

2nd Cycle Universal Periodic Review Myanmar UPR 2015

Information on the Status of the Human Rights Situation
in Myanmar

The Burma-Myanmar UPR Forum

2nd Cycle Universal Periodic Review (UPR) Myanmar UPR 2015 – UPR Advocacy Factsheets

Information on the Status of the Human Rights Situation in Myanmar

One of the key mandates of the UN Human Rights Council is to undertake a ***Universal Periodic Review*** (UPR), on the fulfillment of each States human rights obligations and commitments. The UPR is therefore a unique human rights mechanism and an important political process for advancing the realization of human rights on the ground. Myanmar 2nd Cycle UPR is scheduled to take place on 6 November 2015, when the Myanmar government's compliance with its human rights obligations will be reviewed by all UN Member States at the UN Human Rights Council.

The "*Information on the Status of the Human Rights Situation in Myanmar*" consists of **16 UPR Advocacy Factsheets**, developed by human rights organizations comprising the *Burma-Myanmar UPR Forum*, to guarantee local civil society organizations across sectors could raise their human rights concerns and provide a clear overview of Myanmar's human rights situation to Recommending States prior to the country's 2nd UPR. These Factsheets are following the best practice established by the Human Rights NGO Forum of Mongolia, and have been prepared on the basis of the NGO submissions submitted to the UN Human Rights Council in March 2015, updated data as of September 2015, and contain all the necessary information diplomats would require for their review of Myanmar's human rights records:

1. *Brief Assessment of the Implementation of 1st Cycle UPR Recommendations;*
2. *Remaining challenges, New human rights concerns, First hand cases;*
3. *Specific & Actionable Recommendations for an Effective Implementation.*

The UPR Advocacy Factsheets cover the most challenging human rights issues in Myanmar as identified by the Burma-Myanmar UPR Forum: (1) *Myanmar's 2008 Constitution*; (2) *Human Rights Protection and Legal Reform*; (3) *Freedom of Opinion and Expression*; (4) *Human Rights Defenders: Arbitrary Arrests, Political Prisoners and the need for Prison Reform*; (5) *Torture*; (6) *Impunity and the Right to Remedy*; (7) *The State of Armed Conflicts*; (8) *The Collective Rights of Indigenous People*; (9) *Refugees and IDPs*; (10) *Land Rights*; (11) *Freedom of Religion or Belief*; (12) *The Persecution of Rohingya Muslims in Rakhine State*; (13) *The Rights of the Child*; (14) *The Education Reform*; (15) *Women's Rights*; and (16) *Sexual Orientation, Gender Identity and Gender Expression (SOGIE) Rights*.

To support local organizations inclusive and effective participation in Myanmar 2nd Cycle UPR, and to ensure local voices could be heard before the country's review, UPR Info and Equality Myanmar convened two "***In-Country UPR Pre-Sessions***", consisting of inclusive dialogues between local grassroots organizations and diplomats in Yangon (4 September 2015) and in Bangkok (10 September 2015), complementing UPR Info's UPR Pre-Session in Geneva (8 October 2015). The In-country UPR Pre-Sessions took place thanks to the financial support of the Embassy of the Kingdom of the Netherlands in Bangkok. The goals of the UPR Pre-Sessions are to discuss the human rights situation in Myanmar and to provide diplomats with the UPR Advocacy Factsheets comprehending reliable information and data from the ground, and evidence-based solutions through precise and concrete UPR recommendations.

The UPR Advocacy Factsheets represent a useful advocacy tool to ensure the UPR Recommendations formulated by Recommending States to the Myanmar Government reflect local voices and address vulnerable groups' needs. As of today, the UPR is the only Political Process which legitimately brings solutions from local communities to the Government, with UN Member States acting as the main Bridge. Therefore, it is hoped that the UPR recommendations would form the basis of the next generation of human rights responses for the upcoming government of Myanmar.

The UPR Advocacy Factsheets can be accessed at this following link: <http://goo.gl/0B4cTJ>

For further evidence and data, please access the NGO Submissions at the following link: <http://goo.gl/uYUHAP>

For more information on the Burma-Myanmar UPR Forum, please contact its founders, Aung Myo Min and Khin Ohmar:

Aung Myo Min, Executive Director, Equality Myanmar: myominburma@gmail.com

Khin Ohmar, Coordinator, Burma Partnership: khinohmar@burmapartnership.org

For more information on the UPR Process and the UPR Pre-Sessions, please contact Emilie Pradichit:

Emilie Pradichit, Asia Regional Representative, UPR Info: e.pradichit@upr-info.org

* Created in 2008 following the inception of the UPR mechanism, UPR Info is the only organization in the world focusing specifically on the UPR process. The organization's extensive experience in this area is unique as it addresses all human rights issues and all countries without discrimination or politicization. This is the first UPR Pre-Sessions UPR Info convened at the country level, complementing UPR Info Pre-Sessions organized in Geneva. The Pre-Session offers UN Member States the opportunity to be informed on the status of implementation of recommendations made during the previous review, while providing a safe space for civil society to influence the process by lobbying several countries at once. More info at: www.upr-info.org

MYANMAR'S 2008 CONSTITUTION

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

In its 2011 UPR, the Myanmar government did not accept any of the four recommendations regarding Myanmar's 2008 Constitution (the Constitution). The recommendations ranged from general (amend the Constitution accordingly and in compliance with international human rights and humanitarian laws [Denmark]) to specific (repeal article 445, which effectively grants total immunity to State and military personnel to act with impunity [New Zealand]). The Constitution remains a major stumbling block to establishing democracy since it ensures military control over all aspects of the country's so-called transition to democracy, provides complete autonomy and impunity for the military and fails to allow self-determination in ethnic areas. Since 2011, an unelected military quota in the legislature has exercised its veto power to thwart attempts to amend the Constitution. Therefore, the Constitution remains the single largest structural barrier to democracy, reform and peace in Myanmar and prevents Myanmar from complying with its obligations under the UN Charter, CEDAW and international humanitarian law.

Main Challenges within Myanmar's 2008 Constitution

The Constitution was drafted without democratic consultation and was ratified amidst reports of intimidation, threats, and misinformation and in the wake of a devastating cyclone. Since it does not represent the will of the people, the Constitution remains a major obstacle in Myanmar's road to peace and democracy. While certain provisions of the Constitution have been acknowledged as problematic by the international community, such as Article 59(f) which disqualifies Aung San Suu Kyi from the presidency, other provisions in the Constitution are equally problematic. For example, the definition of rights under the Constitution is subject to "existing law" (Art. 353). However, many existing laws enacted by the former military government restrict fundamental rights and freedoms. In addition, these fundamental rights (including the freedoms of expression, assembly, association and union) may be limited for reasons of "the security of the Union or prevalence of law and order, peace and tranquility" (Art. 353).

Main issues include:

1. **Entrenched military power:** The Constitution establishes an unprecedented structure in which the military technically operates outside the executive, legislative and judiciary branches while retaining a substantial voice and amount of power in the composition and policies of those institutions.
2. **Impunity for crimes by military and government personnel:** The Constitution provides for two levels of impunity for actions taken by former junta members and current government and military personnel (Arts. 445 and 343). Please see the Fact Sheet on Impunity and the Right to a Remedy for more information and recommendations on this topic.
3. **Codified discrimination against women and the continuance of harmful gender stereotypes:** The Constitution contains provisions that explicitly discriminate against women and codifies antiquated conceptions of women and their role in society.
4. **Issues of Federalism:** The Constitution fails to guarantee political equality for all ethnic nationalities.

Challenge 1: Entrenched Military Power allowing Crimes by Military and Government Personnel

The Constitution guarantees that the military is an integral and permanent part of the machinery that governs the country—enjoying great power and autonomy—and exempt from many fundamental constitutional principles. In addition, many provisions grant the military control over the three main branches of government:

Executive: The Constitution provides that the President's powers are to be exercised in conjunction with the National Defence and Security Council (NSDC) (including Arts. 204, 206, 213, 342, 410). However, the majority of the 11 positions on the NSDC are appointed by the Commander-in-Chief of the military (Art. 232.) Thus, while the Constitution states that the NSDC is "led" by the President, in reality the Commander-in-Chief, has far greater and more direct control of many of the executive functions of the government.

Legislature: Article 109 allocates 25% of parliamentary seats, in both the Pyithu Hluttaw and the Amyotha Hluttaw, to the military. Because any Constitutional amendment requires more than 25% approval (Art. 436), the military can single-handedly veto any Constitutional amendments, including those that would reduce the influence and privileges of the military. In fact, the military has used its "veto" to stymie attempts to amend the Constitution (discussed in greater detail below).

Judiciary: Jurisdiction over military matters is removed from all civilian courts, with the Commander-in-Chief's decisions in legal cases deemed "final and conclusive" (Arts. 20(b), 343). Article 445 grants governmental actors (including the military) impunity for crimes. Thus, unless the military voluntarily agrees to allow civilian jurisdiction, there is no judicial oversight over the military, allowing them to act as an autonomous legal entity. Certain judicial positions, namely the Supreme Court and the Constitutional Court, require at least ten years of judicial experience. Thus, only judges that were on the bench during the former junta's authoritarian rule are eligible for the highest positions in Myanmar's judiciary.

Challenge 2: Gender Discrimination

The Constitution does not include a formal definition of discrimination against women, as recommended by CEDAW. Moreover, Article 352 of the Constitution facially discriminates against women's equal employment in stating, "the Union shall . . . not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only" [emphasis added].

Further, article 59 of the Constitution sets out that the President and Vice-President "shall be well acquainted with the affairs of the Union" including "the military" and several top offices are reserved for active military including Commander-in-Chief, several ministries, and 25% of all parliamentary seats. However, since women have not until recently been allowed to serve in the military, this provision in effect disqualifies women from holding those offices.

Challenge 3: Issues of Federalism

The Constitution, drafted as part of the former State Peace and Development Council regime's seven-step democracy road map, is a major reason for armed resistance by ethnic minorities. According to the Constitution, Myanmar's states/regions do not have the right to develop their own constitutions, nor do they have the power to elect their Chief Ministers (Arts. 120 and 261(a), (d)). Moreover, each state/region cannot select the members of its own executive department (Art. 261(b)). The lack of self-determination for Myanmar's ethnic groups both instigated Myanmar's 60 years of internal armed conflict and remains one of the most pressing issues for many of the countries' ethnic armed groups. Thus, the Constitution stands as a direct barrier to peace: leaders of ethnic armed groups maintain, as recently as May 2015, that constitutional reform is a precondition for peace.

Recommendations

Since 2011, attempts to reform the Constitution within the legal structure established by the military have not been successful. In mid-2013, a Constitutional Review Committee for the Reform of the Constitution was formed and received over 300,000 suggested changes. In January 2014, that Committee submitted its report suggesting changes and in July 2014 the National League for Democracy carried out a public signature campaign that collected almost five million signatures calling for amendments. In June and July 2015, the Parliament considered bills to make substantive changes, including proposals to allow the Constitution to be amended with 70% of the votes in Parliament (effectively eliminating the military's veto), to increase Parliamentary power over the executive and judiciary and to provide greater autonomy to state and regional parliaments in electing their own chief ministers. Unsurprisingly, the unelected military Parliamentarians exercised their veto, rejecting all proposals that would have reduced the role of the military. Troublingly, peaceful protests calling for constitutional change have been met with force. In June 2015, peaceful protesters were arrested and charged under Article 18 of the Peaceful Assembly and Procession Law and the Penal Code and face punishments including imprisonment.

With the military blocking every attempt for peaceful and democratic Constitutional amendment, the people of Myanmar are not able to enjoy their fundamental rights and freedoms. The issues and actions outlined above violate Myanmar's international legal obligations to provide and protect fundamental freedoms, to ensure access to justice, a right to remedy and accountability for perpetrators of international crimes, to eradicate gender discrimination and to guarantee peaceful assembly and association. Therefore, the Government should:

1. Amend the Constitution to make Myanmar a fully transparent, accountable and democratic society, including by removing military control over governance and legislation and bringing the military under civilian oversight and control.
2. Ensure the independence of the judiciary in the administration of justice and undertake vetting to remove from power any judges who were complicit in the crimes of the former military junta.
3. Repeal constitutional provisions that grant the military impunity for human rights violations, including sexual violence, and those provisions that permit all military matters, including crimes committed against civilians, to be adjudicated only in courts-martial.
4. Ensure full transparency with respect to prosecutions of military personnel in military courts.
5. Adopt a legal definition of discrimination against women that conforms to CEDAW and repeal or amend specific provisions of the Constitution that discriminate against women in law, such as Article 352, or in effect, such as Articles 109 and 141.
6. Take steps to ensure a genuine federal union which guarantees democratic rights and political equality for all ethnic nationalities.

For further evidence and data, please contact Aung Myo Min and Joseph Wah, Equality Myanmar:

Aung Myo Min, Executive Director: myominburma@gmail.com

Joseph Wah, Advocacy Coordinator: josephylo.wah@gmail.com

HUMAN RIGHTS PROTECTION AND LEGAL REFORM

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

In the first UPR cycle it was recommended that the government backed independent investigation into the deaths of those in custody should be allowed. The investigative body is the Myanmar National Human Rights Commission (MNHRC). Whilst this body has taken on the cases of extrajudicial killings and human rights abuses, and published those findings, it has done little to bring accountability to the perpetrators, or to meet the standards of independence and transparency set out in the Principles relating to the Status of National Institutions, otherwise known as the Paris Principles. Legal reform is urgently needed in Burma/ Myanmar, with oppressive legislation commonly used to detain political and human rights activists. Reforms made so far have been ineffective and cosmetic, having no real impact on the freedoms and security of people in Burma.

Challenges

Peaceful Assembly and Peaceful Procession: The Penal Code is still widely applied to imprison protesters and activists. New laws have been introduced in the last four years that have further restricted peaceful protest and freedom of speech and have been used to intimidate human rights defenders. The primary example of these new laws is the Peaceful Assembly and Peaceful Procession Act (The Assembly Law), enacted in December 2011. This law has repeatedly been used to imprison peaceful protesters and little has been done to amend it.

Cases, Facts, Comments

Of the current 108 political prisoners, 20 are sentenced under Section 18 of The Assembly Law. Section 18 states that "If there is evidence that a person is guilty of conducting a peaceful assembly or a peaceful procession, he or she must receive a maximum sentence of one year imprisonment or a maximum fine of thirty thousand Kyat or both." On June 24 2014, this was changed to a sentence of maximum six months imprisonment. There are still 204 people awaiting trial under Section 18, as well as 16 people awaiting trial under Section 19 of The Assembly Law. Section 1(b, c) states that peaceful assemblies and peaceful processions include the gathering of more than one person. Several solo protesters have however been detained under this law.

31 political prisoners are currently detained under Section 505(b) of the Penal Code. Section 505 (b) is a vaguely worded article under which almost anything could be said to fit the description of what is prohibited. 113 people are awaiting trial for 505 (b) charges. For instance, the article stipulates that "Whoever makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the state or against the public tranquillity shall be punished with imprisonment which may extend to two years or with fine or with both."

Section 401(1) of the Code of Criminal Procedure ensures all releases are conditional meaning that if an activist is released from prison before his/her sentence is complete, the President can revoke the amnesty and call them back to finish their sentence.

Challenges

Cases, Facts, Comments

International Instruments: The government is yet to become party to a multitude of international treaties that would require them to enshrine international human rights principles and protections into domestic law.

Myanmar Government has not ratified or signed many human rights conventions including; the United Nations Convention against Torture (CAT), International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED).

Torture: While torture is prohibited in the Constitution and in domestic law, the law is not effectively enforced and torture remains prevalent.

At the domestic level torture is outlawed: articles 330/331 of the Penal Code state that “voluntarily causing grievous hurt to extort a confession is prohibited.” Despite these legal protections it is well documented that torture and forced confessions are commonplace in Myanmar’s prison system and in conflict areas.

The Myanmar National Human Rights Commission (MNHRC) was established with the stated intent of promoting and safeguarding the fundamental rights of citizens in accordance with the Paris Principles. However a severe lack of independence, effectiveness and transparency has plagued its ability to achieve this mandate so far. Independent and impartial investigation into the killing of civilians must be allowed to take place, without interference or influence from the army or the government.

In October 2014 a freelance reporter was shot dead while being arbitrarily detained by the Myanmar Army in October 2014. He was not returned to his family, government forces buried his body before any investigation could take place. The Myanmar National Human Rights Commission (MNHRC), created in 2011, investigated the case but the family of the deceased largely derided the findings. His family, who believed his body showed signs of torture, deemed the findings insufficient. No accountability was brought to his killers.

Recommendations

Torture:

1. Take measures to ensure there is effective implementation of existing laws prohibiting torture and other human rights abuses.
2. Prohibit the use of torture unconditionally, especially as a means of interrogation.
3. Prohibit confessions gained through torture being used in a court of law.

Peaceful Assembly and Peaceful Procession:

4. Immediately amend The Peaceful Assembly and Peaceful Procession Act to bring it in line with international standards on freedom of expression.
5. Properly define Section 505(b) of the Penal Code.
6. Ensure when an amnesty is granted, activists from then on are absolutely free from further restriction or oppression and cannot under any circumstance be called back to serve the rest of their sentence.
7. Review outdated oppressive laws routinely used to stifle and arrest political activists.
8. Provide clear information as to the arrests and charges of political activists.
9. Ensure access to legal representation for all detainees.

Constitution:

10. The Government should amend the 2008 Constitution to bring the military under civilian oversight and control.
11. Repeal constitutional provisions that grant the military impunity for human rights violations and those provisions that permit all military matters, including crimes committed against civilians, to be adjudicated only in court-martial.
12. Amend the 2008 Constitution to recognize and protect indigenous peoples, their right to self-determination and customary land use practices, and to protect and promote indigenous peoples’ languages and cultures.

Myanmar National Human Rights Commission:

13. Reform the MNHRC so that it is in line with the Paris Principles and provides an independent mechanism for victims of human rights violations to seek redress.

FREEDOM OF OPINION AND EXPRESSION IN MYANMAR

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During the previous UPR cycle in 2011, the government of Myanmar accepted a number of recommendations to consider ratifying and implementing certain key international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR). To date, the ICCPR has not been signed or ratified by Myanmar. In March 2011, a quasi-civilian government was formed, and the government of Thein Sein has since initiated some reforms in preparation for general multi-party elections on 8 November 2015, including an ongoing redraft of the 2008 Constitution.

The country has seen momentous change in this short time, particularly in relation to freedom of speech. However, the reform process appears to be stalling, and there are significant concerns about the deteriorating human rights situation in the country. These include rising ethnic tension, endemic corruption, and the introduction of new legislation that does not comply with international standards.

Since the start of unauthorized peaceful student protests on 20 January 2015, tensions have dramatically escalated. Literature, culture and the media will play a vital educational and awareness-raising role in the run-up to the 2015 elections, and there are fears that this role will be hampered by increased censorship and self-censorship unless rights to freedom of expression are fully protected.

Challenges

State-controlled Media: The media in Myanmar operates in a restrictive legal environment as the government largely controls the media. Reporters are subjected to state laws regulating journalistic ethics. The government has chosen not to engage in legal reforms out of reluctance to cede its control over the press.

Defamation of the State: Criminal defamation is still on the statutes as "defamation of the state" is being prohibited under Article 505(b) of the Penal Code. The executive branch of the government uses defamation-related provision to pose a threat to journalists and whistleblowers.

Self-censorship: New laws and old existing legislation make journalists and writers confused and self-censored. In March 2014, the News Media Law and Printing and Publishing Enterprise Law (PPE) were approved by the government despite the wide spread criticism among journalists, media and writers. However national security provisions: 1950 emergency Provisions Act, the 2000 Internet Act, and the 2004 Electronic Translation Act, which have been used to imprison journalist and writers for long-term sentences, still remain and pose a threat to free expression.

Cases, Facts, Comments

In 2013, journalist Ma Khine with Eleven Media Group was arrested and imprisoned for 3 months under the charge of criminal defamation of a lawyer including trespassing and using abusive language. Five other Eleven Media Group staff members have been detained since 2014 for publically criticizing a bill regarding the state-owned media.

In the defamation case filed by Ministry of Information against the Myanmar Herald newspaper, the editor-in-chief and deputy-chief editor were fined 1 million MMK.

The Ministry of Information also sued 17 senior members of the editorial team of Daily Eleven for publishing the investigative report of the Ministry corruption in 2014. The case is still proceeding.

Five journalists with the Unity weekly journal were each sentenced under the State Secrets Act of 1923 to 10 years on 10 July 2014.

In the cases of other journals, like Myanmar Herald Journal, Bi Mon Te Nay weekly news journal, and Daily Eleven newspaper, it is clearly seen that the enacted laws pose a threat rather than protection to media.

Printing and Publishing Regulations violating the Intellectual Property Rights of Publishers: Press Council is not independent of the executive branch.

The interim press council organized by the Ministry of Information (MOI) in June 2012 was formed with two-thirds of pre-appointed delegations plus one-third of independent but still not elected delegations. It failed to provide an effective platform for dialogue with the government when needed. It was aimed to run only for a year but it had been acting in the interim for three years.

As of today, publishers are required to submit electronic PDF files of their manuscripts to the Ministry of Information (MOI), which is stored in a digital library with free access. Publishers think this constitutes a violation of their intellectual property rights. Publications are also required to register with the MOI. MOI has also authority to decline or close down any publications' registration.

Digital Freedom: Threat to digital freedom and surveillance

The intersection of telecommunication law has been finalized and the rippling worries for lawful intersection spread out among the public. The legal framework is necessary to prevent the officials from misusing this intersection to keep individual or specific groups such as political activist or minorities under surveillance.

Ethnic Conflict and Hate Speech: Rule by law rather than rule of law in the case of ethnic conflict and hate speech.

Although there are laws under the panel code to prevent incitement of racial hatred and religious insult, the implementation depends on the political will of the government. In June, 2015 Htin Lin Oo, a writer and former Information officer of NLD, was detained and sentenced to (2) years hard labour imprisonment after he made a speech criticizing groups that take advantage of religion to stoke hatred and discrimination. By contrast, the international community has pointed to lack of action to contain verbal and physical violence targeting non-Buddhist communities, including the Muslim populations in Rakhine and elsewhere in Myanmar.

Freedom of Assembly: Direct and indirect pressure on freedom of assembly

Licensing and permission regulations for public gatherings are very restrictive and unclear. Authorities sometimes question writers groups, or the indirect message is sent to the organizer or host.

Impunity: Impunity for Crime against Journalists, or the hidden hands of power

The death of freelance journalist known as Ko Aung Kyaw Naing became the first known case of an official investigation into the death of a civilian while in army custody, but no one has been brought to justice for the killing.

In July, Dr. Than Htut Aung, chief executive officer of Eleven Media Group and commentator on alleged government corruption, was the subject of a slingshot attack while in his car in Yangon that he called an attempt to kill him. Even though there were a lot of witnesses who can identify the attackers, the military stepped in to cover the main responsible criminal.

Additionally, journalists reporting from conflict zones are in danger without adequate protection from the military or government.

Recommendations

1. Repeal or amend all existing legislation which unduly restricts the right to legitimate expression, especially the News Media Law and the 2014 Printing and Publications Enterprise law and ensure that all new legislation, including any laws regulating the internet or access to information, comply with international human rights standards protecting freedom of expression.
2. Implement concrete measures to combat religious and ethnic intolerance and rule of law.
3. Abolish the requirement for publications to register under the Ministry of Information to guarantee the respect of intellectual property rights of publishers.
4. Promptly investigate alleged human rights violations committed by the military and other armed groups, including the death in custody of Ko Aung Kyaw Naing and the murder attempt on Dr. Than Htut Aung and bring to justice anyone found responsible.
5. Take steps to ensure that harmful monopolies, which limit media diversity, do not develop.
6. Strengthen protection for journalists reporting in armed conflict zones.
7. Implement a program of restorative justice for all former political prisoners, including journalists and other writers.
8. Amend the Peaceful Assembly and Peaceful Procession Act Law, in particular the requirement for prior permission, so that civil society groups can carry out their activities without interference and harassment.

HUMAN RIGHTS DEFENDERS: ARBITRARY ARRESTS, POLITICAL PRISONERS AND THE NEED FOR PRISON REFORM

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

Arbitrary detention is rife in Myanmar, with due process mostly ignored. Prisoners are detained incommunicado, often without access to legal counsel or family visits. These practices have not been brought to an end and political and human rights activists continue to face arbitrary detentions and abuses at the hands of the authorities.

There are severe concerns over the poor conditions in Myanmar's prisons. The current conditions are said to be tantamount to a form of torture and still require vast improvements to bring them to an acceptable standard. The recommendations for Myanmar's prisons from the 2011 UPR cycle have largely remained unfulfilled. Despite the ICRC being permitted a degree of access to some prisons in Myanmar, their ability to affect real change and improve conditions is severely limited. The ICRC is unable to publish the findings of their visits in the public forum, but they have made improvements to the water and sanitation hygiene of some of the larger jails.

Challenges

Arbitrary Arrests: Individuals are regularly arrested, interrogated and detained without a warrant or court order.

Abuses committed by the Tatmadaw in the context of ongoing armed conflicts include extrajudicial killings; targeting of civilians and arbitrary arrests. The abuses within detention are widespread and show no signs of abating.

Cases, Facts, Comments

AAPP documented the arrest of a female activist was arrested and incarcerated for kidnapping in September 2014 under Articles 364/368 of the Penal Code regardless of the lack of evidence of her involvement in the alleged kidnapping.

On 4 October 2014, Tatmadaw soldiers from Light Infantry Battalion 208 shot and killed Aung Kyaw Naing (also known as Par Gyi), a freelance journalist who was covering an outbreak of conflict in Mon State, after they had arbitrarily detained him on 30 September 2014.

Since 2011, the Chin Human Rights Organization has documented 37 individual cases of arbitrary arrests and detention in Chin State. In August 2014, 8 Khumi Chin farmers were arrested and detained for over a week by LIB 344 Commander Major Tin Htut Oo in the Paletwa area. Seven of the farmers were subjected to ill-treatment amounting to torture, being tied up, kicked and punched, and were denied food for the duration of their detention. One man was beaten with a wooden pole, resulting in head and neck injuries. Two other men suffered severe swelling to their faces. Despite writing three complaint letters to the authorities, demanding justice and compensation for property destroyed while in custody, the farmers have had no response. As the incident violated the terms of the Chin National Front-government ceasefire agreements, in their capacity as the Ceasefire Monitoring Body, the CPTC conducted an investigation and submitted their findings to both parties to the conflict.

Challenges

Political Prisoners: At the time of writing the political prisoner numbers in Myanmar stood at 108, with a further 449 individuals awaiting trial. The first few months of 2015 saw a marked increase in the political prisoner number, with increasingly violent crackdowns being carried out on student demonstrations, garment worker protests and land rights cases such as the notorious Letpadaung copper mine project. The number of those awaiting trial rose significantly as well.

Cases, Facts, Comments

The National Education Law protests standoff in Let-padan ended in the arrest of approximately 127 people and the use of excessive force by police. Whilst some have now been released there are still 101 protesters detained in connection with the education demonstrations. AAPP has received information that some student detainees have been brutally tortured during their detention as well as being held incommunicado without access to family, friends or legal counsel.

Garment factory workers protests seeking improved working conditions and a simple raise in their wages were, in the same week, resulting in a violent crackdown and subsequent arrests.

Detention Conditions: Prison conditions have not improved since the last UPR cycle. The conditions within the prisons themselves still need to be addressed, as the 2011 AAPP UPR Stakeholder Submission recommended.

Containers are still overflowing with human waste and during the rainy season some cells leak leaving the affected area a breeding ground for mosquito larvae and bacteria. Hypertension, diabetes, asthma, coronary heart disease and stomach problems are common ailments and the conditions in prisons exacerbate these conditions. Malaria, cholera, tuberculosis (TB) and HIV/AIDS and dysentery are common. Speaking with mental health professionals is rarely allowed. Family members are often expected to provide medicines to the prisoners; however with the high rate of prisoner's transfers, family members cannot often make visitations.

Recommendations

1. Ensure adequate physical and psychological healthcare for all political prisoners during incarceration and on release.
2. Ensure prison facilities are kept to a certain standard to ensure they are not contributing to the poor record of health that prisoners face.
3. End the practices that prevent prisoners from receiving family and friends supporting during their imprisonment.
4. Allow independent international monitoring of prison conditions and implement changes suggested by these bodies.
5. Provide clear information as to the arrests and charges of political activists.
6. Unconditionally release all political prisoners and end ongoing trials of political detainees.
7. Ensure those detained are done so legally and not arbitrarily.
8. Immediately release all prisoners being arbitrarily detained.

TORTURE AND OTHER CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its 2011 UPR, the Myanmar government pledged to end and prohibit torture. In January 2014, Foreign Affairs Deputy Minister Thant Kyaw promised to ratify the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. However, little progress has been made to those ends. Only a very few cases of torture by the military against civilians have reached civilian court. Victims are frequently threatened, bought off, or sued for defamation when they speak out against abuses. Torture is endemic throughout Myanmar's prisons, detention centers and interrogation centers. It is also a central component of the systematic abuse and intimidation used in Myanmar. Recent studies conducted inside Myanmar have revealed the extent of this torture, with an overwhelming majority of former political prisoners giving accounts of the torture they received during detention. Accounts of torture during police and military custody are widespread.

The following cases detail the extent of these abuses of the torturous treatment people have received at the hands of the authorities. This torture is not random, but part of a wider systematic program of abuse that pervades in Myanmar. Investigations into allegations of torture are rarely conducted and those that are lack independence, as a result perpetrators are rarely held accountable for their crimes. Myanmar has the obligation under international law to provide a remedy for victims of serious human rights violations, an obligation that it has wholly failed to uphold.

Challenges

Practice of Torture in Detention Centers: Fact-finding studies conducted inside of Myanmar have revealed that torture occurs in several forms, particularly in accounts given by political activists in prisons, police cells, and immigration and detention centers. Beatings, rolling an iron rod down the shins, being blindfolded and electric shocks were but of a few of the many types of torture they received. The degree of torture will vary between prisoners with some receiving minor injuries in comparison to others who may be severely injured and left in critical condition and died as a result of the torture inflicted upon them. The forms of torture used range from psychological torture; deprivation of sleep, food and water to stress positions, water torture and violent physical assault; however the torture is systematic and methodological, often used in order to extract false confessions.

Cases, Facts, Comments

In 2012 a farmer was arrested and detained in a Myanmar Army detention facility. Not only was he arbitrarily detained and denied permission to communicate with anyone outside of the facility he was extensively tortured. It has been established that physically he endured scalding hot knife blades to the face; beatings with bamboo; being stabbed in the thigh; bamboo rollers to the back of the thighs; kicks to the head, face and chest; having his chest, stomach and thighs carved with knives and burnings with cigarettes. Further to this, he was kept in solitary confinement; threatened with death and forced to dig his own grave all which amount to psychological torture. Victims of torture often suffer from Post-Traumatic Stress Disorder (PTSD) but do not receive any sort of redress or help from the government.

The case of a land rights activist in Pyay Township in April 2013 showed how he had been tortured during detention and died as a result of his injuries. Subsequent attempts to investigate his case had gone unheeded, despite his body showing clear signs of excessive physical abuse, and no signs that he had died from alcohol abuse as the police report stating.

Challenges

Military Violence: The other most widespread accounts of torture are those of military violence against civilians in ethnic territories. Ongoing armed struggle causes civilians to live in a constant state of insecurity, and makes them vulnerable to the brutality carried out by government forces.

Cases, Facts, Comments

Reports have documented cases of civilians victims of military violence and being arrested and tortured for their alleged affiliation with ethnic armed groups.

Tatmadaw soldiers arrested Kachin farmers Laphai Gam and Brang Yung for alleged ties to the Kachin Independence Army. They were tortured during interrogation and both provided false confessions as a result. Since June 2012, Laphai Gam and Brang Yung have been serving 20 and 21-year prison terms respectively in Myitkyina prison after being found guilty or violating the 1908 Explosives Act and the 1908 Unlawful Associations Act.

Between 28 August and 5 September 2014, Tatmadaw troops from LIB 344 tortured seven Chin farmers from Paletwa Township, Chin State, after accusing them of having links to the Chin National Army. On 19 September 2014, two days after six of the farmers made public accusations of torture, Tatmadaw troops from LIB 344 again detained them and forced them to sign a statement dropping allegations of torture. After their release, the farmers went into hiding.

Recommendations

1. As previously recommended, immediately ratify the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, and adopt national laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN CAT and other relevant international standards.
2. Provide safeguards during detention and interrogation by prohibiting the use of torture unconditionally especially as a means of interrogation and by prohibiting confessions gained through torture being used in a court of law.
3. Allow independent investigations into complaints and reports of torture or other ill-treatment and impartially prosecute the alleged perpetrators.
4. End Impunity and allow victims of torture or other ill-treatment and prisoners to seek legal redress and to safely report cases of torture and to obtain adequate reparation.
5. Provide effective training to officials involved in the custody, interrogation or medical care of prisoners that torture and other ill-treatment are criminal acts.

IMPUNITY AND THE RIGHT TO REMEDY

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

In its 2011 UPR, the Myanmar government accepted a number of recommendations regarding impunity, including to ensure accountability for sexual violence perpetrated by the military and to ratify the UN Convention against Torture (CAT). However, little progress has been made to fulfill these promises. Only a very few cases of abuses by the military against civilians have reached civilian court. Victims are frequently threatened, bought off, or sued for defamation when they speak out against abuses. Myanmar has the obligation under international law to provide a remedy for victims of serious human rights violations, an obligation that it has wholly failed to uphold.

Main Challenges to Seeking a Remedy for Serious Human Rights Violations

1. The judiciary lacks impartiality and independence and is subordinate to the executive and military under the Constitution. The Constitution provides amnesty for past (and arguably present) members of government for any act taken while in office (Art. 445). Efforts to reform the constitution have not touched this issue, and the military retains its veto power over constitutional amendments.
2. Military impunity is further entrenched due to the exclusive jurisdiction that military courts have over all cases and complaints involving military personnel under Article 343 of the 2008 Constitution, which also provides that the decisions of the Commander-in-Chief in military cases are deemed final and conclusive. When courts martial do adjudicate cases involving human rights violations against civilians, there is no transparency in the applicable law, charges, trial, sentence or imposition of punishment. Despite a provision of law allowing the military to agree to transfer criminal cases involving civilians to a civilian court, such transfers are extremely rare.
3. When survivors attempt to seek justice, they are routinely subject to intimidation by state and local authorities – in which superiors of the accused perpetrators are often instrumental – impeding the punishment of those responsible and contravening the Government's commitments under international law.

Ethnic Kachin man Brang Shawng was charged in February 2013 for making "false charges" against the military (Tatmadaw) after he filed a complaint with the Myanmar National Human Rights Commission (MNHRC) calling for an investigation into the September 2012 killing of his 14-year-old daughter during a Tatmadaw attack in Hpakant, Kachin State. In February 2015, he was found guilty by the Hpakant Township Court and fined 50,000 kyat (US\$50) for defamation under Article 211 of the Criminal Code. No investigation into his daughter's death has been conducted.

4. There is no independent human rights institution to which victims can make complaints and receive a remedy. The Myanmar National Human Rights Commission is not independent, impartial, or effective and does not conform to the Paris Principles. Other non-judicial grievance mechanisms, including the parliamentary Rule of Law and Stability Committee and the Farmland Investigation Commission, are overworked and ineffective.

Impunity for Specific Human Rights Violations

Challenges

Military Impunity and the Lack of Access to Justice: The Government accepted several recommendations during its 2011 UPR with respect to access to justice for violations committed by the Myanmar military, including recommendations to ensure accountability and to conform Myanmar's legal system to international standards. However, since 2011 the Government has made little progress on implementing these accepted recommendations. Instead, in areas where conflict between the Myanmar military and ethnic armed groups continues, human rights abuses and violations of international humanitarian law ("IHL") by the Myanmar military are rampant. Human rights violations continue because the Government has failed to take measures, including changes to structural barriers to access to justice, such as those enshrined in the 2008 Constitution, to end these abuses and ensure accountability.

Cases, Facts, Comments

No matter the form—whether as reparations, restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition, or some other mechanism—Myanmar has failed to meet its ongoing obligation to provide full and effective remedies to those who suffered grave violations during military operations. Myanmar also failed to identify and hold individuals to account, including by failing to investigate perpetrators such as Lieutenant General Ko Ko who headed Southern Command, the regional military unit that oversaw major operations during the 2005-2008 military offensive in Kayin State. Indeed, not only was he promoted after the offensive, Lieutenant General Ko Ko was also selected to head the UPR process for Myanmar, raising serious concerns about ongoing impunity and Myanmar's commitment to human rights.

Challenges

Extrajudicial Killings and Disappearances are also common. Civilians in ethnic conflict areas and all those in detention are at particular risk. Families of victims have attempted to file criminal complaints or seek other redress. Few investigations are ever conducted, and those that are held are not independent or credible. Families are at times offered small sums of compensation without acknowledgement of responsibility, which is indicative of an attempt to buy silence rather than to provide a remedy.

Torture: During its 2011 UPR, Myanmar pledged to end and prohibit torture. In January 2014, Foreign Affairs Deputy Minister Thant Kyaw promised to ratify the CAT. So far, the government has failed to fulfill both of these obligations. Torture is still used by security forces during interrogations in prisons and in conflict areas with complete impunity. The signing of the CAT is a necessary step towards removing the institutional barriers to the cessation of such human rights abuses.

Hate Speech and Religious Violence: No action has been taken against any state actors for abuses or violence committed against Rohingya and other Muslims. The investigations into the instances of violence in June and October 2012 and January 2014 were inadequate at best. Government failure to investigate and hold accountable those responsible for the violence against Rohingya and other Muslims encourages subsequent violence. Likewise, no one has been held accountable for spreading hate speech encouraging violence against religious minorities.

Sexual Violence: The Government accepted several recommendations during its 2011 UPR with respect to access to justice for violence against women ("VAW") perpetrated by the Myanmar military, including recommendations to ensure accountability and to conform Myanmar's legal system to international standards. However, since 2011 the Government has made little progress on implementing these accepted recommendations. The military and other security forces commit sexual violence with impunity, particularly in areas of ethnic conflict and against Rohingya women in Rakhine State.

Recommendations

1. Initiate discussions with civil society, political parties and other stakeholders about past and present human right violations and fully consult with victims on the impact of such violations and possible remedies.
2. Investigate and prosecute alleged abuses and allow individuals to bring cases in civilian court against perpetrators, including those in the military.
3. Provide reparation and remedy to survivors and families of victims of sexual violence, torture, disappearance, extra-judicial killing and other serious crimes committed by the military.
4. Repeal constitutional provisions that grant the military impunity for human rights violations, that permit all military matters, including crimes committed against civilians, to be adjudicated only in courts-martial, and that interfere with the independence of the judiciary.
5. Refrain from using the judicial system as a means to intimidate and punish victims and witnesses.
6. Fulfill the commitment to sign, ratify and implement the CAT.
7. Reform the MNHRC so that it provides an independent venue for victims of human rights violations to seek redress and conforms to the Paris Principles.
8. Take stronger measures to combat hate speech and incitement to violence against minority communities, particularly Rohingya and other Muslims, and hold those responsible for hate speech to account.

Cases, Facts, Comments

In October 2011, according to eyewitness testimonies, soldiers abducted Sumlut Roi Ja, a 28-year-old Kachin woman, in Kachin State. More than three years since her disappearance, no investigation has taken place and the fate and whereabouts of Sumlut Roi Ja remain unknown.

On 4 October 2014, soldiers from LIB 208 shot and killed Aung Kyaw Naing (also known as Par Gyi), a freelance journalist who was covering an outbreak of conflict in Mon State, after they had arbitrarily detained him on 30 September 2014. His body bore signs of torture. A subsequent military trial exonerated the two soldiers accused of killing him and found that he was not tortured.

The military arrested Kachin farmers Laphai Gam and Brang Yung for alleged ties to the KIA. They were tortured during interrogation and both provided false confessions as a result. Between 28 August and 5 September 2014, the military tortured seven Chin farmers from Paletwa Township, Chin State, after accusing them of having links to the Chin National Army (CNA). On 19 September 2014, two days after six of the farmers made public accusations of torture, troops again detained them and forced them to sign a statement dropping allegations of torture.

In the last year, Women's Peace Network-Arakan has been informed of multiple instances of gang rape of Rohingya women by police officers in police stations in northern Arakan State. Perpetrators have not been held accountable. Victims have reported harassment and fear of harassment if they attempt to file a report with the police.

In its investigation into the alleged killings of Rohingya in Du Chee Yar Dan in Arakan State in January 2014, the MNHRC proclaimed that there was insufficient evidence to prove that the killings occurred, contrary to the results of a limited investigation by the UN and other human rights organizations.

Since the 2011 UPR, VAW by the military has been documented in Kachin, Karen, Mon, Chin, Shan and Karenni State. For example, following the resumption of conflict between the military and the Kachin Independence Army (KIA), between June 2011 and June 2014, more than 70 cases of sexual violence by the military against women and young girls in Kachin State and Northern Shan State were recorded. At least 20 of the victims were killed. Similar cases have been reported in areas subject to a ceasefire but with high levels of militarization.

THE STATE OF ARMED CONFLICTS

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

Since Myanmar's independence in 1948, armed conflict between various ethnic armed groups (EAGs) and government forces has plagued the country. In the 2011 1st Cycle UPR, the Government of Myanmar (the Government) accepted the recommendation to "solve long-standing conflicts between the Government and ethnic groups in a peaceful manner" yet conflict continues, as do serious human rights violations associated with this conflict. The Government's engagement in the peace process has lacked genuine commitment. While it has engaged with many EAGs by signing accords, hostilities have continued and the Government has reneged on its promises to allow for the establishment of a federal union. While some ethnic armed organizations have agreed to proceed with the Nationwide Ceasefire Agreement (NCA), several others do not want to sign the NCA until it is inclusive of all members.

The ongoing civil war in ethnic areas has directly resulted in serious human rights abuses including: land confiscation, forced labor, sexual violence, child soldiers, forced relocation, torture and extra-judicial killings (some of which are discussed in greater detail in other Factsheets). Those areas covered by ceasefires have seen increased investment and extractive projects that are accompanied by human rights abuses, as well as repression of activists and local residents who oppose the projects. In supposed ceasefire areas, there is ongoing militarization whereby the Government is maintaining and strengthening its presence, increasing feelings of insecurity among local populations.

Challenges

Peace Process: The Government's engagement in the peace process has lacked genuine commitment. While it has engaged with many EAGs by signing ceasefires, hostilities have continued. In August 2014, the Government promised it would cater to the ethnic groups' demand for the establishment of a federal union. However, it retracted its promise a month later. While some ethnic armed organizations have agreed to proceed with the Nationwide Ceasefire Agreement (NCA), several others do not want to sign the NCA until it is inclusive of all members.

Ongoing Militarization: While the Government has engaged with many ethnic armed groups by signing accords, hostilities and human rights abuses have continued and in some cases the Government is strengthening its presence. As a result, ethnic groups remain distrustful of the Government.

Landmines: Myanmar is one of only four nations currently producing landmines. Troops actively use them against civilians, in violation of international humanitarian law. The Government has allowed several humanitarian mine clearance agencies to establish a presence within the country but they have not been allowed to perform mine clearance activities.

Forced Labour: The Government has committed to ending forced labour by 2015. Although progress has been made towards this goal, it has not been achieved, and perpetrators of forced labour continue to enjoy impunity.

Cases, Facts, Comments

Since the last UPR, the Government military broke a 17-year ceasefire with the Kachin Independence Army (KIA) and resumed hostilities against other ethnic armed groups in Kachin and Northern Shan States. The conflict there has continued into its fourth year and the Government Army's actions, notably attacks against civilians, may amount to crimes against humanity and war crimes. The army also conducted military operations against ethnic armed groups in Karen and Mon States, in violation of a 2012 ceasefire with Karen groups.

Even as peace negotiations are taking place, clashes between the Government and EAOs continue. The Myanmar Peace Monitor reports 271 clashes and 6 bomb explosions between EAOs and Government forces from January through June 2015.

In the southeast, the Government Army is maintaining and strengthening its presence. Karen Human Rights Group (KHRG) has documented: new army bases; the strengthening of existing bases; the ongoing rotation of troops; resupplying of rations, weapons and ammunition; and skirmishes between armed actors during the preliminary ceasefire period. These actions have caused injury, property damage and internal displacement of villagers and lead villagers to question the sustainability of the ceasefire.

Contamination with anti-personnel landmines and unexploded ordinance is an important obstacle to durable solutions in the south-east as well as Kachin and northern Shan State, as it will likely prevent many refugees and IDPs from returning for a number of years. Fewer landmines have reportedly been laid in recent years, but clearance so far has been slow. In Kayah state, for example, clearance operations had still not begun as of July 2014.

Forced labour in areas of armed conflict is commonly used by the military to support its camps and to build infrastructure. Since 2011, the use of forced labour has remained an area of concern with at least 155 cases documented by ND-Burma. Demands for labour in Kayin State are often issued verbally at face-to-face meetings, usually between a Government Army commander and a village head.

In addition, KHRG also collected a total of 46 order letters issued by military and civilian Government officials to village heads in six research areas. In some cases, demands were backed by explicit threats of violence or punishment for noncompliance.

Since 2011, 35 incidents of forced labour have been documented by Chin Human Rights Organization, some involving orders to multiple villages at a time. Since 2013, although demands for forced labour from the military have declined due to reduced troop movement, forced labour continues and often intersects with violations of freedom of religion or belief, such as orders for Christian civil servants to perform additional work during Christian worship hours on Sunday, or preparing offerings and other forms of work for Buddhist ceremonies.

Sexual Violence in Conflict: Of particular concern is sexual violence and abuse against women by Tatmadaw (Myanmar Army) soldiers in conflict areas.

Following the resumption of conflict between the military and the KIA between June 2011 and June 2014, more than 70 cases of sexual violence by Government Army soldiers against women and young girls in Kachin State and Northern Shan State were recorded. At least 20 of the victims were killed. Further, recent follow-up reporting indicates that incidents of sexual violence in conflict have occurred as recently as January of 2015, including the rape and killing of two teachers in Northern Shan State by military personnel. In addition, U.N. experts report an increase in sexual violence carried out by the military since 2013. In Myanmar, where "impunity is the rule" and "punishment is the rare exception," victims often do not report sexual violence due to intimidation by, and a fear of negative repercussions from, military personnel and police officers, stigma by the community, and the Government's failure to provide confidentiality for victims. Therefore, reported cases of rape and sexual assault are only a small fraction of the actual total.

Land Confiscation: Land confiscation and destruction of property are the most consistent and commonly documented violations throughout the armed conflict areas. Militarization is closely connected with land confiscation. Although many cases have reported growing numbers of land grabs in relation to recent harmful development projects following ceasefires, the majority of reported cases go back several decades, committed predominantly by the former military regime. These largely remain unresolved.

In southeast Myanmar, indigenous peoples' lands have been confiscated for a variety of business and development projects, including dam construction, mining, logging, large-scale plantation projects and road construction.

The Karen Human Rights Group has documented 126 cases from Karen areas of Southeast Myanmar between December 2012 and January 2015. Villagers identified these cases as occurring due to military purposes and projects related to infrastructure, natural resource extraction and commercial agriculture.

Land confiscation in Mon State significantly increased after the 1995 ceasefire with the New Mon State Party. Since then, at least 1,800 acres of land have been grabbed by the military, as recently as December 2014. Military land grabs are being driven by increased foreign investment and the rising price of rubber. The Myanmar Army has consistently confiscated land, demarcated it as 'Tatmadaw (Myanmar Army) Land,' and then refused access to the original occupants. Since the January 2012 ceasefire between the Karen National Union and the Union government, indigenous peoples have seen an increase in militarization. Land confiscation has occurred both for the expansion of existing Myanmar Army bases, the building of new army facilities, and the development of military-owned agricultural production.

Chin State is still heavily militarized with 54 military camps in the area, although the ceasefire is holding. The military based in Matupi township seized more than 960 of farmland belonging to Chin subsistence farmers in Phaneng village, for "military use" in April 2012.

Internally Displaced People and Forced Relocation: Tens of thousands of villagers in the ethnic insurgent areas remained in forced relocation sites or were internally displaced as a result of decades old conflicts. In conflict areas, people are displaced as part of military strategy or as collateral damage, while in ceasefire areas they are displaced for development purposes such as the construction of hydropower or natural resource extraction.

More than 100,000 people in Kachin State remain displaced following the collapse of a 17-year-old ceasefire between government forces and the Kachin Independence Army in June 2011. As the war enters its fourth year, the internally displaced people (IDP) are living out their worst fears of becoming permanent camp dwellers, never able to return home and resume normal lives. In the meanwhile, life has become increasingly harsh with each passing year.

Since the ceasefire agreement with the Karen National Union in 2012, forced displacement has occurred in southeast Myanmar without consultation, compensation, or, often, notification. Such displacements have taken place most frequently around natural resource extraction, industry and development projects. These include hydropower dam construction, infrastructure development, logging, mining and plantation agriculture projects that are undertaken or facilitated by various civil and military state authorities, foreign and domestic companies and armed ethnic groups. Villagers consistently report that their perspectives are excluded from the planning and implementation of these projects, which often provide little or no benefit to the local community or result in substantial, often irreversible, harm.

Recommendations

Peace Process:

1. Ensure that all ceasefire agreements adhere to international law and international human rights standards and include: human rights protections; impartial monitoring mechanisms which are independent of the parties to the conflicts; and clear and effective recourse in the event that the terms of the agreements are broken.

Ongoing Militarization:

2. Demilitarize ceasefire areas, particularly positions close to villages, by reducing troop numbers, army bases, checkpoints and weapons stockpiles.
3. Stop military offensives against ethnic minorities, indigenous peoples, halt military expansion in indigenous peoples' areas, and begin a time-bound process of demilitarization as part of a sustained effort to end human rights violations against indigenous peoples in Myanmar.

Landmines:

4. Eliminate the use of landmines and immediately allow humanitarian mine clearing agencies to perform mine clearance activities.
5. Ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

Forced Labour:

6. End the use of forced labour and ensure accountability for its use.

Sexual Violence in Conflicts:

7. Deliver on promises made during the 2011 UPR to end sexual violence, and ensure the prosecution and punishment of perpetrators from the police, military and other authorities.
8. Provide reparation and remedy to survivors and families of victims of sexual violence, torture, disappearance, extra-judicial killing and other serious crimes committed by the military against women in conflict areas.

IDPs, Refugees and Land Rights:

9. Ensure that all policy reforms ascertain and respect the land rights of communities and individuals displaced by conflict, including refugees.
10. Ensure that any future ceasefire agreements include components which guarantee the land rights of all populations, including IDPs and refugees.

COLLECTIVE RIGHTS OF INDIGENOUS PEOPLES

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

Myanmar did not accept a 2011 UPR recommendation to incorporate the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into domestic law and ratify ICERD. There is no accurate information about the number of indigenous peoples in Myanmar/Burma, partly due to the lack of understanding about the internationally-recognised concept of indigenous peoples. Estimates suggest that indigenous peoples comprise 40 percent of the population and occupy 60 percent of the land in the country. According to the 1982 Citizenship Law, those 'ethnic groups' who have been present in the current geographical area of Myanmar/Burma since before 1823 (the beginning of the first British annexation) are considered *taing yin tha*, which is usually translated as 'indigenous' peoples. According to the provisional results of the 2014 census, the total population of Myanmar/Burma is 51.41 million. 50.21 million people were directly counted, and an additional 1.20 million people were estimated to live in inaccessible conflict areas in Arakan, Karen and Kachin States.

The broad ethnic categories of Kachin, Karen, Karenni, Chin, Burman, Mon, Arakan, and Shan do not reflect the rich diversity of Myanmar/Burma's indigenous peoples. For example, the Naga and Tavoy (Dawei) do not identify with any of those broad categories. For the 2014 census, the government used 135 sub-groups under the main ethnic categories, but this is highly controversial and was heavily criticized for being not just inaccurate, but divisive. To date, no census figures on the ethnic composition of Myanmar/Burma have been released. The government claims that all full citizens of Myanmar/Burma are 'indigenous' (*taing yin tha*), and on that basis dismisses the applicability of the UNDRIP to Myanmar/Burma. Indigenous rights activists use the Myanmar language term *htanay taing yin tha* for indigenous peoples, based on the international concept, using the criteria of non-dominance in the national context, historical continuity, ancestral territories, and self-identification.

Commonly violated collective rights:

- The right to free, prior, and informed consent.
- The right to own land, territories, and natural resources, in accordance with traditions and customary laws.
- The right to determine own strategies for the development or use of their lands, territories, and natural resources.
- The right to enjoy own means of subsistence and sustainable environmental management.
- The right to practice and revive culture and traditions.
- The right to self-determination.

Challenges

Myanmar/Burma's 2008 Constitution makes no mention of indigenous peoples, their collective rights, or customary land use practices in indigenous peoples' territories. When it comes to ownership of land and natural resources, the Constitution stipulates that, "the Union [of Myanmar] is the ultimate owner of all lands and natural resources". The lack of recognition of the people's rights to own land directly contradicts with the basic principle that the State's power is derived from its citizens.

Land Rights: Indigenous peoples' land is being confiscated at an alarming rate, in connection with militarization, infrastructure and extractive industry projects, as well as business and large-scale plantation projects. The right to FPIC with regards to such projects is not respected, and impact assessments (IAs) are seldom conducted or made public. Indigenous peoples are rarely compensated for land that is confiscated or damaged, and when compensation is issued, it often falls below market value of the land. Indigenous peoples are subsequently losing the ability to manage their territories.

Cases, Facts, Comments

A draft National Land Use Policy (NLUP) gives special privileges to business investors, which could spark more land grabs within the country. The draft NLUP includes a chapter on "Land Use Rights of Ethnic Nationalities", with references to customary land tenure. However, the formulations are vague and require clarification to ensure that there is full recognition and registration of land use and tenure rights of indigenous peoples, especially shifting cultivation practices. Indigenous rights activists also want to ensure that the draft NLUP's customary land tenure protections are not limited to agricultural land, but should include forests, pastures and other lands and resources on which indigenous and other communities depend for their livelihoods.

In Karen areas, land confiscation has occurred for the expansion of existing Myanmar/Burma army bases, the building of new army facilities, and the development of military-owned agricultural production. In 2014 in Leik Tho Sub-Township, Taw Oo (Taungoo) township, Bago Region, the Myanmar/Burma Army confiscated 200-300 acres of villagers' farmland. The Myanmar/Burma Army based in Matupi township seized more than 960 of farmland belonging to Chin subsistence farmers in Phaneng village, for "military use" in April 2012. Since 1995, more than 1,800 acres of land have been grabbed by the Myanmar/Burma Army in Mon State, as recently as December 2014.

Challenges

Natural Resources: The State's control over land, and natural resources for development projects in indigenous peoples' territories is driving violent conflict and related human rights violations. Since late 2011, the Myanmar/Burma government has signed preliminary bilateral ceasefire agreements with 14 major ethnic armed groups in the country. However, armed clashes continue in both ceasefire and non-ceasefire areas, in many cases linked to control over territory and natural resources. Foreign investors are promoting harmful development projects - such as mega hydro-powered and coal-fired electricity generating projects - in conflict areas without conducting any peace and conflict impact assessment (PCIA). These harmful projects have serious impacts, and pose a direct threat to traditional and sustainable livelihoods.

Cultural Rights: Although the government previously accepted UPR recommendations to ensure that ethnic minorities are granted fundamental rights and are enabled to enjoy their culture, religion, and language freely, militarization and displacement continue to prevent indigenous peoples from practicing and promoting their language and cultural rights. Starting in 1962, the teaching of indigenous peoples' languages was progressively banned in different areas, and has put the rich diversity of indigenous peoples' languages in Myanmar/Burma at risk. The government has neglected or destroyed important cultural heritage sites of indigenous peoples.

Cases, Facts, Comments

Dam building on the Salween (Than Lwin) river has been closely linked with violent conflict and mass displacement of civilians. In October 2014, heavy fighting broke out in Karen State between the Democratic Karen Benevolent Army (DKBA) and the combined force of the Myanmar/Burma Army and Border Guard Force (BGF) in the vicinity of the Hatgyi dam site, forcing more than 2,000 civilians to flee their homes. The Myanmar/Burma Army and Border Guard Force (BGF) have increased military presence in the area, and the fighting appears to be part of a calculated military strategy to control territory in Karen State. By "clearing out" the DKBA, who oppose the dam, the Myanmar/Burma Army and BGF aim to secure the area for dam construction to begin.

In 2013, the government made an official announcement that indigenous language study would be allowed in schools again, but only as an extracurricular subject with inadequate financial support from the government, which has been ineffective at preserving and promoting indigenous languages. 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. In November 2014, in spite of community protests, the authorities dug out large volumes of soil and remnants of ancient artifacts from the site of the Royal Palace in Mrauk-Oo, and used it for road construction in the town.

Recommendations

1. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to provide expertise, and to assist in facilitating a national-level dialogue with the aim of identifying and recognizing indigenous peoples in Myanmar, based on the international concept of indigenous peoples and the UNDRIP.
2. Amend the 2008 Constitution to recognize and protect indigenous peoples, the right to self-determination and customary land use practices, and to protect and promote indigenous peoples' languages and cultures.
3. Provide the MNHRC with training on the UNDRIP, and amend the MNHRC enabling law to bring the body into line with the Paris Principles; ensure it has a strong mandate to fully investigate and provide adequate and fair restitution for land confiscation and other human rights cases; and to ensure there is increased representation of indigenous peoples.
4. Amend the draft NLUP and domestic legislation to ensure that it incorporates the collective rights of indigenous peoples to their land, territories, and natural resources, including customary land use practices with regard to forests, rivers, and other land, as well as agricultural land.
5. Ensure that FPIC is sought from indigenous peoples in Myanmar/Burma before proceeding with any harmful projects in their lands and territories, by using a transparent, participatory, and meaningful consultation process, ensuring in law, policy, and practice that appropriate PAs - especially peace and conflict impact assessments - as determined by local communities themselves, are conducted by independent and impartial experts, and published in local languages.
6. To provide for the teaching of indigenous peoples' languages in the national curriculum in law, policy, and practice, and to allocate sufficient national budget for effective implementation
7. Consult indigenous peoples' experts and local communities about the preservation of cultural heritage in indigenous peoples' areas, and allocate sufficient national budget to preserve such cultural heritage with a view to seeking UNESCO world heritage status for key sites.
8. Stop military offensives against indigenous peoples, halt military expansion in indigenous peoples' areas, and begin a time-bound process of demilitarization as part of a sustained effort to end human rights violations against indigenous peoples' in Myanmar/Burma.
9. Make the draft Nationwide Ceasefire Agreement and framework for political dialogue publicly available, and organise meaningful consultations in indigenous peoples areas, to allow them to take a proactive role and to ensure that their rights are fully recognised in the final agreement and framework, including the right to self-determination.

REFUGEES AND INTERNALLY DISPLACED PERSONS

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

In 2011, the Burma Government agreed to resolve its longstanding conflict with the ethnic armed organizations (EAOs) and to rehabilitate the refugees in cooperation with relevant UN agencies during the last cycle of the UPR. Contrary to the rhetoric of peace and transition, the Burma Army has breached a ceasefire agreement with the Kachin Independence Army (KIA) in 2011, and continues to commit human rights violations that would likely constitute war crimes and crimes against humanity under international laws, including forced labor, arbitrary arrest, sexual violence, torture and extrajudicial killing, particularly in ethnic areas where internally displaced persons (IDPs) and refugees may return. The rampant confiscation of land and forced evictions by the Burma Army and government backed investors are in direct violation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Burma became a signatory on July 2015. The failure to effectively implement the ICESC, the International Covenant on Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), and to sign other universal core human rights treaties as agreed upon in the last cycle of the UPR, has led to the increase in the number of refugees and people living in refugee like conditions from 414, 626 in 2011 to 479,606 in 2013. The 110,307 refugees along the Thailand-Burma border have been prevented from a safe and dignified return home due to the ongoing armed conflict, loss of land and livelihood, and presence of landmines among other concerns.

New Emerging Challenges

The preliminary ceasefires have allowed the Burma Army to gain further foothold in ethnic areas where it was previously inaccessible to them and is increasing its military presence, strengthening existing bases, and resupplying soldiers, rations and weapons. Exasperating the already growing tensions between EAOs and the Burma Army are the recent expansion of mega projects. Control over natural resources and land has caused conflict between armed actors, consequently increasing the number of the displaced people. In addition, the growing presence of the Burma Army and the subsequent clashes has led to fear of renewed conflict and has fostered distrust towards the sustainability of the ceasefires and the ongoing peace process.

Steady decrease in funding and social and health service provision in refugee camps along the Thailand-Burma border is further inducing fears of repatriation.

Foreign investment driven mega projects often involving hydropower dams, mono-plantation projects, extraction of natural resources, and infrastructure development has increased since 1st cycle of UPR. While the Burma Government agreed to commit to poverty reduction and the right to food and food security, this is severely compromised by extensive land confiscation. To battle the widespread land confiscation, the Burma Government must recognize customary laws and practices as well as policies in ethnic areas. The Burma Army and the government-backed corporations have taken refugees and IDPs' land without consultation, leaving them with no home or land to return to.

The ever-increasing natural resource extraction, dams and the projects in Special Economic Zones also frequently damage farmland, leaving refugees and IDPs without their primary means of subsistence upon their return.

Cases, Facts, Comments

A salient example of the increased militarization leading to conflict in ethnic areas is in Karen State, where both the Democratic Karen Benevolent Army (DKBA) and the Karen National Union have signed preliminary ceasefire agreements. Since then, the Burma Army delivered large amount of supplies to the Burma Army camps near the Hat Gyi Dam site. The Burma Army subsequently deployed a new battalion in the area to provide security around China's Sinohydro Corporation and the Electricity Generating Authority of Thailand's joint hydropower project. This tension led to the fighting between the Burma Army and the DKBA in October 2014, displacing over 2,000 villagers who attempted to cross the border to Thailand. In 2014, 61,000 people and 131 organizations, including political parties, signed a petition in opposition of the Salween dams.

Rations such as rice, oil and coal have been reduced and food rations fall substantially below households' needs. Some households deemed self-reliant now receive only 8kg of rice as opposed to 12 kg in 2011.

The two land laws the Vacant, Fallow and Virgin Lands Management Law (VLV law) and the farmland Law enacted in 2012 are both insufficient in guaranteeing local people the right to ownership of land, and have serious flaws that are aiding and abetting land confiscation. The National Land Use Policy, initially thought to be aimed at preventing land rights abuses undermines the rights of the ethnic minorities and empowers foreign and domestic investors over small-scale farmers, further legitimizing the state institutionalization of land confiscation. In Karen State alone, local organizations have documented 68 cases of land confiscation as a result of infrastructure projects. Only six reports by villagers described any form of compensation and mere 11 reports of prior consultation to land being confiscated were documented.

Local organizations have documented the devastating environmental damages of gold mining operations in Mong Len, eastern Shan State. The process of extraction, which includes the use of cyanide, has lead to soil erosion and water pollution, destroying farmland used by hundreds of people near the extraction site. Companies provided only minimal compensation and the loss of land – the villagers' primary means of livelihood – has increased poverty and forced villagers to migrate.

The government's restriction on the movement of local and international humanitarian organizations' access to IDPs in Kachin State is obstructing the delivery of adequate aid and assistance.

Since the Burma Army breached the ceasefire agreements with KIA and began its attacks in 2011, over 120,000 people in Kachin State have been displaced and more than 100,000 people have been settled into IDP camps along the China-Burma border. The funding cuts are resulting in further suffering and the loss of dignity for those who have already fled conflict and have lived in harsh conditions since 2011 when the fighting first began.

Ongoing Challenges

Ongoing war against EAOs and the breach of preliminary ceasefires, particularly in northern Burma, has led to a dramatic increase in IDPs and refugees over the last 4 years.

Burma Army and other armed actors continue to use antipersonnel and other mines throughout the last two decades, posing a threat to refugees and IDPs and their livelihood upon their return.

By not recognizing the citizenship of infants born in refugee and IDP camps, the Burma Government has failed to fulfill their agreement to ensure effective implementation of the CRC, particularly in regards to the right to education and health, which they agreed to in the last cycle of the UPR.

Burma does not formally recognize the existing educational and health structures, policies and community-based service provision in ethnic areas and in the refugee camps. Consequently, the Burma Government views them as unrecognized health professionals or educators putting them at risk of arrests by the authorities for their legitimate humanitarian work. Diplomas and certificates are also unrecognized, endangering the livelihoods of those who were educated in the IDP and refugee camps. The Burma Government has not proposed durable solutions for refugee and IDP students and health workers.

Cases, Facts, Comments

The Burma Army has escalated their attacks against the KIA by using airstrikes and helicopter gunships during an attack in late 2012 and early 2013. The war against KIA, Myanmar National Democratic Alliance Army and Ta'ang National Liberation Army in northern Burma has led to the displacement of over 120,000 people. Burma has seen some of the heaviest fighting in decades since President Thein Sein's government came to power in 2011 and began its discussions towards a Nationwide Ceasefire Agreement.

Burma remains one out of the only few countries who continues to produce landmines and have not presented a clear timeline to accede to the Anti-Personnel Mine Ban Convention. Efforts to implement demining activities and mine-risk education programs have been minimal.

Children born in IDP and refugee camps are still unable to receive citizenship. Linked to the recognition of health and education in IDP and refugee camps mentioned above, this is in part due to the lack of official recognition of midwives in ethnic areas, who must possess a government-accredited certificate in order to submit birth certificates upon a child's birth.

In November 2011, two mobile health workers were arrested for assisting a patient in Karen State and accused of being KNU spies and tortured. In addition, the approximately 33,000 students who are taught in 87 basic education schools throughout the nine refugee camps along Thailand-Burma border remain without a government recognized diplomas and certificates. The education services provided in refugee camps are unique and are not aligned to the education system of Burma, making it increasingly more difficult for students to successfully pass entry exams.

Recommendations

1. Allow meaningful and full participation of refugees, displaced persons and civil society organizations in all stages of preparedness, planning and repatriation by holding timely consultations regarding the timing and condition of the refugees and IDPs possible return or resettlement; refugees and IDPs return must be truly voluntary.
2. Honestly and willingly participate in the peace process, by honoring original ceasefire agreements, end offensives in Shan and Kachin States, withdrawing the military from ethnic areas and beginning political dialogue to secure conditions for the safe and voluntary return of IDPs and refugees.
3. Sign and ratify the UN Convention against Torture and begin an investigation on extra judicial killings, particularly in ethnic areas.
4. Present a clear timeline to accede to the Anti-Personnel Mine Ban Convention and ensure that refugee return is conducted safely and with dignity by implementing demining activities and strengthening mine-risk education programs.
5. Recognize, respect and promote the tenancy rights of all landholders and abolish the classification of "Vacant, Fallow, and Virgin Land" from NLUP and recognize the customary tenancy rights, while immediately cease all land confiscation and undertake comprehensive investigation and action regarding land disputes; land should directly be returned or adequately compensated and a mechanism for land distribution and restitution must be set up with a priority for vulnerable groups including refugees and IDPs.
6. Formally recognize the existing structures, policies and community-based organizations and relief organizations operating with the respective administrative systems of the EAOs, while also taking steps to recognize the diplomas and certificates issued by these organizations to students and health workers.
7. Ensure that all refugees and displaced children have access to birth registration by setting up a nationwide birth registration system in cooperation with EAOs and civil society organizations.

LAND RIGHTS IN MYANMAR

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

The key issue of land rights has emerged since the inception of the 2011 reform process, when the Myanmar authorities began to display a greater tolerance for freedom of expression and peaceful protests by land rights activists and farmers. During the March 2011 UPR review session, none of the States made recommendations regarding land rights, perhaps because the issue had not yet gained prominence due to restrictions on freedom of expression in Myanmar. Nevertheless, during the session, the Government reported that the 1894 Land Acquisition Act protected Myanmar citizens from forced eviction and land confiscation, and claimed the authorities provided land for resettlement.

Since the 2011 UPR, the Government has made some progress in addressing land rights concerns, although much remains to be done. Almost immediately after the reform process began, the authorities were confronted with widespread protests by activists against past land expropriations. They responded by forming various bodies to investigate such expropriations, although these had no power to resolve disputes. The authorities were also unwilling or unable to resolve land disputes and either return land to those with valid claims or provide land of the same quality to such claimants. At the same time, the security forces began arresting and imprisoning dozens of peaceful land rights protesters, a practice which has developed into an ongoing pattern of repression.

Major Challenges related to Land Rights:

1. Customary land use and ownership of land is a widespread and longstanding practice, but the Government does not adequately recognize customary land use and ownership in law, policy or practice. This has resulted in insecure land tenure for a large proportion of smallholder farmers and the poor urban population.
2. The Government initiated a consultation process on its draft National Land Use Policy in October 2014, culminating in a nationwide consultation at the end of June 2015 on the sixth draft of the policy. Civil society representing ethnic minorities reportedly expressed concerns that customary land tenure and dispute resolution practices are not adequately addressed in the draft. The final version of the National Land Use Policy will reportedly inform the content of an Umbrella Land Law, which will fall to the new Parliament elected in November 2015 to enact. Until such time, current laws do not adequately recognize customary land tenure rights, nor sufficiently protect people from land expropriations.
3. Most rural people, including ethnic minorities, do not have sufficient written documentation of the land they have traditionally used and are therefore at risk of having their land expropriated.
4. Myanmar investment laws have failed to address international human rights standards and the public interest. Development projects have negatively impacted on the lives of many villagers and communities, who are victims of land expropriations.
5. There is a pressing need for a mechanism to address past land expropriations by the Government. Such expropriations have contributed to the problem of landlessness among both the rural and urban population. Although some land has been returned, there are still tens of thousands of rural people who have lost their land due to expropriation.
6. The authorities have criminalized people taking part in peaceful public protests against land expropriations by the Government. Large-scale land allocations by the Government to the private sector have increased significantly in the past decade, against which many local people have protested.

Challenges

Legal Framework: Land rights in Myanmar exist in a legally restrictive environment. The current legal framework does not adequately address protections to the environment, landowners and ethnic minorities, while granting legal protections to foreign investors.

Cases, Facts, Comments

However, the Government has recognized the need for legal and policy reform of the cumbersome land regime, characterized by insecure land tenure for smallholder farmers (a large part of the population); lack of clarity about land use rights; outdated maps and confusion about different categories of land; and complicated land registration processes.

The Protection of Foreign Investments resulting in Land Expropriations is an impediment to Myanmar's Sustainable Development:

Myanmar investment laws have failed to address international human rights standards and the public interest. Development projects have negatively impacted the lives of many villagers and communities victims of land expropriations.

Since 2011, the impact on local communities of infrastructure and commercial development projects has been substantial, causing significant changes to lands used for livelihood activities and the environment. These have had severe consequences for villagers. Such projects are typically initiated without consultation of villagers and without opportunities to negotiate standards for project implementation or compensation. As rural inhabitants depend on access to land for agrarian and livelihood activities, the loss or destruction of land limits a community's ability to support itself.

Specifically, land confiscation in Mon State increased after the 1995 ceasefire with the New Mon State Party. Since then, the Myanmar Army has reportedly expropriated 1,800 acres of land, as recently as December 2014. Military land expropriations are reportedly being driven by increased foreign investment and the rising price of rubber.

Land expropriations have also increased in areas surrounding development projects, specifically the Shwe Gas Pipeline in Rakhine State and the Dawei Special Economic Zone (SEZ) in Tanintharyi Region –increasing poverty for affected communities. Land expropriations leave women in these areas without work or livelihood, preclude them from participating in and benefiting from these projects, and mean that the distribution of benefits from these projects is unequal.

Ethnic Minorities victims of Land Confiscations for "Military Use": Militarization is closely connected with land confiscation.

Most rural people, including ethnic minorities, do not have sufficient written documentation of the land they have traditionally used and are therefore at risk of having their land expropriated.

In Southeast Myanmar, ethnic minority peoples' lands have been confiscated for a variety of business and development projects, including dam and road construction, mining, logging, and large-scale plantation projects.

Although Myanmar's ethnic minority people have reported cases of land expropriations in relation to recent development projects, the majority of expropriations go back decades. These largely remain unresolved. Anti-personnel mines pollute large swathes of ethnic minority land in conflict-affected areas. Large-scale demining has not yet taken place, preventing internally displaced people and refugees from returning to their land.

Chin State is still heavily militarized with a reported 54 Myanmar Army camps in the area, although the ceasefire is holding. The Myanmar Army based in Matupi township seized farmland belonging to Chin subsistence farmers in Phaneng village, for "military use" in April 2012.

As a result, by allowing increased militarization in ceasefire areas to secure development projects, the Government is not adequately promoting and protecting the fundamental rights of the most marginalized communities, including women and girls, and addressing their humanitarian and socio-economic needs.

The Prohibition of Peaceful Protests against Land Expropriations: The authorities have criminalized people taking part in peaceful public protests against land expropriations by the Government.

At the site of the Letpadaung copper mine, run jointly between a Chinese military associated company and the military-owned Union of Myanmar Economic Holdings Limited, local villagers were forced to move from their land and homes. In 2012, a peaceful assembly at the mine site was forcibly broken up by security forces who used white phosphorous against demonstrators. Protesters were denied the right to free assembly and subsequently arrested and imprisoned. In December 2014 a local farmer Daw Khin Win was killed by a bullet fired by the police.

Recommendations

1. Ensure that land reform, including the final National Land Use Policy and any new land legislation, fully recognizes customary land tenure rights throughout the country and provides a mechanism for resolving on-going and past land expropriations.
2. Ensure that people who do not have sufficient written documentation of the land they have traditionally used are not subjected to arbitrary land expropriations.
3. Address the problem of landlessness among rural people, including ethnic minorities, and the urban population. Ensure that any land expropriations do not result in landlessness.
4. Ensure that people living in Special Economic Zones and in other areas slated for development, including ethnic minorities, are not arbitrarily deprived of their lands and livelihoods.
5. Ensure that ethnic minorities living in ceasefire areas are not subjected to arbitrary land expropriations.
6. Permit people, including farmers, to organize and peacefully protest against land expropriations and other issues and ensure that they are not arbitrarily arrested for such activities.
7. Amend laws that permit the compulsory acquisition of land for use by private businesses for a wide range of purposes so that in the future, expropriation is only permitted in cases of necessary, proportionate, narrowly construed public interest, with strong procedural safeguards.

FREEDOM OF RELIGION OR BELIEF IN MYANMAR

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During the last UPR in 2011, 13 recommendations were made to the Myanmar Government concerning freedom of religion or belief. Of these, 3 recommendations were accepted by the Myanmar Government including “ensur[ing] that ethnic and religious minorities are granted fundamental rights and end[ing] discrimination against persons belonging to these minorities (Slovenia);” “ensur[ing] that ethnic minorities are granted fundamental rights and are enabled to enjoy their culture, religion and their language freely and without any form of discrimination (Poland);” and “promot[ing] interreligious dialogue and cooperation at the key local and national levels (Phillippines).” The 2 former recommendations have not only been ignored but more laws have been passed that discriminate against minority communities and limit freedom of religion or belief in practice. Violence, hate speech and discriminatory practices persist without government oversight. Furthermore, four dangerous bills that would restrict religious conversion and interfaith marriage, and population control among other things, have been passed through the Upper House of Parliament. These bills would institutionalize discriminatory policies and divide society further on religious lines.

Of the remaining 10 recommendations that were ‘noted’ by the Myanmar government, 5 were concerned with the protection of the Rohingya Muslim minority group including “[a]dapt[ing] the Citizenship Act of 1982 in order to put an end to the statelessness of the Rohingya population (Belgium);” and “[i]mmediately end[ing] violence and discrimination against members of ethnic and religious minorities, grant[ing] full citizenship rights to Rohingyas and end[ing] sexual violence committed against ethnic minority women (USA).” Not only have the Rohingya not been granted full citizenship, but their partial citizenship status has been stripped. As evidenced by the Rohingya fleeing Myanmar, this group has only been further disenfranchised.

Remaining Challenges and Emerging Human Rights Issues

Rohingya Muslims are facing discrimination and disenfranchisement based on their ethnic and religious identification. Most recently, this was exhibited in the exodus of Rohingya Muslims from Myanmar. In Rakhine State and beyond, mass demonstrations against humanitarian assistance for Rohingya have been implemented. While Rohingya were initially recognized as citizens, their national registration cards were taken away and replaced with white identification cards which grant partial citizenship rights including the possibility of naturalization. The white cards have since been revoked away as well. This identification card will be replaced by a green card, which will identify them as foreign resident citizens suppressing their ability to become full citizens. Rohingyas are not officially recognized by the current government and have been forbidden citizenship, leaving them stateless for generations because of the overly burdensome and narrow 1982 Citizenship Law.

Protections afforded to religious minorities by the government are inconsequential, while policies in direct opposition to religious freedom have been signed into law with grave consequences to individuals’ ability to practice freely:

- Anti-discrimination measures that exist in the Constitution do not actually apply to ethnic groups that lack government recognition, such as Rohingya Muslims.
- Religious persecution has been further institutionalized. The four ‘Race and Religion Bills’ bills have seen success in Parliament with three being passed into law. In practice, these laws would be divisive and enable the government to control interfaith marriages, religious conversions, childbearing and extra-marital relationships.

Remaining Challenges and Emerging Human Rights Issues

There is an intense need to create an inclusive socio-political environment. The anti-Muslim narrative has been propelled by ultra-nationalist movements and supported by governmental policies and practices. This movement urges the boycott of Muslim businesses and encourages interfaith marriage restrictions through social media, pamphlets, DVDs and other widely distributed promotional materials.

Active protection of groups facing violence and discrimination is imperative for free practice of religion or belief. There is a need for officials to intervene in conflict based on religion, although in clashes in Rakhine State and Mekhtila, authorities were either unable or unwilling to interrupt the mob-like attacks on religious groups and sites. In conflict-affected areas, resettlement after the destruction of homes and communities has been a slow or non-existent process, further disenfranchising minority religious groups.

Civic and religious participation of religious minorities are restricted:

- Senior government offices and military ranks are unofficially reserved for Buddhists. Muslims and Christians have been discouraged from enlisting in the military and are often unable to receive higher ranks if they do enlist. Local police in most regions lack religious diversity as they are primarily composed of Buddhists.
- Officials have censored Islamic sermons, ceremonies and festivals and denied permission to build new Mosques in some areas

Recommendations

1. Prohibit and prosecute hate speech and discriminatory practices that incite violence toward minorities;
2. Draft and enact national laws that uphold the international standards to protect and promote freedom of religion or belief;
3. Withdraw and/or repeal the ‘Race and Religion Protection’ Bills from Parliament and Law;
4. Ensure religious minorities have equal professional opportunities within the government;
5. Reform local police forces by recruiting officers of diverse ethnic and religious minorities, by training them in riot control, and by equipping them with non-lethal riot control gear;
6. Set up information response centers to disseminate accurate information so that small-scale conflicts do not escalate into full-scale violence;
7. Allow political parties, CSOs, NGOs, INGOs and journalists to access conflict areas to protect religious minorities; and
8. Refrain from restricting religious ceremonies, sermons and building of faith spaces.

PERSECUTION OF ROHINGYA MUSLIMS IN RAKHINE STATE

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For over thirty years, the government of Myanmar has denied citizenship rights to the Rohingya, a Muslim ethnic group of over one million who have been residing in northern Rakhine (Arakan) State for generations. Even more disturbingly, the government has denied them their fundamental rights as humans. Since the 1st Cycle Universal Periodic Review of Myanmar in 2011, discrimination, violence, and other forms of abuse against Rohingya and other Muslims in Myanmar have significantly increased despite Myanmar's internationally applauded steps toward democracy, creating not only a human rights tragedy in Myanmar but a humanitarian crisis in the region. Nonetheless, the Myanmar government continues to deny, as it did in the 1st Cycle Review, that any discrimination or abuse has taken place. In fact, government officials refuse to acknowledge that any people known as Rohingya even exist. In doing so, the government has denied Rohingya the right to self-identify and sought to escape blame for the human rights and humanitarian disaster that it has helped create.

Since 2011, violence between Rakhine Buddhists and Rohingya Muslims has led to the deaths of hundreds of Muslims and the displacement of thousands. The most severe and widespread violence occurred in June 2012 in Maungdaw, Sittwe, and other townships in Rakhine State and in January 2014 in the village of Du Chee Yar Dan. During these incidents, Rakhine Buddhist mobs attacked Rohingya community members and razed entire villages. Over 140,000 Rohingya and Kaman Muslims remain confined in internment camps within Arakan State, while others have fled to neighboring countries to escape violence and abuse, often dying or falling victim to traffickers in the process. Rohingya in Arakan State are subject to discriminatory and abusive policies, which place often prohibitive restrictions on Rohingya ability to travel, marry, have children, access health care, practice religion, or obtain education. Anti-Muslim sentiment is increasing throughout the country as evidenced by the growth of the 969 and Ma Ba Tha movements and by violence in 2013 outside of Mandalay and in other locations throughout the country. The government has taken little to no action to combat this trend or protect vulnerable communities.

Rights most commonly violated:

- Right to life
- Right to bodily integrity and safety
- Right to equal protection
- Right to be free from discrimination
- Right to religious freedom
- Right to education
- Right to access to justice
- Right to health care
- Right to be registered at birth
- Right to a livelihood
- Right to found a family
- Right to freedom of movement
- Right to marry
- Right to a nationality

Challenges

The Citizenship Law of 1982, which contains discriminatory provisions that distinguish between three classes of citizens and states that only certain ethnicities qualify as "nationals" guaranteed full citizenship, has been used in practice to revoke citizenship and other rights of thousands of Rohingya.

Thousands have been arbitrarily detained and mistreated by security forces.

Cases, Facts, Comments

In 1989, the government collected national registration cards, which were held by all citizens, from Rohingya Muslims and later distributed to them temporary cards, known as "white cards," which were never replaced with the citizenship scrutiny cards given to members of other ethnicities. In 2014, Rohingya were excluded from the census and parliament passed a law aimed at excluding holders of white cards from forming political parties and running for election. In 2015, the government announced the white cards would expire and began collecting them, leaving many without any form of identification at all. Recently, the government began issuing "green cards," the significance of which is as of yet unknown, but likely to include the further deprivation of Rohingya rights.

A notoriously abusive force known as NaSaKa, a border guard force made up of army, police, immigration, and customs officials, terrorized Rohingya residents of Arakan State until it was disbanded in 2013, but has been effectively replaced by a group known as MaKaPa, which resembles NaSaKa in membership and practices.

Authorities place restrictions on how and when Rohingya marry and how many children they can have.

Authorities enforce the restrictions with random spot checks on people's homes and jail those whom they deem to be not in compliance. These practices have led many women to attempt unsafe abortions or flee the country. Additionally, the discriminatory and oppressive Race and Religion Protection Bills have all either become law or are awaiting signature by the President. These laws, which contain provisions that restrict interfaith marriage, empower authorities to limit the birth rate of women, place burdens on conversion, and outlaw polygamy, are widely considered to be targeted at the Muslim community.

Rohingya children are denied birth certificates and other forms of documentation.

This lack of documentation has made it difficult, if not impossible, for parents to provide the requisite documentation needed to register for any kind of identification, let alone citizenship, and has prevented countless children from accessing many basic services, such as schooling and health care.

Through restrictions on travel and other repressive tactics, Rohingya are denied access to education, health care, livelihood, and religious practice.

Local authorities have written policies preventing Rohingya from being able to freely move between townships and outside of the state. Rohingya in IDP camps live in squalid conditions, are not allowed to travel, and are blocked from receiving humanitarian assistance such as food and health care.

Rohingya women are subject to rape and sexual harassment by state actors, who are not held accountable for their acts.

Starting in 2012, Rohingya university students living in Rakhine State have been prevented from returning to class, thus denying a generation of young people access to higher education.

In an attempt to escape dire conditions and abuse in Arakan State, over 100,000 Rohingya have fled the country, often falling prey to traffickers.

NaSaKa, a now defunct border guard force, had a well-documented history of raping Rohingya women. In the last year, WPNA has been informed of multiple instances of gang rape of Rohingya women by police officers in police stations in northern Arakan State along with other forms of abuse toward Rohingya women by military and other state actors.

The state has failed to protect Rohingya from violence and in many instances, directly participated in abuse. No state actor has been held accountable for abuses committed against Rohingya and investigation and prosecution of other perpetrators of violence and abuse have been severely inadequate.

Traffickers, at times in collusion with state actors, have extorted the fleeing Rohingya, placed them in perilous conditions, forced them into slavery, and subjected them to other forms of abuse. The plight of fleeing Rohingya came to international attention in May after thousands of Rohingya were discovered stranded at sea.

After investigating the violence in Arakan State in June 2012, the Myanmar National Human Rights Commission found that there were "no government abuses" and claimed all humanitarian needs were being met. In its investigation into the alleged killings of Rohingya in Du Chee Yar Dan in Arakan State in January 2014, it proclaimed that there was insufficient evidence to prove that the killings occurred, contrary to WPNA research and the results of a limited investigation by the UN.

Rather than taking action against ultra-nationalists advocating for religious violence, the government has instead imprisoned individuals, such as U Htin Linn Oo, who have advocated for tolerance.

Recommendations

1. Restore full citizenship rights of Rohingya. Eliminate requirements for citizenship that discriminate on the basis of race, religion, ethnicity or any other protected status. Remove burdensome documentation requirements that make it harder for individuals from remote areas, with little resources, or from backgrounds not deemed a "national race" to assert their citizenship rights.
2. Unequivocally endorse non-discrimination and the right of all individuals in Arakan State to equal protection of the law.
3. Provide and protect freedom of movement for Rohingya and other displaced or isolated persons.
4. End all official and unofficial policies burdening Rohingya right to marry and limiting the birth rate of Rohingya women. Reject—or repeal, if already passed—each of the "Race and Religion Protection Laws."
5. End impunity of state actors implicated in rape, harassment, killings, and other forms of violence against Rohingya. Investigate and prosecute alleged abuses and allow individuals to bring cases against perpetrators in civilian courts.
6. Ensure access to health care, education, and economic opportunity for Rohingya and Rakhine on a non-discriminatory basis.
7. Facilitate returns and resettlements of all displaced persons in accordance with international standards, on a voluntary basis, in a manner protecting those persons' safety and dignity.
8. Issue birth certificates to every child born in Myanmar.
9. Resume recognition of Rohingya as an ethnic group legitimately residing in Myanmar, including by recognizing Rohingya as a "national race" under the 2008 Constitution. Respect the right of Rohingya to identify as Rohingya.
10. Implement reforms of security forces—especially MaKaPa and Border Guard Police—and the justice sector to ensure they comply with international human rights standards, including by ceasing all forms of harassment against Rohingya immediately. Establish an independent monitoring body of all security forces and justice sector actors.

THE RIGHTS OF THE CHILD IN MYANMAR

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

Myanmar became a State Party to the Convention on the Rights of the Child (CRC) in 1991. During Myanmar First Cycle UPR in 2011, the government accepted recommendations aiming to improve the living conditions of children in the country, such as recommendations related to: addressing domestic violence, rape and other sexual abuses against children; fighting human trafficking; ending forced labour and child labour; preventing the use of child soldiers; demobilising and re-integrating child soldiers. However, what we can see, as civil society actors working on a daily basis in supporting the realization of child rights in Myanmar, is that the government has neglected and failed to implement the CRC and the first cycle UPR recommendations in practice. It has been reported and documented that young women and girls are subjected to rape by the State Army. Other forms of violence against children - especially toward the most vulnerable, such as ethnic minorities - are institutionalized in Myanmar. Child trafficking, forced labour, and military recruitment are continually common despite promised measures by the government to address the core causes. The ongoing failure to hold perpetrators accountable, including scant prosecution, has fostered a culture in which children in communities across Myanmar continue to suffer as a result of child rights abuses.

Challenges

Child Soldiers: The government has improved its efforts to reduce recruitment of children into armed groups. However monitors have not been given free and full access to areas controlled by ethnic minority groups in Myanmar. As a result, children are still recruited by the State army and non-State armed groups. Children's presence in military camps makes them targets for military attacks and puts their safety at risk. There is a lack of an institutional approach to resolve the issue of child soldiers in Myanmar.

Armed Conflict related Violence: Myanmar remains a heavily militarized country in which children still face indiscriminate violence. Children risk deadly harm due to exposure to exploding landmines, violence from non-State armed groups, and direct attacks by the military on children and other non-combatants.

Sexual Assaults: Girls are often victims of rape, especially in conflict States dominated by ethnic groups. Despite the government signing The Declaration of Commitment to End Sexual Violence in Conflict, the military still systematically employs rape and sexual violence as weapons of war and members of the army are rarely prosecuted. Rape also carries the risks of HIV and unwanted pregnancies for adolescent girls.

Cases, Facts, Comments

The ILO has received 1,293 complaints regarding child soldiers since 2007. Cases are underreported and children who desert from the military face arrest, prosecution, and imprisonment. The government has failed to identify perpetrators of forced recruitment, naming only 217 offenders since 2007 and most military offenders are never disciplined.

Children have come to view violence in Myanmar as "part of life", depriving them of hope for their future and a lack of sense of safety in their own communities.

Most trafficking cases identified in 2013 by the Anti-Trafficking Task Forces (ATTFs) involved so-called "Kachin brides" who were trafficked to China to "marry" Chinese men. An estimated 80 % of all trafficking cases reported to the police in Myanmar involve women and girls that are trafficked over the Myanmar-China border as "brides". In 2013 there were 55 cases of forced marriage and 24 cases of forced prostitution of girls and women from Myanmar in China. The Kachin Women's Association Thailand (KWAT) also documented 24 trafficking cases between 2011 and 2013.

Challenges

Cases, Facts, Comments

Child Labour: Since the 2011 UPR session, Myanmar has become a State Party to the ILO Convention 182 against the worst forms of child labour. However, the ratification process has not been completed and the government has not ratified the ILO Convention 138, which regulates the minimum age for labourers. Furthermore, the major obstacle to child labour is that it has become institutionalized in Myanmar's economy and normalized in people's minds.

The 2014 Report released by the United ACT (United Against Child Trafficking) and Equality Myanmar identified the root causes of child labour: poverty, inaccessibility to education, accidents, health problems and deaths within the family had caused children to drop out from school and start to work instead. Although labour statistics are unreliable in Myanmar, reports suggest one-third of all children aged 7-16 are working to some extent. Myanmar ranks as the 7th worst country in the 2014 Child Labour Index – an assessment of the prevalence of child labour under age 15 and prevention efforts by governments.

Birth Registration: Parents are unaware of the importance of birth certificates or how to obtain them. Many children in rural areas do not know their birthdate, as registration systems are nonexistent at the village level. Human rights violations persist in the Rakhine State where Rohingya children lack legal protection and birth registration with a two-child policy being enforced in two Rohingya dominated townships.

Rohingya children are barred from social services and subjected to an increased risk of trafficking. 9-year old Anwar in Rakhine State explains: "If children are not in their family list they cannot stay in the village. My parents could not include my younger brother's name in their family list. That is why they had to leave the village. Some parents still live in the village without registering their children but they have to hide them. Or they have to register them with other parents. Like me. I am registered as the son of my grandmother".

Domestic Violence: Corporal punishment is widely used by adults against children as a means of discipline.

58% of respondents surveyed in Northern Shan State reported violence by their parents as the primary form of discipline. 90% had seen or experienced physical violence. 62% were exposed to corporal punishment on a daily basis.

Recommendations

Legal Framework:

1. Ratify the remaining Optional Protocols to the Convention on the Rights of the Child (CRC).

Child Soldiers:

2. Cooperate with non-State armed groups to immediately release all children, and with UN agencies to release the remaining children from the State Army, as well as to engage in a meaningful peace process with armed groups
3. Stop taking legal action against former child soldiers, labelling them as "deserters", and instead provide them with necessary support and assistance.

Armed Conflict related Violence:

4. Immediately investigate cases of violence – including torture and mistreatment – against children, particularly in conflict areas, and effectively punish any perpetrators.
5. Ensure that new child laws include articles for effective protection programmes that protect victims from retaliation and threats, and that establish a right to remedy, treatment, reparation and reintegration to the victims.

Child Trafficking:

6. Further identify the root causes of child trafficking and use a holistic approach to find solutions, including creating livelihood opportunities and cooperate and coordinate with civil society organisations, including children-led organisations, in all stages of anti-trafficking programmes.

7. Carry out effective anti-human trafficking measures, including cooperation with other governments in the region, as pledged in COMMIT.

Child Labour:

8. Immediately ratify ILO Convention 138 and enact domestic labour laws that comply with international standards to stop the use of child labour.
9. Conduct spontaneous workplace checks to investigate the use of child labour and take effective, unbiased action to enforce labour law.
10. Set up a formal body and complaint mechanism that coordinates with different government departments to handle and take action in child labour cases.

Birth Registration:

11. Set up a nationwide birth registration system that ensures all children, regardless of geographic area, ethnicity, religion, disability, or status, have access to birth registration.
12. Cooperate and coordinate with civil society and community-based organisations in the birth registration process to provide capacity building activities on birth registration and its appropriate procedures, to staff responsible for birth registration in communities, and launch innovative awareness-raising programmes for the public.

EDUCATION REFORM IN MYANMAR

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During Myanmar 1st Cycle UPR, some countries recommended Myanmar to invest in and ensure education for children and youth across the country; the Myanmar government accepted these recommendations and with the support of international partners launched a Comprehensive Education Sector Review (CESR) process in 2012. The CESR based in the Ministry of Education (MoE) worked to identify areas for reform and to contribute to new policies and legislation. New legislation was soon drafted and began to work its way through parliament. Early on, a number of issues were identified in the education reform process and elements of the legislation were opposed by university student groups and the civil society led-National Network for Education Reform (NNER). As legislation moved through parliament, student unions launched nation-wide demonstrations to push for amendments. Protests were brutally put down by the police and hired thugs while the controversial National Education Law was adopted in 2014.

In the 1st Cycle of UPR, some countries additionally raised concern over Myanmar's treatment of ethnic and religious minorities highlighting the right to education. These recommendations highlight non-discrimination as a key in Myanmar's democratization and reconciliation process. Although national laws in Myanmar state that basic education should be compulsory and free, the situation on the ground is much different, particularly in rural areas, for low-income families and in many cases for ethnic and religious minorities.

During the 2011 UPR session, Myanmar was recommended additional to "accelerate the effective implementation of the National Plan 2010-2012 on persons with disabilities including providing them with employment opportunities".

One critical solution to Myanmar's challenges to universal and free basic education is increased public spending. As a percentage of the total budget spending, budgeted spending for education was 11 % in the fiscal year 2012/2013. However, as a percentage of Myanmar's GDP that year, it only amounted to 1.46 %, which is among the lowest public spending in the world. A total of 35.62 %, on the other hand, was reserved for the military in the same fiscal year.

New Emerging Challenges

Lack of Access to Education for Rohingya Muslim Children in IDPs Camps: Since the 1st Cycle UPR in 2011, communal violence, predominantly associated with attacks on Rohingya Muslim communities has spread through Rakhine State. Predominantly Rohingya IDPs remain in camps with a multitude of challenges to access education. While longstanding policies of the government against the minority group put them at an existing disadvantage, restrictions on movement and other conflict related controls placed by the government further limit the educational rights of the Rohingya.

Cases, Facts, Comments

The United Nations Office of the Commissioner for Humanitarian Affairs (UNOCHA) estimated in August 2014 that 3,500 primary school-aged children lived in camps "without any access to education" and that an additionally 28,000 children in other parts of Rakhine State required support. Many Rohingya families have been forcibly relocated to segregated camps, where no schools for Rohingya children are available. Moreover, local authorities in Rakhine State attempted to adopt the Rakhine State Action Plan in 2014. It states that only children with birth certificates have a right to enrol in schools. As the plan also would instate a two-child limit on Rohingya families, children born to exceed this limit will be denied birth certificates and thus access to basic education. Thousands of Rohingya university students were not permitted to continue their studies in Rakhine State after the start of the conflict. Following repeated petitions to the government they still are not permitted to return to their studies or to transfer to universities outside of the state.

Ongoing Challenges

Myanmar does not formally recognize the existing educational structures, policies and community-based service provision in ethnic areas and in the refugee camps. Consequently, the government views them as unrecognized educators putting them at risk of arrests by the authorities for their legitimate work. Diplomas and certificates are also unrecognized, endangering the livelihoods of those who were educated in the IDP and refugee camps. The Burma Government has not proposed durable solutions for refugee and IDP students.

Cases, Facts, Comments

Approximately 33,000 students who are taught in 87 basic education schools throughout the nine refugee camps along Thailand-Burma border remain without a government recognized diplomas and certificates. The education services provided in refugee camps are unique and are not aligned to the education system of Myanmar, making it increasingly more difficult for students to successfully pass entry exams.

Low access to education services and poor quality of education resulting predominantly from underfunding by the government of Myanmar remains a critical challenge to education countrywide. Myanmar's schools are poorly equipped and understaffed. High student/teacher ratios at the primary and secondary level persist around the country. University and other tertiary education programs are commonly out-dated and do not respond to the needs of the domestic labour market or provide students with crucial knowledge about global issues.

According to the 2014-2015 Global Competitiveness Index, by the World Economic Forum (WEF), Myanmar was ranked 137 out of 144 countries based on the quality of primary education. The Education For All (EFA) report noted that more than 50% of 5,834 teachers surveyed in 2013 stated that there were not enough desks and chairs for their students. 40% of monastic schools surveyed lacked either chairs or desks for their students. Infrastructure is also a major obstacle for free, universal education for children in Myanmar: the 2014-2015 Global Competitiveness Index (WEF), ranked Myanmar 140 out of 144 countries, based on its transport infrastructure, and 134 based on the quality of the roads in Myanmar.

Ongoing Challenges

Educational disparities resulting from economic inequality remain a key issue in the Myanmar education system. Children from poor families often have less access to education, live further from schools and experience higher drop-out rates. While education is cited as universally available and free, families are often expected to pay for school meals, teaching materials, uniforms and even teachers' salaries and the building and maintenance of schools, which leads to high drop-out rates. Many students drop out of school because they are unable to afford these items and/or must work to feed their families.

Educational inequalities remain for ethnic and religious minorities: Ethnic minority areas have lower quality schools and lower access to education services. Furthermore, religious minorities, predominantly Muslim and Hindu, experience a range of structural barriers to access quality education at the primary and secondary levels and to access educational opportunities at the tertiary level.

Authoritarian teaching methods persist at all levels of education: Social hierarchies based on age and social status, among other factors, are further reinforced in classrooms in Myanmar.

Policy and decision making throughout military rule have been highly centralized, senior military leaders providing direction and vision rather than education professionals: Those lower in the hierarchy are held accountable from their superiors and are expected to follow orders coming down from the top. Authoritarian patterns of operation put forth considerable barriers to change from the ground up.

Education in Myanmar has historically been used by the military government as a tool for assimilation, particularly in outlawing the use of local languages: Officially Burmese is the language of instruction. While some space has been made for the integration of local languages, the language of instruction in schools is Burmese which disadvantages children whose mother tongue is not Myanmar.

Children with disabilities continue to be disadvantaged in Myanmar's education system: Most children with disabilities are excluded from the public school system and those that join the system face a range of social and structural forms of discrimination finding few systems to support their needs. Few private, specialized schools exist for children with special needs.

The Burma Army has escalated their attacks against the KIA by using airstrikes and helicopter gunships during an attack in late 2012 and early 2013. The war against KIA, Myanmar National Democratic Alliance Army and Ta'ang National Liberation Army in northern Burma has led to the displacement of over 120,000 people. Burma has seen some of the heaviest fighting in decades since President Thein Sein's government came to power in 2011 and began its discussions towards a Nationwide Ceasefire Agreement.

Net enrolment rates at the primary and secondary level show drastic inequalities when disaggregated by state/region. Ethnic minority states generally show lowest enrolment rates. Disparities exist further when data is reviewed by townships within each state/division. As an illustration, access to early childhood care and education (ECCE) at nursery schools varies a lot between different States and Regions in Myanmar. For example, ECCE services, though at times some states exceed 60% enrolment, were only accessible to 3.5 % of children in Rakhine State in 2013. Civil society groups continue to receive reports of Hindu and Muslim persons being denied their right to obtain citizenship documentation and thus inhibiting equal access to education. Civil society groups from ethnic and religious minorities for decades have cited the removal of ethnic and religious minority history and culture from textbooks. Ethnic Burman/ Buddhist male figures and corresponding narratives dominate history and social science content.

Teaching methods at all levels of education focus on rote learning and repetition. Students are not encouraged to question information they are provided with, or to develop skills in critical thinking, analysing or problem-solving.

While the government has initiated educational reforms since 2012 including much needed decentralization, education decentralization in practice has resulted in responsibilities being moved from higher to lower levels while decision-making power remains at the top. Education remains more effectively controlled from the political center than it had been during the military era.

The ethnic groups that live in Burma/Myanmar possess distinctive national, cultural and linguistic identities. However, the teaching of ethnic languages in the government school system has been prohibited since 1962, and even though changes are being introduced (e.g. the production of early grade reading materials in several ethnic languages), the policy largely remains in place today.

The Ministry of Education reported that only 2,250 disabled students were enrolled in government-run mainstream or specialized schools in 2012, although nearly half a million school-aged children with disabilities are estimated to live in Myanmar. In 2012, there were only 15 specialized schools, of which four were government-run, and seven vocational training schools for disabled children, of which three were government-run. Only 300 students with intellectual disabilities are annually accepted in government-run schools. 60% of persons who are deaf have never attended school. Amongst persons with disabilities only 2 % have attended high-school. In 2012, only 47 students with disabilities were enrolled in high-school. Research has also found that girls with disabilities are particularly vulnerable to sexual violence, even in schools. Many families cannot afford to take these cases to court, leading to impunity for such crimes. Instead, families have resorted to extreme measures such as forced sterilizations to prevent unwanted pregnancies.

Recommendations

1. Increase the education sector budget to 20 % of the national budget, or 6 % of GDP.
2. Decrease the centralization of the education system and change the curriculum and teaching methodology in order to develop children's intellect.
3. Ensure free and compulsory education up to secondary school through effective laws.
4. Enact effective programmes and laws that ensure inclusivity of all children with disabilities in Myanmar's schools.
5. Integrate non-formal education into national strategic planning regarding the education sector.
6. Ensure access to education for Rohingya Muslim Children and Rakhine on a non-discriminatory basis.

WOMEN'S RIGHTS

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

The Government of Myanmar is responsible for ensuring the human rights of women and girls as part of its obligations under the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and Security Council Resolutions (SCRs). Out of a total of 197 recommendations made to the Government during the 2011 UPR, only nine—a mere 4.6%—made any direct reference to the rights of women reflecting the absence of women from the UPR process rather than the absence of women's issues. The Government accepted only seven recommendations, which related primarily to eradicating all forms of violence against women and bringing its perpetrators to justice, as well as to strengthening domestic laws to ensure gender equality. However the Government has failed to implement any of these seven recommendations.

Summary of Challenges

The failure to make progress on Cycle 1 UPR Recommendations stems largely from entrenched structural barriers and a pattern of human rights abuses that have remained unchanged since 2011. Threats to women's equality exist against an unchanged landscape shaped by a deep history of patriarchy and decades of oppressive military dictatorship. Today, these legacies remain very much alive in the form of fundamental defects that impede genuine reform in all aspects of rule of law, including legal structures guaranteeing true gender equality. Moreover, since 2011, limited democratic reforms in Myanmar have not improved women's rights or made meaningful strides towards ensuring gender equality.

It is important to note that gender cuts across all human rights challenges in Myanmar and that every issue must also be looked at from a gender perspective. This factsheet summarizes some of the major challenges to ending gender based discrimination and achieving substantive gender equality in Myanmar, but is by no means exhaustive. Major challenges to women's equal rights include:

1. Sexual violence in the conflict against ethnic minorities;
2. Barriers to access to justice for violence against women;
3. Gender discrimination embedded in law.
4. Gender impact of displacement;
5. The lack of women in political life and the peace process;
6. Socio-economic and humanitarian needs of women and girls in marginalized rural communities.

Challenges

Sexual Violence in Conflict against ethnic minorities: The Government has failed to meet the promises made during the 2011 UPR to prosecute and punish perpetrators of sexual violence, adopt legal and judicial reforms to guarantee access to justice for women affected by violence, and undertake a comprehensive investigation into crimes of sexual violence by the military and provide reparations to victims. In so doing, the Government has violated its obligations under SCR's on Women, Peace and Security (WPS) and CEDAW, as well as its commitments as a signatory to the General Assembly's Declaration of Commitment to End Sexual Violence in Conflict. It should be noted that the Constitution guarantees impunity for military perpetrators of these crimes (see factsheet on Impunity and the Right to a Remedy). Furthermore, contrary to its obligations under international law, the Government continues to allow survivors and women human rights defenders (WHRDs) to face intimidation and threats.

Barriers to Access to Justice for Violence Against Women: The Government accepted several recommendations during its 2011 UPR with respect to ensuring access to justice for victims of VAW. The majority of these recommendations focused on the need to amend domestic laws related to VAW and to reform the judicial system to ensure its independent ability to administer justice. Despite accepting these recommendations, the Government has not made progress toward ensuring access to justice for victims of sexual violence. Myanmar has no specific law criminalizing domestic violence, no comprehensive laws to prevent violence against women or sexual harassment and no law allowing victims to obtain restraining orders against abusers. In addition, deficiencies in Myanmar's outdated, colonial-era laws such as the Penal Code, the Code of Criminal Procedure, and the Evidence Act, present substantial obstacles to addressing violence against women. The Government's failure to take adequate steps to eradicate and ensure accountability for VAW violates its obligations under the UDHR and CEDAW.

Cases, Facts, Comments

Since the 2011 UPR, human rights groups have documented 73 crimes of sexual violence by the military in Kachin State, Karen State, Mon State, Chin State, Shan State, and Karenni State, resulting in the deaths of 20 women and girls. Rates of prosecution for these crimes remain extremely low. The case of Sumlut Roi Ja is particularly notable here, given the attention the case garnered by the UN Special Rapporteur during 2012-13. Despite her family pursuing the official judicial process to obtain redress, the whereabouts of Sumlut Roi Ja is still unknown. Incidents of sexual violence continue in these areas, not least the rape and murder of two volunteer teachers in northern Shan State by military personnel in January 2015.

The Government has failed to follow through on its promises and obligations to address VAW. Since 2011, the Government has pledged to develop a comprehensive "Anti-Violence against Women Law," but to date only half of its 20 proposed chapters have been drafted. In fact, the Myanmar Parliament unanimously agreed to urge the Government to submit the law for legislative consideration in order to spur the Government to action, but thus far no law has been submitted.

Gender Discrimination Embedded in Law: During the 2011 UPR, the Government accepted recommendations to incorporate its international human rights law obligations into domestic legal systems, including eliminating discrimination against women under CEDAW. A critical first step towards the implementation of the Government's obligations to eliminate discrimination against women is the adoption of a legal definition of discrimination against women, in conformance with CEDAW, within the national Constitution or other appropriate legislation. The Constitution contains some provisions regarding equality but fails to provide a comprehensive definition of discrimination as required by CEDAW and includes other provisions that discriminate against women (please refer to the factsheet regarding Myanmar's 2008 Constitution for a fuller discussion of these issues).

Displacement – IDPs and Refugees: Ongoing conflict across Myanmar continues to displace women and girls. Contrary to its commitments under international law, the Government has not instituted any mechanisms to protect displaced women and girls, and has denied humanitarian assistance to communities affected by conflict which hinders the provision of basic services. In addition, the Government has failed in its promise to include women in consultations about repatriation, imperiling their security and livelihoods, and leaving unaddressed risks specific to women.

Women's Political Participation – Public Life and Peace Talks:

Despite Government claims of progress since 2011 towards free and democratic political processes, women in Myanmar continue to face fundamental barriers to equal participation in public and political life. These barriers include both explicit and implicit restrictions on women's participation in the formulation and implementation of public policy, and their right to hold public office and perform all public functions at all levels of government on an equal basis with men.

The lack of women's political participation is particularly evident in ongoing peace negotiations. The Government-initiated peace dialogue has excluded women at every level, failing to meet commitments made under international law and during the 2011 UPR. By marginalizing the issues faced by women and girls, the Government has failed to live up to its promises to strengthen gender equality, ensure the humanitarian and socio-economic needs of ethnic groups, and build a sustainable democratization and reconciliation process. In contravention of its commitments under SCR on WPS, the Government has failed to consult the wider community to ensure that women's perspectives are included in both discussions and implementation plans, and references to women and gender are entirely absent from ceasefire agreements.

Socio-economic and humanitarian needs of women and girls in marginalized rural communities: By overseeing an increase in the cultivation, production, and use of drugs in ethnic communities since 2011, the Government has failed to meet promises made during the 2011 UPR to address socio-economic inequality and bridge the development gap between rural and urban areas of the country. The Government has continued to incentivize the military to partake in drug-related activities in exchange for fighting rebel groups, severely limiting livelihood opportunities for women in affected communities, and breaking its promise to address their humanitarian and socio-economic needs. These financial pressures have driven different types of violence against women, and resulted in an increase in migration and human trafficking.

Recommendations

The government has failed to introduce sufficient protections for women, including legislation to prosecute perpetrators of violence against women; has denied humanitarian access to conflict zones; and has marginalized the perspectives of women in political life and the peace process. 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 2011 UPR commitments and failed to meet its obligations under international law. Therefore, the Government should:

1. Deliver on promises made during the 2011 UPR to end sexual violence, and ensure the prosecution and punishment of perpetrators from the police, military and other authorities.
2. Enact new legislation guaranteeing comprehensive protection from and redress for all forms of violence against women, including emotional, economic, domestic and sexual violence, and marital rape, as well as sexual assault and sexual harassment.
3. Adopt a legal definition of discrimination against women that is in conformity with CEDAW, either by amending the 2008 Constitution or through anti-discrimination legislation.
4. Ensure that the needs and risks specific to women and girls are addressed at every stage of conflict, including through the provision of support for those affected by livelihood insecurity, trafficking, and sexual violence.
5. Allow unhindered access to those providing humanitarian assistance to internally displaced persons, and uphold the commitment to provide basic services – notably access to healthcare, education and legal services – to all, irrespective of ethnicity.
6. Ensure women's equal and full participation in all aspects of political and public life, including through the use of temporary special measures, such as quotas.
7. Ensure the equal and full participation of women at every stage of ceasefire and peace negotiations, including by appointing women as negotiators, establishing a ceasefire monitoring mechanism which includes women at every level, and ensuring that women are included in the planning, implementation, and monitoring of Disarmament, Demobilisation and Reintegration processes.
8. Take immediate steps to eradicate the drug trade, including by ordering the military to cease all involvement in the cultivation, production, and distribution of narcotic and psychotropic substances in ethnic communities, by prosecuting all those invested in the drug trade and providing alternative means of livelihoods in communities affected by the drug trade – including access to markets for agricultural produce and vocational skills training.

Current existing and proposed national legislation in Myanmar raise substantial gender inequality concerns. A particularly troubling example is the recently passed set of so-called "Laws on the Protection of Race and Religion" which will deeply entrench widespread gender-based discrimination, in clear violation of the Government's international obligations, under CEDAW and elsewhere, to eliminate discrimination against women. Two of the proposed laws, the Buddhist Women's Special Marriage Bill and the Population Control Healthcare Bill, particularly threaten women's fundamental human rights and would embed negative and harmful gender stereotypes into law.

Also of concern are antiquated laws that are not in conformity with Myanmar's obligations under international law, including the 1861 Penal Code. For example, abortion is criminalized under the Penal Code, except in cases of life endangerment, which violates the Government's obligations under CEDAW and, in the case of women who become pregnant as a result of conflict-related rape, the Geneva Conventions and Security Council Resolutions 2106 and 2122.

The military's targeting of civilians in ethnic communities remains indiscriminate, resulting in restrictions on freedom of movement which breaches Myanmar's obligations under the UDHR. In the event of migration, many girls are unable to access education, health care and basic services. Moreover, IDPs – not least in the Palaung areas of Shan State – have little or no access to legal mechanisms, including those that would safeguard them from gender-based violence during displacement, contrary to the Government's obligations under CEDAW. Furthermore, in 2013, human rights groups reported that whilst international aid agencies have been allowed access to areas under Government control in conflict zones, they have been restricted from accessing and assisting over 70, 891 IDPs in Kachin controlled areas.

As of February 2015, women accounted for only 4.8% of combined seats in the upper and lower houses of the national legislature (the Amyotha Hluttaw and the Pyithu Hluttaw, respectively). Furthermore, as of June 2014, women only made up 2.8% of seats at state and regional government levels, 0% of administrators at township levels, and only 0.1% of village heads. Moreover, only two out of 33 federal ministers are women. Finally, women hold only 2 seats out of 166, or 0.01%, of the military's constitutionally-mandated 25% quota in Parliament.

With respect to the peace process, the Government has failed to meet its commitment to guarantee unity, peace and stability by denying women a role at every stage of the peace process. The Government has prioritized cessation of fire at the expense of substantive dialogue between conflicting parties, which has protracted conflict, and – given that negotiations take place entirely between men – contributed to the marginalization of women in political and public life. Furthermore, the Government has not provided support to civil society organizations working in ethnic communities to promote women's leadership development and awareness of women's human rights. Therefore, the Government has failed to meet its commitments under Security Council Resolutions on Women, Peace and Security, including Security Council Resolution 2122.

The expansion of the military into areas formerly under the control of the Kachin Independence Organization has driven production among local farmers, and resulted in a proliferation in violence faced by women. The drug control strategies of the Government are not gender sensitive, and have driven domestic violence, abuse and increased pressure on women to support the household in the absence of any assistance from the Government. The Government has failed to meet its obligation to address the difficulties faced by women in these communities – specifically, the pressure to bring income into the family home in an environment of few livelihoods opportunities – which has resulted in many pursuing work in illicit activities, including the drug trade.

SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION (SOGIE) RIGHTS

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

The 1st Cycle UPR in 2011 did not include any recommendations related to sexual orientation and gender identity (SOGI) issues. The 2008 Constitution does not prohibit discrimination on the ground of sexual orientation or gender identity. Rather, many of the laws left over from British rule are discriminatory. Under Section 377 of the Myanmar Penal Code of 1860, consensual same-sex conduct is a crime. In addition to Section 377, Myanmar law enforcement officials use various laws, particularly Myanmar's 1945 Police Act, to intimidate, humiliate, persecute and violate the fundamental rights of LGBTI (lesbian, gay, bisexual, transgender, intersexual) individuals.

Myanmar's non-existing supportive legal framework, failure to ratify international treaties, and societal misconceptions based on cultural beliefs and traditions, contribute to violent acts and discrimination against the LGBTI community.

Rights most commonly violated:

- Right to bodily integrity and safety
- Right to equal protection
- Right to be free from discrimination
- Right to freedom from arbitrary arrest
- Right to access to justice
- Right to found a family
- Right to access public spaces
- Right to liberty and security of person
- Right to highest attainable standard of mental and physical health
- Right to freedom of peaceful assembly and association.

Challenges

LGBTI individuals victims of Police Abuse & Arbitrary Arrests for "Public Nuisance" under the National Police Act, 1945:

Consensual same-sex conduct has been a crime in Myanmar since 1860 under section 377 of the Myanmar Penal Code of 1860 (India Act XLV). Although incarceration on the basis of section 377 is now rare in respect of consenting adults, Myanmar law enforcement officials continue to perpetrate discriminatory and abusive acts against LGBTI people through various other indirect laws, particularly Myanmar's Police Act 1945.

The systematic and continually violent abuses perpetrated against LGBTI individuals at the hands of law enforcement officials constitute severe violations of their fundamental human rights. Indeed, these human rights abuses include: arbitrary arrest and detention, intimidation, threats, physical and sexual assault, and denial of health services.

Transgender Women are punished by the Police for expressing their gender identity: Transgender women are labeled "disruptive" by law enforcement officials. Viewed as such, they cannot freely express their gender identity without being seen as unlawful, and thus worthy of punishment. The clothes they wear and the way they act are deemed "immoral", and they are being arbitrary arrested, forced to "act like a man", and beaten.

Police abuse is further being exacerbated by high level officials encouraging the arrests of transgender women and their placement in detention at police station in order to be educated by law enforcement officers. This political support is being translated into practice by violent acts against transgender women.

In many instances, members of the LGBTI community are economically disadvantaged and occupationally confined to the beauty and sex industries, further putting them at the fringes of society.

Cases, Facts, Comments

All the human rights violations cases against the LGBTI Community provided below have been documented by the Myanmar LGBT Rights Network, Equality Myanmar and Color Rainbow, between 6 July 2013 and 19 August 2015:

Case 1: On July 6, 2013, twenty plain-clothes policemen arrested ten gay and transgender women at Mandalay moat (a common gathering place for LGBTI people) and subjected them to verbal, sexual, and physical abuse. The Mandalay police maintained that the arrests were due to "public disturbances." That year, Equality Myanmar led an ultimately unsuccessful attempt to sue the officers believed to be responsible.

Case 2: A 37-year old transgender woman and spiritual medium living in the Myoma Quarter of Kyauk Pa Daung, was arrested for a violation of 1945 Police Act Section 35 at Amarapura Township. The Police took her into custody for one night, where they forced her to strip and shout, "I am a man." She had to pay a bribe to be released. She believes that the police will not harass her if she pays enough bribe money.

Case 3: A 22-year old transgender woman living in Ma Yang Gone Township of Yangon was arrested while walking along Inya Lake after coming back from a festival. She and her three friends were taken to the police station where officers rubbed and squeezed her breasts and made them to wear men's clothing. The officers then forced her to perform oral sex. After three days at the station, the women were taken to court and sentenced to one month of imprisonment under Rangoon Police Act 30. They were not allowed to hire a lawyer.

Case 4: A 25-year old transgender woman was arrested by the police and forced to stay at the police station overnight. While in custody, she was ridiculed and shamed in front of other prisoners and was forced to strip in front of everyone. After paying a bribe, she was released. She was aware that many LGBTI people face discrimination and violence committed by the police under the 1945 Police Act Section 35 and that she would have had to pay a bribe to be set free.

Challenges

Cases, Facts, Comments

Case 5: A 35-year old transgender woman living in San Chaung Township of Yangon was arrested by five police officers and kept at the police station for ten days. She was forced to sleep near the toilet or in the storeroom. Police pressured her to take off her clothes and told her to act like a man and to change her female appearance. The respondent and her friend were later taken to a banana plantation and forced to perform oral sex and anal intercourse. They refused at first but were slapped and raped by the five police officers.

Case 6: A 19-year old transgender woman living in the Aung Chan Thar Quarter of Monywa, was approached by police officers while talking with her friends. The police officers were drunk, and forced her and her friends to perform oral sex. When they refused, they were struck on the head. When they tried to run away they were followed and beaten. The respondent bled and was knocked unconscious. One of her friends came to help, but three officers apprehended her friend and raped her. She is now afraid to go out at night and has stopped wearing make-up.

Case 7: On 19 August 2015, during the 13th Mandalay Region Parliamentary Session, Daw Tin Tin Mar, an MP from Chanayetharzan Township, raised a question to the Mandalay Region Government by asking what kind of action is being taken against gay people who assume they are women and who have been acting inappropriately. Dr. Myint Kyu (Minister, Mandalay Region) responded to the question by saying: "The existence of gay men who assume they are women is unacceptable and therefore we are constantly taking action to have the gays detained at police stations, educate them, then hand them back to their parents. I would like to respond to the MP who raised her concerns that we will be including in our operations the area she mentioned as a special case."

This recent case is of serious concern as it targets transgender women who have not committed any crime but solely based on their gender identity and expression. The pledge given by Myint Kyu to Parliament on 19 August 2015 sets the scene for continued abuse of Mandalay's LGBTI community at the hands of police, as "educating" transgender women at the police station does not contribute to the rule of law process, but will only cause negative impacts on them.

Bullying and Humiliation in Schools: Adults and teachers often fail to intervene in cases of bullying that are especially directed at children with disabilities and those in the LGBTI community

LGBTI students have been forced to strip off their clothes in front of others in school, spat at, and told to change into clothes to look like "a real man".

Recommendations

1. Ratify the key international human rights treaties including, but not limited to, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), without reservation.
2. Amend section 377 of the Penal Code to apply only to instances of non-consensual sex.
3. Amend section 348 of the Constitution to include sexual orientation, gender identity, and gender expression as grounds for non-discrimination.
4. Enact comprehensive anti-discrimination laws that prohibit discrimination on the grounds of sexual orientation, gender identity and gender expression.
5. Enact laws that recognize same-sex marriage.
6. Amend the Peaceful Assembly and Peaceful Procession Act Law, in particular the requirement for prior permission, so that civil society groups can carry out their activities without interference and harassment.
7. Stop abusing of the use of the Myanmar's 1945 Police Act, to intimidate, humiliate, persecute and violate the fundamental rights of LGBTI (lesbian, gay, bisexual, transgender, intersexual) individuals.
8. Stop any operation targeting the LGBTI Community, in particular gay people and transgender women, with the objective to detain and educate them, even though they have not committed any crime.
9. Provide awareness-raising programs for law enforcement officials on issues related to discrimination against people with different sexual orientation and/or gender identity.
10. Establish a complaint mechanism for LGBTI people to report when they face arbitrary arrest, harassment, physical and sexual abuse, and other human rights violations, and to take action against perpetrators.



The Burma-Myanmar UPR Forum