the harm and emergencies in conflicts and disaster zones, Increase access to the basic services for children, works on the limitation and prevention of the new forms of violence and exploitation, provides extra support for the government in help for its citizens.

Child protection workers (CPW), in Myanmar are mainly people from the local community. They need to have a better knowledge on how to protect children from harm, injury or danger. CPW needs to improve their knowledge, to support children in cases where they are separated from their caregivers. It deals with analyzing the best to way respond when violation has already happened and how to keep children safe from the further harm. Therefore, it is essential to share experience and knowledge in between CPW all over the world. Its workers come from different organizations for the broader humanitarian effect to achieve common goals. Good team work has to be created between CPW, people who speaks the same technical language, and are ready to support each other.

country. The very first Regular Health Assistant (RHA) training was opened in 1951 and completed trainees were appointed as health assistant at Rural Health Center (RHC) since 1953.

⁴⁶ Recognizing these political, social and health system transitions, constraints and challenges as well as reflecting our vision to serve for the well-being of the people, the 2019- 2023 Five-Year Strategic Plan was developed through involvement of representatives from all Regions and States.

⁴⁷ The Child Protection Working Group (CPWG) is the global level forum for coordination on child protection in humanitarian settings. The group brings together NGOs, UN agencies, academics and others under the shared objective of ensuring more predictable, accountable and effective child protection responses in emergencies. In the humanitarian system, the CPWG constitutes an “area of responsibility” within the Global Protection Cluster.

In conclusion, we can say that it is necessary to conduct further trainings for the caregivers and the orphan children in orphanages - especially trainings in first aid, personal hygiene and self-protection.

As Myanmar is under the risk of natural disasters because of its geographical location, children and their caregivers need also to be trained on how to act during natural disasters, include earthquakes.

4. CRC and Myanmar national law in the process of separation from parents. The process of adoption in Myanmar. What are the restrictions?

According to the Demographic and health surveys (DHS), one of the main goals of adoption is to avoid childlessness, as emphasized at the ethnographic studies. For instance, in 1962, Eskimos reported that from the 33 families who adopted children, 16 of the families did that because they could not have their own children, but 17 did that because they wanted to continue their kin, or they wanted to have a son. In Finland and Italy 80% of families who adopted a child did that as they could not have any children in 2004. In Ukraine, for example, families usually adopt, even when they already had their own children, because they wanted to have more children.⁴⁸

By speaking of the Myanmar adoption law it has a lot of different scenarios, as there is a different customary law applied for each religious group. I assume, as Myanmar practice a contracting form of adoption in most of the cases adopted children are almost deprived of any property or inheritance.

Currently, Myanmar's law does not allow non-Burmese nationals to adopt or have legal custody of Burmese children. The Kittima Adoption Act from 1941, which is still in force, does not allow Burmese citizens who are Buddhist to adopt.⁴⁹ The Government of Myanmar does not recognize dual citizenship. Moreover, Myanmar is not party to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (Hague Adoption Convention).⁵⁰ For instance, Russia, South Korea and Nepal have signed but not ratified Hague Adoption Convention, which means that foreigners are not allow to adopt children from these countries, as well as Russians, South Korean and Nepalese people cannot adopt foreign children. The Hague Adoption Convention emphasizes the importance of safeguarding the best interest of the child established by international law in inter-country adoptions. Countries which have signed and ratified this Convention must ensure that abduction, trafficking or sale of children are forbidden and persecuted.

Where the Inter-country adoptions of children from non-Hague countries are processed in accordance with 8 Code of Federal Regulations, Section 204.3 as it relates to orphans as defined under the Immigration and Nationality Act, Section 101(b)(1)(F). Precisely speaking, competent authority a court or governmental agency of a foreign-sending country having jurisdiction and authority to make a solution in matters of child welfare, including adoption.

⁴⁸ Book/ UN/ Department of Economic and Social Affairs/'Child Adoption: Trends and Policies'/ST/ESA/192, p. 116/New York/2009

⁴⁹ The Kittima Adoption Act of 1941, Burma.

⁵⁰ The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict is the first international treaty that focuses exclusively on the protection of cultural property in armed conflict. It was signed at The Hague, Netherlands, on 14 May 1954 and entered into force on 7 August 1956

Abandonment by both parents means that the parents have willfully left their child and have disclaimed to carry out their parental rights and obligations and that, as a result, the child has been sent to the competent authority in accordance with the laws of the foreign-sending country.

Advanced processing application means Application for Advanced Processing of Orphan Petition Form I-600A completed in accordance with the form's instructions and submitted with the required supporting documentation and the fee as required in 8 CFR 103.7(b). The application has to be signed within the form's instructions by the married petitioner, or by the unmarried petitioner.

A child who was sent to the orphanage for the short-term shall not be considered as an abandoned child if the parents are willing to take the child back from the orphanage at some point. In this case this child cannot be adopted by any foster parents. A child who has been given to orphanage without any presence or notice from the biological parents shall be considered to be abandoned.

The U.S. citizens who would like to adopt children from Myanmar have to contact the adoption authority of Myanmar to make the acquaintance of the laws and the process of adoption.

The U.S. citizen who wish to adopt a child from Myanmar required to prove his or her will and ability to provide proper care for an alien orphan. A married United States citizen of any age, or an unmarried United States citizen who is not less than 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. In the case of a married couple, both of whom are United States citizens, either party may be the petitioner.

Basically American citizens can adopt a child from Myanmar, only in the case if they answer all the requirements, and passed all procedures. The Application for Advanced Processing of Orphan Petition Form has to be signed by the person or a family which wish to adopt. Or another scenario of adoption a child from Myanmar could be if the foreigner would renounce the citizenship of his or her country and apply for the Myanmar citizenship status. As Myanmar does not recognize dual citizenship. Another requirement is that this person should not be a Buddhist.

Within this law, orphans in Myanmar do not have many chances to be adopted neither by Burmese people (as 88% of Burmese people are Buddhist) nor by foreigners, considering that the process of adoption is very complex. These restrictions do not respect the best interest of the child, depriving them from a better chance to a dignified future. Furthermore, in my opinion, these restrictions on the adoption of children from Myanmar by foreigners presents a further obstacle in ensuring better life and the autonomy of the child. Furthermore, these laws may lead to illegal adoption, speculation, and child trafficking.

Within the Intercountry Adoption Universal Accreditation Act (UAA), the accreditation requirement standards, which previously just applied in Convention cases, nowadays also apply in non-Convention cases.⁵¹ This Act helps to protect the child adopted internationally, from the country which has not ratified The Hague Adoption Convention to the country which has ratified this Convention.

⁵¹ The Intercountry Adoption Universal Accreditation Act of 2012 (UAA) extends the safeguards provided by accreditation to orphans who are being adopted from countries that are not party to The Hague Adoption Convention, to their adoptive parents, and to their birth parents.

Social Welfare Department is the government body, responsible for adoption approval in Myanmar.⁵² There are two main national legislations governing adoption, Kittima Adoption Act of 1941 and the Child Law of 1993.⁵³ Due to the harsh requirements for adoption, statistically only 9% out of 100% of children were adopted in 1999-2000. When, for example, in the neighboring Thailand where they ratified Hague Convention of Inter-country Adoption, there were 51% adopted children out of the 100% in 2004. Moreover, we can notice a tendency where orphans under 5 years old at least have a chance to be adopted when children under 18 do not. From the statistic below we can see that:

In 1999-2000, per 100,000 births only 0,8% adoptions took place in Myanmar, whereas in Thailand this number was of 5,2% in 2005. Adoption per 100,000 under 18-year-old was 0% in 1999-2000 in Myanmar. In the neighbor Thailand this number was 0,3 in 2005. Adoption per 100,000 children under 5 was 0,5% in Myanmar in 1999-2000, when in Thailand this number was 0,6%.

This gap is significant, and introduces how life of the orphans could be changed for better, if the State would be more open and willing to change its adoption policy.⁵⁴

Another fact which affects orphans' chances to be adopted is that 252,763 people out of 54 million in Myanmar practice Hinduism. We can find some similarities with the adoption practices in Nepal. In this country, the Civil Code of 1963 Muluki Ain gives priority to the close blood relatives or persons from the same clan.⁵⁵ I believe it has both positive and negative aspects. On the one hand, it is good for the child's well-being to be raised by relatives instead of the orphanage. On the other hand, it deprives other persons to adopt a child even if they are able to provide for instance good education and care for the child. Furthermore, in my opinion the decision on adoption made on the basis of this child's belonging to a particular clan is a mistake and violates the right of the child. Moreover, according to the caste system if a child was born in a poor family, he or she will not have a chance to have better conditions of living. According to this we can make a conclusion that religion, tradition and culture play a salient role in establishing rules of adoption in Myanmar.

In Myanmar the Kittima Adoption Act, which is the main regulation on adoption, perceives adoption as the contractual agreement among two groups, "sought for the express purpose of inheritance." Basically, the adoption is seen as an agreement between the orphaned child and the adopting family. When the adopted child has to work and "pay" for his or her adopting parents it seems like a slavery.

Another fact worth of note is that in Myanmar, persons can be adopted even after being adults. Critically thinking it seems like to obtain a family you have to pay. Or if you cannot pay or if

⁵² The Ministry of Social Welfare, Relief and Resettlement, administers Burma's social welfare, social relief and resettlement affairs. The Ministry of Social Welfare, Relief and Resettlement is currently led by Win Myat Aye, who was appointed by President Htin Kyaw on 30 March 2016.

⁵³ THE CHILD LAW (1993) The State Law and Order Restoration Council Law No. 9/93 The 11th Waning Day of Oo Waso, 1355 M.E 14 July 1993

⁵⁴ UN- Economic and Social Affairs, Trends and Policies ST/ESA/SER.A/292, New York, 2009.

⁵⁵ Muluki Ain, the National Code of Nepal (in Nepalese only) is the first unified law enacted in the 20th Century, more specifically, on 2020 Bhadra 1 (1963) with the objective of maintaining peace and fostering good relations among people irrespective of class, caste or region. Procedural, criminal, civil, and penal provisions are incorporated in the law.

you behave in a wrong way, in the understanding of the adoptive family “wrong,” the contract may be terminated. These conditions hardly respect the best interest of the child.

Kittima Act from the 1941 allows adopting family to adopt a child despite they already have their biologic child.

According to Myanmar law, in case of the full adoption, adopted children have right to inherit from both biological parents and adoptive parents. These circumstances satisfy best interest of the child, by giving a chance for the dignified and secure future.

Continuously speaking of the polices of the adoption in Myanmar, we can notice that there is no differences of the treatment of the boys and girls. Both of them have the equal right for the inheritance.

Another fact which affects the right to inheritance is the believe of Myanmar people that there are differences between children. For instance, “Orasa Child”, is more privileged in comparison with other children in Myanmar.⁵⁶

Under the scope of the Kittima Adoption Act, the adopted child can experience the same rights as the biological child of the adopting family except these three cases: A Kittima child cannot be an Orasa. He or she cannot sue for a quarter share of the adoptive parent’s estate on the death of one adoptive parent from the surviving adoptive parent, because the Kittima child is not by every means regarded as being on equal footing with one’s own child. Within this point we can notice unequal treatment of the biological and adopted children. Which is the violation of the right of the child to not be discriminated against as enshrined in Part 1, Article 2, paragraph 1 and 2 of the CRC. I believe the right for the inheritance has to be distributed equally. A Kittima child loses the right to inherit if the adoptive parents forsake their Buddhist faith and embrace Christianity or any other faith which does not recognize adoption. In such a situation, we can see discrimination based on religion, as guaranteed to every child under Article 14, paragraph 1,2 and 3 of the CRC.

Moreover, there are a lot of restrictions in the process of adoption in Myanmar. And according to the International Human Rights Law under the Universal Declaration of Human Rights, Article 2, there should not be any discriminations based on religion, race, sex or other aspects. Children have to experience equal rights in the process of adoption as also after the adoption.⁵⁷

Furthermore, Myanmar Customary Law, states that “Every child shall have the right to be adopted in accordance with law without discrimination of sex.”⁵⁸ Statistically, more girls are adopted internationally worldwide, whereas nationally, the percentage of adopted boys is

⁵⁶ Orasa child – in Pali language - (the Pali is the language of the Tipiṭaka, which is the sacred canon of Theravāda Buddhism and contains much of the Buddha’s speech. Closely related to Sanskrit, both languages are used interchangeably between religions). Orasa means, congenital, native. The person to whom the gods are favorable privileged in the comparison with other children in Myanmar.

⁵⁷ The Universal Declaration of Human Rights, Article 2 - Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

⁵⁸ Journal of the Myanmar Academy of Arts and Science, Vol.XII, No.10, June 2014, p. 2

higher. I believe that it can be explained by the fact that within the low economy and inequality between men and women at the labor market, adopting families prefer to adopt boys as economically wise boys have more potential to find a job in future than the girls. All that shows the high level of inequalities in societies.

CRC and Myanmar Constitution

The Constitution of Myanmar, Article 456, states that the State must respect all legitimate signed agreements which have been operated since before the Constitution came into force in 2008. Nevertheless, international convention like, for instance, the CRC, have to be included with the special legislation to be respected and practiced in Myanmar courts. The CRC was not included and that is why cannot be applied.

Article 28 requires the State to strive to improve education and health of the people and to implement free, compulsory primary education system. Here we can see that this article does not specify any age as also it speaks of the compulsory education, but many orphans do not have any documents of their existence, the question is, how can the State control if they receive education or not? Moreover, volunteers from the monastic – school Zayar Thiri and many others, can confirm that those orphans do not receive even any basic education as also no other support from the State.

Article 32 provides that the State shall care for mothers and children, orphans, fallen Defense Services personnel's children, for older persons and for persons with disabilities. However, in reality, the State almost does not provide any social protection for the people in need – for example to mothers, children same situation happens with the older people.

Article 35 provides that mothers, children and expectant women shall enjoy equal rights as prescribed by law. - High number of Myanmar women and their children experience stigmatization of getting pregnant and giving a birth without getting married, as also raped women suffer a lot of being socially excluded. Consequently, these women and their children are deprived of their rights. Moreover, by the concern provided by the STPI at the UPR, according to the Population Control Health Care Bill, there is a pressure and limits settled by the Government of the number of children are allowed per family.⁵⁹ Women have to wait for 36 months after having a children before being mothers again. That it not only represses women, but also religious and ethnic minorities. There are different regulations for the Buddhists and non-Buddhists, as the current politics are trying to increase a number of the Buddhists and decrease the population of non-Buddhists. For instance, Buddhist women are not obliged to wait 36 months before get pregnant again. Basically, Buddhists are allowed to have more children than other religions in Myanmar. Also if adoptive parents decided to change their belief from the Buddhism to some other belief - in that case their right to custody might be invalidate.

⁵⁹ Society for Threatened Peoples International Founded in 1970, Germany, is an international NGO and human rights organization. Aims to protect minority peoples around the world.

Furthermore, three similar bills relating to monogamy, religious conversion and interfaith marriage are being debated by parliament. Human Rights Watch warned that this law could be used to target minorities.⁶⁰

Article 366 provides that every citizen, in accordance with national education policy, has the right to education; and shall be given basic education which shall be compulsory in law.”⁶¹ Moreover, the CRC, emphasize the importance of education for children under Article 28 paragraph 1. “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity”. As we have mentioned several times, military and other forms of conflicts- especially in Rakhine, Kachin and northern Shan States - pull children out of school. According to the UNICEF data, around 141,000 children aged 3 –17 are out of school in this area of Myanmar. Moreover, around 4 % of the girls aged 14-15 are deprived of the chance to continue education as a result of child marriage.⁶²

Despite the fact that Child’s Law in Myanmar has many national regulations and provisions⁶³, children in Myanmar are underestimated and often mistreated.

Restrictiveness of Myanmar’s legal documents:

A lot of the Myanmar legal documents are not translated into English. Some of the legal provisions can be found in English on the webpage of the president of the Republic of Myanmar or on the page of the Supreme Court. Also, the US Law Library of Congress and World Legal Information Institute is helping with providing legal documents of Myanmar in English. These circumstances of the limited information in English for the foreign society can be a cause of hiding information. Moreover, as Myanmar is a member of ASEAN, an entity which promotes noninterference and cultural relativism, high authorities of Myanmar do not allow those documents to be translated.⁶⁴ I question why haven't the international institutions, which have

⁶⁰ News/DW/ “Controversial population control bill becomes law in Myanmar” 23.05.2015

⁶¹ The Constitution of the Republic of the Union of Myanmar (2008) is the third Constitution of Myanmar after 1947 and 1974 constitutions which were aborted by military coups. It is part of the seven steps road map announced by then Prime Minister of State Peace and Development Council government General Khin Nyunt on 30 August 2003. One of the seven steps include recalling of National Convention for the drafting of new constitution which was adjourned on 31 March 1996 by State Law and Order Restoration Council government. On 10 May 2008 (24 May 2008 in some townships) the Constitutional referendum was held in Myanmar and SPDC announced 93.82% of the voters favored it however there has been wide spread criticism of the process as the Cyclone Nargis hit Myanmar a few days before the referendum and free and fairness of the overall process

⁶² UNICEF is one of the longest-serving international organizations in Myanmar, with almost 70 years of serve in the country. UNICEF/Education, Program, “Out of School Children” 2018

⁶³ Footnote with the legal acts list/ The Child Law, The Rules on the Child Law, The Penal Code, The Criminal Procedure Code, The Myanmar Citizenship Law, The Anti-Trafficking in Persons Act, The Myanmar Adoption Law, The Myanmar Maternal and Child welfare Association Law, The Development of Border Areas and National Races Law, The Narcotic Drugs and Psychotropic Substances Law

⁶⁴ ASEAN was preceded by an organisation formed on 31 July 1961 called the Association of Southeast Asia (ASA), a group consisting of Thailand, the Philippines, and the Federation of Malaya. ASEAN itself was created on 8 August 1967, when the foreign ministers of five countries: Indonesia, Malaysia, the Philippines, Singapore, and Thailand, signed the ASEAN Declaration.

been present in Myanmar for many years, taken any steps towards communicating with government and making the necessary agreements for those documents to be translated?

As regards access to the case law of Myanmar in English, there is a web page of the Supreme Court of Myanmar where people are supposed to consult judicial decisions English. But at the moment this page is not functioning. In this case, international judges are not able to receive the information of the different judicial processes in Myanmar.

The compliance with CRC in Myanmar is monitored by the Committee on the Rights of the Child:

In 2012 The Committee issued its country observations, and concluded that in some of the areas, national law and the regulations of the CRC have not been applied nor completely respected.⁶⁵

Moreover, the Committee also worried that differences between codified and customary laws can ruin the State's attempts to bring balance in national legislation with the Convention.

The main incoordination between Convention and the National Law of Myanmar which Committee underlined, concerns the definition of the child. The main concern is that according to the national law, a child is a person under 16-year-old, when children of 16-18 years old are defined as "youths."

Additionally, the Committee is concerned that there is no minimum age legally established for boys to get married. Also the minimum age for girls to get married is very low – corresponding to 14 years old only.

The Committee urged the State to change its national legislation and make sure that all persons under 18 are defined as children. Moreover, the minimum age to get married needs to be increased to 18 for girls. For boys it also has to be defined as 18 years old.

Furthermore, the Committee is concerned with torture and detention of children who are considered political prisoners. The Committee recommends the state to take urgent measures to stop all forms of violence against children, especially corporal punishment, and to persecute all perpetrators.

In addition, there are also reports of physical punishment practiced at the public schools in Myanmar, as the following testimony shows:

“When I was a student at the public school, I remember clearly. One of our teachers asked a student who did not behave well to come in the middle of the class and to put his palms up. Then, she flipped a metal ruler in the water and punished our classmate in front of the others. (Daw Myat Mon, 12-year-old, June 2017, Mandalay, Myanmar).

Unfortunately, this practice is still common in Myanmar. Punishments are practiced, in public and private schools and in institutions as well in the orphanages and monasteries. These forms of abuse negatively affect children’s mental and physical health, by leaving remarkable trace on their lives and lives of the future generations.

That is why one of the Committee’s urgent recommendations in the provision 28 in the periodic report of 2012 was that all people working with children, teachers, social workers, health

⁶⁵ The Committee considered the combined third and fourth periodic report of Myanmar (CRC/C/MMR/3-4) at its 1675th and 1676th meetings (see CRC/C/SR.1675 and CRC/C/SR.1676) held on 19 January 2012, and adopted, at its 1697th meeting, held on 3 February 2012, the following concluding observations.

personnel, personnel working in all forms of alternative care needed to be aware and trained on children's rights.

The causes of the child being separated from the parents:

There are different causes for the separation of the child from the parents, most notable being the death of both parents, divorce of the parents, neither parent could take the responsibility, unmanageable or uncontrollable child and children in conflict with the law.

Each case of the adoption and separation should be considered individually, as these are very specific and sensitive issues. Since these decisions are made under the scope of the national law, there is a need for a more thorough and considerate approach to these cases on local and national level, so as to avoid the cases when a child is mistakenly separated from one of the parents or from both of them. Furthermore, despite the fact that Myanmar ratified the CRC, it is not fully applied in the Myanmar National Law. The State has to improve its provisions, in order to decrease the number of the orphan children, and give them a chance to obtain a new family.

Certainly, special mechanisms to control the wellbeing of children in the adopting family have to be established. Lithuania is a good example. They established a public adoption authority that cooperates with adoptive foreign authorities and regularly receives the information about the situation of the adopted children abroad. However, under the current law in Myanmar — according to which the adoption is an agreement or a contract between the foster family and a child — the child is not protected.

Finally, I believe that replacement by family-based care could be a good solution for Myanmar. As in this case orphan-children will receive more care, love and protection, considering than instead of the ninety children under the supervisor of few nuns, each child will be provided with individual care in families. But to implement this, Myanmar adoption law needs to be amended, foreseeing less restrictions for adoption, especially for Buddhists and the internationals. That being so, children could escape from the lack of care that they frequently experience in orphanages.

2. Access to health

1. Role of the World Health Organization in establishing international health law, and international obligations.

Every human has the right to the access to health without any discrimination based on sex, religion or ethnicity.⁶⁶ World Health Organization (WHO) is one of the main founders in formulating policies, legal instruments and providing health development programs.⁶⁷ Some of them are legally binding. One of the most significant international documents which oblige to provide access to health for everyone is the Universal Declaration of Human Rights (UDHR) under the Article 25.⁶⁸ Health in the international human rights law is also emphasized in the International Covenant on the Economic Social and Cultural Rights (ICESCR). Article 12.1 of the Covenant mentions the direct responsibility of the State party to provide the highest standards of physical and mental health for everyone. Moreover, Art. 12.2 gives the specific and precise instructions to be taken by the State.

According to the WHO statistics, Myanmar is number 149 from all the countries with the life expectancy only 67, 68 for both sexes. When in Hong Kong life expectancy is 84,7.⁶⁹ These numbers introduce that country with high scientific, biological and technological progress knows how to use all this knowledge to fulfill high standards of health. When in Myanmar, people do not have access to even basic health standards. As also under-5 mortality rate is 66,71% and neonatal mortality rate is 33,29%. This dynamic is dramatically high and introduces the state's irresponsibility concerning saving life of children and raising healthy population

A further International legally binding instrument of protecting right to health for everyone is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).⁷⁰ Article 11.1 (f) and Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁷¹ In addition Convention on the Right of the Child (CRC) Article 24 - 1. States Parties recognize the right of children to the enjoyment of the highest attainable standards of health and to facilities for the treatment of illness and

⁶⁶ International Covenant on Economic Social and Cultural Rights – General Comment – 14 (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. General Comment No. 14 of the UN Committee on Economic, Social and Cultural Rights is an explanatory note on the necessary elements for the fulfillment of the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)

⁶⁷ The World Health Organization was established by constitution on 7 April 1948, which is commemorated as World Health Day. The first meeting of the World Health Assembly (WHA), the agency's governing body, took place on 24 July 1948.

⁶⁸ The Universal Declaration of Human Rights (UDHR) is a historic document that was adopted by the United Nations General Assembly at its third session on 10 December 1948 as Resolution 217 at the Palais de Chaillot in Paris, France. Of the then 58 members of the United Nations, 48 voted in favour, none against, eight abstained, and two did not vote.

⁶⁹ UNDP/Countries and regions by life expectancy at birth in 2018

⁷⁰ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations convention. A third-generation human rights instrument, the Convention commits its members to the elimination of racial discrimination and the promotion of understanding among all races.

⁷¹ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women.

rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.⁷²

Regional instruments also guarantee the right to health, such as the European Social Charter (Article 11⁷³), the African Charter on Human and Peoples Rights (Article 16)⁷⁴, the American Convention on the Human Rights (Article 10).⁷⁵ Additionally, the right to health is promoted by the United Nations High Commissioner for Human Rights (UNCHR).⁷⁶

The right to health is indivisible, interdependent and interrelated with other rights. For instance: food, education, housing, work, human dignity, right to life, non-discrimination, freedom of association and movement, equality, privacy, prohibition against torture and access to information. The Article 12 of the Covenant was improved by the Article 12.1 and Article 12.2, where right to health is broadly determined, and shows the relatedness between clean drinking water, environment, nutrition as also healthy working conditions. In the developed countries, access to health is of a good level but in the developing countries and third world countries poverty takes away a chance from the people to live in dignity and healthy environment as access to health for everyone is hard to achieve. Despite the fact that control and recommendations by the Covenant, the State keeps falling its responsibility to respect, protect and fulfill the right to health for its citizens. Article 12.2 instruct the state and introduces possible ways to satisfy right to health by providing practical examples.

The right to health includes freedoms and prerogatives. Moreover, right to health does not only implies just to be healthy it is much more multi-faceted. Sexual and reproductive rights, and forced experimentation and torture are protected against.

Violence and torture in the third world countries:

These violations are especially striking in “third world countries”. For example, in Ecuador illiterate people are forced to sell their kidneys, when surgery is performed in terrible unsanitary conditions. They are convinced that a new kidney will grow instead, and, as consequence they suffer several health problems, and, in some cases, death. Sadly, they receive a miserable amount of money or do not receive financial reward at all.

Medical experiments and tortures are practiced in developing and third world countries in several closed institutions, as was emphasized in the recent work of the United Nations Global

⁷² Convention on the Rights of the Child (CRC) The UN General Assembly adopted the Convention and opened it for signature on 20 November 1989 (the 30th anniversary of its Declaration of the Rights of the Child). It came into force on 2 September 1990.

⁷³ The European Social Charter is a Council of Europe treaty which was opened for signature on October 18, 1961 and initially became effective on February 26, 1965, after West Germany had become the fifth of the 13 signing nations to ratify it. By 1991, 20 nations had ratified it.

⁷⁴ It emerged under the aegis of the Organisation of African Unity (since replaced by the African Union) which, at its 1979 Assembly of Heads of State and Government, adopted a resolution calling for the creation of a committee of experts to draft a continent-wide human rights instrument.

⁷⁵ The American Convention on Human Rights, also known as the Pact of San José, is an international human rights instrument. It was adopted by many countries in the Western Hemisphere in San José, Costa Rica, on 22 November 1969.

⁷⁶ The United Nations Commission on Human Rights (UNCHR) was a functional commission within the overall framework of the United Nations from 1946 until it was replaced by the United Nations Human Rights Council in 2006.

Study on Children Deprived of Liberty, led by Manfred Nowak.⁷⁷ As for today, in such institutions it is easy to “cover the tracks” without being responsible and threaten people to keep them silent. Committee for the Prevention of Torture (CPT) visits prisons, orphanages, detention centers and psychiatric clinics once in four years, sometimes more often if that’s needed.⁷⁸

The Committee must inform the State about a visit. After the CPT informed the State, the CPT delegation visit any place where persons may be deprived of their liberty at any time and without notice. Despite that, continuous violence has a place to be. Basically the main problem is that the Committee is not always able to conduct spontaneous visits, this time might be used to hide an evidence. In my opinion, this system needs to be improved, to prevent torture, forced experiments and other violations of human rights and dignity. The visit has to be as spontaneous as possible, so as to witness and consequently report on the realistic situation.

Moreover, according to the United Nations Women, Facts and figures: Ending violence against women, Various forms of violence, “statistically 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner (not including sexual harassment) at some point in their lives.”⁷⁹ As also reproductive freedom has been violated. Data of the Amnesty International (AI), says that, “due to child marriage, unsafe and unprotected sex and inadequate care during pregnancy, maternal deaths are 28% higher among adolescents than among those aged 20-24. Most adolescent girls, whether married or unmarried give birth with insufficient information, health care or support”.⁸⁰ Especially in the time of war or a military conflict, ethnic cleansing or a genocide, the most vulnerable, like women and children experience rape as also forced deprivation of the reproductive organs.

Significant example of these violations is the current genocide in Rohingya.⁸¹ Where with the latest news, “At least 288 villages were partially or totally destroyed by fire in northern Rakhine state after August 2017 and also at least 6,700 Rohingya, including at least 730 children under

⁷⁷ The United Nations Global Study on Children Deprived of Liberty, of Manfred Nowak, throughout 2018 and 2019, research groups collected data and good practices through questionnaires sent to all UN Member States.

⁷⁸ The CPT was founded on the basis of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), which came into force in February 1989. It allows the CPT to visit all "places of detention" of the member states of the Council of Europe. Places of detention, as defined by the convention, are all places in which people are held without their consent. In the first place, this covers police cells, jails, prisons and closed psychiatric institutions, but also immigration detention centers, old people’s homes and the like.

⁷⁹ United Nations Women, The United Nations Entity for Gender Equality and the Empowerment of Women, also known as UN Women, is a United Nations entity working for the empowerment of women. UN Women became operational in January 2011.^[2] President of Chile Michelle Bachelet was the inaugural Executive Director, and Phumzile Mlambo-Ngcuka is the current Executive Director. As with UNIFEM previously, UN Women is a member of the United Nations Development Group.

⁸⁰ Amnesty International, (also referred to as Amnesty or AI) is a non-governmental organization with its headquarters in the United Kingdom focused on human rights. The organization says it has more than eight million members and supporters around the world.

⁸¹ The Rohingya genocide is a series of ongoing persecutions by the Myanmar (formerly Burmese) government against the Muslim Rohingya people. The genocide has consisted of two phases to date: the first occurred from October 2016 to January 2017 and the second has been occurring since August 2017. The crisis forced over a million Rohingya to flee to other countries. Most fled to Bangladesh while others escaped to India, Thailand, Malaysia, and other parts of South and Southeast Asia.

the age of five, were killed in the month after the violence broke out, according to medical charity Médecins Sans Frontières (MSF).”⁸² ⁸³ We can see a picture of dramatic violation of human rights and crime against humanity. In this case Rohingya population does not have any protection neither from its state nor from the Bangladesh where they seek for asylum. Consequently, Rohingya people do not have any access to health at all. From the realistic point of view, they experience this suffer because they are minority, not only religious but also ⁸⁴ due to different traditions and culture.

Female Genital Mutilation – its impact on the life and health of women and girls:

Equality of people to have access to high standard of health care is one of the requirements of the Committee of the Economic Social and Cultural Rights (CESCR) – women and girls in the third world countries as well as in the developing and some developed countries have limited access to health.⁸⁵ In Arab countries, China, Myanmar, India, Bangladesh, Pakistan, Afghanistan and Sub-Saharan Africa, women and girls do not have proper access to health. Moreover, they experience Female Genital Mutilation (FGM), child marriage, sexual abuse, rape and other forms of undignified treatment.

Statistically, according to the: “WHO – FGM is estimated that more than 200 million girls and women alive today have undergone female genital mutilation.

⁸² *Médecins Sans Frontières*, sometimes rendered in English as Doctors Without Borders, is an international humanitarian medical non-governmental organisation (NGO) of French origin best known for its projects in conflict zones and in countries affected by endemic diseases.

⁸³ BBC News, Myanmar Rohingya: What you need to know about the crisis, 23 January 2020.

⁸⁴ Book, WHO, Rohingya Invisible/2019. P.10

⁸⁵ The Committee on Economic, Social and Cultural Rights (CESCR) is a United Nations body of 18 experts that usually meets twice per year in Geneva to consider the five-yearly reports submitted by UN member states on their compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Furthermore, there are an estimated 3 million girls at risk of undergoing female genital mutilation every year. The majority of these girls are cut before they turn 15 years old. Female genital mutilation has been documented in 30 countries, mainly in Africa, as well as in the Middle East and Asia. Some forms of female genital mutilation have also been reported in other countries, including among certain ethnic groups in South America. Moreover, growing migration has increased the number of girls and women living outside their country of origin who have undergone female genital mutilation or who may be at risk of being subjected to the practice in Europe, Australia and North America.”⁸⁶ In my opinion, according to human rights standards, this practice is very controversial as on the one side, people have right to practice their religion and traditions but, on the other side, girls have right to the self-determination, physic and sexual integrity, human dignity, health, privacy and family life. FGM is definitely a harmful practice what deprives women of enjoying their sexual life, leads infections, infertility, bleeding, and death. This tradition effects women’s pregnancy as also brings difficulties, sufferings during child delivering and also aggravates the health of the fetus and the baby. Moreover, this practice puts out of the school many of the girls, as they feel ashamed and do not see any reason to continue studying.

Emergency – unexpected Disease:

New unexpected dangerous diseases make adjustments and change our daily life and altitude towards health. For example, HIV/AIDS, Cancer and our days’ Coronavirus Pandemic (COVID - 19) brought their own effect into development of the health system in general. Current situation of the pandemic made states understand that investment should not be only focused on armies, politics and others. Instead, much more attention and development should be focused on science, health sector and research. Especially underdeveloped countries like, for example, Myanmar, India, Venezuela have a big number of deaths as a result of the lack of resources in the health sector. Proportionally measures need to be taken in each country to satisfy healthy society with clean water, environment, food etc.

Another challenge is the current replacement of the public health sector with the private one. It may negatively affect citizens, by increasing inequalities. Moreover, it weakens the quality of health system by deficiency of the responsibility of doctors in private clinics.

Availability, accessibility and quality are core factors of the health system. In particular, the current situation of the COVID 19 pandemic is a good illustration of the need of availability and accessibility of urgent medical treatment and facilities, as also of a sufficient number of the medical personnel.

Concerning the right to health facilities, goods and services, Article 12.2(d) mentions that the access to the rehabilitation, health education, all preventive measures are important and have to be accessible any time in all regions and for everyone. More attention needs to be paid to the people without health insurance.

The Convention on the Right of the Child obliges the State to make all necessary steps and legislation to provide the highest standards of health for children and their family. Child-

⁸⁶ United Nations Children’s Fund, Female Genital Mutilation/Cutting: A global concern, UNICEF, New York, 2016. United Nations Children’s Fund, Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change, UNICEF, New York, 2013.

friendly information needs to be presented to promote healthy lifestyle for children without discrimination of any kind. Especially, nutrition, safe drinking water and healthy environment need to be provided, equally for the boys and for the girls. As also more attention needs to be focused on the older people with disabilities and indigenous people.

Sadly, State Parties frequently speculate and use public health as an excuse to limit other human rights. For instance, in some countries people with the HIV/AIDS are sent to prison as considered to be dangerous people and doctors are prohibited to provide necessary medical treatment for those people. Such restriction is a violation of the International Human Rights Law (IHRL) as the international human rights standards.⁸⁷

Furthermore, by the year of 2018, 37 million of people were diagnosed with HIV. Pregnant women infected with HIV who do not receive necessary medical support will transmit HIV to the baby.

Children also do not have an access to vaccination, or refuse to get it because of the parents' or care givers illiteracy. Besides, there is deficit of the resources, polluted environment, lack of policies and law in practice in demographical, social and economic sectors. Moreover, there is lack of medicine, speculation on the pharmaceutical market and medicine is overpriced. Also, in my opinion, there should be a policy according to which developing countries should have the possibility to buy medicine with the net cost. I strongly believe that it will help to satisfy the right to health for everyone.

Under the Article (2.2), (2.1) of the Covenant, the State is obliged to satisfy the high standards of the health care system without discrimination of any kind towards fulfillment the Article 12. Any retrogressive measures taken by state in providing high standard of health are not acceptable. To facilitate, provide and promote are the State's main obligations to fulfill. There is the obligation to respect – the State should not interfere with the enjoyment of the right, and to – the State has combat actions of third parties that may interfere with Article 12. To fulfill these duties, the State has obligation to adopt legislative, budgetary, judicial and other steps to fulfill the right to health. State's legal obligation is to make sure that there is no limitation for the access to health to anyone: prisoners, minorities, orphans, asylum seekers, illegal immigrants and mentally sick people. No limitation cannot also be done in the access to contraceptives or sexual education. The State has also the responsibility to not allow medicine facilities or other important constituents to be of an inappropriate quality.

State parties have to make sure that right to health is included in the national, political and legal frame. Steps should be detailed, as also the goals to fulfill right to health. Moreover, all necessary supplementation to train highly qualified doctors should be given.

International Obligations on inter-country cooperation

Under the comment number 3, CESCR asks State to ensure and if necessary to accept help and assistance of the international organizations. United Nations Charter, Article 56

⁸⁷ International human rights law (IHRL) is the body of international law designed to promote human rights on social, regional, and domestic levels. As a form of international law, international human rights law are primarily made up of treaties, agreements between sovereign states intended to have binding legal effect between the parties that have agreed to them; and customary international law.

specifies Article 12, 21, 22 and 23 of the Covenant, and Alma-Ata Declaration speaking about primary health care, and the necessity of the international cooperation for the satisfaction of the right to health. Moreover, Article 12 of the Alma-Ata Declaration mentions the importance of the State not only to respect right to health in their own country but also in other countries, and be ready to provide aid if necessary.^{88 89}

Member States of the World Bank, Monetary Fund and local developing bank have to focus more attention on the right to health by making drafting international polices and credit agreements.^{90 91} The State has obligation to cooperate with the World Health Assembly, in cases of disasters, emergency, humanitarian assistance and support for the refugees.⁹²

Core obligations of the State in providing access to health for everyone

Under the scope of the work of the Programme of Action of the International Conference on Population and Development the core responsibilities under Article 12- the importance of the access to health has been emphasized. Moreover, this shall be provided for everyone without any discrimination.⁹³

To summarize, WHO cooperates with Myanmar, assists and gives advice in establishing necessary laws and provisions on health matters. The main goal is to increase standards of health for everyone. Therefore, it is necessary to eliminate all forms of inequalities and discriminations in the health sector. More attention and assistance needs to be provided for the people in the conflict zone, especially children.

⁸⁸ The Charter of the United Nations (also known as the UN Charter) of 1945 is the foundational treaty of the United Nations, an intergovernmental organization. The UN Charter articulated a commitment to uphold human rights of citizens and outlined a broad set of principles relating to achieving 'higher standards of living', addressing 'economic, social, health, and related problems,' and 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

⁸⁹ The Declaration of Alma-Ata was adopted at the International Conference on Primary Health Care (PHC), Almaty (formerly Alma-Ata), Kazakhstan (formerly Kazakh Soviet Socialist Republic), 6–12 September 1978. It expressed the need for urgent action by all governments, all health and development workers, and the world community to protect and promote the health of all people.

⁹⁰ The World Bank is an international financial institution that provides loans and grants to the governments of poorer countries for the purpose of pursuing capital projects. It comprises two institutions: the International Bank for Reconstruction and Development (IBRD), and the International Development Association (IDA). The World Bank is a component of the World Bank Group.

⁹¹ The International Monetary Fund (IMF) is an international organization headquartered in Washington, D.C., consisting of 189 countries working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world while periodically depending on the World Bank for its resources.

⁹² The World Health Assembly (WHA) is the forum through which the World Health Organization (WHO) is governed by its 194 member states. It is the world's highest health policy setting body and is composed of health ministers from member states.

⁹³ The United Nations coordinated an International Conference on Population and Development (ICPD) in Cairo, Egypt, on 5–13 September 1994. Its resulting Programme of Action is the steering document for the United Nations Population Fund (UNFPA).

2. Social Responsibility, Scientific Development and their impact on the access to health

Every State can decide by itself which measures have to be taken in the specific conditions. However, ICESCR obliges the state to take all the necessary steps to improve national legislation in order to satisfy the right to health.

The Universal Declaration on Bioethics and Human Rights was adopted on 19 October 2005. Its main provision is to ensure that the cooperation of the public health, social responsibility and also new technologies and scientific progress is made with respect to Article 14. This Article highlights the importance of health and bioethics to the society and also emphasizes the importance of the interoperation of the scientific development with political and social sphere.⁹⁴ UNESCO's Committee of the 36 experts observes and controls the current situation in the world. Moreover, the work of the International Bioethics Committee (IBC) is emphasized at the Report on Social Responsibility and Health.⁹⁵ Article 14 gives a new approach to the public health and Bioethics. IBC, in cooperation with the WHO, are trying to find a meeting point and put theory into practice, as well as exercise public policies and social responsibility in the sector of health. As people have rights they also have obligations. By speaking of the social responsibility in the spectrum of health, citizens cannot only rely on the State in satisfying good health for its citizens. For instance, if citizens do not develop a healthy lifestyle (abuse of alcohol, drugs and others). In this case the State cannot provide a good health for these citizens. Moreover, the citizens have responsibility to educate their children to develop a healthy lifestyle including sport, personal hygiene by their own example. This report brings solutions and specifies concrete steps that need to be done in legal scope and policies, in order to fulfill access to health for everyone. The declaration not only highlights the medical ethics aspects, but emphasizes the importance and interrelatedness of the scientific development and political and social systems. Scientific progress is controversial and has a dual effect on the people's access to health. On the one hand, it improves the level of medicine (drugs, surgery, elimination of the varieties of diseases), while on the other hand, it brings more inequalities to the societies, since it is not accessible for everyone.

Scientific development, global awareness and public understanding on health have increased the minimum life expectancy. On the other hand, the global health situation can be characterized as unequal and disproportional, as the case of Myanmar. According to WHO's Commission on Social Determinants of health, it is recommended to reform and develop conditions in which people are born and live as well as to empower the health information.⁹⁶

⁹⁴UNESCO has contributed to the formulation of basic principles in bioethics through in particular the Universal Declaration on the Human Genome and Human Rights, adopted unanimously and by acclamation by the General Conference in 1997

⁹⁵The International Bioethics Committee (IBC) of UNESCO is a body composed of 36 independent experts from all regions and different disciplines (mainly medicine, genetics, law, and philosophy) that follows progress in the life sciences and its applications in order to ensure respect for human dignity and human rights. It was created in 1993 by Dr. Federico Mayor Zaragoza, General Director of UNESCO at that time.

⁹⁶The Commission on Social Determinants of Health (CSDH) was a global network of policy makers, researchers and civil society organizations brought together by the World Health Organization (WHO) to give support in tackling the social causes of poor health and avoidable health inequalities (health inequities).

The conception of biology as the most important element of health has been criticized as health needs interventions and care. Moreover, each person has different values and goals and puts different meaning in what the health is. Article 14 of the Declaration states that “health is essential to life itself and must be considered to be a social and human good”. However, it does not take into consideration biological apprehension, as some of the state’s policies can affect differently healthy and unhealthy people.

3. What is the current situation with the access to health for orphans in Myanmar?

The Constitution of the Republic of the Union of Myanmar, 2008 under Article 32, 351, emphasizes the importance of care giving to the pregnant women, children and orphans.

According to Article 32, the Union shall: care for mothers and children, orphans, fallen Defense Services personnel’s children, the aged and the disabled; Article 351, on its turn, sets forth that mothers, children and expectant women shall enjoy equal rights as prescribed by law. Moreover, Myanmar National Health Law for promoting and protecting health to people includes the following pillars: Public Health Law, 1972, Dental and Oral Medicine Council Law (1989) (Revised in 2011), Law relating to the Nurse and Midwife (1990) (Revised in 2002, Myanmar Maternal and Child Welfare Association Law (1990) (Revised in 2010), National Drug Law (1992), Narcotic Drugs and Psychotropic Substances Law (1993), Prevention and Control of communicable Diseases Law (1995) (Revised in 2011), Traditional Drug Law (1996), Eye Donation Law (1996), National Food Law (1997), Myanmar Medical Council Law (2000), Traditional Medicine Council Law (2000), Blood and Blood Products Law (2003), Body Organ Donation Law (2004), The Control of Smoking and Consumption of Tobacco Product Law (2006), The Law Relating to Private Health Care Services (2007).

Myanmar Maternal and Child Welfare Association Law (1990) reports framework, objectives, membership, and formation, obligations and authority of Central Council and its Executive Committee.⁹⁷ The National Comprehensive Development Plan (Health Sector) (2010-11 to 2030-31) includes - Maternal and Child’s Health. The Department of Health is responsible for primary health care and main health services, promotion of nutrition, maternal and child health services and school health services. Furthermore, Basic Health Services emphasize that the midwives are responsible for maternal and child health care as well as immunization, nutrition promotion and disease control activities. Despite this constitutional protection, around 50,000 children die each year before reaching their fifth birthday.

An important point which explains poor health system in Myanmar is that the annual government spending on health is just US\$0.38 per person, while ethnic minorities and remote communities have no access to national health services at all.⁹⁸ Most of the orphan children in

⁹⁷ The Myanmar Maternal and Child Welfare Associations a non-governmental organisation in Burma which aims to protect mothers and their children in the country. Although it dates back to 1948, it was supported by the Burmese government when it was established in its new center in April 1991 particularly because the organisation aimed to cover much of the country in protection.

⁹⁸ The Save the Children Fund, commonly known as Save the Children was established in the United Kingdom in 1919 to improve the lives of children through better education, health care, and economic opportunities, as well as providing emergency aid in natural disasters, war, and other conflicts. A century later it is a global movement made up of 29 national member organizations which works in 120 countries. Myanmar: Mother and child survival challenges, 14 November, 2014.

Myanmar do not have access to health provided by the government. As many of the orphanages are not registered and settled in the monasteries, most of them are left behind. Moreover, some of the orphan children do not have any birth registration and basically the Public administration is not aware about their existence. The Report of the 'The Myanmar Healthcare System', provided by the Myanmar's Ministry of Health, current Ministry of Health and Sport, within the H.E. Doctor Than Aung, Union Minister of health, 2014 ⁹⁹ is saying that the health care system in Myanmar is changing according to the political and administrative system. Despite that, the Ministry of Health remains the main health provider in Myanmar. It is a mixture of public and private systems.

According to the National Health Policy, some NGOs in Myanmar such as the Myanmar Maternal and Child Welfare Association, and the Myanmar Red Cross Society, take a part in promoting and providing healthcare in the country. Japan provides significant financial support to the health development system in Myanmar and due to the Japanese help, new hospitals have been built such as the Mandalay Children Hospital, the Mandalay General Hospital, the Central Women Hospital-Mandalay, the Yangon Children Hospital and the Central Women Hospital-Yangon. Additionally, with the assistance of the Japanese Government, modernization of the hospitals will be made in the country. The Program of the Health System Strengthening in Myanmar is aimed to provide immunization, nutrition and environmental health, to decrease maternal and under- 5 child mortality. The main goals of the national health policy are to provide health care, increase the number of human resources for health care, and establish more hospitals in the rural area.

One of the key activities under Health System Strengthening program is the initiative to finance hospitals which are in real need, for instance, the Hospital Equity Fund and the Maternal and Child Health Voucher Scheme for the poor.

Current situation analysis of mental, physical and cognitive Health of children in Myanmar

National and Reproductive Health guidelines were added in 2002. The main idea was to develop the health mother and children by decreasing number of maternal, neonatal and child mortality. In addition, 70% of the Myanmar population is living in rural areas. These people need more hospitals and professionals in the health sector. Therefore, special trainings need to be provided. Moreover, there is a need to provide women with prenatal care, delivery and postnatal care, post-abortion care and newborn care.

Furthermore, adolescent reproductive health also needs to be improved, men need to be more engaged in reproductive health, early diagnose and screening have to be more affordable. There are several challenges in achieving high standards of health in Myanmar, including lack of health workers, geographical disadvantages, excessive work load for the midwives, ambulance and other medical facilities need to be improved, monitoring mechanism needs to be enhanced, as also data needs to be developed. By thinking of what could be done regarding the improvement of the healthcare system in Myanmar, we can say that The National Child

⁹⁹ The Ministry of Health is a national government-run ministry administering health affairs and health care in Myanmar, including all of the medical schools. In 2016, President Htin Kyaw dissolved the Ministry of Sports (Myanmar) and organized it under the Ministry of Health. On 25 May 2016, it was renamed to Ministry of Health and Sports (Myanmar).

Survival Forum which is creating a database with the information on newborn and child survival problems needs to be accomplished. It is important to establish a database with all child survival researches and written reports with all details. Furthermore, this system may help in identifying newborn babies who were left by their mothers, to issue birth registration. The development of relationship between Myanmar Newborn and Child Survival and the international community needs to be enhanced. I believe that the government shall have a strong will to collaborate with the international experts.

In my view, a state needs to allocate more financial resources for its population. In addition, to respect, protect and fulfill decent access to health and standards of living for its citizens. Elimination of corruption might make the whole system of the state clearer, and thus there will be more resources to satisfy basic needs and decent standards of living for everyone without any discrimination.

3. Birth registration of the orphans

1. What is the current situation with the birth registration of orphans?

Birth registration is one of the basic rights of everyone. Absence of the birth registration leads to the limitation of the access to education and health. Without the birth registration children are not able to be protected by the law, from the trafficking, may be forced to become child soldiers, as also to be pushed to get married as a child.

As Myanmar is a country where many natural disasters occur, children might be separated from their families during these disasters or other conflicts, and without the birth registration family reunification may be very difficult.

Despite all difficulties, Myanmar achieved some positive results in issuing birth registrations for children. In 2009 - 72% of children were provided with the birth registration and in 2015 this number raised up to 81%. However, we can still witness today a big gap between children from different parts of the country, from a variety of religious and social segments of the population.

Statistically, more than 94% of children in the cities obtain birth registration, when in Chin, Rakhine and Shan States much less children received birth registration. Furthermore, 97% of children from the rich families have a birth registration, while only 69 % of children from the poor families obtained birth registrations.¹⁰⁰

Legislation

Myanmar Constitution was adopted in 2008 under the provision 32. Its main emphasis is that the Union shall care for mothers and children, orphans, fallen Defense Services personnel's children, the aged and the disabled. Moreover, the State has to ensure the disabled ex-Defense Services personnel, as well as a decent living and free vocational training.

These provisions are very unclear and do not address any of the main current issues among the life of the orphans in Myanmar. Moreover, it mentions the Union obligations to provide necessary help for the mother and the orphans. However, the State has completely failed its obligation, as most of the orphanages in Myanmar do not receive any financial or other support

¹⁰⁰UNICEF, program, Realizing the first right of every child, Birth Registration, Myanmar, 2018

from the State. The Constitution does not mention either anything about the obligation of the State to issue birth registration for the newborn babies and others.

Article 3 Paragraph 3 of the Convention on the Right of the Child highlights that “States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. Myanmar ratified the CRC in 1991, and thus is obliged to follow its provisions of this legally binding Convention.

Article 7 and 8 highlight the importance of birth registration. The paragraph 3 of article 9 states that, “parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests”.

CRC and family reunification

Art. 10 of the CRC guarantees the right to family reunification. Section 12 of the Myanmar’s Child Law specifies that every child, “Shall have the right to live with and be brought up by both parents or any one parent if they are alive”.

In Myanmar there are a lot of cases when children get lost during the war or other conflicts and never since that have a chance to find their parents again, as they are sent to the orphanage or adopted by other family. A clear example is the current conflict in the Rohingya State, where millions of refugee children get lost in between Rakhine state and Bangladesh.

Moreover, the child shall not be separated forcibly from his or her parents, except in a case where, in accordance with law, separation is necessary for the best interests of the child.

Kidnapping organized by the state, as well as forced separation from the parents happened during the WWII, and also within the dictatorship in Argentina, Brazil and in our days in between the United States of America and Mexico.¹⁰¹

In the case of Myanmar, some incidents occur in the states with religious and other forms of conflicts, or as the way to decrease the population of one of the groups, and as the method of threatening in reaching their own goals. The Child shall have the right to maintain contact on a regular basis with parents lawfully separated, if it is not prejudicial to the interests of the child.

As we saw, in Myanmar there is a contracting form of adoption according to an individual analysis, and depends on the decision made by the adopting family.

Additionally, the child has the right to guardianship in accordance with law, in respect of his person or her property. “¹⁰²

In the simple adoption form, children have a right to maintain connection with their parents, whereas in the case of the full adoption, this connection is prohibited. Additionally, in the case of the simple adoption children have rights to inheritance from both biological parents and the

¹⁰¹World War II (often abbreviated as WWII or WW2), also known as the Second World War, was a global war that lasted from 1939 to 1945. The vast majority of the world's countries—including all the great powers—eventually formed two opposing military alliances: the Allies and the Axis. A state of total war emerged, directly involving more than 100 million people from more than 30 countries.

¹⁰²The United Nations Convention on the Rights of the Child (commonly abbreviated as the CRC or UNCRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. Nations that ratify this convention are bound to it by international law.

foster family, whereas in the situation of the full adoption children can have the inheritance only from the adoptive parents.

I strongly believe that more steps need to be done by the State and the International organizations in providing birth registration for everyone without any discrimination. Data needs to be established and to include all newborn babies in all the regions of Myanmar. Furthermore, more attention needs to be put in the rural areas, as most of Myanmar people live in the countryside. These steps will help to provide better standards of living for all children, and as a result, will support a better development of Myanmar.

2. What is the potential of the DNA test to help in finding relatives of the orphans?

In order to understand the potential of the DNA testing for the purposes of tracing relatives of the orphans, we have to explain the background of the DNA. DNA is a molecule, comprising the instructions, present in every cell that an organism needs to develop, live and reproduce, and these instructions are passed down from parents to children. Moreover, DNA contains molecules called nucleotides, and these molecules have a phosphate group, a sugar group and a nitrogen base. The order of the nitrogen bases actually determines genetic code, that is, DNA's instructions. Tellingly, DNA of a human has more than 3 billion bases, out of which 99 percent are identical in all individuals. However, there are hundreds of vigintillions (a number with 63 zeros after it) of different combinations of DNA, meaning that there are no two individuals in the world with the exact same combination of DNA. Even though children will have a combination more similar to you than to anyone else, they still won't have the same one. Similarly, every person's finger prints are unique, except for individuals born with adermatoglyphia.

In order to understand the way that DNA is organized, it is helpful to get familiar with different variants of the DNA tests, intended for different purposes. Human DNA usually comes in long stretches known as chromosomes, and each person has a total of 46 chromosomes, 23 pairs.

- Y-DNA tests inspect one of the chromosomes in the 23rd pair, called the Y chromosome, while autosomal DNA tests measure 22 pairs, called the autosomes. Mitochondrial DNA tests consider only a tiny snippet of DNA that is stored in a different place in the cell, the mitochondria.
- Ancestry DNA test is a more advanced one using autosomal DNA testing in order to provide insight into where one's ancestors could have lived 500 to 1000 or more years ago, as well as more elaborate family history. However, there are various tests for specific uses and purposes, but these are the basics to be known in order to best compare DNA tests (Annex3).

What is Autosomal DNA Testing?

Unlike mitochondrial DNA testing and Y-DNA testing, autosomal DNA testing analyzes most of your DNA that comes from your parents—the 22 pairs of chromosomes that make up your autosomes. Autosomal DNA testing is far more information-rich than either Y-DNA, or maternal ancestry DNA tests, since it reveals more about the ethnicity and family relations. Ancestry's autosomal DNA testing evaluates your genetic code at about 700,000 different locations, or markers, across your autosomal chromosomes, focusing on locations that differ between families and ethnic groups. This information can help in identifying in which of the more than 350 regions across the world your ancestors may have lived in.

Brothers who have the same father share the entire Y chromosome. Full siblings share 50% of their genes and half-siblings only share 25%. Additionally, full siblings have “fully identical” segments (both alleles of a gene are identical). This happens only if you have the same parents (twins or full siblings). Half-siblings, however, do not have fully identical segments since they share only one parent.¹⁰³

In the case of Myanmar’s orphans and children, DNA test could be a great opportunity for them to identify their identity and could give them a chance to find their biological family if there is any. DNA test can significantly change the scenario of the life of orphan children, by giving them a chance to escape suffering like malnutrition, ill treatment, sexual abuse, slavery and other forms of violation of their rights.

Matters of the children’s kidnapping at the State’s level

During the Dirty War in Argentina from the 1965 to 1983, children experienced military kidnapping, and more than 500 children were estimated and 30 000 disappeared.¹⁰⁴ One of them was Carolina María Sala, named by her adoptive parents. She was separated from her parents, who were accused of being terrorists and dissidents and later murdered by the current regime.¹⁰⁵ Carolina was deprived of her birth registration, and did not have any chance to take a DNA test, as it was not possible at the time. It took her 26 years to reclaim her identity and find her grandmother and brother. Today, have thousands of cases like this. In this situation we can see how important the role of scientific development and bioethics is in our life. Without DNA test it would be impossible to identify the identity of the person of no birth registration, and also to find lost relatives.

There is another case that demonstrates the serious harm and dramatic fate of the children who were kidnapped from their parents and were deprived of birth certificate and other identification documents. From September 1945 to January 1946, 6,600 unaccompanied children (and by June 8,500) were found in the three western zones of occupation. Most of them were illegitimate, some of them were adopted by the German Nazis, whose purpose was to create a German population with "racially valuable children." Over the months, the Central Tracing Bureau received thousands of pictures of babies, toddlers, and older children with descriptions of when and how they had disappeared from their homes or schools.¹⁰⁶ Most of them were from Poland, the Baltic borderlands and Ukraine. The UNRRA responsibility was to make sure that child welfare was fulfilled and also to find information about the child’s whereabouts from all

¹⁰³DNA Structure, Dickerson, R. E. The DNA helix and how it is read.

¹⁰⁴The Dirty War (Spanish: *Guerra sucia*) is the name used by the military junta or civic-military dictatorship of Argentina (Spanish: *dictadura cívico-militar de Argentina*) for the period of United States-backed state terrorism in Argentina from 1976 to 1983 as a part of Operation Condor, during which military and security forces and right-wing death squads in the form of the Argentine Anticommunist Alliance hunted down any political dissidents and anyone believed to be associated with socialism, left-wing Peronism or the Montoneros movement.

¹⁰⁵The Guardian/ Family/Interview, “I am a child of Argentina’s Disappeared, 29 December, 2014

¹⁰⁶The Arolsen Archives – International Center on Nazi Persecution formerly the International Tracing Service (ITS), in German International Suchdienst, in French Service International de Recherches in Bad Arolsen, Germany, is an internationally governed center for documentation, information and research on Nazi persecution, forced labour and the Holocaust in Nazi Germany and its occupied regions.

sources.¹⁰⁷ Parents were promised that their children will be returned home after the health check and reeducation. However, children who did not satisfy the requirements would never return home, as a result of the IQ test, the physical health check, and other requirements like, for example, being blond and having blue eyes. Hence, children who were not “good enough” were sent to the concentration camps to die.

The Ministry of the Interior let the criminal organization legal status by allowing the right of civil registry, enabling the organization to issue official birth certificates with (invented) places and dates of birth and (false) names, and -- the ultimate form of control -- to act as the stolen children's legal guardian.¹⁰⁸ The biggest problem was that during the Nuremberg trial of Lebensborn officials in 1947, they realized that all German documentation of the kidnappings and reassignments was ordered to be destroyed in April 1945.¹⁰⁹ As a consequence, all the kidnapped children were deprived of any chances to be reunited with their biological parents.

The book “East West Street” documents cases where the DNA test helped victims of the Holocaust find relatives. One of the testimony stresses: “I was referred to an academic at the Department of Genetics at the University of Leicester, a specialist in the examination, she introduced me to the company where the DNA test was available.” By the end the kinship was confirmed.¹¹⁰

The crucial obstacle is that even in the 21st century, for instance, in Myanmar children are deprived of any chance to find their lost relatives. Furthermore, DNA tests are not accessible for orphan children.

In my opinion, access to the DNA test for the orphans without birth registration is an urgent and undeniable challenge, and the State has to make decisive and immediate steps in adopting necessary legislation, but also to allocate funds or ask for the help from the outside. As for today, DNA test in Myanmar is provided by the Bio-Synthesis, American Embassy, which is trying to support Burmese people in identifying and finding lost relatives. As Myanmar has continuous military and other conflicts, the situation of lost children and absence of the birth registration will continue to be a common issue.¹¹¹

Moreover, an important cause of the high number of orphans in Myanmar is stigmatization. Single women as also women who have experienced rape and have given a birth, most of the times suffering from being stigmatized and discriminated by society. Children will also endure this stigmatization. As a consequence, women abandon their newborn babies in the most barbaric and tragic way to keep their pregnancy confidential. Again, children will be deprived from birth

¹⁰⁷United Nations Relief and Rehabilitation Administration (UNRRA) was an international relief agency, largely dominated by the United States but representing 44 nations, founded in 1943.

¹⁰⁸Jewish Virtual Library, “Stolen Children” Interview with Gritta Sereny. Sources: Talk, November 1999. Reprinted by permission of the author.

¹⁰⁹The Nuremberg trials were a series of military tribunals held after World War II by the Allied forces under international law and the laws of war. The trials were most notable for the prosecution of prominent members of the political, military, judicial, and economic leadership of Nazi Germany.

¹¹⁰Philippe Sands, was born 17 October 1960 is a British and French lawyer at Matrix Chambers, and Professor of Laws and Director of the Centre on International Courts and Tribunals at University College London. *The East West Street: On the Origins of the Genocide and Crimes against Humanity* (2016).

¹¹¹The Embassy of the United States in Yangon represents the official diplomatic mission of the American government in Myanmar (Burma), provides assistance to American citizens and issues visas to foreign nationals, for the purposes of visiting and immigration.

certification. For example, in Yangon, on May 12 2016, a crying newborn baby was found by Ms Thidar Han in the street facing down¹¹². Luckily, the baby's life was saved by a doctor's efforts. Unfortunately, the increase of these cases was indicated from 6 cases in Myanmar in 2011 to 20 in 2015.

Despite that, in Myanmar the abandonment of a child younger than 12 years old is punishable with a maximum sentence of seven years in prison. Under Myanmar's civil law, a woman who gives a birth to a child from a man who abandoned her can make a complaint and demand financial support.

3. What needs to be done to improve the current situation with providing birth registration for orphans in Myanmar?

The government of Myanmar within the cooperation with international institutions can and is already making steps towards providing birth registration for the Myanmar's children. Furthermore, close cooperation with UNICEF supports issuing birth registrations and helps to establish a strong system in the national Manual for Birth and Death Registration. These initiatives guarantee steps towards the Universal Birth Registration, which will help to protect the right to civil identification of each child in Myanmar, despite race, language, religion, belonging to minority group or his or her social status. It will also allow children to fully access to their civil, political, economic, social and cultural rights. This improvement will help Myanmar to achieve the Sustainable Development Goal 16.9 and thus "provide legal identity for all, including birth registration."

By spreading awareness, UNICEF and the government of Myanmar are trying to improve the situation with the birth registrations, and more than 300,000 children under the age of five were registered in 2014-2015. Moreover, in 2018 the new action was involved in the Nay Pyi Taw, Mandalay, Yangon, Bago, Sagaing and Tanintharyi regions and Kachin, Rakhine and Shan states where the birth certificates were given to nearly 130,000 children.

Currently, International institutions and Government are aiming to achieve 100% birth registrations for all children. Within the new technologies, it becomes more realistic as an electronic database for birth registration has been implemented in 133 places.

In addition, the Telenor Group started a new project within a Mobile Birth and Death Registration to develop birth registration processes in Mon State in 2018.¹¹³

I believe it is possible to achieve 100% of the birth registration for children, in case of the ending of the interracial, religious and other forms of hate and conflicts in Myanmar. Birth registration should be issued since the moment when the baby was born, immediately, without any discrimination, which is a condition for providing these humans with a dignified future.

Moreover, new scientific development has a potential in identification of identity. With the DNA test, these children will be able not only to obtain birth registration, but also to find their lost family, for example.

¹¹²Frontier Myanmar, News/Child abandonment cases highlight single motherhood, sex education problems/Tuesday, June 07,2016

¹¹³UNICEF/Press Release/UNICEF and Telenor join hands to introduce mobile birth and death registration in Myanmar/ 27August, 2018

Conclusion

Myanmar, the country in the South-East Asia, which values its culture, traditions, and religion, sometimes crosses the line of being too patriotic and as a consequence discriminates the rights of other minority or ethnic groups. The tendency of the eminency of the Buddhists in comparison to other religious groups leads to a continuous war and even crime against humanity among the country. Cultural relativism plays a crucial role in establishing relationship with international institutions and human rights experts. There is a slight improvement towards establishing trust between the Government and the International organizations. Despite the fact that some of the international organizations have been present in Myanmar for more than 70 years, they are still not powerful enough to bring a change in the continuous violation of human rights in the country.

Since Myanmar's geographical location brings a big number of natural disasters, many children are displaced, lose their identity documents, or have not received them since the moment when they were born. Moreover, military and other forms of conflicts in almost each state of Myanmar, deprives children of decent standards of living. In addition, many of them lose their parents and become orphans. Afterwards, they are sent to the different monasteries – orphanages, frequently separated from their siblings. Many of the orphanages are overcrowded and experience lack of caregivers. In these institutions, children experience starvation, forced labor, torture, and may fall victims of trafficking and other forms of violence. Furthermore, according to the Myanmar Law, international adoption is prohibited (it is possible only in the specific cases) and Buddhists are not allowed to adopt orphans. Within the fact that almost 90% of the Myanmar citizens are Buddhists, it takes away any chances of the orphans to find a new family.

Most of the orphanages are not registered, and Myanmar's government almost does not provide any financial support for the orphans. Often, orphan children are taken care of by volunteers. While conducting investigations at the Zayar Thiri monastic school, almost all forms of violation of human rights were witnessed. Specifically, lack of food and clean drinking water, no toileting, forced labor, risk of trafficking, child marriage and absence of birth registration. Despite the presence of a great number of International institutions, such as the UN, UNICEF, Save the Children, Human Right Watch, Red Cross, as well as other national and international NGOs, ongoing contraventions of the International Law, including Human Rights Law continue to occur in this country. The minimum age for marriage, labor, recruitment to the army, criminal responsibility and identification of age when a person is still considered to be a child has to be increased in accordance with international standards (18 years old). CRC in Myanmar needs to be fully implemented together with the Constitution of Myanmar and national Law.

Despite all difficulties, international organizations demonstrate some progress in cooperation with the government towards the fulfillment of the rights – which can be demonstrated by several programmes that are being implemented, such as the “National Strategic Plan for Dengue Prevention and Control 2016-2020, the UNICEF Handbook For Parliamentarians № 13, Eliminating Violence Against Children (2007), UNICEF's Program, ‘Out of School Children’, ‘and ‘The First Right of Every Child - Birth Registration ’Myanmar Sustainable Development Plan, SDGs, National Plan of Action for Food and Nutrition and the activity of several international agencies, such as FAO, ILO, Committee of the Right of the Child, Working Group of UPR, and also the EU Delegation. The process of separation and adoption of children needs to be revised. Especially, more attention needs to be paid to the contracting system of adoption. The fact that children in a new family have to work to satisfy his or her

needs and also the case when the contract can be revoked and the child is sent back to the orphanage have to be revised. To implement international standards of adoption, the signing and ratification of Hague Adoption Convention is necessary.

Besides that, immediate actions need to be taken in the sector of health. The gap between the access to health for the poor and the rich, as well as ethnic, religious and minority groups is significant. Both public and private health systems must work towards the fulfillment of the right to health for everyone without discrimination of any kind. Access to health for orphan children in Myanmar is poor and needs to be enhanced, especially during the current pandemic. WHO is cooperating with the state and helping in establishing the necessary policies and provisions to satisfy high standards of health for everyone. Moreover, WHO strongly recommends the state to invest more resources in the health sector and emphasizes that the budget allocation per person in the health sector is miserable at the moment and needs to be increased. As a result of the ethnic and other forms of discrimination in the country, Rohingya children are discriminated in the access to health and suffer from Malaria, Dengue fever, and at the moment from COVID - 19. Resources must be distributed equally without any discrimination. As 70 % of the people in Myanmar live in a rural area, they do not have enough hospitals and doctors to remain in good health. In addition, more training should be provided for doctors and also for families to explain prevention of diseases, hygiene and other methods to remain healthy. Currently we can observe a big gap between medical practice and medical knowledge in all countries, developed and developing. Moreover, according to the Joint United Nation Program (UNAIDS), 6.800 people contract HIV per day. ¹¹⁴In 2008, 2.1 million of children were diagnosed with HIV.

We also need to take into consideration that educational level and current rate of the illiteracy around the world, on basic standards of healthy behavior like hygiene, healthy nutrition and others make things even worse. In our days and also in the future, the access to the new advanced medicine, vaccination, nanotechnologies and scientific progress is not equally distributed for everyone. Scientific development and social responsibility are necessary and improve life expectancy, increase health among the world. We can remark the notable change in life expectancy, for example, in Portugal it changed from 60 years in 1960, maybe as a result of dictatorship, to 82 years today. Generally speaking, scientific progress gives the chance for humanity to live longer and healthier. We can overcome cancer, HIV/AIDS and even maybe COVID 19 in future.

DNA testing helps millions of people with personal identification. It is also a powerful tool to finding lost relatives, especially in the countries where genocide, civil wars or military conflicts take place. For the orphan children in Myanmar, for example, these tests are urgent to helping children who are deprived of birth registration and do not have any chance to reunite with their biological family. As far as I am concerned, the international organizations working within this field and cooperating with the State have to start investigation and take all necessary measures to provide DNA testing for the orphan children, as also birth certificates to find their relatives. I strongly believe that the best interest of a child is to live with their biological family or an adoptive family but definitely not in a monastery- orphanage.

¹¹⁴UNAIDS is headquartered in Geneva, Switzerland, where it shares some site facilities with the World Health Organization. It is a member of the United Nations Development Group.^[1] Currently, Winnie Byanyima leads UNAIDS as Executive Director. Former Executive Directors are Peter Piot (1995-2008) and Michel Sidibé (2009-2019).

By investigating the current situation with birth registration for children in Myanmar, we can see that the situation is improving and more children are receiving birth registrations.

In conclusion, we can say that Myanmar is a country in transition to democracy which only recently has opened its borders for the international society. Within the help of the international experts, who work toward improvement of the life of children in Myanmar, we can observe a positive dynamic. Transition for the country and its citizens is always a difficult process. The most important is that the state should not use it as an excuse for continuous violations of rights and discrimination of their citizens.

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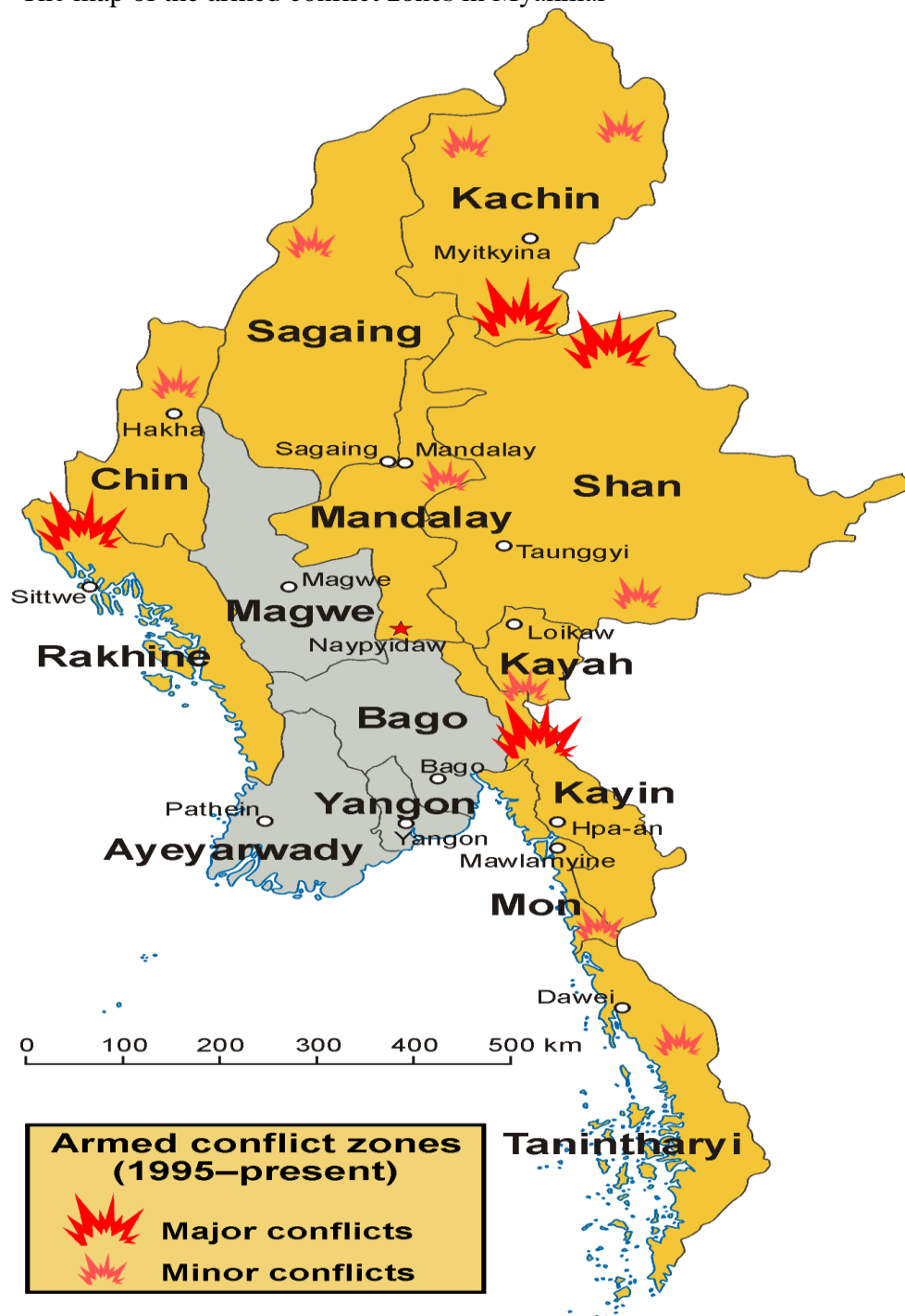
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Annex 1

‘The map of the armed conflict zones in Myanmar’



Annex 2

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Annex 3

‘The Types of DNA’

