

Coalition of Indigenous Peoples in Myanmar/Burma

Lobby paper for the Universal Periodic Review Working Group

Human Rights Council, 23rd Session, Myanmar/Burma

RECOGNITION OF INDIGENOUS PEOPLES AND COLLECTIVE RIGHTS ENSHRINED IN UNDRIP

First cycle recommendation: *106.35. Incorporate the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples into domestic law and ratify ICERD (Denmark, noted).*

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. According to estimates, indigenous peoples comprise 40 percent of the population and occupy 60 percent of the land in the country.¹ The government claims that all full citizens of the country are ‘indigenous’, and on that basis dismisses the applicability of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to Myanmar/Burma. The country’s 2008 Constitution makes no mention of indigenous peoples, their collective rights, or customary land use practices in indigenous peoples’ territories.

LAND, TERRITORIES, AND NATURAL RESOURCES

First cycle recommendations: *None*

As highlighted by the UN Special Rapporteur on the situation of human rights in Myanmar Ms. Yanghee Lee, land is being confiscated at an alarming rate in Myanmar/Burma², in connection with militarization, infrastructure and extractive industry projects, as well as business and large-scale plantation projects, especially in Indigenous peoples’ areas. The right to free, prior, and informed consent (FPIC) with regards to such projects is not respected. There are no transparent, participatory, or meaningful consultation processes, and impact assessments (IAs) are seldom conducted or made public. Indigenous peoples are subsequently losing the ability to manage their territories. A draft National Land Use Policy gives special privileges to business investors, and references to customary land use tenure are vague. The Special Rapporteur urged the government to give priority to securing tenure rights of those who have used land for long periods, and called on the government to ensure that IAs are conducted in line with international human rights standards.³

DEVELOPMENT

First cycle 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, accepted).*

In Myanmar/Burma, 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. The Special Rapporteur has highlighted similar concerns.⁴ Since late 2011, the Myanmar/Burma government has signed preliminary bilateral ceasefire agreements with 14 major ethnic armed groups in the country. However, so far in 2015 more than 200 clashes have been reported in both ceasefire and non-ceasefire areas, in many cases linked to control over territory and natural resources.⁵ 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. The Special Rapporteur called on the Government to proactively manage development and investment processes to ensure a rights-based and people-centred form of sustainable development.⁶

LANGUAGE & CULTURAL RIGHTS

First cycle recommendations: 104.29. *Ensure that ethnic and religious minorities are granted fundamental rights and end discrimination against persons belonging to these minorities (Slovenia, accepted);* 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, accepted).*

In Myanmar/Burma, militarization and displacement prevent indigenous peoples from practicing and promoting their language and cultural rights. The government has neglected or destroyed important cultural heritage sites of indigenous peoples such as Mrauk-Oo in Arakan State. 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. The Special Rapporteur has noted that protecting and promoting diverse languages and cultures will be critical for any process of national reconciliation to be successful and durable.⁷

SUGGESTED QUESTIONS TO THE GOVERNMENT OF MYANMAR/BURMA

1. Does the Government of Myanmar (GoM) have any plans to identify and recognize indigenous peoples in the country, based on the international concept of indigenous peoples and the UNDRIP?
2. What concrete measures have been taken by the GoM to ensure that policies and legislation incorporate tenure rights of those who have used land for long periods, as recommended by the Special Rapporteur?
3. What steps have been taken by the GoM to ensure that independent, impartial impact assessments are conducted in line with international human rights standards, as recommended by the Special Rapporteur, including the right to free, prior, and informed consent?
4. How will the GoM ensure that the current development and investment processes are rights-based and people-centred and contribute to sustainable development in the country, as recommended by the Special Rapporteur?
5. To what extent does the GoM provide national budget for the protection and promotion of indigenous peoples' languages, and preservation of cultural heritage sites?
6. What concrete measures will be taken by the GoM to ensure that nationwide ceasefire and political negotiations with ethnic groups are more representative of the relevant communities, as recommended by the Special Rapporteur, including indigenous peoples?
7. What has been implemented so far by the GoM to meet the State's commitment (104.20) to 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?
8. What has been implemented so far by the GoM to meet the State's commitment (104.29) to ensure that ethnic and religious minorities are granted fundamental rights and end discrimination against persons belonging to these minorities, 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?
9. Does the GoM have any plans to ratify International Labour Organization Convention 169, and if so, when?

RECOMMENDATIONS

- 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.

¹ See <http://www.international.gc.ca/development-developpement/countries-pays/burma-birmanie.aspx?lang=eng>.

² See para. 50, Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee LEE to the UN Human Rights Council, 9 March 2015, ref. A/HRC/28/72.

³ See para. 52, op cit, and para. 70 (a) and (b).

⁴ Ms. Yanghee Lee: "At the heart of the conflict lie historically entrenched inequalities, land and natural resource rights issues, discrimination against minorities and widespread human rights abuses." See para. 33, op cit.

⁵ 205 armed clashes in both ceasefire and non-ceasefire areas had been documented in 2015, at the end of May. See <http://mmpeacemonitor.org/research/monitoring-archive>

⁶ See para. 49, op cit.

⁷ See paras. 30 & 31, Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee LEE to the UN General Assembly, 23 September 2014, A/69/398.