

# MYANMAR

STEPS TOWARDS ICCPR RATIFICATION –  
ASSESSMENT OF THE PROGRESS

*MARCH 2018*

CENTRE FOR CIVIL AND POLITICAL RIGHTS

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## STEPS TOWARDS ICCPR RATIFICATION – ASSESSMENT OF THE PROGRESS

8 March 2018

### I. TWO-YEAR PROJECT “IMPROVING RESPECT FOR HUMAN RIGHTS IN BURMA” SUPPORTED BY UK FCO

#### A. Context and purpose

1. The Centre for Civil and Political Rights (CCPR) aims at promoting the implementation of the International Covenant on Civil and Political Rights (ICCPR) worldwide. For this purpose, CCPR also carries out activities to enhance ratification process of ICCPR by non-Party States.

2. Myanmar has accepted recommendations to ratify ICCPR during the first and second UPR cycles, while already being party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), CRC Optional Protocol on the sale of children, child prostitution and child pornography (CRC OPSC) and the Convention on the Rights of Persons with Disability (CRPD) as well as signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and CRC Optional Protocol on the involvement of children in armed conflict (CRC OPAC).

3. At the same time, Myanmar has still been facing significant and fundamental challenges in the realisation of democracy and protection of human rights in the country, whereby ratification of ICCPR would open up a variety of opportunities for State and civil society actors to effectively address those challenges and protect civil and political rights.

4. In this context, CCPR has started a **2-year project** named “*Improving respect for Human Rights in Burma*” in June 2016 **to enhance process and assist national efforts towards ICCPR ratification by Myanmar**, with support of the **UK Foreign & Commonwealth Office (UK FCO)**.<sup>1</sup>

#### B. Assessment report

5. As the final output of the aforementioned 2-year project, the current assessment report aims to **summarise main outcomes** and, based its findings, **assess progress made and possible steps forward towards ICCPR ratification (and implementation) by Myanmar** for effective protection and promotion of human rights, especially civil and political rights.

### STEPS TOWARDS ICCPR RATIFICATION – ASSESSMENT OF THE PROGRESS

Since June 2016, CCPR has been carrying out the project named “*Improving Human Rights in Burma*” in Myanmar with support of UK Foreign & Commonwealth Office (UK FCO), aiming at enhancement of the process towards ICCPR ratification by

Myanmar. This report summarises outcomes of the project and assesses progress made and possible steps forward based on its findings.

<sup>1</sup> Additional support was also provided by the **Embassy of Switzerland in Yangon** for the organisation of the 2<sup>nd</sup> high-level visit to Myanmar in December 2017 including the 2<sup>nd</sup> workshop with national agencies in Nay Pyi Taw.

## C. Main activities

6. Key activities and outputs of the project, since its start in June 2016 and up to the timing of this assessment report are as follows:<sup>2</sup>

### July 2016: Preparatory visit to Yangon by CCPR Asia Pacific Coordinator

- Meeting with civil society partners and diplomatic community

### November 2016: Preparatory visit to Nay Pyi Taw and Yangon by CCPR Director and Asia Pacific Coordinator<sup>3</sup>

- Meeting with State actors (Union Attorney General's Office and Ministry of Foreign Affairs)
- Meeting and roundtable with national civil society actors co-organised with Equality Myanmar (EQMM)
- Meeting with partners including civil society, Myanmar National Human Rights Commission (MNHRC), relevant UN agencies and diplomatic community

### December 2016: Co-organisation of public event on ICCPR with EQMM in Yangon

### February 2017: 1<sup>st</sup> High-level visit to Myanmar with Judge Krister Thelin, former member of UN HR Committee<sup>4</sup>

- 1<sup>st</sup> workshop with relevant national agencies co-organised with MoFA Myanmar
- De-briefing and planning meeting with MoFA Myanmar
- Meeting with partners including civil society and diplomatic community

### June 2017: Visit to Yangon by CCPR Director and Asia Pacific Coordinator

- Workshop with civil society on ICCPR co-organised by civil society partners (EQMM, Democracy Reporting International and International Bar Association's Human Rights Institute) in Yangon<sup>5</sup>
- Meeting with partners including civil society, MNHRC and diplomatic community

### November 2017: publication of "ICCPR – Guide for Ratification and Implementation" in English and Burmese<sup>6</sup>

### December 2017: 2<sup>nd</sup> High-level visit to Myanmar with Judge Krister Thelin (co-funded by the embassy of Switzerland in Yangon and UK FCO)

- 2<sup>nd</sup> workshop with relevant national agencies and experience sharing from Indonesia, Switzerland and Thailand<sup>7</sup>
- De-briefing and planning meeting with MoFA Myanmar
- Meeting with partners including civil society and diplomatic community for assessment of current situation and further planning

### February 2018: Final assessment

### March 2018: Completion of the project

<sup>2</sup> Details of the country visits including its agenda, findings and outcomes can be found in separate reports of each visit.

<sup>3</sup> Also see: <http://ccprcentre.org/ccprpages/myanmar-steps-towards-iccpr-ratification>

<sup>4</sup> Also see: <http://ccprcentre.org/ccprpages/steps-towards-iccpr-ratification-accession-by-myanmar-2>

<sup>5</sup> Also see: <http://ccprcentre.org/ccprpages/steps-towards-iccpr-ratification-by-myanmar-part-3>

<sup>6</sup> [http://ccprcentre.org/files/media/ICCPR\\_ratification\\_guide\\_FINAL.pdf](http://ccprcentre.org/files/media/ICCPR_ratification_guide_FINAL.pdf) (English) and [http://ccprcentre.org/files/media/ICCPR\\_ratification\\_guide\\_BUR\\_FINAL.pdf](http://ccprcentre.org/files/media/ICCPR_ratification_guide_BUR_FINAL.pdf) (Burmese)

<sup>7</sup> Also see: <http://ccprcentre.org/ccprpages/steps-towards-iccpr-ratification-by-myanmar-part-4>

## D. Main outcomes

7. Through the series of meetings, consultations and roundtable with partners and stakeholders in particular in the 1<sup>st</sup> half of the project, **main challenges towards ICCPR ratification by Myanmar** were identified as: 1) lack of proper understanding of ICCPR provisions and related State obligations among all relevant stakeholders; 2) lack of awareness among stakeholders, especially State actors, of the benefits of ICCPR ratification; and 3) lack of practical knowledge among relevant national agencies about actual implementation of ICCPR and effective engagement with the UN HR Committee. These challenges were further reflected in the planning and addressed through implementation of the rest of the project, in particular through organisation of the two workshops with national agencies<sup>8</sup> as well as in the publication “*ICCPR - Guide for Ratification and Implementation*”.

8. Furthermore, through the 1<sup>st</sup> workshop with national agencies, following articles of / issues covered by ICCPR were identified as especially relevant to Myanmar: **Art.1 right of “peoples” to self-determination, Art.2 non-discrimination and access to remedy; Art.4 derogation; Art.14 equality before courts and fair trial; Art.18 freedom of religion; Art.19 freedom of expression; Art.21 freedom of peaceful assembly; Art.22 freedom of association; Art.25 electoral rights of “citizens”; and Art.27 rights of minorities.** More in depth explanation was given on these articles and issues in the Guide, as well as by Judge Thelin in the 2<sup>nd</sup> workshop with national agencies, which helped participants clarify their concerns and questions.

9. Also through the 1<sup>st</sup> workshop with national agencies, the needs for proper understanding of the possible **reservations under ICCPR**<sup>9</sup> as well as **State obligations** and necessary **measures before and after the ratification** of ICCPR were identified, whereby participants expressed particular interest in **learning from the experience of other State parties** and stressed on its usefulness for Myanmar. These needs and ideas were all reflected and realised in the Guide as well as the 2<sup>nd</sup> workshop with national agencies, where **resource persons** were invited from **Indonesia**<sup>10</sup>, **Switzerland**<sup>11</sup> and **Thailand**<sup>12</sup> to share their experience and give advices to Myanmar.

10. Genuine interest and call for serious consideration and taking actual steps towards ICCPR signature and ratification were expressed by participants in the 2<sup>nd</sup> workshop with national agencies, whereby “**desire**” and “**eagerness**” of Myanmar to join ICCPR were repeatedly expressed and stressed upon by the representatives of the International Organization and Economic Department (IOED) of MoFA Myanmar. Discussion was also started among the participants on the initiation of **comparative analysis of ICCPR and domestic legal framework to be done by relevant State agencies.**

11. Moreover, participants in the 2<sup>nd</sup> workshop with national agencies re-confirmed the **usefulness** and **benefits** of **workshops with resource persons** who can share first-hand experience and examples from different perspectives combined with theoretical explanation and reading material. High **interest** was also shown in this regard to organise **more workshops** in co-operation with CCPR on topics relevant for ICCPR ratification and, especially, its **implementation.**

12. The number of participants was more than 30 in the 1<sup>st</sup> workshop with national agencies and 50 in the 2<sup>nd</sup> one, while 50 for both the roundtable as well as the in-country workshop with civil society actors.<sup>13</sup> Interaction during workshops and meetings as well as feedbacks from participants clearly showed that a new **momentum** was created among relevant stakeholders **towards ICCPR ratification** through the project.

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<sup>8</sup> Please see separate reports on the 1<sup>st</sup> and 2<sup>nd</sup> high-level visit to Myanmar

<sup>9</sup> List of reservations and interpretative declarations under ICCPR was created by CCPR after the 1<sup>st</sup> workshop with national agencies, which provides an overview of reservations, their contents, and State Parties as well as Articles by and on which reservations are made: [http://ccprcentre.org/files/media/List\\_of\\_ICCPR\\_reservations.pdf](http://ccprcentre.org/files/media/List_of_ICCPR_reservations.pdf)

<sup>10</sup> Mr. Bonanza P. Taihitu, Director Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs

<sup>11</sup> Ambassador Paul Seger, Swiss embassy in Yangon

<sup>12</sup> Ms. Nareeluc Pairchaiyapoom, Director of International Human Rights Division, Department of Rights and Liberties Protection, Ministry of Justice

<sup>13</sup> Please also see separate reports on the respective visits and workshops

13. The two workshops with national agencies co-organised with MoFA Myanmar has also drawn **attention of national media**<sup>14</sup>, which published reports both printed and online. In such reports over the 2<sup>nd</sup> workshop with national agencies, “*desire*” expressed by the State participants to join ICCPR was also clearly stated.

14. In addition, cooperative and constructive **relationship between national stakeholders in Myanmar**, including State actors, **and CCPR**, which was created and further strengthened through the project, should also be noted as one of its overall outcome. Such relationship enabled CCPR to effectively and more accurately identify the needs in the country, more smoothly carry out relevant activities and provide targeted assistance. Moreover, this relationship becomes particularly valuable as the basis for further cooperation and collaboration in the efforts towards ICCPR ratification, and more importantly, its implementation in a longer-term, to protect and promote civil and political rights.

## II. PROGRESS AND POSSIBLE STEPS FORWARD TOWARDS ICCPR RATIFICATION (AND IMPLEMENTATION) BY MYANMAR

15. As mentioned above, Myanmar was already Party to CRC (accession in 1991), CEDAW (accession in 1997), CRPD (accession in 2011), CRC OPSC (accession in 2012), and signatory to ICESCR (July 2015) and CRC OPAC (September 2015), before the start of the project in June 2016. As such, the procedure and technical aspect of ratification of international treaties did not seem to pose any particular difficulty to Myanmar.

16. In the meetings with the State actors during preparatory and 1<sup>st</sup> high-level visit, it was indicated that Myanmar would join further international human rights treaties through two steps i.e. signature followed by ratification and the **first priority** of Myanmar in this regard was put on the ratification of **ICESCR and CRC OPAC**, as both were signed in 2015, while **official process to sign ICCPR will be initiated thereafter**. Indeed, Myanmar has **ratified ICESCR** in October 2017.

17. At the same time, it was also indicated that certain time was necessary to carry out internal discussion and analysis in order to initiate official process for the signing and ratification of ICCPR. In this context, the approach and activities of the project were welcomed by the national stakeholders including State actors as it **strengthened their capacity**, especially in terms of **deepening understanding and raising awareness among relevant national agencies** in order for them to smoothly carry out and finalise internal preparatory steps.

18. In the beginning, concerns over certain issues addressed by ICCPR were raised by stakeholders, such as the right of non-citizens, religious minorities and stateless persons; discrimination in law and practice; right to remedy as well as independence of judiciary as domestic situation on these issues could increase reluctance among decision makers. However, in-depth explanation was given in the workshops and the Guide (see § 9 above), whereby it was also stressed that **ratification is the start of the long-term process of implementation** to effectively address those issues. Advices were given to national agencies to conduct **comparative analysis of domestic legal framework, especially the Constitution and ICCPR** regarding its compatibility and to address any gaps as early as possible.

19. In this regard, **production of official translation of ICCPR** in Burmese (and possibly in future in other ethnic languages used in Myanmar) could be a next step forward for all stakeholders. At the time of this assessment, there were two informal translations of ICCPR in Burmese, one done by the civil society and another by the Myanmar National Human Rights Commission (MNHRC). However, none of them was regarded as official and there were several differences between them causing confusion. Needs for assistance to produce such official translation was expressed by IOED MoFA, which also suggested cooperation with the Ministry of Education. However, it was found out that another initiative led by the International Commission of Jurists (ICJ) and Danish National Human Rights Institute (DNHRI), focusing on the capacity building of the judiciary in Myanmar regarding international human rights laws, was also planning to produce Burmese translation of ALL UN HR Treaties including ICCPR in 2018. Against this backdrop, CCPR remains in touch with all involved parties to avoid duplication of work but effectively cooperate and collaborate, whereby production (and translation) of **easy to read commentary of the Covenant** covering at least Articles 1 – 27 could effectively complement the production of translation.

<sup>14</sup> E.g. “[the Global New Light of Myanmar](http://theglobalnewlightofmyanmar.org)”; <http://ccprcentre.org/ccprpages/steps-towards-iccpr-ratification-by-myanmar-part-4>

20. It should also be noted that, as the number of international HR Treaties ratified by Myanmar increases, **challenges might emerge in terms of implementation of these Treaties and reporting** to the respective Treaty Bodies. In this context, clear needs among the relevant national agencies could be identified for **further project i.e. activities to assist national efforts towards ICCPR ratification and, especially, effective implementation by Myanmar**, whereby **capacity building of relevant State agencies** on the **National Mechanism for Reporting and Follow-up (NMRF)** could be a particular element.

21. In such efforts to build capacity on NMRF, actual **experience of Myanmar** in going through recent review by **CEDAW** as well as practice to prepare report to **CESCR** and implement CEDAW recommendations can be embedded, contributing to effective preparation for ICCPR ratification and implementation in a more practical manner and enhancing the implementation of other UN HR Treaties, to which Myanmar is already a Party.

22. As to concrete method of the capacity building, **workshops with resource persons, sharing of experiences and examples from other State parties**, and **production of practical tool** for stakeholders could be further effective as their usefulness and benefits were appreciated by the State actors in the current project. Organisation of **mock sessions** could be new additional approach to facilitate effective engagement of State actors and HR Committee. Particular interest was also expressed by participants in the 2<sup>nd</sup> workshop with national agencies in the **actual steps** taken by other State parties in **preparation for the review** by the HR Committee, as well as to **implement concrete recommendations** issued by HR Committee including possible **timeframe and budget indications**.

23. At the same time, it was also identified by CCPR delegation as well as representatives of IOED MoFA that, when designing and carrying out future capacity building activities, **more involvement of members of the Union Parliament**, both Amyotha and Pyithu Hluttaw has significant importance. In this context, interaction with Parliamentarians from other countries as well as development of a **tool for Parliamentarians to utilise ICCPR** in effectively protecting and promoting civil and political rights in Myanmar could also be an asset. Such focus on the Executive and the Legislative in the next project would also effectively complement parallel initiatives taken by other actors such as the one by ICJ and DNHRI mentioned above focusing on the Judiciary.

24. Furthermore, **resource persons** in the future activities could be invited from the **HR Committee** (current or former members), **officers** from relevant **Ministries** and **Parliamentarians from other State parties**, especially those with **federalism** and/or with **dualist legal system**, while actual identification of resource persons should be done with flexibility in accordance with the needs of the target group.

25. Though feasibility and cost-benefit balance need to be analysed, facilitation of participation of representatives of Myanmar (in particular from the government, Parliament and judiciary) in ICCPR related events / workshops in other countries and/or study trip to Geneva was also suggested by IOED MoFA.

26. After all, as shown in the outcomes of the project above, it can be clearly stated that ICCPR ratification by Myanmar is rather the question of "**when**" than "whether". While Myanmar most likely takes signature-ratification steps, rather than directly acceding to it, there was certain indication (though no official announcement of the plan or timeframe) that efforts are being made to take as many **official steps** as possible towards ICCPR ratification by the **next national election** being expected in 2020, where the **3<sup>rd</sup> UPR of Myanmar** is also scheduled in October / November.

27. On the other hand, there are also various factors that could affect smooth ratification process and/or effective implementation of ICCPR such as the situation in Rakhine, peace process, political dynamics and nationalist movement towards the election, position and control of the military as well as (increasing) dislike among general public against international intervention or the UN as a whole, among others. When developing next project, these factors should be well taken into account, whereby too much external pressure or hurrying for soonest ratification of ICCPR might be counter-effective and particular importance should also be put on the ownership of the process by domestic actors.