

Joint submission to the UN Universal Periodic Review, March 2015

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## **Coalition of Indigenous Peoples in Myanmar/Burma**

All Arakan Students' Youths' Congress (AASYC), Arakan Rivers Network (ARN), Bago Yoma Care, Chin Human Rights Organization (CHRO), Karen Environmental and Social Network (KESAN), Karen Human Rights Group (KHRG), Karen Lawyer Network (KLN), KMSS-Loikaw, Karen River Watch (KRW), Lisu Youth Development Organization, Myanmar Indigenous Peoples/Ethnic Nationalities Network (Myanmar IP/EN Network), Myay Latt Community Forestry (Magwe Region), Mon Multi-media Institute (M3I), Mro Youth Action Group (MYAG), Mon Youth Forum (MYF), Mrauk U Environmental Conservation Association, Naga Students and Youth Federation-Myanmar (NSYF-M), Naga Students and Youth Federation-Yangon (NSYF-M), Pantanaw Karen Literature and Culture Committee, Pantanaw Karen Youth (PKY), Promotion of Indigenous and Nature Together (POINT), SHANAH, Youth Circle (YC), Won-Lark Rural Development Foundation (Arakan).

## EXECUTIVE SUMMARY

- This joint submission by the Coalition of Indigenous Peoples in Myanmar/Burma focuses on the collective rights of indigenous peoples, particularly the thematic areas of land, territories, and natural resources, development, and language and cultural rights, with militarization, self-determination, and free, prior and informed consent (FPIC) as cross-cutting issues.
- Section A describes the context of indigenous peoples in Myanmar/Burma. It highlights the lack of understanding about the internationally-recognised concept of indigenous peoples, and lack of accurate information about the number of indigenous peoples in Myanmar/Burma.
- Section B outlines the normative and institutional framework of the State under Review (SuR) as it pertains to indigenous peoples. It focuses on the policy and legislative framework relating to land use, national bodies with a mandate to address the key issue of land grabbing, and the current peace process in Myanmar/Burma.
- Section C draws on human rights documentation collected by member organizations of this coalition, and highlights how control over land and natural resources for development projects in indigenous peoples' territories is driving violent conflict and related human rights violations. It addresses issues of widespread land confiscation, negative environmental, social, and health impacts, and threats to traditional and sustainable livelihoods from development projects. It also details how militarization, displacement, and oppression have violated language and cultural rights.
- Section D puts forward recommendations to the government of Myanmar/Burma.

### A. INDIGENOUS PEOPLES IN MYANMAR/BURMA

1. 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. However, Myanmar/Burma is considered one of the most ethnically diverse countries in Southeast Asia.
2. The government recognizes eight broad ethnic categories: Kachin, Karen, Karenni, Chin, Mon, Burman, Arakan, and Shan.<sup>1</sup> Since independence from British colonial rule in 1948, the non-Burman ethnic groups in Myanmar/Burma have strongly asserted their distinct identities as 'ethnic nationalities', fighting for self-determination.
3. 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' people. 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.<sup>2</sup> The broad ethnic categories of Kachin, Karen, Karenni, Chin, 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.<sup>3</sup> To date, no census figures on the ethnic composition of Myanmar/Burma have been released.

4. The government claims that all full citizens of Myanmar/Burma are 'indigenous' (*taing yin tha*), and on that basis dismisses the applicability of the UN Declaration on the Rights of Indigenous Peoples (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. There is a need for a national-level dialogue to identify and recognize indigenous peoples in Myanmar/Burma, based on the international concept and the UNDRIP.<sup>4</sup>

## **B. NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE**

5. In terms of the rights of indigenous peoples, the government of Myanmar/Burma voted in favour of the UNDRIP in 2007. Myanmar/Burma has acceded to the Convention on the Rights of the Child (CRC), and therefore has obligations to uphold the rights of indigenous children.<sup>5</sup> In addition, Myanmar/Burma ratified the UN Convention on Biological Diversity, and has obligations to respect and protect traditional indigenous knowledge for environmental conservation by law and practice.<sup>6</sup>
6. 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.<sup>7</sup>
7. In 2012, the government passed the Farmland Law and the Vacant, Fallow, and Virgin Land Law, which established that any land not officially registered with the government can be allocated to domestic and foreign investors. These laws, together with the Foreign Investment Law and Special Economic Zone Law have effectively legalized and facilitated land grabs. Indigenous peoples are especially vulnerable, as they often do not have recognized government land titles, and they are not afforded protection for customary and communal land management, such as shifting cultivation.<sup>8</sup>
8. After criticism of these laws, the government established the Land Allocation and Utilization Scrutiny Committee (LAUSC) and released a draft National Land Use Policy (NLUP) for

consultation in October 2014. However, the consultation has been rushed, with limited participation, and this flawed process has resulted in the draft NLUP falling short of international norms and best practices.<sup>9</sup> It gives special privileges to business investors, which could spark more land grabs within the country.

9. 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.<sup>10</sup> 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.
10. The Myanmar National Human Rights Commission (MNHRC) was first established in September 2011 by presidential decree, and an enabling law was later passed in parliament in March 2014. However, the MNHRC is not impartial or independent of the government and does not operate in line with the Paris Principles. The majority of complaints received by the MNHRC concern land, but the body has been ineffective at investigating and resolving such complaints.<sup>11</sup>
11. In 2012, the Farmlands Investigation Commission (FIC) was established as a parliamentary body to investigate land grabbing in Myanmar/Burma. Its first report, submitted in March 2013, found that the military had forcibly seized about 250,000 acres of farmland from villagers, according to complaints received. However, the FIC lacks direct powers to resolve cases.<sup>12</sup>

### **Peace process in Myanmar/Burma<sup>13</sup>**

12. Since late 2011, the Myanmar/Burma government has signed preliminary bilateral ceasefire agreements with 14 major ethnic armed groups (EAGs) in the country.<sup>14</sup> However, in non-ceasefire areas such as Kachin State, 127 clashes were reported by the media in 2013. By comparison, over the same period 62 clashes were reported in ceasefire areas, in many cases linked to control over territory and natural resources.<sup>15</sup> Collectively, EAGs representing Myanmar/Burma’s indigenous peoples pressed the government for a Nationwide Ceasefire Agreement (NCA) and framework for political dialogue. Disagreements over the understanding and definition of ‘federalism’ as a framework for self-determination, to be included in the political dialogue, are an obstacle. There have only been limited public consultations about the process organised by some EAGs, and little in the way of public consultation organised by the government.
13. The various bilateral ceasefire agreements remain in effect, in principle although not in practice. Some of the bilateral agreements contain provisions for the protection of the

collective rights of indigenous peoples, but these important provisions have not yet been implemented.

14. For example, the 2012 preliminary ceasefire agreement between the Karen National Union (KNU) and the government agreed to recognize land title certificates issued by the KNU. Unlike the government's land policies, the KNU land policy protects customary and communal land rights, requiring FPIC for land transfer.
15. Three agreements signed between the Chin National Front (CNF) and the government in 2012 include provisions that require environmental impact assessments for all development projects, and FPIC for extracting natural resources.<sup>16</sup> There is also a provision to determine the terms of reference for implementing a system in which locals define their own development priorities.<sup>17</sup> In relation to language and cultural rights, there is a provision for the teaching of Chin languages at primary education level.<sup>18</sup>

### **C. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

16. The information presented in this section is not a comprehensive account of human rights violations (HRVs) in indigenous peoples' areas, but the cases are emblematic of patterns of HRVs in all indigenous peoples' areas across Myanmar/Burma.

### **LAND, TERRITORIES, AND NATURAL RESOURCES**

17. Indigenous peoples have the right to their special and important spiritual relationship with their lands, waters, and natural resources, and to pass these rights to future generations. They have the right to own and develop these lands and resources, in accordance with their traditions and customary laws. Indigenous peoples also have the right to be compensated when their lands, territories or natural resources have been confiscated, occupied, or damaged.<sup>19</sup>
18. In Myanmar/Burma, these collective rights are routinely violated. 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.
19. Under current legislation, IAs are not required, but environmental impact assessment (EIA) procedures are being drafted. When referring to IAs, this coalition recommends that these should include – but not be limited to – environmental (EIA), social (SIA), peace and conflict

(PCIA), and community health impact assessments (HCIA), as determined by local communities themselves.

## **Land Confiscation**

20. Militarization is closely connected with land confiscation. Although Myanmar/Burma's indigenous populations have reported growing numbers of land grabs in relation to recent harmful development projects, the majority of reported cases go back several decades, committed predominantly by the former military regime. These largely remain unresolved.
21. In Southeast Myanmar/Burma, 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.<sup>20</sup> Instead of seeking FPIC, in some cases, villagers have been misled into signing contracts relinquishing their land rights.<sup>21</sup> In a number of cases, community members have been forced to pay money to continue using the land, or hand over produce from the land to the confiscating authority, which is a form of forced labour.<sup>22</sup>
22. Land confiscation in Mon State significantly increased after the 1995 ceasefire with the New Mon State Party. Since then, 1,800 acres of land have been grabbed by the Myanmar/Burma Army, as recently as December 2014. Military land grabs are being driven by increased foreign investment and rising price of rubber.<sup>23</sup>
23. The Myanmar/Burma Army has consistently confiscated land, demarcated it as '*Tatmadaw* (Myanmar/Burma Army) Land,' and then refused access to the original occupants.<sup>24</sup> Since the January 2012 ceasefire between the Karen National Union and the Union government, indigenous peoples have seen an increase in militarization.<sup>25</sup> Land confiscation has occurred both 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 also confiscated 200-300 acres of villagers' farmland. In these cases, they do not allow villagers to enter into the area even though they have not implemented any projects on the land as of yet.
24. Chin State is still heavily militarized with 54 Myanmar/Burma Army camps in the area, although the ceasefire is holding. 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.<sup>26</sup> In June 2013, efforts by Chin villagers in Mindat township to appeal for restitution of lands confiscated in 1996 by Light Infantry Battalion (LIB) 274 were ignored.<sup>27</sup>
25. In December 2009, in Naga Mount village tract, Taw Oo (Taungoo) township, Bago Region, the government granted a 2,400 acre land concession to Kaung Myanmar Aung (KMA) Forestry Enterprise – a company with close ties to the former military government. An

estimated 50 small-scale farmers lost their land to the company. Even those with land titles had to give up their land, and though they were compensated, it was an unfair amount. Two villagers who refused to leave their land were sued by the company for trespassing, and others have reported intimidation and threats of violence by company personnel on night patrols near their farm houses. The company has plans to continue planting teak, and at least 100 more villagers are living in fear of losing their land.<sup>28</sup>

26. In February 2014, a court in Bago Region handed down prison sentences ranging from 6 months to 3 years with hard labour to 12 Asho-Chin subsistence farmers under Section 43 (a) of the 1992 Forest Law, after they protested against land grabbing. In 2008, the military government granted the National Resources Development Company, a business reportedly owned by a high-profile member of the ruling Union Solidarity and Development Party, 1,500 acres of farmland for a teak plantation. Approximately 100 acres was ancestral land belonging to the Asho-Chin subsistence farmers from Kyarinn village, whose families and lived and worked on the land for generations.<sup>29</sup> In 2006, an Asho-Chin community in Myay Latt village, Magwe Region was granted a 30-year community forest certificate to manage 70 acres of conserved natural forest and 30 acres of land for agro-forestry. In 2012, 30 acres of their community-managed area were confiscated for construction of the Shwe Gas Project's Myanmar/Burma-China oil and gas pipelines. The compensation offered by the company, based on calculations by the Forest Department, was far below market value. The community are currently bringing their complaint various national-level bodies to fight for proper compensation.<sup>30</sup>

### **Extractive Industry Projects**

27. Extractive industry projects in Myanmar/Burma are notoriously corrupt and commonly linked to human rights violations. Myanmar/Burma is currently a candidate country for the Extractive Industries Transparency Initiative (EITI), which would encourage reform across the mining, oil, and gas industries to meet global standards. However, indigenous peoples are critical that the Myanmar/Burma government is only using EITI as a way of attracting additional investment, and is not truly committed to transparency.
28. Since 2009, construction of the Chinese-Myanmar/Burma Shwe Gas project and Maday deep sea port and oil and gas pipeline have had negative impacts on the environment and indigenous peoples' fishing and farming livelihoods in Kyauk Phyu township, Arakan State. Local people have faced ongoing land confiscation with limited or no compensation for their losses. To date, it is unclear if IAs have been conducted, as no results have been made publicly available. In September 2013, 10 villagers from Maday island were convicted under Article 18 of the Peaceful Assembly and Procession Law, after protesting against the negative impacts of the Shwe gas project without official permission. A leading Arakanese activist sought permission to hold the protest on four separate occasions, but each request was denied.<sup>31</sup>

29. In December 2014, around 5,000 people demonstrated against a marble stone mining project known as the Nay Pu Taung project in the Arakan Roma (Yoma) mountain range in Taunggup (Taung Koke) township, Arakan State. A license was granted to Vietnamese company MYSICO by the Mining Research and Myanmar Investment Commission, and the project started in 2012. FPIC has not been sought from local communities, and there has been no consultation process.<sup>32</sup>
30. In Kyiakmayaw Township, Mon State, over the last five years, five different companies<sup>33</sup> with close ties to the Myanmar/Burma Army and government have been planning cement projects which would involve blast mining of limestone at Ni Don and Pyar Taung mountains, to be used in cement production at factories to be constructed nearby. To date, the projects have already been characterized by corruption, misinformation, and land confiscation.<sup>34</sup>
31. All five companies offered compensation that is far below the true market value. For example, Zaykbar Company is known to have offered villagers 350,000 kyat per acre for land this is worth 2.5-4 million kyat. Many villagers still have not received any compensation. The companies often used coercion to take land from villagers who did not fully understand their rights. Much of the land in Kyiakmayaw is known as “freehold” land, which is ancestral land that has been passed on from generation to generation. Pacific Link purposefully targeted land for acquisition for which people did not have written legal titles. For now, activity by these companies seems to have stalled for unknown reasons, and some villagers have returned to reclaim and cultivate their land that was taken. However a new company has arrived on the scene, Thailand’s Siam Cement Group, which plans to build a 3.7 billion USD cement factory in the area.<sup>35</sup>
32. The environmental impact of extractive industry projects, and the subsequent effect on local livelihoods, has been overwhelmingly negative. Due to river pollution from mining projects in Karen State, villagers are experiencing shortages of drinking and bathing water, death of livestock and a reduction in their ability to access local wildlife.<sup>36</sup> For example, In February 2014, D--- village, Waw Muh village tract, Dwe Lo Township, Mudraw (Hpapun in Myanmar language) District in Karen State, a Chinese company started a gold mining project at MeeTh’RooPoh River. This project resulted in the destruction of villagers’ land as well an additional loss of livelihood means as villagers were denied access to an area where they have traditionally panned for gold. Gold mining in Dwe Lo Township, on-going since 2006, has polluted streams and as a result, caused illness amongst those who use it as a water source.<sup>37</sup> Villagers have also reported serious health issues as a result of coal and stone mining projects in Noh T’Kaw (Kyainseikgyi), Kaw T’Ree (Kawkareik) and Kruh Tu (Kyonedoe) townships, Dooplaya District, Karen State, including skin diseases after bathing in polluted waters and respiratory diseases from breathing in fumes near mining projects.<sup>38</sup>
33. The Gullu Mual (Mwe hill, Mwetaung, in Myanmar language) nickel mining project in Tedim township, northern Chin State is a joint venture between China and Myanmar/Burma. Since 2013, community-based campaigns and demonstrations have taken place around the world against the nickel mining project in the area. It is estimated that at least 30 villages in the



surrounding areas of Gullu Mual would be affected by the project. Surveys conducted by Chin political parties in September 2013 found that local communities were expressing a new level of distrust in the Chinese companies involved in the project, citing a lack of transparency, accountability, and the absence of FPIC. In January 2014, the Chin State Minister of Forestry and Mines announced that companies permitted to extract natural resources in Chin State will be allowed to commence work only after signing a resource-sharing agreement with the State authorities. No further details have been made publicly available. The Gullu Mual nickel mining project is currently suspended, reportedly due to protests by the local communities.<sup>39</sup>

### **Logging Concessions and Deforestation**

34. Logging concessions and deforestation are frequently linked with militarization, dam projects, large-scale plantation projects and road construction. Deforestation from logging and large-scale plantations have made it difficult for local people to find thatch for housing and firewood, both essential to their sustainable ways of life.<sup>40</sup>
35. In September 2011 in G--- village, Ler Mu Lah sub-township in Mergui/Tavoy (Myeik) township in central Tenasserim Region (Tanintharyi), an oil palm company confiscated and deforested 700 acres of ancestral land next to the village in order to plant oil palm trees, without providing any compensation to the villagers.<sup>41</sup>
36. In Kanpetlet township, Chin State, teak logging concessions have been granted to Manawphyushin AK company, which has close ties to Kanpetlet Member of Parliament (MP) Thura Aung Ko, a former Brigadier-General in the Myanmar/Burma Army. In 2013, teak trees in the Yechawng and Lepung village tracts of Kanpetlet township were cut down and sold for profit by the company, without the FPIC of the local people or any benefit to their communities.<sup>42</sup> Paletwa township, Chin State, has a vast swath of forests with various kinds of hardwoods and other native flora and fauna. In 2013, soldiers from LIB 289 based in the area were illegally smuggling a hardwood known as ironwood (*xyliadolabrifformis* or *pyinkado* in Myanmar language) out of Paletwa for sale in Arakan State.<sup>43</sup>

### **DEVELOPMENT<sup>44</sup>**

37. Indigenous peoples have the right to determine their own strategies for the development or use of their lands or territories and other resources, as well as the right to enjoy their own means of subsistence and sustainable environmental management.<sup>45</sup>
38. In Myanmar/Burma, control over land, and natural resources for development projects in indigenous peoples' territories is driving violent conflict and related human rights violations. The government and their foreign investor partners have imposed their notions of development on indigenous peoples, without FPIC, IAs, or any kind of meaningful

consultation processes. Foreign investors are promoting harmful development projects in conflict areas without conducting any PCIA. These harmful projects have serious impacts, and pose a direct threat to traditional and sustainable livelihoods.

### **Electricity Generating Projects**

39. There are five large hydropower projects<sup>46</sup> planned for the Salween (Than Lwin) River in Myanmar/Burma, which runs through Shan, Karenni, Karen, and Mon States. These mega-dams are implemented by the government's Ministries of Electric Power and primarily financed by companies from Thailand and China.<sup>47</sup> Although these projects have been promoted as a way to improve rural electrification, in reality, the majority of electricity produced is already slated for export. Indigenous peoples living downstream are strongly opposed to the dam cascade, which lies on active fault lines, because it would pose a great risk of dam failure and catastrophic flooding. Damming the Salween would irreversibly damage the diverse riparian ecosystem and fishing and farming livelihoods. Project proponents have provided no reliable information to potentially affected communities, and IAs are either non-existent, kept secret, or deeply flawed.<sup>48</sup>
40. Dam building on the Salween 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. Civilians suffered human rights violations, while the government blocked delivery of much-needed humanitarian aid. 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. This recent bout of armed clashes, in clear violation of bilateral ceasefire agreements,<sup>49</sup> demonstrates that the struggle for control over the territory of the Hatgyi dam site undermines the fragile peace process in Karen State.<sup>50</sup>
41. In 2012, the Myanmar/Burma Army completed construction of the Toh Boh (Thauk Yay Hkat in Myanmar language) dam on the Day Loh (Thauk Yay Hkat in Myanmar language) river in Tantabin Township. From 2009-2012, more than 100 households were forcibly relocated from the area to make way for the project.<sup>51</sup>
42. In 2009, China and Myanmar/Burma agreed on a joint investment project to construct a dam on Phunglong (Lemro or Laymyo in Myanmar language) River, in a remote area of Paletwa township, Chin State, populated by Dai-Chins.<sup>52</sup> Construction has been in progress without the FPIC of local people, and with no IAs publicly available. It is estimated that at least 60 villages with a total population of 20,000 will be negatively impacted by the project. In 2014, the project was suspended for unknown reasons.<sup>53</sup>

43. Since 2011, the number of Myanmar/Burma Army troops in Ye township, Mon State, has increased from 3 to 11 battalions. In March 2013, Toyo-Thai corporation signed an agreement with Myanmar/Burma's Ministry of Electric Power to construct a 1,280 MW, \$2.7 billion, coal-fired power plant in Aunden (An Din) village in the same area. In December 2014, local villagers strongly opposed the project, voicing concerns about potential environmental impacts from pollution, and land confiscation near the project site. In response, the company arranged a counter-petition which they submitted to President Thein Sein's office in 2015, and the coal-fired power plant will go ahead.<sup>54</sup>

### **Infrastructure Development Projects**

44. The Japanese International Cooperation Agency (JICA) has recently issued a blueprint that proposes industrial development in Southeast Myanmar/Burma, focused on expanding road networks, establishing industrial estates, urban infrastructure, and industrial agriculture. Such projects would be implemented by the government in cooperation with JICA, but there has been no meaningful consultation process with Karen, Mon and other indigenous people in the area. The plan is likely to exacerbate conflict and lead to land confiscation.<sup>55</sup>

45. The Kaladan Multi-Modal Transit Transport Project (Kaladan Project) is a US\$214 million infrastructure development project, classified as Indian development aid to Myanmar, being implemented in Arakan and Chin States. It involves the construction of a combined inland waterway and highway transportation system connecting Northeast India with a deep sea port at Site-tway, Arakan State.<sup>56</sup> Indian company ESSAR Projects Ltd. is responsible for the ports at Site-tway and Paletwa and waterway transportation system along the Kaladan river, involving riverbed dredging. From Paletwa in Chin State a 130 km highway will connect to the India-Myanmar/Burma border, but the route and company responsible for the highway have not been made known. The project is being implemented without the FPIC of indigenous peoples. More than four years after the project started in 2010, no IAs have been conducted for the project area in Myanmar/Burma.

46. Communities in Arakan and Chin State have already suffered negative environmental and social impacts from the Kaladan Project. As a result of constant dredging since 2011, the shoreline of Thae Hkhun fishing village on Mray Gun Island in Arakan State has been advancing quickly, making it necessary for 50 houses and a monastery to be dismantled and rebuilt further inshore. In September 2013, government officials ordered farmers in Laung Ka Du village, a small Khumi Chin community near Paletwa town on the Kaladan river, not to cultivate their land as it was going to be acquisitioned as a dumping-site for riverbed dredging. The community is currently trying to negotiate with the authorities to ensure that dredged material be dumped on an alternative dumping site they have proposed.<sup>57</sup>

## Road Construction

47. Since June 2013, 280 acres of land has been destroyed to make way for a road construction project linking Mon State's Thanbyuzayat Township to Thailand via the border town of Three Pagodas Pass, and no compensation has been offered.<sup>58</sup>
48. Road infrastructure in Chin State is poor, with more than 800 villages inaccessible by car, according to official statistics.<sup>59</sup> Although Chin indigenous people want roads to be built, in practice farmers have had their ancestral land either damaged or confiscated without compensation to make way for new roads, undermining their livelihoods.<sup>60</sup> In 2014, Mount Khonumtung (Natmataung in Myanmar language), a national park and natural habitat for several endemic bird species and home to over 800 plant species, missed out on UNESCO World Heritage Status due to development in the area, including a Chin State government-built road which resulted in deforestation.<sup>61</sup>
49. Between March and May 2014, construction of roads by the government destroyed villagers' farms, plantations and houses in Kaw T'Ree (Kawkareik in Myanmar language) and Noh T'Kaw (Kyainseikgyi in Myanmar language) townships, Karen State, without any compensation being provided.<sup>62</sup>

## LANGUAGE AND CULTURAL RIGHTS<sup>63</sup>

50. Indigenous peoples have the right to practice and revive their culture and traditions, including the right to use and pass on to future generations their histories and languages, oral traditions, writing systems and literature and to use their own names for communities, places and people.<sup>64</sup>
51. In Myanmar/Burma, militarization and displacement prevent indigenous peoples from practicing and promoting their language and cultural rights. Under successive military regimes, indigenous peoples were subjected to an unwritten forced assimilation policy known as *Burmanization*. 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. Local communities' names for places, mountains, and rivers were replaced with Myanmar/Burma language names. Celebrations of important cultural or historical significance for indigenous peoples were banned under military rule, and more recently, the government has neglected or destroyed important cultural heritage sites of indigenous peoples.
52. 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.<sup>65</sup> In Chin State, in spite of a provision in the CNF-government ceasefire agreements for the teaching of Chin language instruction in primary schools, this has not yet been implemented.

53. In Chin State, Chin communities have been allowed to celebrate Chin National Day on 20th February since 2013. However, the day has not yet been designated a public holiday, even though there is a provision to do so in the CNF-government ceasefire agreements.<sup>66</sup>
54. 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. Local communities face the ongoing destruction of their cultural heritage, which has been destroyed due to the government's lack of preservation efforts, and also due to infrastructure development. In 2010, railroad construction damaged or destroyed sites in Mrauk-Oo. 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 MraukOo, and used it for road construction in the town.<sup>67</sup>
55. In Mon State, blast mining of limestone at Ni Don and Pyar Taung mountains would entail demolishing these entire limestone mountains, which are part of the cultural heritage for the Mon people. The limestone caves in the mountains contain sacred Buddhist relics and cave paintings that pre-date local recorded history.<sup>68</sup>
56. Traditionally, each Karen village has a *Kaw*, which is the ancestral and spiritual territory of that community. Karen people who follow traditional animist practices are reluctant to leave their *Kaw* because they can only make offerings to their gods when physically present in the *Kaw*. It is also important that when they die, their remains are buried in a sacred area within the *Kaw*. In many cases, encroachment by the Myanmar/Burma Army, who build military camps, plant land mines, and burn villages, have forced Karen people to flee from their *Kaw*. Displacement from the *Kaw* has eroded traditional Karen cultural practices, including customary land management based around the *Kaw* structure.<sup>69</sup>

#### **D. RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR**

- R1. To 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.
- R2. 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.
- R3. 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.

- R4. To 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.
- R5. 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 IAs - especially peace and conflict impact assessments - as determined by local communities themselves, are conducted by independent and impartial experts, and published in local languages.
- R6. 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.
- R7. 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.
- R8. 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.
- R9. 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.

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## END NOTES

<sup>1</sup>In March 2015, the *Pyithu Hluttaw* (Parliament) passed the Ethnic Nationalities Rights Protection bill, which refers to the eight major ethnic groups. There was no public consultation on the bill, and although it purports to protect the rights of Myanmar/Burma's ethnic nationalities, further analysis of this law is needed from the indigenous peoples' rights perspective.

<sup>2</sup>The Population and Housing Census of Myanmar, 2014, Summary of the Provisional Results, published by the Department of Population, Ministry of Immigration and Population, August 2014.

<sup>3</sup> See <http://www.irrawaddy.org/burma/chin-group-says-burma-census-ethnicity-question-caused-confusion.html>

<sup>4</sup>The UN-recognised concept of indigenous peoples is derived from: José MartínezCobo, Study of the Problem of Discrimination Against Indigenous Populations, E/CN.4/Sub.2/1986/7/Add.4, para 379.

<sup>5</sup> Articles 17, 29, & 30 refer to children of indigenous origin.

<sup>6</sup> Article 8j of the Convention.

<sup>7</sup> Article 37(a) of the 2008 Constitution. See also point 4, chapter 1, basic principles of the Union.

<sup>8</sup> *The Challenge of Democratic and Inclusive Land Policymaking in Myanmar: A Response to the Draft National Land Use Policy*, Transnational Institute (TNI), February 2015.

<sup>9</sup> As outlined in the United Nations Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

<sup>10</sup> Part VII para 68, paras 23 and 71 of the draft NLUP.

<sup>11</sup> See [Land Disputes Leading Cause of Human Rights Complaints](#), Irrawaddy News, 12 November 2014. and [Myanmar Revamps Human Rights Panel Amid Criticism from Rights Groups](#), Radio Free Asia, 25 September 2014.

<sup>12</sup> In September 2014, the FIC reported that only 583 complaints out of 2,689 sent to the Ministry of Defense had been addressed, while only 299 complaints out of 6,559 submitted to State and Regional governments were settled. See [MPs Urge Prompt Return of Confiscated Land](#), Irrawaddy News, 26 September 2014, and [Military Involved in Massive Land Grabs: Parliamentary Report](#), Irrawaddy News, 5 March 2013.

<sup>13</sup> Relevant recommendation: 104.53. Solve long-standing conflicts between the Government and ethnic groups in a peaceful manner (Czech Republic). The SuR has failed to implement this recommendation.

<sup>14</sup> The first new preliminary bilateral agreement was signed between the government and the United Wa State Party in September 2011. The following groups have signed preliminary bilateral ceasefire agreements: All Burma Students Democratic Front (ABSDF), Arakan Liberation Party (ALP), Chin National Front (CNF), Democratic Karen Benevolent Army (DKBA), Karenni National Progressive Party (KNPP), Karen National Union (KNU), KNU/KNLA Peace Council (KPC), National Democratic Alliance Army - Eastern Shan State (NDAA), New Mon State Party (NMSP), National Socialist Council of Nagaland-Khaplang (NSCN-K), Pa-Oh National Liberation Organization (PNLO), Shan State Progress Party/Shan State Army aka Shan State Army-North (SSPP), Restoration Council of Shan State/Shan State Army (RCSS), United Wa State Party (UWSA). The following groups have NOT signed preliminary bilateral ceasefire agreements: Myanmar National Democratic Alliance Army (MNDAA), aka Kokang Army, Arakan Army (Kachin Region), Arakan Army (Karen Region), Kachin Independence Organization (KIO), Kuki National Organization (Burma), Ta-ang National Liberation Army. See <http://www.mmpeacemonitor.org/stakeholders/stakeholders-overview>

<sup>15</sup> See Burma News International, Deciphering Myanmar's Peace Process: a Reference Guide 2014. Chiang Mai: Burma News International.

<sup>16</sup> Point 6 of the December 2012 agreement: "Environmental impact assessments shall be conducted in regards to all development projects in Chin State. To facilitate such a process, it is agreed that an independent committee shall be formed made up of independent experts. It is agreed that in extracting natural resources from above and underground within Chin State, the principles of Free, Prior, and Informed Consent shall be observed in accordance with the desire of the Chin people." See *Rhododendron News*, CHRO, Nov-Dec 2012.

<sup>17</sup> Point 13a of the December 2012 agreement: "The Chin State government and Chin National Front shall have the power, through consultation, to determine the terms of reference for the implementation of a system in which locals determine their own development priorities." See *Rhododendron News*, CHRO, Nov-Dec 2012.

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<sup>18</sup> Point 21 of the December 2012 agreement: "It is agreed that the Union government will take forward matters regarding the implementation of the teaching and learning of Chin language at the primary education level in schools in Chin State." See *Rhododendron News*, CHRO, Nov-Dec 2012.

<sup>19</sup> See articles 10, 25 – 29, 32 of the UNDRIP.

<sup>20</sup> See <http://www.khrg.org/2014/05/12-52-ps1/photo-set-more-100-households-displaced-tohboh-dam-construction-site-toungoo>; <http://www.khrg.org/2014/06/14-2-nb1/villagers-report-negative-impacts-stone-mining-their-livelihoods-kyaik-ma-yaw>; <http://www.khrg.org/2013/08/13-52-s1/mergui-tavoy-situation-update-te-naw-thri-township-august-2012-march-2013>; <http://www.khrg.org/2012/07/12-73-t2-i1/merguitavoy-interview-saw-k-april-2012>; and <http://www.khrg.org/2014/08/14-35-s1/dooplaya-situation-update-kawkareik-kyonedoe-and-kyainseikgyi-townships-march-may>.

<sup>21</sup> See <http://www.khrg.org/2014/07/14-3-nb1/coercive-land-appropriation-and-qnla-landmine-incident-surrounds-construction-bgf>

<sup>22</sup> See [http://www.khrg.org/sites/default/files/khrg\\_13b17\\_-pdf.pdf](http://www.khrg.org/sites/default/files/khrg_13b17_-pdf.pdf). See section 4K3 of the joint government - ILO strategy for the elimination of forced labour, July 2012, which states, "Policy confirmation and distribution of publicized instructions recognizing that the acquisition of land by and for any party with the subsequent imposition of rent, in cash or kind, on the traditional occupier under threat of losing traditional land usage rights constitutes forced labour."

<sup>23</sup> *Yearning to be Heard: Mon Farmers' Continued Struggle for Acknowledgement and Protection of their Rights*, February 2015, and *Laid Waste: Human Rights Along the Kanbauk to MyaingKalay gas pipeline*, HURFOM, May 2009.

<sup>24</sup> For example, in Hti Lon Township, Hpa-an District in Karen State, the Myanmar/Burma Army has confiscated the land of *Kaw Lah Thu* individuals and displaced them by installing a sign which states, "This land belongs to the Tatmadaw. Do not trespass." See more at: <http://www.khrg.org/2014/09/14-28-s7/hpa-an-situation-update-hti-lon-township-march-2014#sthash.r91ym5es.dpuf>

<sup>25</sup> See <http://khrg.org/2015/02/14-9-nb1/ongoing-militarisation-southeastern-burmayanmar-january-2012-ceasefire-agreement>

<sup>26</sup> See *Rhododendron News*, CHRO, Mar-Apr 2012.

<sup>27</sup> See *Rhododendron News*, CHRO, May-Jun 2013.

<sup>28</sup> One villager reported, "[The company] said they will only give 50,000 Kyat per acre [50 USD] and we can choose whether we take it or not. They said that whether we take the money or not, we will have to leave our land anyway. So people were afraid and accepted that money." Unpublished KESAN research, on file with KESAN.

<sup>29</sup> See *Rhododendron News*, CHRO, Jan-Feb 2014.

<sup>30</sup> Previously unpublished case information, on file with POINT.

<sup>31</sup> Daewoo, Chinese state-owned company's CNPC, in collaboration with Myanmar state-owned company MOGE. See [Statement by Local Residents at Ramree Island regarding Shwe Gas Project, Deep Sea Port, and Oil and Gas Pipeline](#) and [Burma: Release Ten Arakanese Activists, Amend Peaceful Assembly and Peaceful Processions Law](#)

<sup>32</sup> Information on file with Arakan Rivers Network.

<sup>33</sup> Hexa International Company LLC, Zaykbar Co Ltd., 24 Hour General Services Co. Ltd., June Industry Co. Ltd., and Pacific Link Cement Industries Ltd.

<sup>34</sup> For a full case study of cement production in Kyiakmayaw, see reports by the Human Rights Foundation of Monland: *Waiting in Tears* (2010) and *Disputed Territory* (2013).

<sup>35</sup> "Broken Promises" at PyarTaung Cement Project, Human Rights foundation of Monland, 2013.

<sup>36</sup> See <http://www.khrg.org/2014/07/14-20-s1/dooplaya-situation-update-kyainseikgyi-kawkareik-and-kyonedoe-townships-october> and <http://www.khrg.org/2014/06/13-19-s1/hpapun-district-situation-update-dwe-lo-township-january-february-2013>.

<sup>37</sup> See <http://www.khrg.org/2014/10/14-54-s1/hpapun-situation-update-dwe-lo-township-february-and-march-2014> and <http://www.khrg.org/2013/07/13-49-s1/papun-situation-update-dwe-lo-township-march-2012-march-2013>.

<sup>38</sup> See <http://www.khrg.org/2014/07/14-20-s1/dooplaya-situation-update-kyainseikgyi-kawkareik-and-kyonedoe-townships-october>

<sup>39</sup> See *Rhododendron News*, CHRO, Jan-Feb 2014, Sep-Oct 2013, Jul-Aug 2013.



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- <sup>40</sup> See <http://www.khrg.org/2014/07/14-20-s1/dooplaya-situation-update-kyainseikgyi-kawkareik-and-kyonedoe-townships-october>
- <sup>41</sup> See <http://www.khrg.org/2012/07/12-73-t2-i1/merguitavoy-interview-saw-k-april-2012>
- <sup>42</sup> See *Rhododendron News*, CHRO, Jul-Aug 2013.
- <sup>43</sup> See *Rhododendron News*, CHRO, Jan-Feb 2013.
- <sup>44</sup> Relevant recommendation: 104.20. Strengthen policies and measures to ensure better respect and protection of all human rights, especially in the fields of fundamental economic, social and cultural rights and the right to development (Viet Nam). The SuR has failed to implement this recommendation.
- <sup>45</sup> UNDRIP articles 3, 20, 23, 26, 29, 32.
- <sup>46</sup> These are the Kunlong and Mong Ton (Mai Tong, previously Tasang), and Nong Pha (Nao Pha) dams in Shan State; the Ywathitdam in Karenni State; and the Hatgyi (Hutgyi) dam in Karen State.
- <sup>47</sup> Investors in the Salween dams are Electric Generating Authority of Thailand (EGAT) and EGAT International (EGATi), International Group of Entrepreneurs (IGE) Company, Sinohydro Corporation, Hanergy Holding Group, Asia World Company (Goldwater Resources Ltd.), China Three Gorges Project Corporation, China Southern Power Grid, HydroChina Corporation, China Datang Corporation, and ShweTaung Hydropower Co Ltd.
- <sup>48</sup> The EIA released in 2008 has been condemned as deeply flawed by the National Human Rights Commission of Thailand.
- <sup>49</sup> This most recent fighting violates the bilateral ceasefire agreement between the DKBA and the Myanmar/Burma army, however past fighting in this area has also involved the Karen National Liberation Army (KNLA), also in violation of their ceasefire agreements. All of these agreements were signed in 2012.
- <sup>50</sup> *Afraid to Go Home: Recent Violent Conflict and Human Rights Abuses in Karen State*, Karen Rivers Watch, November 2014.
- <sup>51</sup> See <http://www.khrg.org/2012/09/12-96-a2-i1/toungoo-interview-saw-h-april-2011> and <http://www.khrg.org/2014/05/12-52-ps1/photo-set-more-100-households-displaced-tohboh-dam-construction-site-toungoo>
- <sup>52</sup> This dam is being built by Shwetaung Hydro-power Co. Ltd, Junction Model and High Tech Company (Myanmar), China Datang Overseas Investment Co. Ltd (CDOIC) and Hydro Chin Xibei Engineering Company (China).
- <sup>53</sup> See *Rhododendron News*, CHRO, Mar-Apr 2012, May-Jun 2012, Nov-Dec 2012.
- <sup>54</sup> See <http://www.burmapartnership.org/2014/12/hundreds-protest-against-planned-power-plant-in-mon-state/>; <http://monnews.org/2015/01/05/nmsp-stands-locals-opposition-proposed-coal-fired-power-plant/>; <http://monnews.org/2014/12/17/locals-hold-protest-ye-town-opposition-proposed-coal-fired-power-project/>
- <sup>55</sup> Karen Peace Support Network: *Critique of JICA's Development Blueprint*.
- <sup>56</sup> See *One cannot step into the same river twice: making the Kaladan Project people-centred*, the Kaladan Movement, June 2013 available at [www.kaladanmovement.org](http://www.kaladanmovement.org)
- <sup>57</sup> See *Four years on, no clear answers on Kaladan Project*, the Kaladan Movement, 11 June 2014.
- <sup>58</sup> *Disputed Territory: Mon farmers' fight against unjust land acquisition and barriers to their progress*, October 2013, HURFOM.
- <sup>59</sup> See *Rhododendron News*, CHRO, Jan-Feb 2015.
- <sup>60</sup> See *Rhododendron News*, CHRO, Jan-Feb 2014 and Mar-Apr 2014.
- <sup>61</sup> See *Development harms Natmataung's World Heritage prospects*, Myanmar Times, 23 June 2014.
- <sup>62</sup> See <http://www.khrg.org/2014/08/14-35-s1/dooplaya-situation-update-kawkareik-kyonedoe-and-kyainseikgyi-townships-march-may>
- <sup>63</sup> Relevant recommendations accepted by the SuR during the first cycle of the UPR are: 104.29. Ensure that ethnic and religious minorities are granted fundamental rights and end discrimination against persons belonging to these minorities (Slovenia); and 104.52. Ensure 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). The SuR has failed to implement these recommendations.
- <sup>64</sup> Articles 8, 11, 12, 13, 14 of the UNDRIP.
- <sup>65</sup> See *Schools set to offer courses in ethnic languages*, DVB, 12 August 2013.
- <sup>66</sup> See *Rhododendron News*, Jan-Feb, May-Jun, Nov-Dec 2012, CHRO.

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<sup>67</sup>Information about damage to the grounds of the Royal Palace at Mrauk-Oo on file with ARN. See also, [Railroad Construction Damages Pagoads in Archaeologically Important Myanmar Town](#), Global Heritage Fund.

<sup>68</sup>*Disputed Territory: Mon farmers' fight against unjust land acquisition and barriers to their progress*, October 2013, HURFOM

<sup>69</sup>Unpublished research on file with KESAN.