

RIGHTS TO LAND, TERRITORIES AND NATURAL RESOURCES

Under the UNDRIP Indigenous Peoples have the right to enjoy their own means of subsistence and sustainable environmental management. Indigenous peoples also have the right to Free, Prior, and Informed Consent (FPIC) and the right to be compensated when their lands, territories or natural resources have been confiscated, occupied, or damaged. 16. Under current economic reform processes, the lands and natural resources belonging to Indigenous Peoples have become targets for exploitation. FPIC has been not legislated in Burma/Myanmar. As a result, Indigenous Peoples face long-term negative social and environmental impacts due to implementation of small, medium and mega-projects such as extractive industry projects, large scale land- concessions, and government led greengrabbings without FPIC.

The National Land Use Policy (NLUP) approved in 2016 recognized “traditional 5 land use” practices under Section 8, but this has not yet been translated into a National Land Law as set out in the policy. Instead, newly-amended laws such as the Forest Law, Farmland Law, Vacant, Fallow and Virgin Lands Management Law (VFV Law), Land Acquisition, Resettlement and Rehabilitation Law are not in line with the National Land Use Policy. In fact, these laws are being used to legitimise land-grabbing. In addition, the lack of recognition of customary land tenure systems creates vulnerability to national conservation agendas which facilitate green grabbing.⁷ Land Grabbing & Green Grabbing 18. At the height of the COVID-19 pandemic in May and June 2020, Tatmadaw LIB 423 and LIB 424 confiscated around 900 acres of land in Hsi Seng Township in the Pa-O Self-Administered Zone. They charged 70 Pa-O Indigenous farmers - many of them elderly women - with criminal trespassing under Article 447 of the Penal Code. In a separate case, LIB 66 confiscated around 1,300 acres of land in Kholam Sub-township and prosecuted 47 farmers under the same provision. In both cases, the farmers have traditionally owned the land for decades. However, much of it was designated vacant and fallow under the VFV law, allowing the Tatmadaw to claim the land and criminalise the farmers.⁸ 19. In mid-2018 Wunn Pyae mining company was granted Indigenous Peoples' land under the VFV law in Thein Gone village, Ywar Ngan Township of Southern Shan State to conduct mineral exploration, without the community's FPIC. Concerned that there will be serious negative impacts on customary land use and the environment, the villagers have opposed the project since the start of its implementation. Indigenous Human Rights Defenders were arrested for organising protests.⁹ 20. Between 2015 to 2019 in Waingmaw and Bhamo townships in Kachin State, about 100,000 acres of land – mostly belonging to Indigenous Internally Displaced Persons (IDPs) who had fled the area due to armed conflict - was confiscated and granted mainly to Chinese companies and their proxies. Those companies established banana tissue plantations by conducting mass deforestation, and also profited from selling wood and other natural resources from mining. Villagers report that rivers have been polluted by mining waste and chemical fertilizers. IDPs now want to return to their lands, but under the provisions of the VFV law, they would be accused of trespassing. Indigenous communities are concerned that they will not be able to reclaim their land, as they do not have the necessary documentation to prove ownership under the law and have lost their ability to practice customary land management systems.¹⁰ 21. The government's 30-Year National Forestry Master Plan (2001-30) set goals of achieving 30 percent of the total land area being within the Permanent Forest Estate (PFE) and 10 percent of the land area being within protected 6 areas by the

year 2030. In order to achieve those goals, various international agendas have been approved and are currently being implemented. For example, Burma/Myanmar entered into the UN-REDD Programme in 2011 as one of its Nationally Determined Contributions under one pillar of its National Comprehensive Development Plan (2011-2030). Under REDD+ laws and regulations are required to be brought into line with the UNDRIP. However, this process has yet to go far enough with regards to Burma/Myanmar's national legislation, including the Conservation of Biodiversity and Protected Areas Law and Forest Law.^{11 22} Furthermore, in establishing protected forest areas, FPIC has not been implemented with Indigenous communities. Under the Permanent Forest Estate, large areas of Indigenous lands across the country have been designated as either protected public forest or protected areas. For example, in Thandaunggyi, Karen State, between 1999 and 2003 more than 300,000 acres were designated as protected forest areas. In 2018 more than 63,000 additional acres were proposed as protected forest areas. Designated land comes under the control of the Forest Department and Indigenous communities lose access to the land and their traditional livelihoods. This same issue has impacted Indigenous communities across Karen, Chin, Rakhine, Kachin and Shan States as well as Tanawthari (Tanintharyi) Region, and parts of Magwe Region where Asho-Chin live. For example, in 2019 in Ngaphe Township, Magwe Region, Forest Department officials cut down bamboo and other trees in preparation for a eucalyptus plantation in an area designated protected public forest in 2015.¹² Denial of the right to own means of subsistence ²³. Indigenous communities rely on long-fallow shifting cultivation to allow multiple uses for land such as rice paddy, cash crops plantation and grazing lands. Due to long-standing vilification of Indigenous practices, the government blames Indigenous communities for causing deforestation and forest degradation. Communities are coming under increasing pressure - including the threat of land confiscation under the VFV law during fallow periods - to replace shifting cultivation with perennial plants such as avocado, cardamom (pha-lar) and other types of agroforestry. When they make this change, communities find it difficult to make ends meet, resulting in increasing outmigration of young women and men from their lands.^{13 24}. Moken (Salone) fisherman from Tanawthari continue to have their livelihoods impeded due to pearl farming business activities on traditional fishing grounds. The government and private companies including Myanmar Tasaki began pearl farming in the 1990s, zoning off large areas in Moken fishing grounds, where Moken people catch cuttle fish and rely on other sea and coastal-based livelihoods. The Moken community have cited loss of livelihoods as a result of the pearl farms. Attempted expansions of these areas take place year on year. During meetings with the company, Moken and other local communities have rejected expansion proposals and 7 requested access to previously confiscated areas. Despite rejecting the proposal and lodging complaints at every level of government, no responses have been received.¹⁴ Lack of Effective Redress ²⁵. Although Burma/Myanmar supported recommendations 143.123 and 143.124 calling for effective redress for land-grabbing and a clear complaints mechanism, these recommendations have not been implemented.^{15 26}. The Central Committee for Scrutinizing Confiscated Farmlands and Other Lands established in 2016 is neither independent nor transparent. It lacks adequate powers to resolve previous cases effectively, either by returning land or providing sufficient compensation. At the same time, there are new disputes emerging under a series of reformed laws (including the Forest Law, Farmland Law, VFV Law, Land Acquisition, Resettlement and Rehabilitation Law) which the Committee is failing to address, resulting in a lack of remedy for Indigenous Peoples.^{16 27}. Between 1990 and 1991, Light Infantry Battalions (LIB) 250, 356 and 360 of the Burma/Myanmar military (Tatmadaw) confiscated land

from Indigenous communities in Loikaw and Demoso Townships in Kayah (Karenni) State under the then 1894 Land Acquisition Act for the purpose of building military training schools. More lands were grabbed than needed, without any prior notice, financial compensation or land reallocation. In 2013 the government announced that previous land-grabbing cases by the military would be resolved, so Indigenous farmers began re-farming on the lands that were outside of the military compound, and had never been used by the military. However, from June 2019, the military ordered the farmers not to use the land. The farmers were subsequently targeted for arrest and imprisonment.

IMPACTS OF MEGA-DEVELOPMENT PROJECTS ON INDIGENOUS PEOPLES

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

agency, the Tatmadaw and its Border Guard Forces sought to take control of the territories along the route that have long been controlled by other Ethnic Armed Organizations (EAOs). As a result, fighting broke out between the Tatmadaw and the Democratic Karen Buddhist Army, displacing over 1,000 people in July 2015. A further 6,000 were displaced between 2016-2018.^{21 34}The Kyaukphyu Deep Sea Port is the first phase of a proposed US\$7.8 billion Special Economic Zone in Kyaukphyu Township, Arakan State which to date has not undergone community FPIC, or any E/SIA. Local communities have concerns about the impacts, based on negative experiences with the existing Madae Deep Sea Port completed in 2013. That resulted in local fishermen being restricted from using traditional fishing grounds between 6pm and 6am in large areas around the port, enforced by military naval vessels. Traditional fishing methods take place at night due to synchronization with markets that operate in the morning. Such restrictions therefore impact livelihoods associated with the fishing trade.^{22 35} In July 2018, local fisherman from Ann and Kyaukphyu Townships complained of water pollution close to where the Madae Deep Sea Port project and the Sino-Myanmar Oil and Gas Pipeline are located. The Thanzit River turned brown and hundreds of thousands of mussels died, impacting livelihoods. Local fisherman also complained of skin infections after fishing in the water. Despite informing local government, there was no effort to find the source of the pollution. Local people believe that waste was deposited in the water by the Chinese-funded projects. Moreover, the government is not providing any equitable benefit sharing of profits made from the gas being sold to China to the people of Arakan State.

IMPACTS OF ARMED CONFLICT ON INDIGENOUS PEOPLES

Under Article 30 of the UNDRIP, military activities shall not take place in the lands or territories of Indigenous Peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the Indigenous Peoples concerned.³⁷ Conflict between the Arakan Army (AA) and the Tatmadaw first broke out in March 2015 in Paletwa, southern Chin State and has been ongoing since then. In December 2018, the Tatmadaw declared a four-month unilateral ceasefire in active conflict areas in Kachin and Northern Shan States. Since that time the Tatmadaw began sending more troops to Arakan State and Paletwa in southern Chin State, and the conflict between the AA and the Tatmadaw has significantly escalated - at least in part fueled by the contested Kaladan Multi-Modal Transport project. In the midst of the global COVID-19 pandemic - following widespread calls from civil society, the international community, and EAOs - the Tatmadaw agreed to a temporary ceasefire on 13 May but refused to extend it to the conflict with the AA.^{24 38} Throughout March, April and May 2020, violence in Paletwa Township and Arakan State escalated as the Tatmadaw bombed civilian infrastructure at will and burned villages to the ground, resulting in large numbers of civilian casualties and mass displacement. The Tatmadaw's conduct against the indigenous civilian population could amount to war crimes and crimes against humanity. In the context of this conflict, there is no access to justice for victims of human rights abuses, nor accountability for alleged perpetrators.^{25 10 39} The conflict between the AA and the Tatmadaw has resulted in the deaths of at least 280 civilians in Arakan State and Paletwa Township in Chin State since it began in 2015, with over 479 injured. It is likely the death toll is much higher given the inaccessibility of the area. The deaths have been caused by indiscriminate shelling and airstrikes on civilian infrastructure, the use of landmines, extra-judicial killings and torture leading to death in detention. Arbitrary detention and enforced disappearance are commonplace in

relation to the conflict. There remain 12 people missing in Paletwa and 30 in Arakan State. Over 500 people have been detained for suspected links to either party to the conflict.^{26 40} Currently there are approximately 171,000 people internally displaced as a result of the conflict between the AA and the Tatmadaw. 160,000 IDPs are spread across Arakan State and 11,000 in Paletwa Township. The conflict has also negatively affected the livelihoods of Indigenous People in these areas as indiscriminate use of landmines impedes Indigenous farming practices. During this period, the Tatmadaw has maintained humanitarian blockades, resulting in food shortages in the conflict zone.

INDIGENOUS AND ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

Indigenous and Environmental Human Rights Defenders (IEHRDs) are struggling to protect their land, environment and natural resources. In Burma/Myanmar, IEHRDs are criminalized, harassed or killed for their work to prevent land grabbing and negative environmental impacts. ⁴² On 22 November 2018, seven young IEHRDs were arrested by the police for organizing the protest against Wunn Pyae Mining Company in Thein Gone village, Ywar Ngan Township of Southern Shan State. They were charged under Penal Code sections 114, 435, 447, and 506 (abetting crimes, intent to cause damage, criminal trespassing and criminal intimidation respectively). They were held for ten days and only released after the villagers agreed to allow the company to continue mining for the rest of their permit duration.^{28 43} In June 2019, 41 Karenni farmers from Loikaw and Demoso townships in Kayah (Karenni) State were arrested for reclaiming and reusing their lands previously confiscated by the military. The farmers were charged under Penal Code sections 353, 427 and 447 (assault or criminal force, mischief causing damage, and criminal trespassing respectively) and the Public Property Act 6 (1) (misappropriation of public property). On 13 March 2020, the Township Courts found the farmers guilty and handed down sentences ranging from 15 days to six months in prison as well as monetary fines.^{29 44} On 5 April 2018, well-known Karen IEHRD Saw O Moo was killed by the Tatmadaw LIB 351. Saw O Moo was one of the most active community 11 leaders in the Salween Peace Park, a grassroots initiative to create a 5,400-sq. km indigenous Karen reserve in Mu Traw District. The incident happened in his home village Ler Mu Plaw, Karen State at a time when the Tatmadaw had breached the NCA in order to seize territory and construct a military operation road through indigenous Karen lands. After a community meeting, Saw O Moo offered a ride home on his motorbike to Saw Hser Blut Doh, a soldier of the Karen National Liberation Army (KNLA), assigned by the KNLA to provide security and protect civilians in the area. The two were ambushed and shot at by Tatmadaw soldiers. Saw Hser Blut Doh managed to escape, but Saw O Moo was killed. The family could not perform indigenous funeral rites as the Tatmadaw prevented them from retrieving Saw O Moo's body.^{30 45} On 7 March 2020, Karen IEHRD Saw Tha Phoe from the Karen River Watch Network was sued by Hpa-an GAD under Section 505 (b) of the Penal Code for 'making or circulating statements that may cause public fear or alarm and incite the public to commit an offense against the state or "public tranquility"'. The case is related to a traditional Karen prayer ceremony held on 17 January 2020, in which Indigenous Peoples came together to pray for protection from pollution caused by the Myaingkalay cement factory. Saw Tha Phoe was forced into hiding in order to avoid arrest and a possible sentence of up to two years in prison.³¹