

Child Labour in the Myanmar Fishing Sector



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Executive Summary

The fishing industry has been a significant driver of Myanmar's economic growth in the last decade. However, Myanmar's fishing industry has simultaneously been associated with alleged child labour issues. Human Rights Now (HRN), a Tokyo-based international human rights NGO, sent a fact-finding mission in July 2017 to investigate the alleged child labour situation in the Myanmar fishing industry.

Over the course of five visits from 6 July 2017 to 25 July 2017, the fact-finding mission conducted interviews with labourers at San Pya market, one of the largest wholesale fish markets in Yangon, as well as at two villages across the Yangon River, Aye and Ba Done Nyunt villages. The fact-finding team conducted interviews with 19 people, including 12 child labourers¹.

While acknowledging the limited scope of the fact-finding mission, HRN uncovered abject working conditions and the use of child labour in the fishing sector in Myanmar.

Child participation in the Myanmar labour force is widespread due to poverty, little knowledge about the issue, shortcomings in the country's education system and a lack of services aimed at poor children and families.² Furthermore, Myanmar lacks a coherent legal framework against the practice of child labour and, simultaneously, for the protection of young workers. The Myanmar government has not implemented a uniform legal definition of a child, and there is a discrepancy in the country's domestic legal standards regarding the minimum age for child workers. Where domestic laws do include provisions on child labour, these provisions are limited in the scope of their protection, fragmented as they apply differently to different sectors, frequently outdated, and rarely enforced.

Additionally, child labourers in the fishing sector work under hazardous conditions rising to the level of "worst forms of child labour" under the standards of the International Labour Organization (ILO). These hazardous conditions, amongst others, include lengthy working hours and physically taxing environments, such as working in extreme temperatures or underwater without the requisite safety measures.

Moreover, children working in the Myanmar fishing sector are at risk of being trafficked. These circumstances expose children to additional abuses and violations of their ancillary rights.

¹ Note: the said interviews are meant to be a sample of the child labour practices in Yangon and are not intended to represent the entire of the Myanmar fishing industry.

² International Labour Organization, "Knowledge, attitudes and Practices (KAP) study on child labour in Yangon, Ayeyarwady Region and Mon State", 2015, at 2, http://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_27675/lang--en/index.htm

Further, child labour practices in the Myanmar fishing sector undermine socio-economic rights such as the right to education and the right to health.

While welcoming the government's recent efforts aimed at tackling child labour issues, including the reported drafting of the National Action Plan on Child Labour, HRN remains concerned about the lack of adequate regulation and specifically the lack of enforcement of existing regulation on the part of the Myanmar government regarding labour standards in the Myanmar fishing sector. Currently, the Myanmar legal system is composed of a series of old laws inherited in part from the former colonial Indo-British legal system, and the labour legislation is fragmented by the business sector. This creates a legal vacuum and gaps in the application of legal protection regarding child labourers. The proposed reforms should address this matter, provided that their implementation will be thorough.

Within the framework of international law, the current reality violates several ILO conventions, the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children.

As a means to raise awareness of and improve the child labour situation in the Myanmar fishing industry, HRN makes the following recommendations in this report:-

To the government of Myanmar:

- Immediately conduct a thorough, effective, and transparent large-scale investigation of the child labour practices and human rights violations in the Myanmar fishing sector.
- Launch and Implement the National Action Plan on child labour to ensure adequate conditions of work on board fishing vessels and in the broader fishing sector, using the ILO Work in Fishing Convention 2007 (No. 188) as guidance.
- Develop and structure clear roles within the the responsible sections of government and foster greater communication and cooperation between the Navy and non-governmental partners with regard to the fishing sector and its child labour practices.
- Clarify the Myanmar Marine Fisheries Law of 1990 by specifying the responsibilities of the inspector, researchers, observers, and trainees on board the vessel, using Article 8 of the ILO Work in Fishing Convention 2007 (No. 188) as guidance.
- Set minimum working age requirements across all sectors, including the fishing industry, using Article 9 of the ILO Convention 188 in relation to child labour as guidance.

- Expand consultation with multiple stakeholders in the fishing sector, aimed at revising the Marine Fisheries Law of 1990, to include the necessary discussion of child labour issues within the industry.

To Foreign States and Companies Engaged in Business with the Myanmar Fishing Sector:

- Develop and implement strong monitoring and due diligence measures³, in consultation with local worker groups, NGOs, workers, and other stakeholders, to ensure products produced by child labour, as well as other human rights impacts, do not enter their supply chains. Also take measures to address child labour and other negative human rights impacts identified, such as using their leverage to see that the supplier end its child labour practices.
- Take measures to verify their due diligence practices are effective in identifying risks and preventing abuse. This should include audits, on-site investigations and consultations with workers' organisations and civil society. Additionally, the due diligence system's criteria and procedures should be released in public to allow civil society evaluation and assurance that they are effective.
- Publicly affirm a commitment to the UN Guiding Principles on Business and Human Rights and establish human rights and CSR policies to ensure that labour and human rights, including the rights of children, are respected in supply chains, in accordance with the Guiding Principles and international labour rights standards.⁴
- Use their leverage to persuade or see that multiple stakeholders continue to work towards adequate protection of the rights of potential and actual child labourers in the industry.

³ We recommend the following as models for strong and effective due diligence such as the OECD-FAO Guidance, ECCJ Position Paper, Amfori-BSCI System, and the ETI Base Code for labour rights standards. *See* AMFORI-BSCI System Manual, 11 November 2014, <https://www.amfori.org/resource/amfori-bsci-system-manual-full-and-interactive-version-english>

⁴ A useful example is the Ethical Trading Initiative's ETI Base Code. *See* ETI Base Code, <https://www.ethicaltrade.org/eti-base-code>

I. Introduction

Myanmar, formerly known as Burma, is a former British colony and military dictatorship. In 2012, the Myanmar military initiated a political and economic reform process with the stated intention of becoming a democratic and capitalist country open to foreign investment.

In the last half-century, Myanmar has undergone thorough changes in its political and economic framework. A long period of corruption and human rights violations under two different military regimes for almost five decades between 1960 and 2008 placed Myanmar among the world's most impoverished states.⁵ However, following the adoption of a New Constitution in 2008, a gradual liberalisation began in 2010. This culminated in Myanmar's freest elections yet in 2015 and the installation of a government led by the party of former opposition leader Aung San Suu Kyi under her *de facto* leadership.⁶ Myanmar's new government adopted policies seeking to address some human rights violations and grow its economy by welcoming foreign investment.⁷ However, the new government has recently drawn criticism for their involvement in and handling of the Rohingya crisis in Rakhine State since August 2017.⁸

Despite these developments, Myanmar is experiencing an economic boom. An influx of capital from foreign investors eager to take advantage of Myanmar's more open economic policies and low production costs have boosted Myanmar's economic growth. Myanmar is expected to grow an average of 7.1 per cent per year in the next three years and has the potential to reach a net worth of 200 billion USD in 2030, close to a 350 per cent increase since 2010.⁹

Yangon is the economic centre and commercial capital of Myanmar. As of 2014, economic activity in the city constitutes 23 per cent of the national GDP and, as of

⁵ Lex Rieffel, "The Economy of Burma/Myanmar on the Eve of 2010 Elections," *The United States Institute of Peace*, May 2010, <https://www.usip.org/sites/default/files/resources/SR241Rieffel.pdf>; Asian Development Bank "Poverty in Myanmar," <https://www.adb.org/countries/myanmar/poverty>.

⁶ The European Union Election Observer Mission noted, however, unreasonable restrictions on the right to stand in the elections as well as the right to vote. As many as one million refugees, primarily of the Rohingya ethnic group, were denied the right to vote in the elections. European Union Election Observer Mission to Myanmar in 2015, Final Report, 15 Aug. 2015, 10 & 40, https://eeas.europa.eu/headquarters/headquarters-homepage/23795/eu-election-observation-mission-myanmar-2015_en.

⁷ Beina Xu and Eleanor Albert, "Understanding Myanmar" *Council on Foreign Relations*, 25 March 2016.

⁸ UN news, "UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar", 11 Sept 2017, <https://news.un.org/en/story/2017/09/564622-un-human-rights-chief-points-textbook-example-ethnic-cleansing-myanmar>.

⁹ Kyaw Soe Lynn and Jane Zhang, "Myanmar Growth Projected to Recover Following a Slowing Economy in 2016," *The World Bank*, 30 Jan 2017.

2015, 90 per cent of the country's international trade passes through the Port of Yangon.¹⁰ Yangon serves as a focal point for the Myanmar fishing sector as Yangon houses the two main wholesalers of the sector.¹¹ Additionally, the city hosts a majority of the export-oriented companies processing inland capture fisheries.¹²

This report investigates human rights abuses occurring in the fishing sector in Myanmar, with a special focus on child labour issues. The report first provides detailed information about the national fishing sector (Part II). Subsequently, the report discusses child labour and its causes in Myanmar (Part III) and describes the results of a field investigation conducted by HRN between 6 July 2017 to 25 July 2017 in Yangon's San Pya market, Aye village, and Ba Done Nyunt village. (Part IV). Finally, the report includes an analysis of international law standards pertaining to the issue of child labour (Part V), as well as HRN's recommendations to stakeholders (Part VI).

II. Fishing Sector in Myanmar

a. The Fishing Sector and Myanmar's Economic Development

The fishing industry is crucial to Myanmar's economy, providing food security and livelihoods for much of the population.¹³ The fishing industry is the second-most important food-producing sector in Myanmar and is reported to provide direct employment to 3.2 million people.¹⁴ The sector is also the fourth largest contributor to national GDP and the fourth largest source of foreign exchange earnings.¹⁵

b. Challenges in the Fishing Sector

Workers in the Myanmar fishing sector are vulnerable to abuse and often exposed to hazardous conditions. These will be elaborated in further detail in the following

¹⁰ Catarina Heeckt et al., "Towards Urban Growth Analytics for Yangon", *London Schools of Economics*.

¹¹ "Myanmar," Seafood Trade Intelligence Portal, <https://seafood-tip.com/sourcing-intelligence/countries/myanmar/>.

¹² 'Freshwater Capture Fisheries,' International Labour Organization, 2015, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_446505.pdf, at 27.

¹³ "Fishery and Aquaculture Country Profiles: The Republic of the Union of Myanmar," Food and Agriculture Organization of the United Nations, <http://www.fao.org/fishery/facp/MMR/en>.

¹⁴ "Saving Fisheries from Drowning: Myanmar's Fisheries Overshadowed by Overexploitation," Crossroads, <http://www.crossroadsmyanmar.com/focus/saving-fisheries-drowning-myanmar%E2%80%99s-fisheries-overshadowed-overexploitation>. "Special Study on Sustainable Fisheries Management and International Trade in the Southeast Asia and Pacific Region," Asian Development Bank Institute, 2013, <https://www.adb.org/sites/default/files/publication/156293/adbi-wp438.pdf>, at 9.

¹⁵ "Fishing, fisheries and aquaculture," Open Development Myanmar, 22 November 2016, <https://opendevelopmentmyanmar.net/topics/fishing-fisheries-and-aquaculture/>.

paragraphs. Such risks are amplified by environmental factors such as the decline in fisheries, which can lead to unregulated and unlicensed fishing or long voyages at sea, which may in turn exacerbate the potential abuse and hazardous conditions suffered by the workers.¹⁶

i. Abuse and Exploitation

Offshore fishing operations tend to facilitate or abet abusive working environments because workers are confined to their fishing vessels during lengthy voyages at sea. An ILO report concerning working conditions in the offshore fishing industry documented abuse and exploitation such as physical violence, debt bondage, salaries that fall short of original terms, lack of food, and restrictions on familial contact.¹⁷

ii. Hazardous Conditions

Workers in the fishing sector face a range of hazardous conditions. The ILO found that out of 286 respondents surveyed, 33 percent reported touching extremely hot or cold materials; 28 percent reported exposure to toxic smells; 8 percent reported working in a confined space; 33 percent reported extreme fatigue; 15 percent reported skin problems; and 16 percent reported burns, corrosions, or scalds.¹⁸ These risks, which are inherent to the fishing industry, are worsened by the poor or inadequate training provided to the workers.¹⁹

iii. Decline in Fishery Resources and Economic Challenges

Myanmar is facing a severe decline in fishing resources after decades of overfishing.²⁰ This depletion threatens the livelihood of those in Myanmar who rely on the fish as a source of food and income. It also incentivizes clandestine fishing to circumvent limits placed on the sector, which could facilitate worker abuse.

¹⁶“Myanmar,” Seafood Trade Intelligence Portal, <https://seafood-tip.com/sourcing-intelligence/countries/myanmar/>.

¹⁷ “Internal Labour Migration in Myanmar,” International Labour Organization, 2015, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_440076.pdf, at 63.

¹⁸ *Id.* at 46.

¹⁹ *Id.* at 46

²⁰ Amitav Ghosh and Aaron Savio Lobo, “Bay of Bengal: depleted fish stocks and huge dead zone signal tipping point,” *The Guardian*, 31 January 2017, <https://www.theguardian.com/environment/2017/jan/31/bay-bengal-depleted-fish-stocks-pollution-climate-change-migration>.

III. Child Labour in Myanmar

Children have traditionally been considered a part of Myanmar's workforce. Because child labour remains culturally embedded, as well as perceived to be economically necessary in Myanmar society, parents may encourage children to enter the workforce prematurely. Ironically, many employers of young child labourers feel as though they are performing an act of welfare by employing children.²¹

Following Myanmar's transition towards democracy, a number of international organisations have begun work to eliminate child labour. However, these initiatives are still in their early stages, and child labour continues to be widespread throughout Myanmar across numerous industries including agriculture, in factories, and the ubiquitous tea shops all over the country.

This section outlines the issue of child labour in Myanmar to provide a backdrop for HRN's investigation in the San Pya market, the largest wholesale fish market in Yangon. The section explores the general situation of child labourers in Myanmar and discusses their work conditions and abusive and exploitative practices. It then discusses the role of children in fishing and seafood-gathering occupations, inland fisheries, marine fisheries, and aquaculture, respectively.

a. Work Conditions Threatening the Safety of Child Labourers

Children working in the fishing sector face threats to their health, safety, development, and education.

i. Working Age

There are some laws in Myanmar which establish industry-specific minimum age requirements for workers in certain industries, such as the Factories Act or the Shops and Establishments Law²², but Myanmar has not set a general requirement for workers across all industries.²³ The government has finalised a draft Child law that would establish a general minimum working age of 14, but it is still pending passage by Parliament.²⁴ Meanwhile, Myanmar continues to host and rely on a large

²¹ See "Knowledge, Attitudes, and Practices Study on Child Labour in Yangon, Ayeyarwady Region and Mon State," International Labour Organization, http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_27675/lang-en/index.htm, at 33.

²² Both the Factories Act and the Shows and Establishment Law have been amended in 2016 and establish a minimum working age of 14 for their respective industries

²³ LAW AMENDING THE FACTORIES ACT 1951, 20 Jan. 2016; SHOPS AND ESTABLISHMENTS LAW (2016), 25 Jan. 2016.

²⁴ "A Legal Review of National Laws and Regulations Related to Child Labour in Myanmar in Light of International Laws and Standards," International Labour Organization, 2015, at 12. "Background Report for the National Action Plan on child labour in Myanmar," International Labour Organization,

number of child labourers; the ILO estimated in June 2018 that nearly one in ten of Myanmar's 12 million children between the age of 5 and 17 are already working and qualify as child labourers.²⁵ A 2016 ILO survey found that many children commonly entered the workforce between the ages of 10 and 14 years old, but many entering the workforce much younger.²⁶

ii. Work Hours

Child labourers in Myanmar often work long hours. A majority of child workers 12 years and older work more than 50 hours per week; a quarter work more than 60 hours per week, excluding time spent on household chores at home.²⁷ Surveys in different sectors reported that children often work six to seven days a week, with a significant portion receiving no regular days off or time off at all.²⁸

iii. Hazardous Conditions

Child labourers in Myanmar also face a number of other risks to their physical well-being. They may be exposed to hazardous work conditions including work underground, underwater, and in confined spaces. Furthermore, their work may involve dangerous machinery or tools, carrying heavy loads, exposure to hazardous substances or extreme temperatures, long hours or nighttime labour, and risk of abuse.²⁹ This risk is compounded by the fact that child labourers enter the workforce with little awareness about occupational safety and health (OSH) standards. As of June 2018, it is estimated that over 600,000 of Myanmar children are engaged in hazardous work conditions.³⁰

On 12 June 2018, the Myanmar Ministry of Labour, Immigration, and Population completed a draft list of occupations which would be considered too hazardous to

27 April 2017, at 8. "Lives on Hold: Making sure no child is left behind in Myanmar," United Nations Children's Fund (UNICEF), May 2017, at 11.

25 "Myanmar: too many children still in hazardous and unsafe forms of work", International Labour Organization, 12 June 2018, https://www.ilo.org/yangon/press/WCMS_631831/lang--en/index.htm, at 1.

26 "Agricultural Sub-Sector Child Labour Surveys: Myanmar" International Labour Organization, 2016, at 29, 46, and 63. "Knowledge, attitudes and practices (KAP) study on child labour in Yangon, Ayeyarwady Region and Mon State," International Labour Organization, 2015, at 27.

27 "Myanmar: Labour Force, Child Labour and School to Work Transition Survey," see above note 15, at 40.

28 "Rapid Assessment on Child Labour in Hlaing Thar Yar Industrial Zone in Yangon, Myanmar—2015," International Labour Organization, 2015, at 14. "KAP," see above note 16, at 29.

29 "Recommendation 190," International Labour Organization, at Part II(3).

30 "Myanmar: too many children still in hazardous and unsafe forms of work", International Labour Organization, 12 June 2018, https://www.ilo.org/yangon/press/WCMS_631831/lang--en/index.htm, at 1.

permit employment of children below 18 years of age; this list includes fishing.³¹ However, the list will not take effect until passage of the Child Rights Law, which has been stalled in the Hluttaw for over a year.³² While these new regulations are a welcome development, more action is needed to ensure that they are well-known and comprehensively enforced by the police and judicial systems.

iv. Wages

Children in Myanmar receive lower wages than adults.³³ Children earn on average 400 kyats per hour (about \$0.30 USD), or between 3,200 and 4,000 kyats per day (about \$2.20 to \$3.00 USD), though children in some industries report even lower earnings.³⁴ Furthermore, children who work for their families often do not receive compensation for their labour. Even when they do earn “outside income”, it is often paid directly to the family, sometimes without ever passing through the children’s hands.³⁵ In May 2018, Myanmar introduced a new daily minimum wage of 4,800 kyats (\$3.30 USD). Although this minimum wage can only be enforced in the formal sectors, this minimum has a positive spillover effect and is increasing daily wages in the informal sectors too.³⁶

v. Interference with Education

The significant decline in school attendance among teenage children parallels their increasing participation in the workforce as they age.³⁷ Although some children do

³¹ Zaw Zaw Htwe, “Myanmar drafts hazardous work list for children,” Myanmar Times, 13 June 2018, <https://www.mmmtimes.com/news/myanmar-drafts-hazardous-work-list-children.html>.

³² *Id.*; Thompson Chau, “Children’s rights bill inconsistent over child labour regulations,” Myanmar Times, 23 Aug. 2017, <https://www.mmmtimes.com/news/childrens-rights-bill-inconsistent-over-child-labour-regulations.html>.

³³ See “Hlaing Thar Yar,” see above note 18, at 24. “KAP,” see above note 16, at 33 (employers noting that children are cheaper sources of labour than adults). Cherry Thein, “NGO program trains villagers in Mon State about child labour,” Myanmar Times, <http://www.mmmtimes.com/index.php/national-news/10965-education-program-tackles-child-labour-in-mon-state.html> (quoting NGO leader saying children can be paid half as much as adults).

³⁴ “Report on Child Labour in Myanmar,” The Republic of the Union of Myanmar Ministry of Labour, Immigration and Population, 2015, http://www.mol.gov.mm/en/wp-content/uploads/downloads/2017/03/MMR-CL-Child-labour-in-Myanmar-IB-edit-final-version_21.11.2.pdf, at 56. “Myanmar: Labour Force, Child Labour and School to Work Transition Survey,” see above note 15, at 40-41; See KAP, see above note 16, at 31-32 (showing children in some locations averaging as low as about 23,000 Kyats per month, despite the majority of children in all locations working at least 40 hours per week, indicating some children are likely working for less than 200 Kyats per hour).

³⁵ *Id.* at 47. “KAP,” see above note 16, at 1. “Agricultural Sub-Sector Child Labour Surveys,” see above note 16, at 55 and 77. “Hlaing Thar Yar,” see above note 18, at 21.

³⁶ ILO Myanmar, “Minimum wage a step forward for democracy and sustainable development”, 25 May 2018, http://www.ilo.org/yangon/press/WCMS_630131/lang--en/index.htm

³⁷ “Myanmar Labour Force, Child Labour and School to Work Transition Survey,” see above note 15, at 35 and 38.

not drop out of school prior to beginning work, the children's work hours and responsibilities gradually conflict with school attendance.³⁸

vi. Trafficking, Migration, and Vulnerability to Exploitation

Child labourers in Myanmar are also at risk of being trafficked and subjected to forced labour. Internal migration is common in Myanmar, and the 2014 census suggests that between 6% to 17% of children and youths from ages 10 to 19 were recent migrants, with the rate varying based on sex, age, and what areas they migrated to and from.³⁹ The unreported numbers in reality are likely higher.⁴⁰ One community member described the situation of independent child migrants as a "tragedy" and noted the anguish children expressed when they were sent away for work, saying, *"the [parents] and the children cry but pushed by poverty, they have no choice."*⁴¹ Historically, Myanmar's border regions between different states have higher levels of migration. The largest number of child labourers living without parental care are Mon (19%), Kayin (12%) and Tanintharyi (12%).⁴²

Children in Myanmar who migrate for work are particularly vulnerable to the worst forms of labour exploitation. ILO consultations with civil society and others revealed that children are frequently trafficked or subjected to forced labour.⁴³ An ILO survey of internal migrants over age 15 found that 34% of migrant children interviewed were in situations of forced labour and 18% were in situations of trafficking, the highest proportion of any age group.⁴⁴ Children from poorer households faced comparatively higher rates of exploitation, as did children with lower levels of

³⁸ The National Action Plan suggests only 0.3% of working children are able to attend school while working. "Background Report for the National Action Plan," see above note 14, at 8; "Report on Child Labor," above note 22, at 79. Some surveys found children did not necessarily drop out of school before or immediately upon starting work, but still found low rates of attendance (about 10% compared to almost full attendance among non-working children) and primary drop-out between primary school and middle school. "KAP," see above note 16, at 28 and 33. See also "Hlaing Thar Yar," see above note 18, at 18.

³⁹ "Thematic Report on Migration and Urbanization," The Republic of the Union of Myanmar, 2014, http://myanmar.unfpa.org/sites/default/files/pub-pdf/Migration_insidepages_FINAL_lowrespreview.pdf, at 24 and 51.

⁴⁰ The census did not account for seasonal migrants or those living in non-traditional arrangements like worker dormitories. Surveys have reported child labourers migrating alone for work and residing at their workplaces, as well as the presence of working street children, who would not be included in the census. See "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at 24. "Hlaing Thar Yar," see above note 18, at 8.

⁴¹ "Hlaing Thar Yar," see above note 18, at 23.

⁴² UNICEF, "Situation analysis of children in Myanmar", July 2012, https://www.unicef.org/eapro/Myanmar_Situation_Analysis.pdf, p.118

⁴³ See Worst Forms of Child Labour Convention (No.182), International Labour Organization, 1999. "Internal Labour Migration in Myanmar," see above note 10, at 25. "Background Report for the National Action Plan," see above note 14, at 10.

⁴⁴ "Internal Labour Migration in Myanmar," see above note 10, at 65.

education.⁴⁵ Though uncommon, children who paid a recruitment fee to secure their job, often to a *pwe sar* (labour broker), were 14 times more likely to be trafficked than children who did not pay a fee when migrating for employment.⁴⁶

b. Causes of Child Labour

Child labour in Myanmar, and in Yangon's fishing industry in particular, can be traced to a number of problems plaguing Myanmar's efforts at development. These interconnected issues include poverty and family debt, the poor quality yet relatively high expense of public education, underemployment of the adult labour force, and culturally-embedded societal acceptance of child labour.⁴⁷ Myanmar also lacks an established domestic legal framework to address, avoid and prevent child labour, with no overarching legislation delineating a minimum working age or suitable conditions of work for young people, though the recently introduced hazardous work list might change this.⁴⁸ Furthermore, the country's employers, children, enforcement officials, and greater public are not aware of children's rights or the laws relevant to child labour in Myanmar.⁴⁹

These conditions create an environment in which child labour and violations of children's human rights persist despite recent efforts by the Myanmar government and other international organisations to address these problems. To keep children out of danger in the fishing and seafood sectors in Myanmar, the government must address these deep-rooted structural problems in addition to strengthening legal protections for young workers.

i. Poverty and Labour Force Issues

1. Economic Instability

Economic vulnerability, is a direct causal factor of child labour.⁵⁰ As noted above, poverty is widespread in Myanmar. In 2015, 18.9% of working people in Myanmar earned less than 80,000 kyat, or about \$60.00 USD, per month.⁵¹ Furthermore, interviews conducted by the ILO indicated that households solely reliant upon

⁴⁵ *Id.* at 66.

⁴⁶ *Id.* at 69.

⁴⁷ See "Background Report for the National Action Plan," see above note 14, at 10.

⁴⁸ See Part V(A) of this report for an analysis of Myanmar's domestic legal framework.

⁴⁹ International Labour Organization, "Knowledge, attitudes and Practices (KAP) study on child labour in Yangon, Ayeyarwady Region and Mon State", 2015, at 2, http://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_27675/lang--en/index.htm

⁵⁰ "ILO Global Report on Child Labour cites "alarming" extent of its worst forms," International Labour Organization, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007784/lang--en/index.htm.

⁵¹ "Myanmar: Labour Force, Child Labour and School to Work Transition Survey," see above note 15, at 15.

fishing as a source of income were likely to expand their income stream in order to compensate for the decrease in wage. This may drive or encourage children from such households to join the workforce.

2. Families Without a Double Income

Furthermore, children might work when families lack a double income. This might happen when mothers are primarily responsible for childcare and domestic tasks, or when one parent has migrated for work or has passed away.⁵² Additionally, children join the workforce when their parents are unemployed or underemployed.⁵³ Despite a relatively progressive legal scheme for unemployment benefits on paper, difficulties in actual implementation means that families in Myanmar effectively lack the adequate social protection and entitlements when unemployed.⁵⁴ In January 2014, only two percent of the active age population was covered by the Myanmar Social Security Scheme, in addition only 0.11 percent of school aged children were covered by the National School Stipends Program.⁵⁵ Adults who cannot find work quickly are forced to take on jobs with lower wage and part time jobs, or risk having no income at all.⁵⁶ In such cases they may turn to their children and rely on them to fill gaps in their families' income.

3. Employers' Perceptions of Child Labour

Employers' misconceived perceptions of child labour exacerbate the issue.⁵⁷ In multiple surveys, though employers admitted that they pay children less than adult workers, they emphasised how they felt that hiring children from poorer families amounted to an act of charity to help families that would otherwise be unable to make ends meet.⁵⁸ While it may be true that child labourers' financial contributions may help their families in the short term, the prevalence of child labour in the

⁵² "KAP," see above note 16, at 14. "The Union Report: Occupation and Industry," The Republic of the Union of Myanmar, 2014, http://www.burmalibrary.org/docs22/2B_Occupation_and_Industry_EN.pdf, at 6 (listing labour force participation rate of women at just over 50%). "KAP," see above note 16, at 13 and 18 (discussing the appearance of high rates of migration among parents in the study and the relatively high proportion of child labourer survey respondents who had a parent pass away).

⁵³ "Background Report for the National Action Plan," see above note 14, at 4.

⁵⁴ "Social protection within the framework of labour legislation reform in Myanmar," International Labour Organization, Apr. 2015, at 16, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_375564.pdf.

⁵⁵ "Social protection within the framework of labour legislation reform in Myanmar," International Labour Organization, Apr. 2015, at 15-18, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_375564.pdf.

⁵⁶ "Myanmar: Labour Force, Child Labour and School to Work Transition Survey," see above note 15, at 12.

⁵⁷ "Background Report for the National Action Plan," see above note 14, at 10.

⁵⁸ *Id* at 10. "KAP," see above note 16, at 35. "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at 24. "Hlaing Thar Yar," see above note 18, at 24.

workforce can and will drive down wages in general in the industry and limit opportunities available to low-skilled adult labourers, therein perpetuating the perpetual need for child labour.⁵⁹

4. Household Debt

Household debt, even in relatively small amounts, may also push children to enter the workforce. The 2015 Labour Force Survey revealed that indebted households are more likely to have a working child than households without debt.⁶⁰ Child labourers in various sectors indicated that family debt contributed to their decisions to start working.⁶¹ With 35% of households indebted, a significant number of Myanmar families possess this additional risk factor.⁶² Financial insecurity is thus often the baseline condition prompting children to enter the workforce at young ages, for long hours, and in dangerous occupations.

ii. Shortcomings in Myanmar's Educational System

The obstacles to obtaining a meaningful education incentivise poorer households to pull their children out of school. Although education in Myanmar from elementary level through high school is nominally free, in practice it entails various compulsory costs.⁶³ Students may have to provide their own supplies and pay for after-school tuition classes to pass their exams.⁶⁴ Generally, the average out-of-pocket cost of education per child in primary school is estimated at \$46 USD per child in grades 1 to 3 and \$56 USD per child in grades 4 to 5. Such costs are insurmountable expenses for poorer families.⁶⁵

Secondary school education can be more expensive, sometimes requiring children to stay in dormitories at extra cost as well as to pay for uniforms.⁶⁶ The concentration of secondary schools in cities means that many children in rural areas

⁵⁹ "KAP," see above note 16, at 24.

⁶⁰ "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at 78.

⁶¹ "Agricultural Sub-Sector Child Labour Survey," see above note 16, at 77. "KAP," see above note 16, at 23. "Hlaing Thar Yar," see above note 18, at 20.

⁶² "Myanmar: Labour Force, Child Labour and School to Work Transition Surveys," see above note 15, at 7.

⁶³ "Background Report for the National Action Plan," see above note 14, at 20.

⁶⁴ *Id.* at 20. "Hlaing Thar Yar," see above note 18, at 19. "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at 27 and 45. "KAP," see above note 16, at 33.

⁶⁵ "Situation Analysis of Children in Myanmar," United Nations Children's Fund and Ministry of National Planning and Economic Development, July 2012, https://www.unicef.org/eapro/Myanmar_Situation_Analysis.pdf, at 86.

⁶⁶ "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at ix. "Background Report for the National Action Plan," see above note 14, at 11 and 20.

must travel long distances to the cities to continue their education, if they are able to continue at all.⁶⁷

The situation is worse in Myanmar's ethnic states, where the government has under-invested in schooling for decades.⁶⁸ Moreover, due to a history of armed conflict and civil strife, education has become politicised in these regions.⁶⁹ The government often insists on schools teaching in the Burmese language, a policy which many minority groups perceive as forced cultural assimilation.⁷⁰ In any case, such policy has been harmful to children in the ethnic states as teaching children in their native language has been shown to be more effective for providing quality education.⁷¹

Many families find that keeping their children in school is not worth the financial cost. Though surveys suggest that parents believe that education is important, they also show that parents lack faith in Myanmar's educational system.⁷² Underdevelopment in Myanmar's educational system is such that teachers face resource constraints and tend to focus on rote memory learning rather than building longer-lasting knowledge and skills.⁷³

As elaborated above, keeping children in school thus provides a low immediate return on investment, which encourages children to drop out on their own or at the wishes of their parents. In multiple surveys, children cite income-related problems and the high cost of schooling as the main reasons they either left or never attended school.⁷⁴ "Lack of interest" is another reason many students drop out, as they do not view their schools to be providing the skills they need to obtain employment.⁷⁵

⁶⁷ "Improving Post-Primary Education Outcomes in Myanmar," Development Asia, Nov. 2016, at 3, http://themimu.info/sites/themimu.info/files/documents/Summary_Improving_Post-Primary_Education_Outcomes_in_Myanmar_Aug2017.pdf.

⁶⁸ "Analysis of Education Services in Contested Regions of Myanmar," Myanmar Education Consortium, July 2015, at 13, <https://mecmigration.files.wordpress.com/2016/05/mec-contested-areas-report-july-20151.pdf>.

⁶⁹ *Id.*, at 14.

⁷⁰ *Id.*, at 6, 24-27, & 29.

⁷¹ See, e.g., "Baseline Study Report," DantDaLun, Myanmar Education Consortium, Dec. 2014, <https://mecmigration.files.wordpress.com/2016/05/mec-baseline-study-report-final.pdf>.

⁷² "KAP," see above note 16, at vi. "Background Report for the National Action Plan," see above note 14, at 11. "Agricultural Sub-Sector Child Labour Survey," see above note 16, at 29.

⁷³ "Agricultural Sub-Sector Child Labour Survey," see above note 16, at 8 and 29. "Background Report for the National Action Plan," see above note 14, at 11.

⁷⁴ See "KAP," see above note 16, at 23. "Hlaing Thar Yar," see above note 18, at 20. "Report on Reasons for Out-of-School Children in Select Communities in Myanmar," Myanmar Education Consortium & WorldVision Myanmar, 2014, at 5 and 7.

⁷⁵ "Improving Post-Primary Education Outcomes in Myanmar," Development Asia, Nov. 2016, at 3, http://themimu.info/sites/themimu.info/files/documents/Summary_Improving_Post-Primary_Education_Outcomes_in_Myanmar_Aug2017.pdf.

Once children exit traditional schooling, there are few alternatives to working. The government is making efforts to develop and expand non-formal education programs and vocational training, but these opportunities have yet to reach most out-of-school children.⁷⁶ Most who no longer attend school work low-skilled jobs and are unable to build transferable skills, continuing the cycle of poverty.⁷⁷

⁷⁶ “Delivering Results for Children 2016,” United Nations Children’s Fund, 2016, at 3 (noting NFE programs have reached 40,000 children). “Hlaing Thar Yar,” see above note 18, at 21.

⁷⁷ “KAP,” see above note 16, at 42 and 45.

iii. Societal Acceptance of Child Labour

Though many in Myanmar disapprove of child labour, it is also viewed as an unavoidable outgrowth of poverty and the country's underdevelopment.⁷⁸ Children are widely viewed by parents, employers, and the children themselves, as having obligations to contribute financially to the family when necessary.⁷⁹

When families are priced out of the education system, parents often view sending children to work as the best alternative.⁸⁰ Parents worry that out-of-school children would get into trouble with drugs or other delinquency if left without other responsibilities.⁸¹ Civil society representatives and community members recognise child labour as a problem but often echo the common view that child labour is inevitable for families in deep poverty.⁸² Employers take a similar stance, maintaining that they would not refuse if a child's family member implored them to give a child a job.⁸³ In one ILO survey, all adult respondents agreed that the government of Myanmar should take primary responsibility for solving this intractable problem.⁸⁴

Our conversations with parents of children working at San Pya market echoed these sentiments. One mother said she would like all of her six children to attend school rather than work, but that the cost of raising six children made it impossible. She believed all of the parents of child workers in her village had similar views.

The working children generally perceive themselves to be working by their own free choice rather than because of pressure from parents or otherwise. In past studies, most children reported that they, rather than their parents or adult relatives, made the decision to start working.⁸⁵ Most expressed interest in supporting themselves and their families by working rather than attending school, likely driven by a desire to be good children.⁸⁶ The children we interviewed at the

⁷⁸ "Background Report for the National Action Plan," see above note 14, at 31-32, and 47. "KAP," see above note 16, at 11.

⁷⁹ "KAP," see above note 16, at 23. "Hlaing Thar Yar," see above note 18, at 22-23.

⁸⁰ International Labour Organization, "Knowledge, attitudes and Practices (KAP) study on child labour in Yangon, Ayeyarwady Region and Mon State", 2015, at 2, http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_27675/lang--en/index.htm

⁸¹ *Id.* (both sources).

⁸² *Id.* (both sources).

⁸³ "KAP," see above note 16, at 33. "Hlaing Thar Yar," see above note 18, at 24. "Background Report for the National Action Plan," see above note 14, at 10. "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at 24.

⁸⁴ "KAP," see above note 16, at vi.

⁸⁵ "KAP," see above note 16, at 13. "Hlaing Thar Yar," see above note 18, at 20. "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at 26.

⁸⁶ "Background Report for the National Action Plan," see above note 14, at 10. "Hlaing Thar Yar," see above note 18, at 17.

San Pya fish market confirmed this sentiment, and generally reported a desire to make money as their primary motivation for leaving school. Despite this widespread perception, children likely do not have much of a choice if their families simply cannot afford to pay for their educational expenses or require their additional income.⁸⁷

c. Child Labour in the Fishing and Seafood Sectors

Though our investigation did not explore the ways children are involved in the initial capture of fish and shellfish, past research from the ILO suggests that most children employed in this part of the supply chain work for small inland fishery businesses engaged in catching fish, crabs, and shrimp, aquaculture cultivation, and seafood processing.⁸⁸ The products often pass through San Pya market, some of which are then exported to international markets.⁸⁹

Surveying freshwater fishing sector in one township in the Ayeyarwady region, the ILO found that children make up a significant part of the industry's workforce, with 63% of all children in the surveyed fishing villages participating in some form of economic activity related to the sector.⁹⁰ This includes children as young as age seven. Though many children reported that they continued to attend school while working part time, most children did not progress past grade 5.⁹¹

Children typically work for family members, working on fishing boats, collecting crabs and tying crab claws, sorting seafood, selling catch in the village, or carrying loads of processed or fresh seafood.⁹² All of the children surveyed by the ILO were exposed to hazardous conditions to some degree. Many reported working in the extreme heat and cold, in storms and amid strong currents and tides on the seas, in close proximity to poisonous snakes and disease-carrying insects, and with dangerous tools like knives, fish hooks, and boat engines.⁹³ Children working at seafood brokers and farms were found to sleep in the facility overnight, while those engaged in family fishing operations often slept on riverbanks.⁹⁴

⁸⁷ See "Agricultural Sub-Sector Child Labour Survey," see above note 16, at 75. "KAP," see above note 16, at 23. "Hlaing Thar Yar," see above note 18, at 19-20.

⁸⁸ "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at 23.

⁸⁹ Oliver Slow, "Myanmar fisheries keen to scale up", 26 Jan 2016, <https://frontiermyanmar.net/en/myanmar-fisheries-keen-to-scale-up>.

⁹⁰ "Agricultural Sub-Sector Child Labour Surveys," see above note 16, at vii.

⁹¹ *Id.* at 28.

⁹² *Id.* at 30.

⁹³ *Id.* at 35-36.

⁹⁴ *Id.* at vii and 36.

IV. Field Investigation of Child Labour in the San Pya Market

a. Methodology

HRN conducted a field investigation to gather information on child labour in the San Pya Fish Market in Yangon on four dates between 6 July 2017 to 25 July 2017. The scope of this endeavor is limited in nature and therefore mainly useful as an illustration to demonstrate the myriad of child labour issues arising in the industry.

The investigation was conducted through on-site visits at the San Pya market and at two of the villages across the river, where many of the staff at San Pya were living, at Aye and Ba Done Nyunt villages. In total, HRN conducted 19 interviews, of both individuals and groups. This included interviews with 12 children. Three visits were conducted at the San Pya market, and one at each village. The visits to the market were conducted at different times of the day (10.00am, 4.00pm, and 5.00am) as the business of the market varied at different times. The first visit was aimed at getting an overview of how the market operates, and interviews conducted during this visit aimed to get a representative sample of workers and to understand the different jobs at the market. The later visits were primarily focused on interviewing children working at the market and their families, attributes of the children, the practice of child labour, and working conditions.

The interviews were semi-structured, with a list of pre-defined questions, but interviewees were encouraged to add more comments or discuss other topics. Questions to adult workers mainly regarded their jobs, salaries, working conditions, and their perceptions of child labour in the market. Children were also asked about the type of job they were doing, their wages and working hours, reasons for working, and their perceptions of the work.

The investigation team encountered a number of challenges during the field investigation. First, since the interviews were conducted at the workplace, many people did not have much time to answer questions while working, and interviews had to be shortened. It was also difficult to speak with children as they were often in the presence of their parents or colleagues; however, all answers we received appeared to be honest. Generally speaking, the Myanmar interviewees seemed to speak candidly about child labour issues perhaps because the practice is very widespread and there is no fear of sanction.

Below is a complete list of all interviews and site visits conducted. Summaries of all interviews are provided in Appendix A at the end of this report.

Site visit 1: San Pya market, 6 July 2017, 10.00am

- Interview #1: 14-year-old boy who brokers fish
- Interview #2: male adult security worker on one of the jetties

- Interview #3: male adult and child jetty workers (interviewed as a group)
- Interview #4: male adult shop owner
- Interview #5: two female adult cleaners
- Interview #6: two male adult general labourers

Site visit 2: San Pya market, 13 July 2017, 4.00pm

- Interview #7: male adult jetty workers (interviewed as a group)
- Interview #8: female adult owner of a fish distributing business and 3 of her employees
- Interview #9: male adult owner of a fish distributing business
- Interview #10: 16-year-old male fish transport worker

Site visit 3: Aye and Ba Done Nyunt villages, 18 July 2017, 2.00pm

- Interview #11: 14- and 16-year-old boys who sort fish at San Pya market
- Interview #12: Adult male in the village
- Interview #13: Mother of a 10-year-old child worker
- Interview #14: Adult male and 16-year-old son, who both carry fish
- Interview #15: Mother of a child worker

Site visit 4: San Pya market, 25 July 2017, 5.00am

- Interview #16: 10- and 12-year-old male child workers
- Interview #17: 15-year-old worker, who sells prawns with his aunt
- Interview #18: 13-year-old boy who packs boxes to be filled with fish
- Interview #19: Children who scrub fish

b. Findings from the Field Investigation

At San Pya, which sits along the east bank of the Yangon River, children work alongside adults in the busy wholesale market, the largest in Yangon.

i. Working Hours

Children ages 10 and up work both night and day shifts, sometimes for up to 12 hours. Most of the children reported working every day, though some take occasional days to rest or have days off when they are not needed.

ii. Working Age and Hazardous Conditions



Younger children commonly work as fish brokers, seeking out sellers at the market to purchase fish from and bring back to wholesalers. Adult workers in the market described brokering as something relatively easy for children to do, as it does not require heavy lifting like other more physically strenuous jobs in the fishing industry. Nevertheless, brokering entails a number of hazards for children. For example, the children work gruelling hours, which mirror the long hours worked by adults. In addition, though young children do not take on the most physically taxing jobs, they still have to work in wet and cold conditions during the rainy season.



In interview #8, one mother whose 13-year-old son works as a fish broker said he works the night shift from 8.00pm to 8.00am. She reported that her son had started accompanying her to work at the fish market a few months earlier, after dropping out of school at Grade 6 in order to contribute to the family's income.

iii. Effect on Education and Physical Impact

Children working at the fish market do so at the expense of their education. In interview #14, one 16-year-old fish transport worker said he started working after dropping out of school in Grade 5.⁹⁵ Similarly, in interview #15, the mother of a teenager who transports fish around the market said that, although her son finds the job tiring and has developed back problems from carrying heavy loads, he still prefers to work rather than attend school. In interview #11, two other teenagers who were employed to sort fish dropped out of school in Grades 4 and 6 respectively. They explained that they wanted to earn money, even if the income mainly goes back to their parents.



⁹⁵ All ages are self-reported, unless indicated otherwise. Many teenagers appeared and sounded significantly younger than what they reported, but as we had no way of confirming their ages, self-reported ages are assumed to be correct.

iv. Informal Labour and Employment

Other children at the market do not work for a formal employer. During interview #13, we spoke to one mother whose oldest three children—aged 14, 12, and 10—accompany her to the market. The children make 3,000 to 4,000 kyats (around \$3.00 to \$4.00 USD) per day by picking up and selling fish that have fallen from other workers' carts and baskets. We also spoke to two brothers, aged 10 and 12, in interview #16 who similarly collect fish around the market to sell to “aunties” and earn about 3,000 to 4,000 kyats per day.





v. Debt Bondage and Risk of Trafficking

Children working in the fishing industry are sometimes trapped in debt bondage situations or are at risk of being trafficked. The ILO survey of the San Pya market and inland fisheries noted that several children appeared to be working in debt bondage arrangements. As our mission to San Pya market was not equipped to identify children in situations of trafficking or forced labour, we are unable to draw conclusions about the prevalence of these types of exploitation among children who work at the fish market. Given the lack of regulation and oversight of the labour conditions in the market, trafficking and forced labour at San Pya market are certainly areas of concern that mandate further research and greater monitoring by authorities.

In addition, we urge the Myanmar government and other stakeholders to come forward and shed more light on the situation in other markets as well as in other areas of Myanmar. As our field investigation was limited in nature and only focused on San Pya market in Yangon, the results of our investigation are unable to comprehensively cover all of the potential and actual child labour issues occurring across the country. The purpose of our field investigation is to heighten awareness to the issue of child labour within the Myanmar fishing industry, and we implore all relevant stakeholders to contribute more to the further uncovering and addressing of this situation.

V. Legal Framework

a. Myanmar's Obligations under Domestic Law

The present Myanmar Constitution does little to protect child workers. Article 359 of the 2008 Constitution prohibits forced labour as a criminal offense punishable by imprisonment or fines; however there is no specific system in place to protect children from forced labour.⁹⁶ There is neither a constitutionally guaranteed right to protection nor an established minimum working age, and only vague guarantees regarding its citizens' right to health.⁹⁷ However, the new Child Rights Law, which is still pending passage in Myanmar's parliament, would afford protections to child labourers. The Constitution does, however, mandate that the state provide a free and compulsory primary education system.⁹⁸

Several domestic laws, such as the Factories Act or the Shops and Establishments Law, regulate the ages and conditions of child workers within select occupations.⁹⁹ But these laws are sector-specific and do not apply to children working with fish and seafood. As a result, children working in the fishing or seafood sector outside of factories or shops are not covered by any law regulating their working condition or a minimum age of employment. This is a glaring loophole in the law faced not just by those in the fishing industry but also by child labourers in other industries such as agriculture.

Lastly, Myanmar's Child Law guarantees children over the age of 14 the right to work.¹⁰⁰ Although there are some provisions which prohibit employing children in occupations that may risk loss of life, disease, or harm to morals, they do not adequately specify which occupations or industries in fact pose such a risk.¹⁰¹ Moreover, mechanisms provided for in the Child Law to ensure the safety of child workers are not adequately enforced. For example, the ILO reported that none of the child workers they interviewed had ever heard of the "certificate of fitness" which employers are required to obtain for each child they employ to ensure that they are healthy enough for employment.¹⁰²

⁹⁶ CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, Sept. 2008, art. 359; International labour organization, "A legal review of national laws and regulations related to child labour in Myanmar in light of international laws and standards", 2015, p. 14,

http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_27436/lang--en/index.htm.

⁹⁷ See generally CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, Sept. 2008; *Id.*, art. 367.

⁹⁸ *Id.*, arts. 28 & 366(a).

⁹⁹ LAW AMENDING THE FACTORIES ACT 1951, 20 Jan. 2016, secs. 75-78; SHOPS AND ESTABLISHMENTS LAW (2016), 25 Jan. 2016, art. 13(a).

¹⁰⁰ THE CHILD LAW (LAW NO. 9/93), 14 July 1993, §24.

¹⁰¹ See International labour organization, "A legal review of national laws and regulations related to child labour in Myanmar in light of international laws and standards", 2015, p. 8, http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_27436/lang--en/index.htm.

¹⁰² *Id.*, pp. 13-14.

The hazardous work list drafted by the Ministry of Labour, discussed above, would establish fishing and seafood as industries in which children cannot work.¹⁰³ However, until the list becomes binding law and is enforced accordingly, most children working in the fishing or seafood production industries will not be privy to sufficient protection, or to any at all.¹⁰⁴

The following is a compilation of Myanmar's domestic laws whose scope may cover child labour in the fishing or seafood sectors.

i. Child Labour and Labour Laws in Myanmar

1. Child Law (1993)

The Child Law does not set out any explicit rights for child workers, but rather it establishes that children have the right to work and delegates all laws and regulations ensuring their rights and safety to the Ministry of Labour.¹⁰⁵ However, such limited labour-related provisions are vague to the point of being unenforceable and are not tied to any corresponding labour inspection legislation.¹⁰⁶

Section 65 of the Child Law prescribes criminal penalties to those who employ children in work that is hazardous to life, may cause disease, or is harmful to their moral character.¹⁰⁷ At the very least, this provision recognises under the law the negative impact of employing children in certain sectors. Nevertheless, as in Section 24 of the same law, whether the provision applies to a given industry is ambiguous, and enforcement is limited.¹⁰⁸

2. Sector-specific Labour Laws

Although the Shops and Establishment Law sets certain standards for child participation in the workplace, the law only applies to children employed in shops or establishments, an umbrella term as defined by its legislation, which may not include most children working in the fishing or seafood sectors.¹⁰⁹ The law, as

¹⁰³ Zaw Zaw Htwe, "Myanmar drafts hazardous work list for children," Myanmar Times, 13 June 2018, <https://www.mmmtimes.com/news/myanmar-drafts-hazardous-work-list-children.html>.

¹⁰⁴ *Id.*; Thompson Chau, "Children's rights bill inconsistent over child labour regulations," Myanmar Times, 23 Aug. 2017, <https://www.mmmtimes.com/news/childrens-rights-bill-inconsistent-over-child-labour-regulations.html>.

¹⁰⁵ THE CHILD LAW (LAW NO. 9/93), 14 July 1993, §24.

¹⁰⁶ International labour organization, "A legal review of national laws and regulations related to child labour in Myanmar in light of international laws and standards", 2015, pp. 37, 46, http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_27436/lang--en/index.htm.

¹⁰⁷ THE CHILD LAW (LAW NO. 9/93), 14 July 1993, §65.

¹⁰⁸ *See Id.*; International labour organization, "A legal review of national laws and regulations related to child labour in Myanmar in light of international laws and standards", 2015, pp. 37, http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_27436/lang--en/index.htm.

¹⁰⁹ Whether children employed at the fish market fall under the Act depends on whether these stalls are considered shops. *See SHOPS AND ESTABLISHMENTS LAW* (2016), 25 Jan. 2016, Art. 2(e) ("Shop means

amended in 2016, prescribes some minimum standards for the safety conditions of these child workers in Article 15. The article stipulates that only individuals aged 14 or older may be employed; children between the ages of 14 and 16 may only work four hours a day, and not between the hours of 6pm and 6am; and furthermore, that no child under the age of 15 will be required or allowed to work in a dangerous workplace.¹¹⁰ The law gives no standards or criteria for defining dangerous work or a dangerous workplace.

The Factories Act also addresses the health and safety of child labourers in factories. This law prohibits young people (those under 18) from working in dangerous circumstances, and it also sets out certain parameters regarding the employment of young persons.¹¹¹

As stated earlier, the scope of these occupation-specific laws is limited, and they do not actually protect children working in the fishing or seafood sectors.

ii. Laws Prohibiting Forced Labour and Trafficking

The Constitution of the Union of Myanmar prohibits privatised forced labour in Chapter VIII, paragraph 359, which states: “The Union prohibits forced labour except hard labour as a punishment for crime duly convicted and duties assigned by the Union in accord with the law in the interest of the public.”¹¹²

The Anti Trafficking in Persons Law of 2005 (*sic*) lays out the formation and guidelines of a central body and working groups to combat trafficking efforts in Myanmar. It provides for a series of harsh penalties for individuals who traffic women, children, and youth, with a 10-year minimum imprisonment sentence that may be extended to life (compared to a minimum of a 5-year sentence for individuals who traffic other persons).¹¹³ It also states that any public official who demands or accepts money or property in connection with the investigation, prosecution, or adjudication of any listed offence may face a minimum of 3 years imprisonment.¹¹⁴

any premises used wholly or partly for the wholesale or retail sale of commodities or articles either for cash or credit or instalment. This expression includes hair dressing, beauty culture, body fitness and beauty, goldsmith, radio or television or telephone repairing, book binding or photo shop, pawn shop, sewing shop, laundry, footwear repairing shop, tailor, and a commercial establishment or establishments for desktop publishing service computer and consumer electronic products repairing service.”); *See also* “A Legal Review,” see above note 14, at 51.

¹¹⁰ SHOPS AND ESTABLISHMENTS LAW (2016), 25 Jan. 2016, arts. 14 & 15.

¹¹¹ LAW AMENDING THE FACTORIES ACT 1951, 20 Jan. 2016, arts. 75 & 77.

¹¹² CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, Sept. 2008, S 359.

¹¹³ ANTI TRAFFICKING IN PERSONS LAW, 13 Sept. 2005, arts. 16-18, 24 & 25.

¹¹⁴ *Id.*, art. 30.

However, enforcement of this law remains problematic. The government has investigated fewer than 500 cases of trafficking since 2014, in reality the unreported cases are likely to be far higher than 500.¹¹⁵ In some reported cases, law enforcement officers themselves engaged in trafficking or sexual exploitation of victims.¹¹⁶

iii. Socio-Economic Protections

1. Education Laws

The Constitution of Myanmar contains two provisions concerning its citizens' right to education; it mandates the provision of free and compulsory primary education and also gives the government the power to enact laws enabling people to "participate in matters of their education."¹¹⁷ However, it does not set out an age up to which students are required to stay in school, and it also does not require the government to take affirmative action to ensure that education is a viable choice for all children in their circumstances.¹¹⁸

The 1993 Child Law also contains some education-related provisions. Chapter 5, Paragraph 20 of the 1993 Child Law stipulates that every child shall have opportunities to acquire education and the right to acquire free primary-level education at government schools.¹¹⁹ The Ministry of Education has not yet fully implemented the required free primary-level education established under the Child Law.¹²⁰ Additionally, it has failed to adequately address student dropout rates; fewer than one in five students in Myanmar remain in school until graduation.¹²¹ This rate was confirmed in our own findings, where out of the 12 interviews that we conducted, 6 children had left school between 4th and 7th grade.¹²²

Finally, the Hluttaw passed the National Education Law in 2014 and amended it in 2015. The law reiterates the requirement for free, compulsory primary education as well as a progressive plan for extending free education to higher-grade levels.¹²³ It also creates a National Education Commission, which must cooperate with the Ministry of Education to carry out the goals and objectives provided for in the

¹¹⁵ U.S. Dept. of State, *2018 Trafficking in Persons Report, Burma*, June 2018, <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282623.htm>.

¹¹⁶ *Id.*

¹¹⁷ CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, Sept. 2008, §§ 28 & 366.

¹¹⁸ *See generally* CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, Sept. 2008.

¹¹⁹ THE CHILD LAW (LAW NO. 9/93), 14 July 1993, §20(a).

¹²⁰ International Monetary Fund, *IMF Country Report No. 18/91: Myanmar*, 28 Marc. 2018, p. 19, <https://www.imf.org/en/Publications/CR/Issues/2018/03/28/Myanmar-Selected-Issues-45764>.

¹²¹ Myanmar Times, *The 'missing million': fewer than one in five graduate high school*, 12 July 2018, <https://www.mmtimes.com/special-features/207-education-2015/14537-the-missing-million-fewer-than-one-in-five-graduate-high-school.html>.

¹²² See interviews #8, #10, #11, #15, & #17.

¹²³ THE NATIONAL EDUCATION LAW (2014), 30 Sept. 20014 at §4 (d)(j).

law.¹²⁴ Furthermore, under the law, the parents and guardians of school-aged children have the responsibility to enroll their children and to ensure the completion of free and compulsory school.¹²⁵

2. Laws Protecting Health

Chapter 5, paragraph 19 of the Child Law affirms that every child has the right to enjoy health facilities, and it provides that the Ministry of Health has the responsibility of carrying out measures to minimise the child mortality rate and maximise children's health.¹²⁶ The responsibility to ensure the safety of child labourers rests with the Ministry of Labour per Chapter 5, paragraph 24.¹²⁷

iv. Fishing Sector-specific Legislation

The poor working conditions and use of child labour in the Myanmar fishing industry cannot be fully addressed without explicit and rigorously-enforced legislation.

Myanmar lacks a comprehensive legislative framework relating to fishery operations and the rights of workers. The Myanmar Marine Fisheries Law of 1990 (as amended in 1993) is the only piece of domestic legislation governing the fishing sector that is currently in force.¹²⁸ The legislation primarily concerns the operations of the marine capture sub-sector, with a focus on registration, responsibilities of those on board the fishing vessel, and the hiring of fishermen.¹²⁹

Registration and licensing facilitate regulation of the industry because authorities are able to grant licenses contingent upon the fulfilment of certain conditions. The Myanmar Fisheries Law of 1990 governs registration and licensing procedures, setting out certain requirements for those activities.¹³⁰ Myanmar authorities have nonetheless failed to systematically enforce the provisions.¹³¹

¹²⁴ *Id.* at §6.

¹²⁵ *Id.* at §45.

¹²⁶ THE CHILD LAW (LAW NO. 9/93), 14 July 1993, §19(a)(b).

¹²⁷ *Id.* at §24(b).

¹²⁸ International Labour Organization, *Database of national labour, social security, and related human rights legislation (NATLEX)*, available at http://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=MMR&p_count=110&p_classification=19&p_classcount=3.

¹²⁹ MYANMAR MARINE FISHERIES LAW (NO. 9/1990), 25 Apr. 1990, Articles 11, 31(e), & 17(e).

¹³⁰ MYANMAR MARINE FISHERIES LAW (NO. 9/1990), 25 Apr. 1990, Articles 3-8, 17 & 18.

¹³¹ Myanmar Fisheries Partnership, *Inshore Fisheries*, http://aciarc.gov.au/files/myanmar_fisheries_partnership-inshore-brief_2.pdf.

Without mechanisms in place to ensure the legitimacy of fishing activities, illegal, unregulated, and unlicensed fishing (IUU) will persist. The ILO states that the practice of IUU is closely entwined with labour exploitation.¹³² Fishers who operate outside the bounds of domestic regulations have no restrictions on what they can do to optimise their profits (e.g. paying low or no wages, demanding excessive working hours, or exploiting children).

The Myanmar Fisheries Law also contains a provision that only allows registered fishermen to work on fishing vessels.¹³³ If effectively enforced, this provision could help mitigate child labour practices by barring children from registration. With systematic inspection, vessels employing children would be found out and penalised. Unfortunately, as highlighted in the *ILO Internal Labour Migration in Myanmar* report, recruitment processes on board fishing vessels are often informal, leaving no paper trail.¹³⁴ The informal recruitment process and inability of authorities to keep track of labourers greatly limits the utility of the Fisheries Law.

As a further concern, the legislation only relates to the marine fishery sub-sector, rather than the fishing sector as a whole. Inland fisheries, consisting of around a quarter of Myanmar's entire fishery production, are left unregulated.¹³⁵

b. Myanmar's Obligations under International Law

Persistent, widespread use of child labour triggers several of Myanmar's obligations under international law. The failure to address child labour falls within the scope of children's rights law, international labour law, and human rights law.

i. Children's Rights

Several international conventions protect the rights of child labourers. These include labour conventions under the umbrella of the ILO and human rights conventions like the CRC.

1. Protection from Hazardous Conditions

Child labour in hazardous conditions falls within the scope of the ILO's Worst Forms of Child Labour Convention (Convention 182), the Convention on the Rights of the Child (CRC), and the ILO's Night Work of Young Persons (Industry) Convention (Convention 006).

¹³² See, e.g., International Labour Organization, *Fishers First*, 2016, at 12, http://ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_515365.pdf.

¹³³ MYANMAR MARINE FISHERIES LAW (No. 9/1990), 25 Apr. 1990, at Article 11.

¹³⁴ "Internal Labour Migration in Myanmar," see above note 10.

¹³⁵ "Freshwater Capture Fisheries," see above note 6, at 1.

Myanmar ratified the Worst Forms of Child Labour Convention in 2013, and its provisions came into force one year later.¹³⁶ The implementation of Convention 182, a fundamental labour convention under the ILO's system, is considered a high priority by the ILO.¹³⁷ The Convention aims to protect children's rights in the workplace and has the most direct bearing on the child labour violations present in Myanmar's fishing and seafood sectors. The Convention does not have legal effect within Myanmar, however; it merely obliges the state to create laws which will define and criminalise the "worst forms of child labour."

Article 3 of Convention 182 gives guidance to states when drafting their own domestic definitions of the "worst forms of child labour" and requires member states to determine conditions of hazardous work.¹³⁸ It suggests "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children" and "debt bondage," as well as "work which...is likely to harm the health, safety or morals of children."¹³⁹ Similar wording is found in the CRC's protection of children from engaging in hazardous work or work that is "harmful to the child's health or physical, mental, spiritual, moral or social development."¹⁴⁰

Although some children in Myanmar's fishing industry are trafficked or in debt bondage, and should thus be given special protections under Convention 182 and the Forced Labour Convention (Convention 29) by definition, most of them are subjected to conditions described in Article 3(d). The ILO has defined "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children" as hazardous work.¹⁴¹ ILO Recommendation 190 provides guidance as to what conditions constitute hazardous work. Conditions most relevant to child labour in the fishing industry include "work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads," "work in an unhealthy environment which may...expose children to hazardous substances, agents or processes, or to temperatures...damaging to their health," and "work for long hours or during the night or work where the child is unreasonably confined to the premises of the

¹³⁶ International Labour Organization, *Ratifications of C182 – Worst Forms of Child Labour Convention*, 1999, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327.

¹³⁷ International Labour Organization, *Conventions and Recommendations*, <http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>, at 1.

¹³⁸

¹³⁹ CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR, 17 June 1999, Articles 3(a) & (d).

¹⁴⁰ *Id.* at Article 32.

¹⁴¹ *Id.* at Art. 3(d); ILO Recommendation 190, see above note 18, at Part II.

employer.”¹⁴² The Convention obliges Myanmar to take immediate action to define and eliminate child labour in the economy.¹⁴³

Children working in the fishing industry are at particular risk of working in hazardous conditions.¹⁴⁴ For example, child workers in the inland fishery sector labour in extreme weather amongst disease-carrying insects, sometimes with dangerous tools or while carrying significant weight.¹⁴⁵ In some cases, children are unable to return home after their shift and sleep on the workplace premises, thus facing unreasonable confinement to the workplace.¹⁴⁶ Our field investigation revealed that children working in the San Pya fish market often carry heavy loads, are exposed to hot and cold temperatures, and work in close proximity to dangerous machines without safety equipment. Children at all points in the fishery supply chain work for extremely long hours, and often during the night when the fish market is at its busiest.¹⁴⁷ As mentioned before, the recently drafted hazardous work list will apply to the fisheries sector and has the potential to greatly reduce the number of child labourers if enforced properly.

**a. The Myanmar Government’s Implementation
of its Obligation to Protect Child Labourers
from Hazardous Conditions under
Convention 182**

This sub-section addresses the Myanmar Government’s efforts to address child labour.

**i. Obligation to Take Measures to
Prohibit and Eliminate the Worst
Forms of Child Labour**

Article 1 of Convention 182 obliges state parties to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child

¹⁴² ILO Recommendation 190, *supra* note 18, at Parts II(b)-(e).

¹⁴³ CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR, 17 June 1999, Article 1.

¹⁴⁴ Using the ILO’s definition of hazardous work, Myanmar’s Ministry of Labour, Employment, and Social Security and Central Statistical Organization found over 600,000 children to be working in hazardous conditions, with 48.1 percent working in the agricultural, fishing, and forestry industries. “Myanmar: Labour Force, Child Labour and School to Work Transition Survey,” *see above* note 15, at 33, 43-44, and 48.

¹⁴⁵ “Agricultural Sub-Sector Child Labour Survey,” *see above* note 16, at 35-36.

¹⁴⁶ *Id.* at vii.

¹⁴⁷ “Myanmar: Labour Force, Child Labour and School to Work Transition Survey,” *see above* note 15, at 40.

[labour] as a matter of urgency.”¹⁴⁸ Additionally, Article 7(1) requires Myanmar to take “all necessary measures” to implement and enforce the convention’s provisions, including by sanctioning those who employ children in the worst forms of child labour.¹⁴⁹ Though Myanmar has increased its efforts to combat child labour since ratification of the convention, the new law currently awaiting passage in Parliament should be swiftly and effectively implemented for it to have any effect on the ground.

The Factories Act illustrates Myanmar’s shortcomings in fully addressing child labour. The Act, amended in 2016, permits children 14 years or older to work in factories for a number of hours after being certified by a doctor and to operate dangerous machinery if they have received “sufficient” training or are supervised by an experienced worker.¹⁵⁰ The vagueness of this law, which contains no further explanation of what this training or supervision comprises, undermines its efficacy. Furthermore, the Factories Act continues to permit dangerous work that qualifies as a “worst form of child labour” that Convention 182 aims to eliminate.¹⁵¹ Additionally, labour inspectors often have little authority to enforce the law.

With regard to the fisheries sector in particular, the Ministry of Agriculture, Livestock, and Irrigation issued a ministerial notification instructing employers in the fisheries sector to comply with Convention 182. However, no information is presently available about the content of this notification or its effectiveness. Without establishing domestic laws to prohibit the employment of children in the worst forms of child labour across industries, the government cannot effectively eliminate the serious child labour abuses present in the fishing industry.

ii. Obligation to Convene Consultations with Relevant Stakeholders to Monitor Implementation of Convention 182

In line with the obligations imposed by Articles 4 through 6 of Convention 182, there has been some progress in establishing monitoring mechanisms, both by the government and by other international bodies.¹⁵² First, a technical cooperation project, MY-PEC, was funded by the ILO and reports periodically on the situation in Myanmar. Work by My-PEC has yielded a national action plan addressing child labour.

¹⁴⁸ CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR, 17 June 1999, Article 1.

¹⁴⁹ *Id.* at Article 7(1)

¹⁵⁰ LAW AMENDING THE FACTORIES ACT 1951, 20 Jan. 2016, Articles 77 & 25.

¹⁵¹ CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR, 17 June 1999, Article 3(d).

¹⁵² CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR, 17 June 1999, Articles 4-6.

Second, the Government has convened a Technical Working Group on Child Labour which has drafted a list of hazardous work from which children should be barred.¹⁵³ The government finished this process in June 2018 and included some 20 industries in which children will not be allowed to work, including the fishing sector. While this is a welcome development, Myanmar should ensure the proper implementation of these measures.¹⁵⁴

b. Night Work

Night work is recognised as a sub-category of hazardous labour.¹⁵⁵ In addition to admonishing against night work in Convention 182, the ILO has also prohibited it under the Night Work of Young Persons (Industry) Convention (Convention 006), to which Myanmar has acceded. The Myanmar government is obligated under Convention 006 to bar child participation in night work in the fishing industry, including fish processing factories under Article 1(b) and “handling goods at docks” under Article 1(d).

ii. Labour Rights

1. Right to Protection from Forced Labour and Trafficking

Several ILO instruments require Myanmar to address forced labour and trafficking of children in the fishing sector. As noted above, the Worst Forms of Child Labour Convention (Convention 182) requires Myanmar to take immediate action to eliminate the trafficking, forced labour, and debt bondage of children.¹⁵⁶ Similarly, the Forced Labour Convention (Convention 029) requires Myanmar to take measures to suppress the use of forced labour “within the shortest possible period,” including in the private sector.¹⁵⁷ In particular, Convention 29 requires Myanmar to establish a complaints mechanism and to take “adequate measures” to ensure strict application of laws restricting forced labour by providing for consistent monitoring.¹⁵⁸

The prevention of forced labour and trafficking also falls within the scope of human rights law. Both the CRC and the ICESCR offer general guidelines with respect to

¹⁵³ *Id.* at Article 4; “A Legal Review,” see above note 14, at, 30.

¹⁵⁴ Myanmar Times, “Myanmar drafts hazardous work list for children”, 13 Jun 2018, <https://www.mmmtimes.com/news/myanmar-drafts-hazardous-work-list-children.html>

¹⁵⁵ “Recommendation 190,” , at Part II(e).

¹⁵⁶ CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR, 17 June 1999, Article 3(a).

¹⁵⁷ CONVENTION CONCERNING FORCED OR COMPULSORY LABOUR, 28 JUNE 1930, Articles 1(1) and 4(1)

¹⁵⁸ *Id.* at Articles 23 and 24.

protecting children from trafficking.¹⁵⁹ Myanmar is also party to several agreements aimed specifically at eliminating trafficking, including the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.¹⁶⁰ In addition to defining children as any individual under 18, in contrast to Myanmar's definition of "child" as anyone under 16, the Protocol also requires parties to adopt legislation and other measures to criminalise trafficking, as well as to pay particular attention to marginalised groups (such as children) that are more vulnerable to trafficking.¹⁶¹

a. Myanmar's Implementation of its Obligation to Eliminate Forced Labour and Trafficking in the Fishing and Seafood Sectors

Myanmar has enacted the Anti Trafficking in Persons Law in accordance with the UN TIP Protocol.¹⁶² This law criminalises trafficking in persons for exploitation with or without the victim's consent.¹⁶³ It creates a framework through which the government can conduct media campaigns and research trafficking trends, and it also assigns responsibilities to government bodies dedicated to anti-trafficking.¹⁶⁴

In addition to codifying the prohibition of forced labour and trafficking under the Anti Trafficking in Persons Law, Myanmar has taken several promising steps to address the issue. The government has created several bodies to address trafficking, including the Central Body for the Suppression of Trafficking in Persons (CBTIP) under the Ministry of Home Affairs¹⁶⁵ and a Supplementary Understanding Forced Labour Complaints Mechanism with the ILO; and it is setting up various national task forces and divisions to tackle the problem.

Despite such promising mechanisms and apparently positive changes in the law, Myanmar has not sufficiently reduced forced labour and trafficking in the fishing industry. Part of the problem is due to gaps in the laws themselves. For example, the Anti Trafficking in Persons Law only prohibits the sale of children for the purposes

¹⁵⁹ Article 35 of the CRC requires states to take "appropriate measures" to prevent trafficking, while Article 36 protects children from "other forms of exploitation." CONVENTION ON THE RIGHTS OF THE CHILD, 20 Nov. 1989, Articles 35-36. The ICESCR dictates that "young persons should be protected from economic and social exploitation." INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 16 Dec. 1966, Article 10(3).

¹⁶⁰ United Nations Office on Drugs and Crime, *Signatories to the United Nations Convention against Transnational Crime and its Protocols*, available at <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>.

¹⁶¹ PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, 12 Dec. 2000, Articles 5 & 9.

¹⁶² *Id.*

¹⁶³ ANTI TRAFFICKING IN PERSONS LAW, 13 Sept. 2005, Articles 24-33.

¹⁶⁴ *Id.*, Articles 5-10.

¹⁶⁵ UN Action for Cooperation against Trafficking in Persons, Myanmar National Trafficking Trends, <http://un-act.org/myanmar/>

of exploitation, which is limited to sexual exploitation, forced labour, debt-bondage, or similar acts; meanwhile the Penal Code only criminalises the sale of children for unlawful or immoral purposes.¹⁶⁶ This may leave unprotected those children who work in hazardous conditions like the fishing industry, whom the ILO considers to be trafficked.¹⁶⁷

Another problem is the government's lack of attention to marginalised groups that are more at risk for trafficking. Laws from the military government period that are still in place today leave certain populations, including ethnic minorities and girls, especially vulnerable to trafficking.¹⁶⁸ The government's failure to screen vulnerable populations, such as returning migrant workers, for signs of trafficking has exacerbated this problem.¹⁶⁹ In many cases, enforcement is hampered because victims of trafficking are unaware of the illegality of their situation or distrust law enforcement officers.

Furthermore, Myanmar's anti-trafficking and forced labour efforts have focused primarily on victims of cross-border trafficking, resulting in a lack of information on domestic trafficking.¹⁷⁰

Finally, Myanmar has also struggled to consistently penalise perpetrators of forced child labour and child trafficking. With respect to enforcement, existing legislation does not clearly demarcate the responsibilities of the general police, the anti-trafficking task force, and labour inspectors.¹⁷¹ As of result, by 2015, Myanmar had reported only a few prosecutions of private citizens for forced labour offenses in conjunction with the ILO Supplementary Understanding on complaints mechanism, indicating that the existing mechanism does not effectively protect children in situations of forced labour and trafficking.¹⁷²

¹⁶⁶ ANTI TRAFFICKING IN PERSONS LAW, 13 Sept. 2005, Article 3(a).

¹⁶⁷ "A Legal Review," see above note 14, at 23. "Recommendation 190," see above note 19, at §§11(b) and 12(a).

¹⁶⁸ For example, one such rule dictates that women between the ages of 16 and 25 can only cross a border with an escort, which facilitates women's risk of trafficking. Nyein Nyein, "Burma's Parliament Ratifies Asean Anti-Trafficking Convention," *The Irrawaddy*, 15 Dec 2016.

¹⁶⁹ "A Legal Review," see above note 14, at 24.

¹⁷⁰ *Id.*

¹⁷¹ See U.S. State Department Trafficking in Persons Report, Burma (2017), at 114 ("However, a lack of clarity between the roles and responsibilities of ATTF officers and general police investigators, coupled with poor police-prosecutor cooperation, continued to hamper the success of investigations and prosecutions.").

¹⁷² International Labour Organization, *Observation of CEACR on C29, adopted 2015*, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3250775.

Given the large gap in the enacted legislation and the implementation of such laws, Myanmar must take measures to address the internal regulations and practices contributing to child trafficking, including restructuring its anti-trafficking mechanisms and adjusting the federal laws that continue to render children vulnerable to trafficking. The prior efforts of the Myanmar government cannot be undermined, but it is necessary for the government to be transparent with the results in order for any such reforms to be effective. We invite the Myanmar government, a necessary player, to partake in this ongoing discussion.

2. Labour Union Rights

Myanmar's weak protections for labour unions also contribute to the child labour violations in the fishing industry. The state is a party to the Freedom of Association and Protection of the Right to Organise Convention (Convention 087), another fundamental convention in the ILO system, and it must also guarantee child labourers the freedom of association under Article 15(1) of the CRC.¹⁷³

Without the ability to effectively organise, workers are unable to challenge unsafe working conditions, exploitative working hours, and unequal pay—problems that are amplified in cases of child labour. If the new hazardous labour list in line with ILO Recommendation 190 is implemented effectively, thus barring children from engaging in particularly dangerous work, employers may find it easier to simply terminate the employment of legally working teenagers rather than improve their labour conditions. Without adequate labour unions in the fishing industry and seafood sector, working children would have little opportunity for recourse.

Myanmar's compliance with international law relating to labour organising is thus a key component in the fight against child labour in the fishing and seafood sectors, and the broader fight against child labour in the country

a. Myanmar's Implementation of its Obligation to Protect Labour Organising Rights

Though Myanmar has made improvements to its labour organising laws since the military government period, there continue to be reports of anti-union actions. The ability of workers to advocate for safer workplaces or challenge unfair terminations or insufficient pay remains limited.¹⁷⁴ For example, the Child Law in its current form

¹⁷³ FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 9 July 1948; CONVENTION ON THE RIGHTS OF THE CHILD, 20 Nov. 1989, Article 15.

¹⁷⁴ See International Labour Organization, *381st Report of the Committee on Freedom of Association*, Case No. 3171 (Myanmar), Mar. 2017, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_548465.pdf. An example of anti-union action is the trend that employers continue to disregard labour dispute settlements and wrongfully

does not explicitly affirm children's freedom of association, and the Labour Organization Law only protects the right of children above the minimum working age to join labour organisations.¹⁷⁵ Myanmar must enforce the minimum working age of workers in the fishing industry and seafood sector and in the meantime ensure that working children are not left out of the collective action process.

Domestic law also places several restrictions on the right to organise in contravention of Convention 87, which requires Myanmar to permit labour unions to organise without previous authorisation from the government.¹⁷⁶ For example, the Labour Organization Law requires a minimum of 30 workers in the trade to establish a basic labour organisation, with at least 10% of the entire sector recommending its formation.¹⁷⁷ This double requirement makes forming an official labour organisation difficult, particularly in decentralised sectors like the fishing and seafood sectors. Such barriers have negative implications for the potential of workers to challenge widespread child labour abuses within their own industries.

Another example of a restriction on the right to organise is the provision under the Labour Organization Law that prohibits striking without permission from the relevant labour federation, without advance notice, or "*within 500 yards [of] hospitals, schools, religious buildings, airports, railways, bus terminals, ports, or diplomatic missions and military or police installations.*"¹⁷⁸ This makes it impossible for non-registered organisations to hold a lawful strike, as they cannot secure official permission without being a registered organisation, and it is completely impractical for even those organisations that are officially registered.

None of the workers at San Pya market that HRN spoke to during our field investigation belonged to a labour organisation. Additionally, none knew if one existed, or expressed a desire to join one. Several workers said they were not happy with their pay, but that their only means of bringing a complaint to their employer would be to have their "team leader" speak to their employer. These conversations support the findings of other reports that indicate knowledge of and support for labour organising is low in Myanmar, especially in decentralised sectors.

terminate workers due to lax enforcement of domestic labour law and minimal penalties for violations. Myanmar Times, *Workers demand jail time for habitually offending employers*, 18 Jan. 2016, <http://www.mmtimes.com/index.php/national-news/yangon/18509-workers-demand-jail-time-for-hab%20itually-offending-employers.html>.

¹⁷⁵ THE CHILD LAW (LAW No. 9/93), 14 July 1993, Article 15(c); LABOUR ORGANIZATION LAW, 11 Oct. 2011, Article 3

¹⁷⁶ FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 9 July 1948, Article 2.

¹⁷⁷ LABOUR ORGANIZATION LAW, 11 Oct. 2011, Article 4(a)(i)-(ii).

¹⁷⁸ LABOUR ORGANIZATION LAW, 11 Oct. 2011, Articles 39, 41(b)-(c), & 50(b).

Labour organisations will continue to be ineffective if their ability to advocate is limited by the weak legal regime governing them. Domestic labour laws must protect the rights of workers, including working children, to take part in labour organisation activities, to freely associate, and to have recourse in cases of wrongful termination, or Myanmar will be in breach of its obligation under Convention 87 to empower labour organisations to “further and defend the interests of workers.”¹⁷⁹

iii. Socio-economic Rights

1. Right to Education

Myanmar has obligations under various international conventions to uphold the right to education. The ILO’s Convention 182 requires state parties to provide means of rehabilitation and social integration, as well as vocational training if possible, for former child labourers.¹⁸⁰ In Article 7(2)(d), the convention includes an obligation to “*identify and reach out to children at special risk*” which should include children working in isolated segments of the fishing industry or seafood sector who may not be effectively reached by other initiatives.¹⁸¹

Likewise, the CRC requires state parties to undergo lengthy measures to ensure that children are protected from any working conditions that will prevent them from accessing their right to education. The CRC explicitly recognises the right of the child to education in Article 28, outlining various steps that parties can take to protect this right, and it also emphasises in Article 32 that states must protect children from work that interferes with the right to education.¹⁸²

Additionally, Article 13 of the ICESCR recognises the right to education and outlines concrete requirements (such as providing free and compulsory primary education) for the realisation of this right. The UN Special Rapporteur for education has also issued guidelines for realising the right to education, including the advice to create non-formal, or “second-chance” avenues for education, characterised by flexibility, variety, and the ability to respond to individual needs.¹⁸³ Governments can implement their responsibility to provide non-traditional education through formalising funding, providing regulations that act as quality-control, and providing pathways from non-formal systems back into the formal education system.¹⁸⁴

¹⁷⁹ FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 9 July 1948, Article 10.

¹⁸⁰ CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR, 17 June 1999, Article 7(2).

¹⁸¹ *Id.* at Article 7(2)(d).

¹⁸² CONVENTION ON THE RIGHTS OF THE CHILD, 20 Nov. 1989, Articles 28 & 32.

¹⁸³ UN Human Rights Council, “Report of the Special Rapporteur on the Right to Education: Realizing The Right to Education through Non-Formal Education,” 2 June 2017, A/HRC/35/24.

¹⁸⁴ *Id.* at 17 and 20.

a. Myanmar's Implementation of the Right to Education

By permitting children to leave school and work in the fishing and seafood sectors, Myanmar falls short of its obligation to protect children's right to education. In the Committee on the Rights of the Child's 2012 concluding report on the implementation of the CRC in Myanmar, the Committee noted with concern that Myanmar dedicated an extremely low proportion of its resources to social sectors.¹⁸⁵ In particular, the Committee highlighted the low spending on education compared to the disproportionately higher amount of spending on the military and state-owned enterprises.¹⁸⁶ If Myanmar were to allocate a larger budget for education, it could implement programs such as increasing the length of government-sponsored compulsory education or providing non-formal education, which could prevent children from having to choose between attending school and working.

On a more positive note, since 2009, Myanmar has been developing and expanding its non-formal education program. As of 2017, these new programs have served over 66,000 students who would otherwise have lacked access to education.¹⁸⁷ Such programs include teacher education seminars and camp learning programs, which are funded jointly by the Myanmar Ministry of Education, Literacy Resource Centre, UNICEF, and UNESCO.¹⁸⁸ Ideally, these efforts should also focus on the parents of children and employers when highlighting the importance of education. In the short term, this will aid in the effective observance and implementation of the law. In the long term, education can go towards shifting antiquated mindsets on child labour practices and overcoming culturally embedded perceptions.

2. Right to Health

Myanmar also has obligations to uphold the right to health. The ICESCR protects the right to healthy working conditions and specifically highlights the need to protect children and young persons from employment that may be harmful or dangerous to their development.¹⁸⁹

a. Myanmar's Implementation of the Right to Health

¹⁸⁵ Committee on the Rights of the Child, Fifty-Ninth Session, "Concluding Observations: Myanmar" CRC/C/MMR/CO/3-4, 3 & 4 (2012).

¹⁸⁶ *Id.* at 4.

¹⁸⁷ Ei Shwe Pyu, "Non-Formal Education Program to Expand its Wings," Myanmar Times, 10 May 2017.

¹⁸⁸ *Id.*

¹⁸⁹ INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 16 Dec. 1966, Articles 7, 10, and 12.

As discussed throughout this report, by allowing children to work in the fishing and seafood sectors, Myanmar has failed to protect the health and well-being of children. In particular, the “hazardous conditions” of employment in these sectors seriously threaten the healthy development and safety of child labourers. HRN’s field research confirmed that children were indeed subjected to employment harmful to their health.¹⁹⁰

c. A Note about Obligations of Foreign Governments and Corporations Engaging in Business with the Fishing and Seafood Sectors in Myanmar

Even if regulation of child labour within Myanmar is not within the reach of foreign governments or corporations, foreign companies with supply chains reaching into Myanmar still have power and leverage to influence Myanmar labour practices and certain obligations with respect to their supply chains. Chief among these is the The United Nations Guiding Principles on Business and Human Rights (UNGP), although there are other such international standards.¹⁹¹ The UNGP notes that states have a duty to protect the rights of workers within their territory and ensure that corporations domiciled in their territory respect human rights throughout their operations (Principles 1 and 2)¹⁹². According to the UNGP, corporations have a duty to respect human rights, including:

- 1) Business enterprises should respect human rights, this includes avoiding infringing on the human rights of others and addressing adverse human rights impacts with which they are involved. (Principle 11)
- 2) The responsibility to business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts. (Principle 14)
- 3) Conduct ongoing human rights due diligence to identify actual and potential adverse human rights impacts (Principle 17)

¹⁹⁰ See for example interview #15 where a mother mentions the back problems of her daughter, or interview #13 where another mother regrets that her child has to do difficult work.

¹⁹¹ The Netherlands’s Child Labour Due Diligence Law, “Wet Zorgplicht Kinderarbeid” (2017); France’s Duty of Vigilance Law, “Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre” (2017). See also “EU import conditions for seafood and other fishery products” (https://ec.europa.eu/food/sites/food/files/safety/docs/ia_trade_import-cond-fish_en.pdf).

¹⁹² “Guiding Principles on Business and Human Rights”, HR/PUB/11/04, 2011, http://www.ohchr.org/Documents/publications/GuidingprinciplesbusinessHR_EN.pdf

The United Nations takes the position that while the UNGPs do not create any new binding obligations on states, they do constitute a restatement of existing obligations that governments have under international human rights law.¹⁹³ Under this view, foreign states and corporations should acknowledge the clear evidence of child labour in the fishing sector in Myanmar and conduct due diligence and reshape its relations with the Myanmar fishing sector accordingly.

Furthermore, states and corporations must respect the rights outlined in the ILO's Declaration on Fundamental Principles and Rights at Work, which includes a prohibition on child labour, as well as those in the ICESCR.¹⁹⁴ Corporations that rely on suppliers using child labour in the production of seafood exports therefore have a responsibility to "seek to prevent or mitigate" the practice of child labour and accompanying human rights violations.¹⁹⁵ These corporations should develop an industry-wide sustainability initiative, consisting of public criteria for monitoring labour rights in supply chain and mechanisms for monitoring them.

Some model approaches HRN recommends international corporations consider using or develop into similar initiatives include:

- Standardized and effective due diligence requirements which companies may sign on to follow, for example the OECD-FAO Guidance standards listed above, and due diligence standards modelled after the ECCJ Position Paper which lists 10 requirements for all due diligence.¹⁹⁶
- Standardized and effective criteria for labour rights abuses, such as the Ethical Trading Initiative's ETI Base Code for labour rights abuses.¹⁹⁷
- Foreign companies should also consider various options to ensure accurate and effective due diligence procedures. For example, they could develop and use third party due diligence auditing like the Amfori-BSCI system, which has proven to be an accurate and effective system. If companies do conduct their own internal auditing system, they should develop effective criteria and procedures similar to the Amfori-BSCI system and publicly release information about its criteria and procedures at a similar level of detail as the "AMFORI-BSCI System Manual" to allow public evaluation and assurance of its effectiveness.¹⁹⁸

¹⁹³ "Frequently Asked Questions about the Guiding Principles on Business and Human Rights," United Nations Office of the High Commissioner of Human Rights, 2014, http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf.

¹⁹⁴ *Id.* at Art. 11 and 12.

¹⁹⁵ *Id.* at Art. 13.

¹⁹⁶ ECCJ Position Paper, <http://corporatejustice.org/eccj-position-paper-mhrdd-final-june2018-2.pdf>.

¹⁹⁷ ETI Base Code, <https://www.ethicaltrade.org/eti-base-code>.

¹⁹⁸ AMFORI-BSCI System Manual, <https://www.amfori.org/resource/amfori-bsci-system-manual-full-and-interactive-version-english>.

VI. Recommendations

In order to adequately address the problem of child labour in the fishing and seafood sectors in Myanmar, Human Right Now offers the following recommendations.

To the government of Myanmar:

- Immediately conduct a thorough, effective, and transparent large-scale investigation of the child labour practices and human rights violations in the Myanmar fishing sector.
- Launch and Implement the National Action Plan on child labour to ensure adequate conditions of work on board fishing vessels and in the broader fishing sector, using the ILO Work in Fishing Convention 2007 (No. 188) as guidance.
- Develop and structure clear roles within the responsible sections of government and foster greater communication and cooperation between the Navy and non-governmental partners with regard to the fishing sector and its child labour practices.
- Clarify the Myanmar Marine Fisheries Law of 1990 by specifying the responsibilities of the inspector, researchers, observers, and trainees on board the vessel, using Article 8 of the ILO Work in Fishing Convention 2007 (No. 188) as guidance.
- Set minimum working age requirements across all sectors, including the fishing industry, using Article 9 of the ILO Convention 188 in relation to child labour as guidance.
- Expand consultation with multiple stakeholders in the fishing sector, aimed at revising the Marine Fisheries Law of 1990, to include the necessary discussion of child labour issues within the industry.

To Foreign States and Companies Engaged in Business with the Myanmar Fishing Sector:

- Develop and implement strong monitoring and due diligence measures¹⁹⁹, in consultation with local worker groups, NGOs, workers, and other stakeholders, to ensure products produced by child labour, as well as other human rights impacts, do not enter their supply chains. Also take measures to address child labour and other negative human rights impacts identified, such as using their leverage to see that the supplier end its child labour practices.
- Take measures to verify their due diligence practices are effective in identifying risks and preventing abuse. This should include audits, on-site investigations and

¹⁹⁹ See footnote [3].

consultations with workers' organisations and civil society. Also publicly release the due diligence system's criteria and procedures to allow civil society evaluation and assurance that they are effective,

- Publicly affirm a commitment to the UN Guiding Principles on Business and Human Rights and establish human rights and CSR policies to ensure that labour and human rights, including the rights of children, are respected in supply chains, in accordance with the Guiding Principles and international labour rights standards.²⁰⁰
- Use their leverage to persuade or see that multiple stakeholders continue to work towards adequate protection of the rights of potential and actual child labourers in the industry.

²⁰⁰ See footnote [4].