

**Third Cycle of the Universal Periodic Review  
37<sup>th</sup> session (Jan-Feb 2021)**

**Myanmar**

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**Information on the Status of the Human Rights Situation in Myanmar**

Included are six UPR Advocacy Fact Sheets prepared by KHRG based on the research it has compiled from interviews and information collected by local villagers.

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**About KHRG**

*The Karen Human Rights Group (KHRG) is a grassroots, Karen-led human rights organisation, established in 1992 and now operating across rural southeast Myanmar. KHRG is independent and unaffiliated. Our commitment is to villagers : protecting their voices, which often get ignored by the national government and the larger international community, and supporting their strategies to claim human rights.*

*We aim to increase villagers' capacity and opportunities to understand and claim their rights, and ensure that their voices, priorities and perspectives influence decision-makers. KHRG is one of the only organisations to support the documentation of human rights abuses with a focus on villagers' responses and the way these responses can be supported. We thus also advocate to encourage other local and international groups and institutions to support local villagers' self-protection strategies.*

*KHRG publishes the information it receives in the form of interviews, incident reports, situation updates, and other reports.*

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## Impunity for Past Human Rights Violations

### *Summary of Key Recommendations from Previous Cycles*

During the first cycle of the UPR, France and the United Kingdom urged Myanmar to end impunity for human rights violations, and New Zealand recommended that Myanmar amend Article 445 of the Constitution, “which effectively grants total immunity to State and military personnel to act with impunity.” All of these recommendations were merely noted by the government.

During Myanmar’s last UPR, three countries made recommendations once again calling on the government to address impunity. Senegal urged Myanmar to “combat impunity”; and Argentina stressed the need to guarantee “the investigation and punishment of perpetrators of human rights violations.” Unlike the similar recommendations made by France and the United Kingdom in 2011, both were accepted, raising hopes that the Myanmar government would address impunity during the present cycle. However, it failed to take any meaningful steps to bring to justice the perpetrators of the widespread human rights violations committed by security forces in Southeast Myanmar before the ceasefire.

Saudi Arabia also called on Myanmar to “end impunity of members of the army and government officials, who commit human rights violations, and bring them to justice.” This recommendation was noted. Although the ruling National League for Democracy did try to repeal article 445 of the Constitution, it failed to secure enough votes in Parliament to do so.

### National Framework

In January 2016, in the aftermath of the victory of the National League for Democracy in the 2015 general elections, Parliament adopted the Former Presidents’ Security Law. The original draft drew criticism from human rights groups, as it granted former presidents immunity from prosecutions for undefined “actions” committed during their time in office. Although the final version added the formula “in accordance with the laws,” Amnesty International pointed out that “the law could still be interpreted as granting immunity to former presidents; including for crimes against humanity, war crimes and other crimes under international law.”

In the same vein, Article 445 of the Constitution effectively enables former junta officials to evade accountability for human rights violations: “No proceeding shall be instituted against the said Councils [the State Law and Order Restoration Council and the State Peace and Development Council, the former juntas that ruled Myanmar from 1988 to 2011] or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.”

In January 2020, 114 constitutional amendment proposals were submitted to the Union Parliament by the National League for Democracy and some ethnic parties to reduce the special powers and privileges granted to the military, including by repealing Article 445. However, the proposal to end constitutional impunity for ex-junta members only gathered 62.3% of the votes, and was therefore rejected. The 2008 Constitution requires the support of more than 75% of lawmakers in Parliament to pass constitutional amendments, while allocating 25% of the seats to the military. This gives the Tatmadaw a veto power over any constitutional change.

Defence service personnel are also shielded from prosecution by civilian courts. Articles 293 (b) and 319 of the Constitution give courts-martial exclusive jurisdiction over military personnel; and Section 72 of the 1959 Defence Services Act stipulates that defence personnel on active service who commit serious crimes are subject to the jurisdiction of courts-martial. In a January 2018 report, the International Commission of Jurists noted that, due to the broad definition of active service provided by the law, military personnel would in most instances be considered to be on active service. In short, the military is only accountable to itself, which has enabled its members to escape prosecution for the gross human rights violations committed in Southeast Myanmar and throughout the country.

Article 343 (b) of the Constitution further stipulates that the decision of the Commander-in-Chief of the Defence Services is final and conclusive in the adjudication of military justice. As the Commander-in-Chief exercises both appellate power and ultimate authority, no other institution can appeal those decisions.

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# Impunity for Past Human Rights Violations

## Situation on the Ground

### Overview

KHRG's documentation shows that, before the 2012 ceasefire agreement, the Myanmar army carried out systematic attacks against civilians in the conflict-affected areas of Southeast Myanmar. The military subjected Karen villagers to a wide range of human rights violations, including killings, torture, widespread sexual violence against women and forced labour. It also engaged in looting, extortion, land confiscation, as well as in destruction of property.

The analysis of 95 interviews of villagers conducted by KHRG in 2018 and 2019 across Southeast Myanmar has showed that the vast majority of abuses perpetrated by the military before the 2012 ceasefire were met with total impunity.

The Myanmar government has consistently failed to take any steps to bring perpetrators to justice and provide remedies to the victims. Nobel Peace Prize recipient Aung San Suu Kyi, the current State Counselor of Myanmar, even called on the population to **"forgive and forget"** the atrocities committed by the military to achieve national reconciliation. Not only does this approach completely ignore the victim's demands for justice and reparations, it also paves the way for further impunity.

This inertia has had dire consequences for the victims. Countless survivors of human rights violations are still struggling with long-term health issues, including post-traumatic stress disorders and physical disabilities. Many were unable to reestablish sustainable livelihoods after losing their land, property or loved ones as a result of the abuses perpetrated by the military. They now face economic difficulties and are often unable to support the education of their children. Without the ability to access reparations and support, they will most likely remain marginalised.

### Main challenges

Impunity for former heads of state, junta officials and soldiers potentially responsible for gross human rights violations is currently embedded in Myanmar's legal framework. Therefore, it is necessary to repeal the legal provisions that shield former top officials from prosecution and to bring defence personnel under the jurisdiction of civilian courts. However, the current shortcomings of the Myanmar justice system need to be addressed if it is to ever deliver justice and reparation to the victims.

KHRG's documentation shows that Karen civilians in rural Southeast Myanmar have little trust in the justice system, which they perceive as biased against ethnic minorities. Corruption is common and pervasive in Myanmar's courts, and their lack of transparency and independence from the executive has undermined civilians' trust and reinforced the notion of impunity for powerful actors.

In addition, there is a language barrier for those who do not speak Burmese, which is generally true for Karen villagers from rural areas. The justice system is also perceived as being too expensive: besides the costs of the lawyers and court fees, there is the cost of transportation to and from the court and the lost wages incurred for anybody who attends court. Cases in the Myanmar justice system also drag on for a long time, which means more visits, more money spent, more potential income lost, and more time between the incident and the punishment or relief sought.

These shortcomings prevent many victims of human rights abuses from even trying to access reparation through the court system. A comprehensive legal and judicial reform is therefore needed to restore the faith of the population in the justice system, make it more accessible for rural ethnic communities and ensure that domestic courts have the power to try perpetrators of gross human rights violations and provide remedies to the victims.

## Recommendations

1. **Develop and implement a dedicated strategy to end impunity for past conflict-related human rights abuses and provide appropriate remedies to the victims.**
2. **Amend the 2008 Constitution and the 1959 Defence Services Act to allow for civilian jurisdiction over defence personnel; and repeal legal provisions that shield former military and government officials from prosecution.**
3. **Step up the fight against corruption within the justice system and take the necessary measures to ensure its independence from the executive and military.**
4. **Improve access to justice for ethnic minorities, including measures to remove language and financial barriers, and address case backlog.**

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## Ongoing Human Rights Violations by Security Forces

### *Summary of Key Recommendations from Previous Cycles*

In its 2011 UPR, the Myanmar government accepted the recommendation to continue to improve its domestic legislation and judiciary system to be in line with international human rights standards and obligations including intensifying human rights education and training, especially for its military and law enforcement officers, in order to enhance their awareness and promote greater accountability (Thailand). It did not however accept any of the three recommendations that would require amending Myanmar's 2008 Constitution, like amending the Constitution accordingly and in compliance with international human rights and humanitarian laws (Denmark, Norway, Canada). The Constitution remains a major barrier to establishing democracy since it ensures military control over all aspects of the country's transition to democracy, and provides complete autonomy and impunity for the military.

In the 2015 UPR cycle, the Government accepted several recommendations to combat impunity, including ensuring independent investigations of all cases of violence and discrimination against ethnic and religious minorities, and compliance with due process and respect for the rule of law (Iceland, Argentina, Senegal). It also accepted the specific recommendation to address issues of military impunity by ensuring that police and military officers alleged to have committed acts of torture and ill-treatment are held accountable through the criminal justice system (Lithuania). None of these recommendations to combat impunity specify amending the Constitution, thus raising once again questions as to how impunity will be addressed without Constitutional reform.

### National Framework

The Nationwide Ceasefire Agreement (NCA) signed in October 2015, was also intended as a key instrument for ensuring the rights of civilians in the transition to peace. Article 9 of the NCA provides specifically for the protection of civilians, with agreements to avoid violent acts against the person, like torture, killing, imprisonment, rape or sexual assault; forcible displacement; forcibly taking money, property, food, labor or services from civilians; and forced labour. It also specifies ensuring the security and development of civilians living in ceasefire areas. Nevertheless, rights violations against civilians have continued, mostly with impunity.

A Joint Ceasefire Monitoring Committee (JMC) was set up to investigate alleged violations of the NCA; and the UN created a Support Platform Project (JMC-SPP) to provide it with technical assistance. However, in September 2019, the Final Independent Evaluation of the JMC-SPP labeled the JMC a "passive monitoring operation," and stated that "it is not a sufficient mechanism for upholding victims' rights and ensuring the protection of civilians, including victims of sexual and gender based violence, against violations committed by NCA signatories."

The Myanmar National Human Rights Commission (MNHRC) was established in 2011 to address human rights violations, but has been criticized as lacking independence and failing to meet the international standards set forth in the Paris Principles. The MNHRC, composed of ex-military and retired senior civil servants, has consistently failed to investigate the gross human rights violations committed in conflict-affected areas. In May 2019, it unquestioningly accepted the army's version of events after six ethnic Rakhine villagers were shot dead while in military custody in Rathaedaung Township, even though reports from the ground pointed towards unlawful killings. Despite recent reforms (January 2020), little has changed. Even the calls to create a commission with expertise in human rights have been ignored.

### Situation on the Ground: Challenges and Impacts

**Despite the ceasefire agreement, military clashes and fighting continue on an on-going basis** in many areas of Southeast Myanmar. On a number of occasions, the Tatmadaw have indiscriminately fired at civilians and civilian areas amid clashes with the Karen National Liberation Army (KNLA). In January 2019, the military fired at least 89 mortar shells in the vicinity of two villages in Lu Thaw Township, Mu Traw District, northeastern Karen [Kayin] State. A year later, between January and April 2020, there were 30 more reports of shelling (over 290 mortars) and firing, combined

with the burning of forest lands that villagers use for their livelihood. Although no known casualties, villagers were forced to flee on a number of occasions. The Tatmadaw have also persistently conducted military training and live fire practice in or near civilian areas, often on confiscated lands and without prior warning. Stray bullets, artillery shells and grenades endanger civilians and damage roads, plantations, and property. Unexploded ordnance (UXO) also remains a major problem in many areas.

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## Ongoing Human Rights Violations by Security Forces

### Situation on the Ground: Challenges and Impacts (cont.)

Beyond the violence and injury caused by on-going conflict, **KHRG has documented multiple cases of killings by Tatmadaw soldiers that were clearly committed outside the context of military operations and crossfire activities.**

In eastern Bago Region, soldiers shot a villager (reason unknown) at a gold mining site in March 2017; and in May 2017, a rogue soldier slashed the throat of an eight-year-old girl upon holding her hostage. In northeastern Karen State, soldiers killed a Karen community leader who was on his way back home from doing aid work at an IDP camp in April 2018. In two separate incidents in March 2020, a Karen National Union forest ranger and another Karen community leader died after soldiers opened fire on them. Before villagers could retrieve the body of the community leader, the body had already disappeared.

In southern Karen State, in what may have been a racially-motivated act, two Tatmadaw deserters killed seven Muslim civilians and injured another in April 2019. In July 2020, two Tatmadaw soldiers shot dead the shopkeeper where they had been drinking, then stole the jewelry that she was wearing. In only three of these cases, the killing of the Muslim families, the eight-year-old girl, and the shopkeeper, has the crime led to legal proceedings. And only in the case of the young girl was a verdict rendered.

**Members of security forces have continued to subject civilians to physical violence with impunity.** From March 2017 to June 2019, KHRG documented five instances of physical abuse perpetrated by the Border Guard Force (BGF) in central and northeastern Karen State. Three of those victims were hospitalised, with one suffering permanent brain damage. In January 2020, Tatmadaw soldiers

detained and beat a villager for several hours in northeastern Karen State.

**Extortion by security forces and public servants remains a problem.** KHRG has documented a variety of cases, notably demanding extortion taxes for refusing to serve as or provide porters, and the charging of illegal [use] taxes and/or the confiscation of land and property. KHRG received one independent report of staff from the Ministry of Labour, Immigration and Population illegally charging villagers for household registration documents, followed by threats to prevent them from reporting the case. This form of extortion is taking place on a much wider basis, and has been cited repeatedly in interviews with villagers in the course of KHRG's larger research projects. Such extortion is often a reason that villagers are unable to secure their national identification documents which are necessary for accessing their rights as citizens, including the ability to freely circulate within the borders of Myanmar.

Although fewer reports since the ceasefire agreement, **members of security forces continue to subject civilians to forced labour.** In 2017 and 2018, KHRG received multiple reports of Tatmadaw and BGF soldiers forcing civilians to serve as navigators and porters throughout Karen State. In some cases, the villagers were exposed to landmines and armed attacks, and/or were deprived of food. Frequently, villagers who refuse to comply are forced to pay a levy. The Tatmadaw also used villagers as human shields to prevent being targeted by the KNLA in southern Karen State in April 2016.

### Recommendations

The Government has failed to address the on-going human rights violations committed by security forces, and has made little progress implementing the recommendations it accepted in previous UPR cycles. Thus a culture of impunity persists that gives military staff free reign to engage in acts of violence against civilians. Therefore, the Government should:

- 1. Take action against actors responsible for violating NCA provisions on the protection of civilians, and undertake criminal proceedings for cases of serious abuse.**
- 2. Conduct prompt, independent, impartial and effective investigations into allegations of human rights violations by government officials and members of security forces; and bring suspected perpetrators to justice through fair, independent trials and ensure access to remedies for victims.**
- 3. Continue to improve its domestic legislation and judiciary system to be in line with international human rights standards and obligations including intensifying human rights education and training, especially for its military and law enforcement officers, in order to enhance their awareness and promote greater accountability.**

## Women's Rights: Sexual and Gender-Based Violence

### *Summary of Key Recommendations from Previous Cycles*

In 2011, the Government of Myanmar accepted various recommendations by other States to ensure that violence against women and girls, including domestic violence and all forms of sexual abuse, constitutes a criminal offence, and that perpetrators, including members of armed forces are prosecuted and punished (Norway & Brazil). During Myanmar's last UPR, the government again received *and accepted* recommendations to enact and enforce legislation that guarantees comprehensive protection from all forms of violence against women, and that addresses impunity for all perpetrators (Sweden). It also specifically accepted recommendations to criminalize marital rape and to prohibit forced or early marriages (Paraguay & Spain), as well as to ensure impartial and effective investigation of violence perpetrated against women and children, and ensure reparations for victims and the right to a fair trial, including legal aid, for both the victim and the accused (Finland & Namibia).

Although the government has increased its efforts to prevent and combat violence against women by adopting a National Plan of Action for the advancement of the human rights of women, as recommended in 2011 (Iran), it only noted the renewed recommendation by other States in 2015 to actually implement that National Plan of Action and take concrete steps to improve the human rights situation of women by amending existing legislation, including the Penal Code, (Spain, UK, Australia); removing military impunity for human rights violations - including sexual violence (UK, Albania, Canada); and appointing a Gender Advisor within the President's Office (UK). As such, there is critical need to reiterate previous recommendations, with an emphasis on implementation.

### National Framework

Over the past 20 years, the Government of Myanmar has engaged in commitments to ensure that its laws uphold women's rights and advance women's equality. In 1997, Myanmar acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Through CEDAW and other "due diligence" obligations, States must ensure that violence against women is prosecuted and punished, that women victims have means of redress and protection, and that all public officials are familiar with and sensitized to these issues. Current legislation in Myanmar, however, has few provisions that protect against sexual and gender-based violence, and has retained many provisions that are not compatible with CEDAW or international standards and best practices.

Myanmar also signed the 2004 Declaration on the Elimination of Violence Against Women of the Association of Southeast Asian Nations (ASEAN), and thus agreed to "take all necessary measures" to "protect and promote the full enjoyment of all human rights and fundamental freedoms in order to allow women and girls to protect themselves against violence" and to "intensify efforts to develop and/or improve existing legislative, educational, social measures and support services aimed at the prevention of violence against women" (Article 6).

The year 2013 brought the hope of substantive change. The Myanmar government made addressing violence against women a key priority area of its National Strategic Plan for the Advancement of Women, and drafted a law for the protection and prevention of violence against women. The Prevention of Violence Against Women (PoVAW) draft law was first submitted to parliament in 2017, but has yet to be adopted. A new draft has been developed and was officially posted to the parliament website in January 2020, but no information about its submission for debate has been released, although almost a year has already passed.

The Penal Code of 1860 thus remains the primary legislation regarding sexual and gender-based violence, but does not adequately address women's lived experiences of violence, since drawn from a mix of colonial and traditional sources. It also contains problematic definitions of rape and sexual violence. Although an amendment was approved in 2019 that increases the punishment for child rape, and includes marital rape as a punishable crime, it neglected to remove the exception that defines "sexual intercourse by a man with his own wife" as not rape, and made the punishment for marital rape a maximum sentence of two years, even though the standard sentence for rape was set at 20 years. There are also no specific laws to prevent domestic violence, intimate partner violence, or to allow women to seek restraining orders. The Penal Code also fails to provide adequate guidelines for assessing and proving lack of consent.

This continued inaction on the part of the Myanmar government to implement changes to current legislation and move forward on a PoVAW law not only puts women's lives in jeopardy, it also serves as a clear indication that the Myanmar government itself needs to be held accountable for failing to protect the rights of women and uphold its commitments to international standards.

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## Women's Rights: Sexual and Gender-Based Violence

### Situation on the Ground: Challenges and Impacts

Since the signing of the NCA, KHRG has received an increasing number of reports from survivors of sexual violence, some of which were unpublished because of the sensitivity of the case and/or the survivors' fears of reprisals. Although more survivors of sexual violence are now sharing their stories, significant barriers to the official reporting of such cases and accessing justice persist. The risk of stigma and a culture of victim blaming often influence their decision on whether to report an incident of sexual violence to the authorities.

**Widespread conflict-related sexual violence has significantly decreased** in Southeast Myanmar since the signing of the preliminary ceasefire agreement in 2012. However, current reports point to **a shift to more isolated incidents committed by individual soldiers or police officers** compared to earlier reports of systematic violence by soldiers where: "All night long the soldiers would come and drag women away to be raped. They took turns and women were often raped by several soldiers in one night." Despite the shift, these more isolated incidents remain difficult to punish because of the position and/or status of the perpetrators, and the overall climate of impunity that surrounds military personnel.

**Reports of non-conflict-related sexual violence committed by civilians have increased** over the past few years. The predominance of cases involves **children (both girls and boys), family members, and women with developmental disabilities**. These cases typically go unpunished because of the added vulnerability of these individuals, combined with pressure to avoid taking action against family members, and/or concerns about the survivor's ability to provide details of the incident, and/or conflicting stories of consent.

In rural Southeast Myanmar, **there is a tendency to resort to traditional justice systems in cases of sexual violence**. In reality, these "justice systems" resemble informal dispute settlement mechanisms, where local justice administrators attempt to find a resolution between the perpetrator and the victim, offering recourse through compensation or other non-punitive means. In some of the cases documented by KHRG, authorities required or encouraged the victim to marry the perpetrator. Not only does this constitute a form of forced marriage, CEDAW has stated that the use of such mechanisms "often perpetuate[s] gender-based violence against women."

**Law enforcement agents of both the Karen National Union (KNU) and the Myanmar government have often failed to conduct proper investigations** after incidents were reported. Even when legal investigations or processes to try the perpetrators are initiated, the proceedings often **lack transparency and fail to take a victim-centred approach**, especially when perpetrators are members of the security forces. On some occasions, victims are not even apprised of the proceedings.

In addition to facing **stigmatisation and secondary victimisation** by their community, many survivors also continue to grapple with the **trauma of sexual violence**, particularly when endured over long periods of time due to fears of reporting, or failure to prosecute. KHRG's documentation shows that, for some victims, the psychological, physical, and emotional trauma has led to further marginalization, an inability to resume their regular activities, and even attempted self-harm. In most cases, there is an absence of psychosocial support for victims and a lack of redress and accountability for perpetrators.

### Recommendations

The Government has failed to introduce sufficient protections for women, including legislation to prosecute perpetrators of violence against women. Furthermore, the Government has not addressed the root causes of these abuses – most notably, the country's 2008 Constitution. Consequently, the Government has reneged on its previous UPR commitments and failed to meet its obligations under international law. Therefore, the Government should:

- 1. Move forward with the adoption of a Protection and Prevention of Violence against Women law that is in line with international standards, and that addresses the concerns already raised by women's civil society organisations.**
- 2. Strengthen protection for women and children by putting in place measures to guarantee effective access to protection and redress for survivors of sexual violence, including legal services and physical and mental health services.**
- 3. Amend the Penal Code to incorporate a definition of rape that is in line with international standards; and broaden and clarify the definition of consent.**

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## Land Rights

### *Summary of Key Recommendations from Previous Cycles*

The issue of land rights was not addressed during the first cycle of the UPR. During Myanmar's last UPR, three countries made recommendations related to the right to land. Germany urged Myanmar to "ease tensions in rural areas by developing an effective land registration system with a clear complaints handling mechanism"; and Czechia stressed the need to "effectively address the issue of land grabbing, including through providing redress to farmers and others whose land was illegally or arbitrarily seized."

Although Myanmar supported these two recommendations, it failed to take the appropriate steps to implement them; and land confiscations are now on the upswing throughout the country. During this cycle, the government set up a registration deadline for land regarded as vacant, fallow or virgin—on which up to 10 million persons rely for their livelihoods. This exacerbated existing land issues in Southeast Myanmar and paved the way for large-scale land confiscations. Similarly, efforts aimed at providing redress to land confiscation victims have proved insufficient.

In 2015, the Netherlands also called on Myanmar to "amend laws that permit the compulsory acquisition of land by private businesses so that the expropriation is only permitted in the cases of necessary, proportionate and narrowly construed public interest, with strong procedural safeguards." This recommendation was merely noted, and legislative changes since the last UPR have actually made it easier for private businesses to engage in land grabbing.

## National Framework

Land governance in Myanmar is regulated by over 70 laws, but none of them provide a way to register or protect customary land tenure, which remains predominant in ethnic areas. For decades, this has enabled the government, the military and private actors to confiscate customary lands with impunity. The very concept of customary ownership is incompatible with the Constitution, which states that the Union is the ultimate owner of all lands.

In January 2016, the government adopted a non-binding National Land Use Policy (NLUP). The policy's main objectives include recognising and protecting customary land tenure rights and developing fair procedures relating to land restitution. The NLUP explicitly states that customary land tenure systems shall be recognised by a future National Land Law (NLL), and that adequate land use and housing rights shall be systematically provided to ethnic nationals who lost their land resources due to land confiscation.

However, progress on the implementation of the NLUP and the enactment of the NLL have stalled. The National Land Use Council, which was established by the NLUP to coordinate the drafting of the NLL only held its first coordination meeting in April 2018; and meetings to set up a drafting roadmap only started in December 2019.

In March 2016, the government created the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands to solve pending land confiscation cases and declared that it would solve all land confiscation cases within six months. Although the body claims to have settled thousands of claims, thousands more remain unresolved; and farmers and activists have claimed that it is plagued by corruption.

In September 2018, amendments to the Vacant, Fallow and Virgin (VfV) Land Management Law required people occupying VfV land to apply for 30-year land use permits by March 2019—a provision that the majority of farmers living in rural area were generally not aware of. As of October 2019, 47 million acres (over 28% of the country's landmass) were still regarded as VfV, 75% of which were in ethnic areas where customary land tenure remains important. As these lands can now be reallocated for business purposes, these amendments have paved the way for both large-scale land grabs and the continued seizure of land by local elites with better access to information and registration systems. People living on or using land classified as VfV can now face trespassing charges—an offense punishable with up to two years in prison. Although the law states that it does not govern customary lands, no formal registration mechanisms were established.

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## Land Rights

### Situation on the Ground

#### Overview

The total number of acres that were confiscated by armed actors and private companies in recent decades is unknown, but **estimates are in the millions**. KHRG has documented that private companies and **armed actors continue to use large areas of confiscated land all across Southeast Myanmar**.

With the signing of the 2015 Nationwide Ceasefire Agreement (NCA) and the relative stabilisation of several conflict zones, rural communities assumed that land previously confiscated by armed actors would be returned. However, **the military continues to live on and use confiscated lands for live fire exercises or other purposes**. As a result, **thousands of subsistence farmers continue to face livelihood challenges**, and many communities still live in fear due to the close proximity of armed actors. According to KHRG's documentation, some Tatmadaw units even lease confiscated lands back to villagers.

Section 9 of the NCA prevents the Tatmadaw from confiscating land and property from civilians. However, KHRG documented three land confiscation cases perpetrated by the Tatmadaw or its affiliated Border Guard Force after the signing of the NCA, highlighting that it remains an on-going problem. Land confiscation has also been a prominent feature of the road works that the Tatmadaw has been conducting in northeastern Karen State over the past few years.

The 2012 ceasefire and NCA have ushered in a period of intensified investment. Infrastructure development and natural resource extraction are on the rise in Southeast Myanmar. This has resulted in an increase in land disputes, as rural populations relying on customary tenure come face-to-face with local and international companies. **KHRG has received five reports on land confiscation by private companies in Southeast Myanmar since the signing of the NCA; and several others on companies that continue to use land that was confiscated before the NCA**. Major infrastructure projects like hydropower dams or the Asian Highway have also resulted in large-scale land confiscation.

#### Main challenges

Because of the predominance of customary land tenure and the prevalence of weak and overlapping land governance systems, **rural populations in Southeast Myanmar are particularly vulnerable to land confiscation**. Both the Karen National Union (KNU) and the Myanmar government have their own land registration system, and have been proactive in issuing land titles since 2012.

However, land titles are not traditionally used by rural populations in Southeast Myanmar, and the protection they offer is somewhat cursory: the government does not recognise KNU land titles, and KHRG has documented **one instance of land confiscation affecting a holder of a Myanmar government land title** in northern Mon State.

Some villagers lack knowledge about the different land registration systems (including the VFV law), and more informed people use it against them to take over their lands. In addition, many villagers in the rural areas of Southeast Myanmar lack Burmese language skills, the proper identification documents, and access to land administration services, and therefore cannot apply for a land use permit either.

IDPs and refugees are at a particularly high risk of losing their lands because they often lack the necessary documents to undertake the registration process. In January 2019, KHRG documented a case where wealthy individuals were able to usurp the lands belonging to returnees in eastern Bago Region. These people took advantage of the fact that the returnees, as customary owners, did not have land titles to register the lands in their own names.

KHRG's documentation and other sources have shown that many small-scale customary land owners lost their lands in a similar manner and were sued for trespassing even before the March 2019 registration deadline under the VFV law, notably in Tanintharyi Region and Northern Karen State. As customary land owners are usually unable to show land permits in court, such trials are usually won by the actors who confiscated their land.

### Recommendations

- 1. Abolish the Vacant, Fallow and Virgin (VFV) Land Management Law and adopt legislation to recognise and protect customary land tenure in line with the 2016 National Land Use Policy.**
- 2. Accelerate the restitution of confiscated lands, or provide adequate compensation where restitution is not possible; and facilitate access to complaint mechanisms for IDPs and refugees.**

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## Healthcare and Education

### *Summary of Key Recommendations from Previous Cycles*

During the first cycle of the UPR, the Democratic People's Republic of Korea (DPRK), Algeria and Cuba made recommendations on the need to invest in education and healthcare services. All of them were supported by Myanmar.

During the second cycle of the UPR, more countries stressed the need to improve access to education and healthcare. Iran, DPRK and Laos made recommendations to provide equal access to education, and Brunei Darussalam recommended to “continue to invest in education and ensure the continued provision of free education for its primary and secondary students.” Sweden, China, Vietnam, DPRK and Laos called on the government to increase healthcare spending, while Brunei Darussalam recommended to “take appropriate steps towards achieving Universal Health Coverage in the country.”

These recommendations were all supported by Myanmar, but their full implementation has yet to be undertaken. Although KHRG's documentation shows that access to education and healthcare in Southeast Myanmar has somewhat improved since 2015, major shortcomings remain; and the government still continues to allocate minimal resources to these areas.

In 2015, Panama urged Myanmar to continue improving healthcare, food and education services in IDP camps. Although this recommendation was also supported by Myanmar, the government has not taken the necessary steps to implement it. In May 2019, a KHRG report revealed that over 5,600 IDPs in Myaing Gyi Ngu were facing dire humanitarian conditions, food shortages and lack of access to basic services and job opportunities.

### National Framework and recent developments

Articles 366 and 367 of the 2008 Constitution stipulate that every citizen has the right to education and healthcare. Under Article 28 of the Constitution, the Union shall implement a free and compulsory education system and enact the necessary laws to enable ethnic people to participate in matters of their education and health.

By law, education is compulsory, free, and universal, but only through the fourth grade (up to age 10). However, the government abolished high school enrolment fees in the academic year 2015-2016. Since 2015, public investment in education has almost doubled – from 1,406 billion kyats [around 1 billion USD] in 2015/2016 to 2,686 billion kyats [around 2 billion USD] in 2019/2020 – allowing the government to expand its educational network in rural areas of Southeast Myanmar, including by building new facilities.

On October 6<sup>th</sup> 2017, Myanmar ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), thus legally committing to implementing and making the right to education for all a reality (Articles 13 and 14). But the expansion of the Myanmar education network has often negatively impacted ethnic minorities, for instance, by co-opting schools run by ethnic education providers, or by disrupting or discontinuing the practice of Karen mother tongue-based education in some areas of Southeast Myanmar. Although the 2014 National Education Law, as amended in 2015, allowed government schools to teach ethnic languages and history as subjects, and to use ethnic languages as “classroom languages” to explain the national curriculum whenever necessary, the time and resources allocated to ethnic subjects remains inadequate given the government's expressed commitment of protecting the language, culture and history of ethnic minorities as stipulated in the 2015 Ethnic Rights Protection Law.

KHRG's documentation shows that the Myanmar government has also been expanding its healthcare infrastructure in Southeast Myanmar since 2015, notably through the construction of new clinics in rural areas. This was particularly the case in Karen and Mon states. Despite this relatively positive development, public spending on healthcare remains insufficient. Although the government increased its healthcare budget from 754 billion kyats [around 570 million USD] to 1,200 billion kyats [around 900 million USD] in 2018-2019, it decreased it to 1,072 billion kyats [around 810 million USD] in 2019-2020.

Despite some improvements on the ground, the overall budget increases for healthcare and education did not translate to improved services in all the rural areas of Southeast Myanmar.

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## Healthcare and Education

### Situation on the Ground: Challenges and Impacts

#### Education

Although the expansion of the Myanmar education network has resulted in better access to primary education across Southeast Myanmar, KHRG's documentation shows that major shortcomings remain.

Primary school facilities in several villages cannot accommodate all the local children or are in urgent need of repairs; and a lack of teachers has also been reported. Some communities had to build their own schools and hire teachers. Although access to primary education is technically free, parents often have to pay for school materials, textbooks, and informal tutoring fees, making it difficult for families facing livelihood difficulties to support their children's education. Access to schools for internally displaced and stateless children remains limited.

Access to secondary education presents additional challenges, because of the insufficiency of schools in remote areas. In November 2019, KHRG documented that around half of the children from two village tracts in northern Karen State were unable to continue their studies past primary school because it takes two days to reach the closest secondary schools. Children from families that cannot afford to cover transportation or relocation costs are at high risk of dropout. The lack of room in existing facilities also continues to bar children from accessing secondary education, and teacher shortages remain problematic.

#### *Ethnic subjects in government schools*

Despite the recent measures to introduce ethnic subjects in government schools, reports from villagers and teachers interviewed by KHRG in 2020 showed disparities in access to culturally appropriate education among Karen and Pa'O children in southeast Myanmar. Interviewees raised issues such as lack of

textbooks and ethnic teachers, as well as the absence of ethnic history lessons to balance out the national curriculum and its pro-Burmese narratives when it comes to history. Some teachers also complained that too little time had been allocated to teach ethnic subjects; and other interviewees pointed out that ethnic subjects were not taught at all in some schools.

In addition, the use of ethnic languages to explain the Myanmar curriculum is not yet generalised. As around 70% of the teachers in ethnic areas do not speak the local language, this could undermine the ability of non-Burmese speaking students to keep up with classes and puts them at increased risk of school drop-out.

#### Healthcare

KHRG's documentation shows that clinics in rural Southeast Myanmar are frequently understaffed, lack essential medical supplies, have unreliable opening hours and usually offer low standards of service. The cost of services and treatment also remains prohibitive for many villagers. Those who cannot afford to travel or pay hospital fees usually rely on traditional medicines, which can lead to livelihood difficulties because of the longer treatment and recovery period.

Due to the lack of facilities in some rural areas, some communities have to travel long distances to reach the closest clinics, which can prove challenging during the rainy season due to poor road infrastructure. Many communities living along the border rely on healthcare services provided in Thailand. This makes their population particularly vulnerable, especially in the event of prolonged border closures, as is the case with the travel restrictions implemented in March 2020 by the Thai and Myanmar governments to curb the spread of COVID-19.

### Recommendations

1. Increase the budget allocated to education and healthcare to reflect regional and international standards; and make sure that budget expenditures and projections address inequalities in access to education and healthcare services.
2. Improve overall access to education and healthcare in rural areas, including through the construction and staffing of new schools and clinics to meet local needs and the reduction of costs related to healthcare and education.
3. Increase the time allocated for the teaching of ethnic subjects in government schools; and ensure that all government schools located in ethnic communities consistently apply existing legal and policy provisions regarding the teaching of ethnic languages.

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## Refugees and Internally Displaced Persons

### *Summary of Key Recommendations from Previous Cycles*

The Government of Myanmar has supported few recommendations regarding refugees and internally displaced persons (IDPs) during the last two UPR cycles. In 2011, it accepted a vague recommendation to rehabilitate Myanmar returnees in cooperation with the relevant United Nations agencies (Bangladesh). In 2015, the focus of recommendations was primarily on IDPs, and included adopting and implementing all the necessary measures to continue improving health care, food and education services in camps for internally displaced persons (Panama), allowing access to humanitarian aid (Kuwait), and ensuring the safe and voluntary return of all internally displaced persons to their place of origin (Turkey).

The Government has been resistant to direct calls to guarantee the rights of displaced persons, including ensuring the rights of citizenship and working toward solutions for refugee and IDP returns, particularly when involving Rohingyas. In 2011, it only noted but did not accept recommendations to Implement and enforce the right not to be arbitrarily displaced and the Guiding Principles on Internal Displacement (New Zealand).

Although not specifically in reference to refugees and IDPs, the Government did accept the 2015 recommendation to accelerate citizenship verification processes so that populations now deprived of identity documents do not remain in an illegal situation (France).

### National Framework

Peace negotiations and the signing of the Nationwide Ceasefire Agreement (NCA) led to increased initiatives to facilitate the return of refugees and IDPs. UNHCR began exploring options for refugee returns, and organized the first facilitated returns in 2016. Some local leaders and organisations also began preparing the return of IDPs to their home village or a new settlement site. Yet little support from the Myanmar government has been provided to returnees. The Border Consortium (TBC) has noted that the sustainability of these movements and prospects for reintegration remain in doubt due to on-going security and livelihood concerns. The fragility of the situation of most returnees has led TBC to conclude that many may now be in a state of internal displacement due to difficulties with resettlement.

The signing of the NCA has had negative impacts on conditions in IDP and refugee camps. International aid for refugees and displaced persons in camps on both sides of the Thai-Myanmar border has been heavily reduced and in some cases slashed entirely because of assumptions that the conditions are (or would soon be) safe for refugees and IDPs to finally return to their homes. Without international assistance, IDPs are left to depend on the government to either resolve the conflicts that prevent them from returning to their homes, or provide livelihood support while they remain in their current camp or displacement site. Likewise, because refugees in Thailand have few opportunities and rights outside the border camps, they as well depend on the government to assist with their repatriation and reintegration under safe and sustainable conditions.

Myanmar ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in October 2017. Under the ICESCR, the government has committed to take immediate steps towards the progressive realisation of rights to adequate housing, livelihood, food, health and education, without discrimination, and to the maximum of its available resources. Yet most returnees and IDPs are facing serious challenges in all of these areas. Having ratified the ICESCR, the government should also refrain from entering into trade and investment treaties where, for example, the government's actions in fulfilling an investment agreement would lead to forced relocation and inadequate resettlement. Since the NCA, conflict and displacement tied to development projects have increased significantly.

Access to citizenship is key to reintegration and to opening up the rights to which refugees and IDPs are entitled, but also to ensuring that ethnic minorities are counted as citizens. The Government of Myanmar has engaged in several campaigns to assist with the processing of national identity cards, but the requirements themselves are extremely demanding: original household registration, completed family genealogy form (including three generations), original birth certificate, applicant's parents' original identity documents, letter of recommendation from the ward or village administrator (as proof of residence), document listing blood type, and three passport-size photos. For refugees who repatriated through UNHCR, part of the repatriation process involved ensuring that refugees have the necessary documents to apply for their national ID card once back in Myanmar. Most returnees, whether refugees or IDPs, have however returned on their own and thus have not benefitted from this form of assistance. In fact, only 1,039 refugees have returned to Myanmar through UNHCR, whereas an estimated 20,000 plus have returned spontaneously.

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## Refugees and Internally Displaced Persons

### Situation on the Ground: Challenges and Impacts

#### Access to citizenship

Civil documents are essential for returnees when trying to resettle; the absence of these documents can have a detrimental effect on all aspects of their lives. Without an ID card, returnees face difficulty with normal tasks such as finding employment or travelling domestically. A national ID card is necessary to buy or register land and property, and without land registration or titles, returnees could have their land confiscated. Yet, IDPs and refugees often lack (and cannot obtain) the documents required in order to apply for their national ID. Due to protracted conflict, violence, and displacement, even if villagers may have held some of these documents at one time, they often no longer have these documents (because destroyed, lost, or confiscated), and may not know how to or even be able to acquire them now.

KHRG's research found that returnees encountered a number of additional difficulties trying to obtain their civil documents, from long wait times to excessive demands by government staff. In some cases, interviewees stated that they were only able to obtain their civil documents once they paid large sums for them (even though these documents are supposed to be issued free of charge).

#### Return conditions

From March 2019 to March 2020, KHRG interviewed 40 IDP and refugee returnees across rural Southeast Myanmar. The overwhelming majority were unable to reestablish sustainable livelihoods. Although some have received housing in repatriation sites, it is reportedly of low quality and many returnees actually lack tenure rights. Access to basic services such as water and electricity remains limited, and the lack of education and healthcare facilities

in remote areas poses additional challenges.

On-going conflict continues to make it unsafe to return to certain areas. But even in areas considered "safe to return," KHRG found that issues of security and safety continue to be a problem given the lack of any systematic demining operations in Karen areas. Landmine awareness training is provided to returnees, and is taking place in many areas of heavy resettlement, but landmines and unexploded ordnance (UXO) contamination are still present in certain locations, and thus pose a threat to villagers' safety and can impact movement and livelihood. The on-going presence of ethnic armed groups and military activity also leads returnees to worry about the return of conflict and feel distrust in the peace process.

#### On-going displacement

In the Salween River area of central Karen State (Hpa-an and Hpapun districts), the Hatgyi Dam construction project has been a key factor catalysing violence in the area, as different armed actors vie for control of the site. 5,610 people were forced to displace to nearby Myaing Gyi Ngu. Unable to return home because of militarisation and landmines, hundreds of families struggle to make ends meet. The living conditions in Myaing Gyi Ngu, as in Ei Tu Hta IDP camp, are well below international humanitarian standards.

KHRG's documentation has shown that IDPs in Myaing Gyi Ngu do not have access to proper water and sanitation, and also face food shortages. This has led some to scavenge for vegetables in landmine-contaminated areas. They also lack protection from the elements because they do not have access to housing materials to repair their dilapidated dwellings. The vast majority of these IDPs cannot earn an income and struggle to access basic services.

### Recommendations

Given the on-going displacements, the poor conditions of return that prevent the reestablishment of sustainable livelihoods, and the difficulties refugees and IDPs experience in validating their right to citizenship, the Government should:

- 1. Develop a comprehensive strategy to assess and address the needs of repatriated refugees and internally displaced persons.**
- 2. Enact measures to address the immediate humanitarian needs created by on-going conflict-related displacements.**
- 3. Develop mechanisms to facilitate the obtainment of civil documents, taking into consideration the specific constraints encountered by IDPs and refugees resulting from conflict and protracted displacement.**

## Resources cited and further reading

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