

**Universal Periodic Review (37th session, October-November 2020)
Contribution of UNESCO**

Myanmar

I. Background and framework

<i>Title</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>	<i>Reference to the rights within UNESCO's fields of competence</i>
Convention against Discrimination in Education (1960)	Not a State party	Reservation to this Convention shall not be permitted		Right to education
Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	29/04/1994 Acceptance			Right to take part in cultural life
Convention for the Safeguarding of the Intangible Cultural Heritage (2003)	07/05/2014 Ratification			Right to take part in cultural life
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	Not ratified			Right to take part in cultural life

II. Promotion and protection of human rights on the ground

A. Education

1. The Constitution of the Republic of the Union of Myanmar of 2008¹ enshrines the right to education in its Chapter VIII on Citizen, Fundamental Rights and Duties of the Citizens. The constitutional law lays down the right to education and compulsory basic education for citizens (Section 336) and sets out to improve education quality and encourage citizen participation in education (Section 26).

¹ The Constitution of the Republic of Myanmar , accessible at
<http://www.unesco.org/education/edurights/media/docs/e7c956407bd5c10b51dfca4d2cdb97bc5f0fee75.pdf>
http://www.mofa.gov.mm/wp-content/uploads/2013/08/Constitution_of_Myanmar.pdf

In addition, it provides guarantee of equal rights for all and prohibits discriminate based on race, birth, religion, official position, status, culture, sex and wealth (Sections 347 and 348).

2. The National Education Law (NEL) was adopted in 2014² and later amended in 2015.³ It outlines the principles of education, especially regarding access to education, free compulsory primary education and life-long learning opportunities (Sections 3 and 4). The law also defines the scope of the free compulsory primary education and the responsibilities related to its implementation (Sections 16(a), 17, 45, 48 and 49a-b). Extensive reference to non-formal education and to continuing education and life-long learning are encompassed as well (Sections 31, 32a-c, 33a-d, 58g and 61).

B. Freedom of opinion and expression

Constitutional and Legislative framework:

3. Freedom of expression is safeguarded in the 2008 Constitution of the Republic of the Union of Myanmar.⁴
4. In 2014, a new Media Bill was enacted in the Republic of the Union of Myanmar. The Media Law outlined the rights of journalists and of the media, furthering freedom of expression.⁵
5. However, the Printer's and Publishers' Registration Law expands the government's control over the press⁶, including giving the Ministry of Information the power to issue and revoke publishing licenses.
6. Under the 1861 Penal Code, defamation is criminalized with penalties of up to two years' imprisonment.⁷ Furthermore, the 1923 State Secrets Act also contains imprisonment sentences for anyone found guilty of disclosing state secrets of up to fourteen years.
7. A draft Right to Information Law has been submitted to Union Parliament since September 2016.

Implementation of legislation:

² National Education Law, 2014 (41/2014), unofficial translation accessible at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100493/120566/F28507983/MMR100493%20Eng.pdf>

³ National Education Amendment Law, 2015 (38/2015), accessible at:

http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100492 (PDF only accessible in Burmese)

⁴ See the Constitution of the Republic of the Union of Myanmar (2008) at

http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf.

⁵ See the 2014 Media Law at http://www.burmalibrary.org/docs17/2014-Media_Law-en.pdf.

⁶ See the 2014 Printer's and Publisher's Registration Law at http://www.burmalibrary.org/docs18/2014-03-14-Printing_and_Publishing_Law-13-bu.pdf (in Burmese).

⁷ See the Penal Code of Myanmar at http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf.

8. The 2015 Broadcast Law establishes a government body, known as the Broadcast Council, that can issue and revoke broadcast licenses. The members of the Council are appointed by the President of the Republic of the Union of Myanmar.⁸

Safety of journalists:

9. Between 2008 and 2019, UNESCO recorded the killing of Kenji Nagai, a Japanese journalist.⁹ The Director-General of UNESCO condemned the killing and called on the government to inform UNESCO, on a voluntary basis, of the actions taken to prevent impunity and of the status of the judicial inquiries. According to information provided by the Republic of the Union of Myanmar, the judicial investigation of Kenji Nagai's case is currently still ongoing.

III. Review and specific recommendations

A. Education

10. UNESCO has conducted a right to education review of the national legal framework of the Republic of the Union of Myanmar in 2017/2018 in light of international legal obligations and political commitments and formulated recommendations to better protect this right.

Legislative, regulatory and policy framework:

- The new Child Law No. 22/2019¹⁰, enacted on 24 July 2019, preserves children's right to free public primary education, which is also compulsory (section 46) and addresses specifically the rights of children with disabilities to acquire basic education (primary level) or vocational education (sections 51 and 52).
- In 2015 the Republic of the Union of Myanmar has launched a National Education Strategic Plan (NESP) 2016-2021¹¹ with the general commitment to achieve, by the end of the 2020-2021 financial year, "improved teaching and learning, vocational education and training, research and innovation leading to measurable improvements in student achievement in all schools and educational institutions". To reach this NESP goal, the Ministry of Education has identified and defined nine Transformational Shifts in the following areas: Preschool and kindergarten education, Basic education, Basic education curriculum, Student assessment and examinations, Teacher education and management, Alternative education, TVET, higher education, and Management capacity development and quality assurance.

Free and compulsory education

- In the Republic of the Union of Myanmar, the legal framework refers alternatively to "compulsory basic education" (section 366 of the Constitution), and "free and compulsory primary education" (section 17 of the NEL) which might lead to different interpretations of the level covered by

⁸ See the bill at <https://www.president-office.gov.mm/?q=hluttaw/law/2015/09/01/id-10426>

⁹ See the public condemnation made by the UNESCO Director General at <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/press-freedom/unesco-condemns-killing-of-journalists/countries/myanmar/>

¹⁰ Child Law No. 22/2019, accessible at <https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/2019-07-23-PH-Act22-bu.pdf>

¹¹ National Education Strategic Plan (NESP) 2016-2021, accessible at https://planipolis.iiep.unesco.org/sites/planipolis/files/ressources/myanmar_nesp-english_summary.pdf

compulsory schooling. Further, according to the latter section, free and compulsory education shall be expanded in successive stages. The Education 2030 Agenda calls on states to put in place policies and legislation that guarantee 12 years of free, publicly funded, inclusive, equitable, quality primary and secondary education, of which at least nine years are compulsory for all children, leading to relevant learning outcomes.¹² Further pre-primary education is neither free nor compulsory as encouraged by the Education 2030 Framework for Action¹³.

Minority groups

- According to a recent UN report, access to education is limited, with reports of Rohingya children in Central Rakhine being prevented from attending the formal education system because of the combination of movement restrictions and the lack of schools.¹⁴ Likewise, the government structures specific to northern Rakhine State, with the border guard police holding both security and administrative authority over the townships with predominantly Rohingya populations, has resulted in myriad local orders restricting freedom of movement, including access to education.¹⁵
- Recently, Marzuki Darusman, head of the UN Independent International Fact-finding mission on Myanmar, informed the General Assembly that “the treatment of some 600,000 Rohingya remaining in Rakhine State is largely unchanged. Their situation has worsened, as they endure another year subjected to discrimination, segregation, movement restrictions and insecurity, without adequate access to livelihoods, land, basic services, including education and health care, or justice ...”¹⁶.

Child labour

- According to article 48 of the Children's Rights Act (Union Parliament Law No. 22, 2009)¹⁷, the minimum age of employment is 14 which is premature¹⁸ and could interfere with the child's right to education.

Specific recommendations:

11. The Republic of the Union of Myanmar should be encouraged to:

- Ratify the Convention against Discrimination in Education
- Submit regularly comprehensive national reports for the periodic consultations on UNESCO's education-related standard-setting instruments, and notably on the Recommendation against

¹² Education 2030 Framework for Action. para. 34, accessible at: <https://unesdoc.unesco.org/ark:/48223/pf0000245656>

¹³ Ibid, para. 6 and 36.

¹⁴ Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, Doc. A/HRC/42/CRP.4, August 2019, para. 59, accessible at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/sexualviolence/A_HRC_CRP_4.pdf

¹⁵ Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure, UN Committee on the Elimination of Discrimination against Women, March 2019, accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/075/79/PDF/N1907579.pdf?OpenElement>

¹⁶ UN Independent International Fact-Finding Mission on Myanmar calls on UN Member States to remain vigilant in the face of the continued threat of genocide, 23 October 2019, accessible at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25197&LangID=E> (accessed on the 30/01/2020)

¹⁷ <https://www.mlis.gov.mm/mLsView.do?lawordSn=13100>

¹⁸ See Article 2 of the ILO Minimum Age Convention n°138 (1973)

Discrimination in Education in the framework of the 10th Consultation¹⁹

- Consider ensuring at least 9 years of free and compulsory education and progressively expand free education to 12 years
- Consider introducing at least one year of free and compulsory pre-primary education
- Ensure that Rohingya children may travel safely and freely to obtain access to health care, education and places of livelihood
- Consider increasing the minimum age of employment to 15 years ensuring that it is aligned with the end of compulsory education
- Share with UNESCO any relevant information to update its country profile on UNESCO's Observatory on the Right to Education²⁰
- Consider signing the Safe Schools Declaration and take all necessary measures to protect schools from attack and to prevent the use of schools for military purposes.

B. Freedom of opinion and expression

12. The Republic of the Union of Myanmar is encouraged to review its laws including Printer's and Publishers' Registration Law so that they are in line with international standards, and to ensure that freedom of opinion and expression are guaranteed in the country.
13. The Republic of the Union of Myanmar should ensure that journalists and media workers are able to practice the profession in a free and safe environment as part of their fundamental human rights in accordance with international standards.²¹ Government is encouraged to investigate all attacks on journalists and media workers, and ensure full implementation of the rule of law.
14. The Republic of the Union of Myanmar is encouraged to introduce an access to information law that is in accordance with international standards.²²
15. It is recommended that the Republic of the Union of Myanmar decriminalize defamation, and place it within a civil code that is in accordance with international standards.²³
16. The Government is encouraged to assess the system of supervision of broadcasting sector in order to ensure that this process is transparent and independent.

C. Cultural rights

¹⁹ <https://en.unesco.org/themes/right-to-education/convention-against-discrimination/consultation>

²⁰ <http://www.unesco.org/education/edurights/index.php?action=countries&lng=en>

²¹ See for example, UN General Assembly Resolution A/RES/68/163 and Human Rights Council Resolution A/HRC/21/12

²² See for example, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the recommendations of the 2000 Report of the UN Special Rapporteur on Freedom of Opinion and Expression, the 1981; 2002 Recommendation of the Committee of Ministers of the Council of Europe, the 2002 African Commission on Human and Peoples' Rights Declaration of Principles of Freedom of Expression in Africa and the 2000 Inter-American Commission on Human Rights' Declaration of Principles of Freedom of Expression.

²³ See for example, General Comments No 34. of the International Covenant on Civil and Political Rights (ICCPR), 2006 Recommendation of the 87th Session Human Rights Committee, the recommendations of the UN Special Rapporteurs on the Right to Freedom of Opinion and Expression, and Resolution 1577 (2007) of the Parliamentary Assembly of the Council of Europe.

17. As a State Party to the Convention the Convention concerning the Protection of the World Cultural and Natural Heritage (1972)²⁴, and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003)²⁵, the Republic of the Union of Myanmar is encouraged to fully implement the relevant provisions that promote access to and participation in cultural heritage and creative expressions and, as such, are conducive to implementing the right to take part in cultural life as defined in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. In doing so, the Republic of the Union of Myanmar is encouraged to give due consideration to the participation of communities, practitioners, cultural actors and NGOs from the civil society as well as vulnerable groups (minorities, indigenous peoples, migrants, refugees, young peoples and peoples with disabilities), and to ensure that equal opportunities are given to women and girls to address gender disparities.
18. the Republic of the Union of Myanmar is also encouraged to ratify the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) as a means to promote access to and participation in creative expressions and as such contribute to implementing the right to take part in cultural life.

D. Freedom of scientific research and the right to benefit from scientific progress and its applications

19. The Republic of the Union of Myanmar did not submit its National Report on the implementation of the Recommendation on the Status of Scientific Researchers (1974) for the Second Consultation covering the period from 2013 to 2016²⁶. Therefore the Republic of the Union of Myanmar is encouraged to report to UNESCO in future on the implementation of the newly adopted Recommendation on Science and Scientific Researchers (2017), which supersedes the 1974 Recommendation, on any legislative or other steps undertaken by it with the aim to ensure the application of this international standard-setting instrument paying a particular attention to the legal provisions and regulatory frameworks which ensure the implementation of human rights of scientific researchers, as well as human rights obligations related to science, the principle of non-discrimination, including urging active promotion of women and girls entering scientific careers, as well as the scientists' rights of autonomy, freedom of research, expression and publication.

²⁴ Periodic Report available at: <http://whc.unesco.org/document/116967>

²⁵ Periodic Report not available

²⁶ <http://unesdoc.unesco.org/images/0025/002592/259256e.pdf>