

**Joint submission to the UN Universal Periodic Review of Myanmar
July 2020**

**37th Session of the UPR Working Group of the Human Rights Council
January/February 2021**

Coalition of Indigenous Peoples in Burma/Myanmar¹

About the Coalition of Indigenous Peoples in Burma/Myanmar

The Coalition was formed in 2015 in order to participate in the Universal Periodic Review (UPR) process. The Coalition expanded in 2020 and now includes 28 organisations representing the interests of Indigenous Peoples from across Burma/Myanmar. This makes it one of the largest and most representative civil society coalitions participating in this third cycle of Burma/Myanmar's UPR, which in turn reflects the growing Indigenous Peoples' movement in the country.

Methodology

The Coalition held a preliminary consultation, during which its members established guiding principles for working together during the third cycle of the UPR, including making decisions by majority consensus. The members produced the content of the submission in thematic working groups based on the issues of most pressing concern to them, in line with the UN Declaration on the Rights of Indigenous Peoples. Unfortunately, a planned follow-up consultation had to be cancelled due to the risks associated with the corona virus pandemic. Instead the draft submission in both English and Burmese was emailed to Coalition members for review. Working Committee members then followed up to collect Coalition members' feedback, which was incorporated into the final submission.

Contact:

**UPR Working Committee for the Coalition of Indigenous Peoples in
Burma/Myanmar**

Chin Human Rights Organisation: info@chinhumanrights.org

Indigenous Peoples/Ethnic Nationalities Network:

ipen.myanmar@gmail.com

Indigenous Peoples Partnership: ipp@ipppartnership.org

Promotion of Indigenous and Nature Together: point.org.mm@gmail.com

A. INTRODUCTION

1. The Coalition's submission is focused on the protection and promotion of the rights enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), as it is a ground-breaking instrument of law created primarily by and for Indigenous Peoples. The UNDRIP is commonly referred to as 'soft' law, which is not legally-binding *per se* but generates important legal effects. UN treaty bodies including the Committees on the Rights of the Child and Economic, Social and Cultural Rights have drawn on UNDRIP provisions to interpret States' obligations under those legally-binding international human rights treaties, to which Burma/Myanmar is a State party.²
2. Burma/Myanmar is one of the largest and most diverse countries in Southeast Asia. As of 2019, the population of Burma/Myanmar is about 54 million. The 2014 National Census did not reveal the ethnic composition data, thus, there is no accurate information about Indigenous Peoples, partly due to lack of recognition and restrictions on self-identification in the census. Indigenous Peoples are broadly sub-grouped under the eight main ethnic categories – Kachin, Kayah, Kayin, Chin, Mon, Bamar, Rakhine, and Shan, which undermines their rights to self-identification. For example, Naga, Danu and Tavoy (Dawei) Indigenous Peoples do not identify themselves as belonging to any of those broad categories.
3. In Burma/Myanmar, the term *taing-yin-tha* in Burmese (sometimes officially translated as national races by the government, or ethnic nationalities) is used to refer to those who have been present in the current geographical area of Burma/Myanmar since before the beginning of the first British annexation, and is usually used to refer to the eight main ethnic categories, including the majority group of Bamar. Indigenous peoples use the terminology *htanay-taing-yin-tha* for Indigenous Peoples, which translates as "*original dwellers who have strong ancestral ties to the present territories*", based on the concept of self-identification, and using the criteria of non-dominance in the national context, historical continuity, ancestral territories, and cultural values.
4. The present-day Union of Myanmar was formed by the Bamar and Indigenous Peoples in 1948, with the strong promise of self-determination under the Panglong agreement. However, that promise was not fulfilled by successive governments, who instead embarked on a nation-building process based on the notion of one race, one language, one religion, in pursuit of a homogenous society based on the Bamar identity. This led to one of the most protracted armed conflicts in the world as Indigenous Peoples seek to assert their rights to self-determination. However, the government interprets demands for self-determination as secession from the State and considers the international concept of Indigenous Peoples as the Western world's discourse, inapplicable to the Burma/Myanmar context.

B. NATIONAL HUMAN RIGHTS FRAMEWORK

5. Under the UNDRIP, Indigenous Peoples have the rights to representation, consultation and participation, including in decision-making on matters which would affect their rights.
6. Although Burma/Myanmar voted for the UNDRIP in 2007, the 2008 Constitution of Myanmar does not recognise the existence of Indigenous Peoples (*htanay-taing-yin-tha*) and instead refers to national races (*taing-yin-tha*). This undermines the identity of Indigenous Peoples and hence the rights enshrined in the UNDRIP.
7. The lack of formal legal recognition of Indigenous Peoples in Burma/Myanmar negatively impacts on the rights to representation, consultation and participation for Indigenous Peoples in decision-making processes. For example, Indigenous Peoples are poorly represented within Ministries and high-level civil service positions. As a result, many laws, policies and practices undermine indigenous customary practices and are not in line with the UNDRIP.
8. There are two principle reform processes happening in the country; constitutional reform within the parliament, and political dialogue under the Nationwide Ceasefire Agreement framework, but they are disconnected. In the constitutional reform process that is taking place in the parliament, there is little discussion of the right to self-determination for Indigenous Peoples and it does not reflect the principles agreed under the Union Peace Conference. There is a need for Indigenous Peoples and their rights to be recognised in both processes.
9. The Ethnic Rights Protection Law 2015 is the first law which mentions *htanay-taing-yin-tha*/Indigenous Peoples. During the first ever open consultations to develop the by-law, Indigenous representatives and CSOs advocated for the law to contextualise the term to the Burma/Myanmar context. However, the term was left out entirely in the final version of the by-law.³
10. Since engagement with the United Nations Framework for the Convention of Climate Change process began, the government of Myanmar started using the term *htanay-taing-yin-tha* quite frequently and has invited a few Indigenous representatives to different consultations in accordance with UN requirements. However, the government does not use the term consistently, instead using it interchangeably with "ethnic minorities."⁴
11. In addition, a series of new laws which have direct impacts on Indigenous

Peoples such as the 2018 Forest Law and 2018 Conservation of Biodiversity and Protected Area Law do not mention *htanay-taing-yin-tha*/Indigenous Peoples.⁵

C. PROMOTION AND PROTECTION OF INDIGENOUS PEOPLES' RIGHTS ON THE GROUND

C1.1. RIGHTS TO EQUALITY AND NON-DISCRIMINATION

12. Under Article 2 of the UNDRIP, Indigenous Peoples and individuals are free and equal to all other peoples and individuals and have the right to non-discrimination in the exercise of their rights, especially regarding their indigenous origin or identity.
13. However, in Burma/Myanmar these rights are routinely violated. Indigenous names are not fully or accurately recorded on Citizenship Scrutiny Cards, household registration lists and other official documents due to the practise of *Burmanisation* of names (a form of assimilation into the dominant language and culture). Sometimes the same name will be recorded differently on various identity documents, which leads to problems when making passport, visa, or other official applications.
14. In addition, Indigenous Peoples have their own name prefixes and honorific titles which are not consistently allowed to be recorded on official documents. For example, during the voter list compilation process carried out in November 2019 in preparation for the 2020 elections, Indigenous name prefixes such as Mahn, Ga, Sa, and Nant in Pwo Karen villages and Naw/Saw in Sagaw Karen areas were replaced with Burmese prefixes. Asho-Chin communities report the same issue with the honorifics Salai/Mai when they apply for identity documents. Such practices have the effect of denying Indigenous identities.⁶

C1.2. RIGHTS TO LAND, TERRITORIES AND NATURAL RESOURCES

15. Under the UNDRIP Indigenous Peoples have the right to enjoy their own means of subsistence and sustainable environmental management. Indigenous peoples also have the right to Free, Prior, and Informed Consent (FPIC) and the right to be compensated when their lands, territories or natural resources have been confiscated, occupied, or damaged.
16. Under current economic reform processes, the lands and natural resources belonging to Indigenous Peoples have become targets for exploitation. FPIC has been not legislated in Burma/Myanmar. As a result, Indigenous Peoples face long-term negative social and environmental impacts due to implementation of small, medium and mega-projects such as extractive

industry projects, large scale land- concessions, and government led green-grabbing without FPIC.

17. The National Land Use Policy (NLUP) approved in 2016 recognized “traditional land use” practices under Section 8, but this has not yet been translated into a National Land Law as set out in the policy. Instead, newly-amended laws such as the Forest Law, Farmland Law, Vacant, Fallow and Virgin Lands Management Law (VFV Law), Land Acquisition, Resettlement and Rehabilitation Law are not in line with the National Land Use Policy. In fact, these laws are being used to legitimise land-grabbing. In addition, the lack of recognition of customary land tenure systems creates vulnerability to national conservation agendas which facilitate green grabbing.⁷

Land Grabbing & Green Grabbing

18. At the height of the COVID-19 pandemic in May and June 2020, Tatmadaw LIB 423 and LIB 424 confiscated around 900 acres of land in Hsi Seng Township in the Pa-O Self-Administered Zone. They charged 70 Pa-O Indigenous farmers - many of them elderly women - with criminal trespassing under Article 447 of the Penal Code. In a separate case, LIB 66 confiscated around 1,300 acres of land in Kholam Sub-township and prosecuted 47 farmers under the same provision. In both cases, the farmers have traditionally owned the land for decades. However, much of it was designated vacant and fallow under the VFV law, allowing the Tatmadaw to claim the land and criminalise the farmers.⁸

19. In mid-2018 Wunn Pyae mining company was granted Indigenous Peoples' land under the VFV law in Thein Gone village, Ywar Ngan Township of Southern Shan State to conduct mineral exploration, without the community's FPIC. Concerned that there will be serious negative impacts on customary land use and the environment, the villagers have opposed the project since the start of its implementation. Indigenous Human Rights Defenders were arrested for organising protests.⁹

20. Between 2015 to 2019 in Waingmaw and Bhamo townships in Kachin State, about 100,000 acres of land – mostly belonging to Indigenous Internally Displaced Persons (IDPs) who had fled the area due to armed conflict - was confiscated and granted mainly to Chinese companies and their proxies. Those companies established banana tissue plantations by conducting mass deforestation, and also profited from selling wood and other natural resources from mining. Villagers report that rivers have been polluted by mining waste and chemical fertilizers. IDPs now want to return to their lands, but under the provisions of the VFV law, they would be accused of trespassing. Indigenous communities are concerned that they will not be able to reclaim their land, as they do not have the necessary documentation to prove ownership under the law and have lost their ability to practice customary land management systems.¹⁰

21. The government's 30-Year National Forestry Master Plan (2001-30) set goals of achieving 30 percent of the total land area being within the Permanent Forest Estate (PFE) and 10 percent of the land area being within protected areas by the year 2030. In order to achieve those goals, various international agendas have been approved and are currently being implemented. For example, Burma/Myanmar entered into the UN-REDD Programme in 2011 as one of its Nationally Determined Contributions under one pillar of its National Comprehensive Development Plan (2011-2030). Under REDD+ laws and regulations are required to be brought into line with the UNDRIP. However, this process has yet to go far enough with regards to Burma/Myanmar's national legislation, including the Conservation of Biodiversity and Protected Areas Law and Forest Law.¹¹
22. Furthermore, in establishing protected forest areas, FPIC has not been implemented with Indigenous communities. Under the Permanent Forest Estate, large areas of Indigenous lands across the country have been designated as either protected public forest or protected areas. For example, in Thandaunggyi, Karen State, between 1999 and 2003 more than 300,000 acres were designated as protected forest areas. In 2018 more than 63,000 additional acres were proposed as protected forest areas. Designated land comes under the control of the Forest Department and Indigenous communities lose access to the land and their traditional livelihoods. This same issue has impacted Indigenous communities across Karen, Chin, Rakhine, Kachin and Shan States as well as Tanawthari (Tanintharyi) Region, and parts of Magwe Region where Asho-Chin live. For example, in 2019 in Ngaphe Township, Magwe Region, Forest Department officials cut down bamboo and other trees in preparation for a eucalyptus plantation in an area designated protected public forest in 2015.¹²

Denial of the right to own means of subsistence

23. Indigenous communities rely on long-fallow shifting cultivation to allow multiple uses for land such as rice paddy, cash crops plantation and grazing lands. Due to long-standing vilification of Indigenous practices, the government blames Indigenous communities for causing deforestation and forest degradation. Communities are coming under increasing pressure - including the threat of land confiscation under the VFV law during fallow periods - to replace shifting cultivation with perennial plants such as avocado, cardamom (pha-lar) and other types of agroforestry. When they make this change, communities find it difficult to make ends meet, resulting in increasing outmigration of young women and men from their lands.¹³
24. Moken (Salone) fisherman from Tanawthari continue to have their livelihoods impeded due to pearl farming business activities on traditional fishing grounds. The government and private companies including Myanmar Tasaki began pearl farming in the 1990s, zoning off large areas in

Moken fishing grounds, where Moken people catch cuttle fish and rely on other sea and coastal-based livelihoods. The Moken community have cited loss of livelihoods as a result of the pearl farms. Attempted expansions of these areas take place year on year. During meetings with the company, Moken and other local communities have rejected expansion proposals and requested access to previously confiscated areas. Despite rejecting the proposal and lodging complaints at every level of government, no responses have been received.¹⁴

Lack of Effective Redress

25. Although Burma/Myanmar supported recommendations 143.123 and 143.124 calling for effective redress for land-grabbing and a clear complaints mechanism, these recommendations have not been implemented.¹⁵
26. The Central Committee for Scrutinizing Confiscated Farmlands and Other Lands established in 2016 is neither independent nor transparent. It lacks adequate powers to resolve previous cases effectively, either by returning land or providing sufficient compensation. At the same time, there are new disputes emerging under a series of reformed laws (including the Forest Law, Farmland Law, VEV Law, Land Acquisition, Resettlement and Rehabilitation Law) which the Committee is failing to address, resulting in a lack of remedy for Indigenous Peoples.¹⁶
27. Between 1990 and 1991, Light Infantry Battalions (LIB) 250, 356 and 360 of the Burma/Myanmar military (Tatmadaw) confiscated land from Indigenous communities in Loikaw and Demoso Townships in Kayah (Karenni) State under the then 1894 Land Acquisition Act for the purpose of building military training schools. More lands were grabbed than needed, without any prior notice, financial compensation or land reallocation. In 2013 the government announced that previous land-grabbing cases by the military would be resolved, so Indigenous farmers began re-farming on the lands that were outside of the military compound, and had never been used by the military. However, from June 2019, the military ordered the farmers not to use the land. The farmers were subsequently targeted for arrest and imprisonment.¹⁷

C1.3. IMPACTS OF MEGA-DEVELOPMENT PROJECTS ON INDIGENOUS PEOPLES

28. Under the UNDRIP Article 32, Indigenous Peoples have the right to determine their own strategies for development or use lands or territories and other resources. States should consult with Indigenous Peoples to obtain their FPIC before the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other

resources.

29. The prevailing models of mega-development projects such as deep sea ports, hydro-power dams, and roads fuel grievances of Indigenous communities regarding land rights and their autonomy over the use of traditional land, and result in social and environmental injustices. This is linked to the lack of FPIC and opportunities to engage in decision-making processes and benefit-sharing. Government and foreign investors also engage with large infrastructure projects which fail to abide by Nationwide Ceasefire Agreement (NCA) principles, resulting in escalating conflict and associated human rights violations.
30. In Karen State, numerous hydropower dam projects have been implemented without FPIC over several years, resulting in land confiscation, flooding, and disruption of livelihoods and have also been a catalyst for escalating conflict. In April 2019, Indigenous communities in Thandaunggyi Township, Karen State learned that the government is once again trying to implement a dam project known as Thauk Yay Hkat I in a Karen National Union (KNU) controlled area. The project would require the relocation of 60 villages, but Indigenous communities were not consulted and the project does not have the permission of the KNU, in breach of the NCA. The KNU subsequently began enforcing movement restrictions within a 3-mile radius of the dam site. Indigenous communities have cited concerns that conflict is likely to arise due to the breach of the NCA.¹⁸
31. Similarly, the Indian-government funded Kaladan Multi-Modal Transport link has been a driver of conflict in Paletwa Township, Chin State and Rakhine State as Arakan Army operations have targeted key Kaladan funded infrastructure and abducted local people seen to be connected to project activities.¹⁹
32. In August 2018, Khumi Chin community members from 20 villages close to Paletwa Town lodged complaints with the General Administrative Department (GAD) at the Township level because compensation agreed for loss of land and livelihoods to make way for Phase II of the Kaladan project under the Delhi based C&C Company had not been paid. Previously, in May 2017, community members had been informed during meetings that they would be required to make way for a road being built for them by the Indian government. For the road construction Indigenous farmers' paddy and orchards were destroyed but no Environmental or Social Impact Assessment (E/SIA) had been undertaken for the road.²⁰
33. Road infrastructure projects have also both been criticized for fuelling militarization and armed conflict in indigenous territory. For example, along the Asian Highway, a joint construction project initiated under the Asia Development Bank and Thailand's Neighbouring Countries Economic Development Cooperation agency, the Tatmadaw and its Border Guard

Forces sought to take control of the territories along the route that have long been controlled by other Ethnic Armed Organizations (EAOs). As a result, fighting broke out between the Tatmadaw and the Democratic Karen Buddhist Army, displacing over 1,000 people in July 2015. A further 6,000 were displaced between 2016-2018.²¹

34. The Kyaukphyu Deep Sea Port is the first phase of a proposed US\$7.8 billion Special Economic Zone in Kyaukphyu Township, Arakan State which to date has not undergone community FPIC, or any E/SIA. Local communities have concerns about the impacts, based on negative experiences with the existing Madae Deep Sea Port completed in 2013. That resulted in local fishermen being restricted from using traditional fishing grounds between 6pm and 6am in large areas around the port, enforced by military naval vessels. Traditional fishing methods take place at night due to synchronization with markets that operate in the morning. Such restrictions therefore impact livelihoods associated with the fishing trade.²²
35. In July 2018, local fisherman from Ann and Kyaukphyu Townships complained of water pollution close to where the Madae Deep Sea Port project and the Sino-Myanmar Oil and Gas Pipeline are located. The Thanzit River turned brown and hundreds of thousands of mussels died, impacting livelihoods. Local fisherman also complained of skin infections after fishing in the water. Despite informing local government, there was no effort to find the source of the pollution. Local people believe that waste was deposited in the water by the Chinese-funded projects. Moreover, the government is not providing any equitable benefit sharing of profits made from the gas being sold to China to the people of Arakan State.²³

C2.1. IMPACTS OF ARMED CONFLICT ON INDIGENOUS PEOPLES

36. Under Article 30 of the UNDRIP, military activities shall not take place in the lands or territories of Indigenous Peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the Indigenous Peoples concerned.
37. Conflict between the Arakan Army (AA) and the Tatmadaw first broke out in March 2015 in Paletwa, southern Chin State and has been ongoing since then. In December 2018, the Tatmadaw declared a four-month unilateral ceasefire in active conflict areas in Kachin and Northern Shan States. Since that time the Tatmadaw began sending more troops to Arakan State and Paletwa in southern Chin State, and the conflict between the AA and the Tatmadaw has significantly escalated - at least in part fueled by the contested Kaladan Multi-Modal Transport project. In the midst of the global COVID-19 pandemic - following widespread calls from civil society, the international community, and EAOs - the Tatmadaw agreed to a temporary ceasefire on 13 May but refused to extend it to the conflict with the AA.²⁴

38. Throughout March, April and May 2020, violence in Paletwa Township and Arakan State escalated as the Tatmadaw bombed civilian infrastructure at will and burned villages to the ground, resulting in large numbers of civilian casualties and mass displacement. The Tatmadaw's conduct against the indigenous civilian population could amount to war crimes and crimes against humanity. In the context of this conflict, there is no access to justice for victims of human rights abuses, nor accountability for alleged perpetrators.²⁵
39. The conflict between the AA and the Tatmadaw has resulted in the deaths of at least 280 civilians in Arakan State and Paletwa Township in Chin State since it began in 2015, with over 479 injured. It is likely the death toll is much higher given the inaccessibility of the area. The deaths have been caused by indiscriminate shelling and airstrikes on civilian infrastructure, the use of landmines, extra-judicial killings and torture leading to death in detention. Arbitrary detention and enforced disappearance are commonplace in relation to the conflict. There remain 12 people missing in Paletwa and 30 in Arakan State. Over 500 people have been detained for suspected links to either party to the conflict.²⁶
40. Currently there are approximately 171,000 people internally displaced as a result of the conflict between the AA and the Tatmadaw. 160,000 IDPs are spread across Arakan State and 11,000 in Paletwa Township. The conflict has also negatively affected the livelihoods of Indigenous People in these areas as indiscriminate use of landmines impedes Indigenous farming practices. During this period, the Tatmadaw has maintained humanitarian blockades, resulting in food shortages in the conflict zone.²⁷

C2.2. INDIGENOUS AND ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

41. Indigenous and Environmental Human Rights Defenders (IEHRDs) are struggling to protect their land, environment and natural resources. In Burma/Myanmar, IEHRDs are criminalized, harassed or killed for their work to prevent land grabbing and negative environmental impacts.
42. On 22 November 2018, seven young IEHRDs were arrested by the police for organizing the protest against Wunn Pyae Mining Company in Their Gone village, Ywar Ngan Township of Southern Shan State. They were charged under Penal Code sections 114, 435, 447, and 506 (abetting crimes, intent to cause damage, criminal trespassing and criminal intimidation respectively). They were held for ten days and only released after the villagers agreed to allow the company to continue mining for the rest of their permit duration.²⁸
43. In June 2019, 41 Karenni farmers from Loikaw and Demoso townships in Kayah (Karenni) State were arrested for reclaiming and reusing their lands

previously confiscated by the military. The farmers were charged under Penal Code sections 353, 427 and 447 (assault or criminal force, mischief causing damage, and criminal trespassing respectively) and the Public Property Act 6 (1) (misappropriation of public property). On 13 March 2020, the Township Courts found the farmers guilty and handed down sentences ranging from 15 days to six months in prison as well as monetary fines.²⁹

44. On 5 April 2018, well-known Karen IEHRD Saw O Moo was killed by the Tatmadaw LIB 351. Saw O Moo was one of the most active community leaders in the Salween Peace Park, a grassroots initiative to create a 5,400-sq. km indigenous Karen reserve in Mu Traw District. The incident happened in his home village Ler Mu Plaw, Karen State at a time when the Tatmadaw had breached the NCA in order to seize territory and construct a military operation road through indigenous Karen lands. After a community meeting, Saw O Moo offered a ride home on his motorbike to Saw Hser Blut Doh, a soldier of the Karen National Liberation Army (KNLA), assigned by the KNLA to provide security and protect civilians in the area. The two were ambushed and shot at by Tatmadaw soldiers. Saw Hser Blut Doh managed to escape, but Saw O Moo was killed. The family could not perform indigenous funeral rites as the Tatmadaw prevented them from retrieving Saw O Moo's body.³⁰
45. On 7 March 2020, Karen IEHRD Saw Tha Phoe from the Karen River Watch Network was sued by Hpa-an GAD under Section 505 (b) of the Penal Code for 'making or circulating statements that may cause public fear or alarm and incite the public to commit an offense against the state or "public tranquility"'. The case is related to a traditional Karen prayer ceremony held on 17 January 2020, in which Indigenous Peoples came together to pray for protection from pollution caused by the Myaingkalay cement factory. Saw Tha Phoe was forced into hiding in order to avoid arrest and a possible sentence of up to two years in prison.³¹

C3.1. RIGHTS TO HEALTH

46. Under Article 24 of the UNDRIP, Indigenous individuals have the right to access health services without any discrimination and have an equal right to the enjoyment of the highest attainable standard of physical and mental health.
47. Health facilities are chronically underfunded and understaffed in Indigenous areas, particularly in remote areas. In some cases, armed conflict has exacerbated the situation. For example, many government staff in Paletwa Township, Chin State - including healthcare workers - have left their posts since 2019 due to personal security threats in the form of kidnapping and enforced disappearances often carried out by members of the AA.³²

48. In 2016 there was a measles outbreak in the Naga Self-Administered Zone. Although the government claimed that its measles vaccination programme had achieved 100 percent coverage, remote Indigenous areas such as the Naga Self-Administered Zone were not adequately covered. Due to additional problems of food insecurity and chronic malnutrition, the outbreak caused 82 deaths. 57 were children under the age of 5, including 10 infants less than a year old.³³

C3.2. RIGHTS TO EDUCATION

49. Under UNDRIP Articles 14 and 15, Indigenous Peoples have the rights to access an education in their own culture and language, as well as to establish and control their own educational systems. Indigenous Peoples also have intersecting rights to consultation and participation with regards to education provision.

50. Interrelated systemic barriers include chronic underfunding of government schools in remote Indigenous areas, resulting in a lack of schools and suitably-qualified teachers; language barriers, due to the policy of Myanmar/Burmese language as the medium of instruction, which many Indigenous children do not understand well; and extreme poverty, forcing children to drop out and work in order to support their families. Protracted armed conflict is also a significant factor, resulting in intergenerational illiteracy particularly in remote Indigenous areas.³⁴

51. One recent study conservatively estimated that over 23 percent of children are out-of-school in conflict-affected and remote Indigenous areas across the country. According to the 2014 census data, the youth literacy rate in the Naga Self-Administered Zone is 77 percent overall and as low as 39 percent in the Lahe area. The national average is 94 percent. The matriculation pass-rates in Chin State and the Naga Self-Administered Zone are consistently the lowest in the country, limiting progression from secondary school to tertiary education.³⁵

52. In interpreting Article 30 CRC (the right of Indigenous children to enjoy their culture, religion and language in community with others), the Committee on the Rights of the Child references the UNDRIP and has stated, 'In order to implement this right, education in the child's language is essential.' Article 43 of Burma/Myanmar's National Education Law stipulates that ethnic languages can be used alongside the Myanmar language, but merely as a 'classroom language' to explain the national curriculum, not as a primary medium of instruction. Article 44 specifies that state governments can introduce the teaching of ethnic languages and literature as separate subjects.³⁶

53. In practice, the teaching of Indigenous languages and literature is an

optional extra-curricular subject taught outside of regular school hours for between one and eight hours per week. The programme is chronically under-resourced, with no government support for curriculum development. For example, even though the programme has been going for seven years, the curriculum in West Pwo Karen has only been developed for grade one. Moreover, Indigenous language teachers' salary is low and irregular, and they are not provided with adequate training or teaching aids which demotivates teachers.³⁷

54. Burma/Myanmar's controversial education reforms process largely excludes Indigenous representatives. The subsequent National Education Strategic Plan (NESP) 2016-2021 doesn't acknowledge Indigenous Peoples as such, nor does it make any reference to Burma/Myanmar's international legal obligations under the rights to education enshrined in CRC and ICESCR. The NESP is currently being reviewed. Although Indigenous representatives have been invited to workshops, to date the review process has not allowed for meaningful consultation or participation.³⁸

C3.2 RIGHTS TO CULTURE AND CULTURAL HERITAGE

55. Under the UNDRIP, Indigenous Peoples have the right to their special and important spiritual, historical and cultural relationship with their lands, waters, and natural resources, and to pass these rights to future generations. They also have the right to protect, develop and revitalise their cultural traditions and customs, including ceremonies as well as archaeological and historical sites.

56. In Chipwi township, Kachin State, Chinese companies and companies run by militia groups and Border Guard Forces under the Tatmadaw have been mining gold and uranium since around 2012, and with increasing intensity since 2016. These extraction projects have had devastating cultural and environmental impacts. The Chipwi and Ngo Chan Hka rivers have been contaminated by chemical waste from mining sites. The Chipwi river is central to the story of origin of the Ngo Chan people, and holds special spiritual and cultural significance. With the river contaminated, Ngo Chan Indigenous People are facing the loss of their identity and their cultural relationship with the river.³⁹

57. Karen Indigenous People have their own practice of celebrating Karen Martyrs' Day on 12 August. They were able to celebrate Karen Martyrs' Day between 2010 and 2017, but more restrictions were introduced in 2018 and 2019. In 2019 Naw Ohn Hla and two other Karen activists were charged under the Peaceful Assembly and Peaceful Procession Law and detained for 22 days.⁴⁰

58. Traditionally, Naga tribes held many festivals multiple times during the year

to mark different occasions. During the time of the military regime, it was impossible to hold such regular festivals due to restrictions on public gatherings. Instead in 1990 the Tatmadaw ordered just one festival to be held and designated it as Naga New Year Festival, from 14 – 16 January annually. Since that time, the Festival has been under the control of successive governments, until 2020 when rival festivals went ahead – one organised by the Central Committee of Naga Culture and the other by the Sagaing Region government. The government's continued attempts to control the Festival not only undermines Naga culture, but also has the effect of dividing Naga communities.⁴¹

59. Arakan State is rich in ancient cultural heritage including pagodas, monuments, stupas, and temples, particularly the city of Mrauk-Oo, which was the last capital of the Arakan Kingdom. During the course of the armed conflict between the AA and the Tatmadaw, several Tatmadaw battalions established bases among the cultural heritage sites in Mrauk-Oo and dug trenches and planted landmines in the area. In 2019, artillery shells and gunfire from Tatmadaw troops damaged historic monuments, including a sacred Buddha statue.⁴²

D. RECOMMENDATIONS

60. In full cooperation with Indigenous Peoples and the UN Permanent Forum on Indigenous Issues, Burma/Myanmar should develop and implement a National Action Plan to achieve the ends of the UNDRIP by mid-UPR cycle.

61. Fully recognize customary land tenure and land use management in the forest and agricultural sectors in a National Land Law, and reform all existing law related to land and natural resources in accordance with the National Land Use Policy and the UNDRIP, with the full participation of Indigenous Peoples' organizations at every level of the law-drafting process.

62. Reform the Central Committee for Scrutinizing Confiscated Farmlands and Other Lands to ensure independence and transparency and representation of Indigenous Peoples' at all levels. Expand the Central Committee's mandate to cover current land confiscation practices under the recently amended laws, strengthen its investigative powers, and decentralize those to State and Region level along with decision-making powers, to make it a more accessible and effective mechanism for dealing with Indigenous Peoples' grievances.

63. In cooperation with Indigenous Peoples, develop comprehensive FPIC guidelines in-line with UNDRIP provisions and incorporate those guidelines into national legislation. Fully implement the process of FPIC in policy and practice, specifically on the issue of consent. Enforce the guidelines on FPIC

for any project that is implemented in Indigenous areas, including actions in the name of international climate change agendas.

64. Cease military offensives and halt military expansion in Indigenous Peoples' areas. Begin a time-bound process of demilitarization as part of a sustained effort to end human rights violations against Indigenous Peoples' in Burma/Myanmar.
65. Consult with Indigenous communities and all relevant Ethnic Armed Organizations prior to all large and small-scale development projects, in line with the Nationwide Ceasefire Agreement. Clear information on benefit sharing should be provided in consultation and full participation with project-affected Indigenous communities. Undertake comprehensive conflict and risk assessments plans to mitigate negative impacts related to mega-development projects in Indigenous areas which are conflict prone.
66. Ensure the safety of Indigenous Peoples as they defend their rights to land and natural resources, including by amending existing laws to end the criminalization of Indigenous and Environmental Human Rights Defenders.
67. In order to begin reversing the impacts of chronic under-resourcing of healthcare provision in Indigenous areas, implement special measures over the next five years to significantly improve healthcare provision and ensure accessible and affordable basic healthcare services to all Indigenous Peoples.
68. In order to address barriers which result in low educational attainment of Indigenous children, introduce special measures. These should include significantly increased funds and resources for schools in Indigenous areas which support culturally appropriate methods of teaching and mother-tongue curriculum development.
69. Immediately end restrictions on the cultural activities of Indigenous Peoples. Respect their rights to protect and revitalise cultural traditions including key festivals, national days and other events of cultural significance.

END NOTES

- ¹ 1. All Arakan Students and Youth's Congress, 2. Arakan Rivers Network, 3. Bago Yoma Alin Tan Youth Group, 4. Chin Human Rights Organization, 5. Environmental Conservation and Farmers Development, 6. Environmental Conservation and Rural Development, 7. Farmers Land Union (Shan), 8. Geba Affairs, 9. Geba Literature Association, 10. Green Rights Organization, 11. Hsar Mu Htaw CSO, 12. Humanity Institute, 13. Indigenous Peoples Partnership, 14. Karen Environmental And Social Action Network, 15. Karen Human Rights Group, 16. Karen Lawyers Network, 17. Karenni State Farmers' Union, 18. Karuna Mission Social Solidarity – Kengtung, 19. Karuna Mission Social Solidarity – Loikaw, 20. Myanmar Indigenous Peoples/Ethnic Nationalities Network, 21. Myay Latt Community Forestry (Magwe), 22. Naga Students and Youth Federation, 23. Pantanaw Karen Literature and Culture Committee, 24. Pantanaw Karen Youth, 25. Promotion of Indigenous and Nature Together, 26. Rural Indigenous Sustainable Education, 27. Southern Youth Development Organization, 28. Won-Lark Rural Development Foundation
- ² Committee on Economic, Social and Cultural Rights, 'General Comment No. 21: Right of everyone to take part in cultural life' (21 December 2009) E/C.12/GC/21) 1[2] 7[26]. Committee on the Rights of the Child, 'General Comment No. 11: Indigenous children and their rights under the Convention' (2009) UN Doc CRC/C/GC/11 14[62].
- ³ Pyidaungsu Hluttaw Law No. 8/2015 (Burmese version) available at <http://www.myanmar-law-library.org/IMG/pdf/2015-02-25-law_protecting_ethnic_rights-08-bu-02.pdf> accessed 27 June 2020.
- ⁴ Myanmar REDD+ Program, 'Draft National REDD+ Strategy Myanmar' (2020) 7, 11, 31, 33-34, 49, 54. The Republic of the Union of Myanmar, 'Myanmar's Intended Nationally Determined Contribution-INDC' (August 2015) 2, 41.
- ⁵ Pyidaungsu Hluttaw Law No. 29/2018 - Forestry (Burmese version) available at <http://www.myanmar-law-library.org/spip.php?page=pdfjs&id_document=993> accessed 27 June 2020, The Pyidaungsu Hluttaw, 'The Conservation of Biodiversity and Protected Areas Law' (May 2018) available at <<https://www.informea.org/sites/default/files/legislation/Conservation%20of%20Biodiversity%20and%20Protected%20Areas%20Law%202018%20%28Translation%29.pdf>> accessed 1 July 2020.
- ⁶ Information provided by the Pantanaw Literature and Culture Committee, Karen Human Rights Group, and Nga Phe Literature and Culture Committee.
- ⁷ Consultation & Workshop Indigenous Rights and Universal Periodic Review held 25-26 February 2020, 'Thematic Discussion Outcomes Document', CHRO, 'Summary of Land Policy Developments' 4, POINT, 'Indigenous Peoples' Rights to Customary Land in Myanmar: Current Status and the Way Forward' (2019) 9-10, KHRG, 'Southeast Myanmar Field Report: Growing concerns about militarisation, land tenure security, development projects and human rights abuses' (January to June 2019) 2, The Republic of the Union of Myanmar, 'National Land Use Policy' (January 2016) 29-30, 'The Republic of the Union of Myanmar, 'The Law Amending the Vacant, Fallow and Virgin Land Management Law' (2018), and 'The Land Acquisition, Resettlement and Rehabilitation Law' (2019).
- ⁸ Seng Phoo, *Army Prosecutes 47 Farmers In Kholam*, Shan Herald Agency for News (13 June 2020) available at <https://www.bnionline.net/en/news/army-prosecutes-47-farmers-kholam>, *Farmers Protest Land Grab in Southern Shan State*, Shan Herald Agency for News (05 June 2020) available at <https://www.bnionline.net/en/news/farmers-protest-land-grabs-southern-shan-state> accessed 8 July 2020.
- ⁹ Information provided by Green Right Organisation. This case is further described in paragraph 42.
- ¹⁰ Information provided by Humanity Institute.
- ¹¹ Consultation & Workshop Indigenous Rights and Universal Periodic Review held 25-26 February 2020, 'Thematic Discussion Outcomes Document', CHRO, 'Summary of Land Policy Developments' 1-3, POINT, 'Indigenous Peoples' Rights to Customary Land in Myanmar: Current Status and the Way Forward' (2019) 11-13, KHRG, 'Southeast Myanmar Field Report: Growing concerns about militarisation, land tenure security, development projects and human rights abuses' (January to June 2019) 2, The Republic of the Union of Myanmar, The Ministry of Forestry 'The National Forest Master Plan (NFMP)' (2000).
- ¹² Consultation & Workshop Indigenous Rights and Universal Periodic Review held 25-26 February 2020, 'Thematic Discussion Outcomes Document'; further information provided by Geba Affairs, Myay Latt Community Forestry and Southern Youth Development Organisation, The Republic of the Union of Myanmar, The Ministry of Forestry 'The National Forest Master Plan (NFMP)' (2000).
- ¹³ KMSS-Loikaw, 'Livelihood, Land Use and Carbon: A Study on the Carbon Footprint of a Shifting Cultivation Community in Kayah State' (2017) 7-8, 49-51; further information provided by KMSS-Loikaw.
- ¹⁴ Information provided by Southern Youth Development Organisation.
- ¹⁵ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review – Myanmar' (23 December 2015) UN Doc A/HRC/31/13 19.
- ¹⁶ Consultation & Workshop Indigenous Rights and Universal Periodic Review held 25-26 February 2020, 'Thematic Discussion Outcomes Document', CHRO, 'Summary of Land Policy Developments' 3, POINT, 'Indigenous Peoples' Rights to Customary Land in Myanmar: Current Status and the Way Forward' (2019)

- 9-10, KHRG, 'Southeast Myanmar Field Report: Growing concerns about militarisation, land tenure security, development projects and human rights abuses' (January to June 2019) 2, Namati, 'Why is the resolution rate of confiscated lands slowing down in the last few years?' (September 2019) 10-13.
- ¹⁷ Information provided by the Karenni State Farmers Union. This case is further described in paragraph 43.
- ¹⁸ KHRG and Karen Rivers Watch, 'Development or Destruction? The human rights impacts of hydropower development on villagers in Southeast Myanmar' (June 2018), *Khit Thit News* 13 May 2019, available at < <https://www.khitthitnews.com/2019/05/knu-%E1%80%91%E1%80%AD%E1%80%94%E1%80%BA%E1%80%B8%E1%80%81%E1%80%BB%E1%80%AF%E1%80%95%E1%80%BA%E1%80%94%E1%80%9A%E1%80%BA%E1%80%99%E1%80%BC%E1%80%B1%E1%80%A1%E1%80%90%E1%80%BD%E1%80%84%E1%80%BA.html> >, accessed 28 June 2020. Further information provided by Geba Affairs.
- ¹⁹ CHRO, 'Annual report on the situation of human rights in Chin State, Western Myanmar' (10 December 2019) 11-12.
- ²⁰ CHRO, 'Stable and Secure? An Assessment on the Current Context of Human Rights for Chin People in Burma/Myanmar' (2018) 38.
- ²¹ KHRG, 'Southeast Myanmar Field Report: Growing concerns about militarisation, land tenure security, development projects and human rights abuses, January to June 2019' (3 September 2019). Thwee Community Development Network, KHRG, and KESAN, 'Beautiful Words, Ugly Actions: the Asian Highway in Karen State' (2016) 28.
- ²² Information provided by the Arakan Rivers Network and AASYC.
- ²³ *ibid.*
- ²⁴ CHRO, 'Thematic Briefing: Armed conflict in Paletwa, southern Chin State' (15 June 2015), John Zaw, *Myanmar military calls unilateral ceasefire in Covid-19 fight*, UCA News (11 May 2020) available at <<https://www.ucanews.com/news/myanmar-military-calls-unilateral-ceasefire-in-covid-19-fight/87983>> accessed 28 June 2020. Additional information provided by CHRO and AASYC.
- ²⁵ Information provided by CHRO and AASYC.
- ²⁶ *ibid.*
- ²⁷ *ibid.*
- ²⁸ Information provided by Green Right Organisation and Danu Women's Group. This case is further described in paragraph 19.
- ²⁹ Information provided by the Karenni State Farmers Union. This case is further described in paragraph 27.
- ³⁰ KESAN, 'A Tribute to Saw O Moo: Karen Indigenous Rights Defender Gunned Down by Burma Army Soldiers in Mutraw District, Karen State' (9 April 2018); KHRG, 'News Bulletin: A Karen Community Leader, Saw O Moo, Was Murdered by Tatmadaw Forces in Hpapun District, April 2018' (15 June 2018).
- ³¹ Lawi Weng, *Environmental Activist Faces Arrest in Myanmar's Karen State, Rights Groups Object*, The Irrawaddy (10 March 2020) available at <<https://www.irrawaddy.com/news/burma/environmental-activist-faces-arrest-myanmars-karen-state-rights-groups-object.html>> accessed 28 June 2020; Hayman Pyae, *Amnesty International demands Karen state withdraw charges against environmental activist*, Myanmar Now (14 March 2020) available at <<https://myanmar-now.org/en/news/amnesty-international-demands-karen-state-withdraw-charges-against-environmental-activist>> accessed 28 June 2020.
- ³² Information provided by CHRO.
- ³³ Information provided by IPP.
- ³⁴ RISE, 'Educating Indigenous Children in Myanmar - 2018 CASE+ Education Study: Baseline report on out-of-school children' (February 2019) 1-3.
- ³⁵ *ibid* 3. The Republic of the Union of Myanmar, 'Thematic Report on Education: Census Report Volume 4-H' (2017) 22. The average for the Naga SAZ was calculated after analysing the raw census data from township reports for the Naga SAZ, available at <<https://myanmar.unfpa.org/en/node/31986>> accessed 28 June 2020. CHRO, 'Stable and Secure? An Assessment on the Current Context of Human Rights for Chin People in Burma/Myanmar' (2018) 32. Additional information provided by IPP.
- ³⁶ Committee on the Rights of the Child, 'General Comment No. 11: Indigenous children and their rights under the Convention' (2009) UN Doc CRC/C/GC/11 14[62]; National Education Law 2014 No. 41/2014 and National Education Amendment Law 2015 No. 38/2015.
- ³⁷ Consultation & Workshop Indigenous Rights and Universal Periodic Review held 25-26 February 2020, 'Thematic Discussion Outcomes Document'. Additional information provided by the Pantanaw Literature and Culture Committee.
- ³⁸ The Government of the Republic of the Union of Myanmar Ministry of Education, 'National Education Strategic Plan 2016-21' (2016); Consultation & Workshop Indigenous Rights and Universal Periodic Review held 25-26 February 2020, 'Thematic Discussion Outcomes Document'.
- ³⁹ Information provided by Humanity Institute.
- ⁴⁰ KHRG, 'Karen activists facing charges for holding an event to commemorate the 69th Karen Martyr's

Day' (20 August 2019).

⁴¹ Information provided by IPP.

⁴² Information provided by AASYC.