

# Submission to the United Nations Universal Periodic Review of Myanmar

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(Access to Justice Initiative, Association of Human Rights Defenders and Promoters, Assistance Association for Political Prisoners (Burma), Athan, Civil Authorize Negotiate Organization, Equality Myanmar, Free Expression Myanmar, Gender Equality Network, Generation Wave, Genuine People's Servants, Harmony Youth Association, Htoi Gender and Development Foundation, Justice for All, Karen Human Rights Group, Metta Campaign, Mon State Women and Children Upgrade Centre, Myan ICT for Development Organization, Myanmar LGBT Rights Network, Myanmar Physically Handicapped Association (Momauk), Myanmar Positive Women Network, PEN Myanmar, Promotion of Indigenous and Nature Together, Tavoyan Women Union, The Seagull: Human Rights, Peace & Development, Smile Myanmar, United Women, Women's League of Burma, Women Organization Network (Kayin state), Zwegabin Image)

Telephone: (95) 448015306

Email: [pa.eqmm@gmail.com](mailto:pa.eqmm@gmail.com)

Website: [www.equalitymyanmar.org](http://www.equalitymyanmar.org)

# List of Abbreviations

- ACC - Anti-Corruption Commission
- BGF - Border Guard Forces
- CAT - Convention Against Torture
- CED - Convention on Enforced Disappearances
- CEDAW - Convention on the Elimination of all Forms of Discrimination against Women
- CERD - Convention on the Elimination of All Forms of Racial Discrimination
- CPU - Corruption Prevention Unit
- CRC - Convention on the Rights of the Child
- CCRCFOL - Central Committee for Reviewing Confiscated Farmlands and Other Lands
- CRPD - Convention on the Rights of Persons with Disabilities
- CSO - Civil Society Organization
- DKBA - Democratic Karen Buddhist Army
- EAG - Ethnic Armed Group
- FPIC - Free, Prior and Informed Consent
- HRC - Human Rights Council
- ICCPR - International Covenant on Civil and Political Rights
- ICESCR - International Covenant on Economic, Social and Cultural Rights
- ICRMW - International Convention on the Rights of all Migrant Workers
- IDP - Internally Displaced Person
- IIFM - Independent International Fact-Finding Mission to Myanmar
- IIMM - Independent Investigative Mechanism for Myanmar
- IPs - Indigenous Peoples
- LGBTI - Lesbian, Gay, Bisexual, Transgender and Intersex
- MoU - Memorandum of Association
- NCA - Nationwide Ceasefire Agreement
- NLD - National League for Democracy
- NSPAW - National Strategic Plan for the Advancement of Women
- OCHA - Office for the Coordination of Humanitarian Affairs
- PoVAW - Prevention of Violence Against Women
- SMMT - Social Media Monitoring Team
- SOGIE - Sexual Orientation, Gender Identity or Gender Expression
- TNLA - Ta'ang National Liberation Army
- UNDRIP - United Nations Declaration on the Rights of Indigenous Peoples
- UPR - Universal Periodic Review
- UN - United Nations
- VFV - Vacant, Fallow and Virgin

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# Introduction

1. The Burma/Myanmar UPR Forum is a coalition of 29 civil society organizations working to improve the human rights in Myanmar. Since its formation in 2010, the Forum has collaboratively submitted joint stakeholder reports for Myanmar's 1<sup>st</sup> and 2<sup>nd</sup> UPR cycles respectively. Forum monitors human rights situation on the ground in the hopes that our work will lead to accountability.
2. During the second cycle, Myanmar received 281 recommendations, among which 166 were "accepted" and 15 were "noted." Very little positive changes have taken place since Myanmar's last review and its human rights record remains mired.
3. There has been an escalation of armed conflicts. At present, there is active fighting between the Myanmar military *Tatmadaw* and ethnic armed groups (EAG) in Rakhine, Kachin, and Shan state resulting in displacement and civilian casualties. Serious violations of ethnic and religious minorities' human rights, including allegations of genocide, crimes against humanity and war crimes has been well-documented.
4. Despite electing a civilian government in 2015, civil society space as not increased. Advocates calling for peaceful dialogue, interfaith harmony, gender equality, and human rights continues to be subjected to arrest and imprisonment while state Security forces committing the aforementioned crimes are not held accountable. Weak rule of law, lack of judicial independence, corruption maintain Myanmar's entrenched impunity for the powerful.
5. This report features 11 key human rights issues and highlights violations, gaps in protection, and deteriorating conditions spanning the full spectrum of human rights. The Forum presents recommendations to the Government of Myanmar so that it will uphold its obligations to fulfill international human rights obligations for all people on its territory.<sup>1</sup>

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<sup>1</sup> This report was prepared in early 2020, before the human rights impacts of the COVID-19 pandemic in Myanmar could be fully felt or understood. Myanmar has not yet taken adequate steps to test and monitor the spread of the virus. Additionally, government officials have spread misinformation rooted in nationalism and exceptionalism, including the misconception that "lifestyle and diet" will protect citizens from infection. Myanmar's "whole of nation" approach to fight the COVID-19 pandemic does not seem to extend beyond the ethnic Bamar Buddhist majority. The military continues to wage war in ethnic minority states, rejecting domestic and international calls for a cease-fire during the pandemic. Internet blackouts, media shutdowns, and aid blockages have cut civilians off from vital public health information, and placed thousands of people in overcrowded and unsanitary displaced persons camps at high risk of infection. In addition to the observations and recommendations contained in this report, the full human rights impacts of COVID-19 on the health, safety and livelihoods of people in Myanmar should be considered during this UPR.

## Status of Ratifications and Cooperation with International Human Rights Mechanisms

6. Of the 9 core international human rights treaties, Myanmar has ratified 4. ICESCR was ratified in 2017 and CRC-OP-AC in 2019.

### Cooperation with UN Bodies and Mechanisms

7. Myanmar has not cooperated with the UN Special Procedures and no visits have been conducted since the 2nd UPR cycle. In December 2017, it accused UN Special Rapporteur Yanghee Lee, of bias and barred her from returning to the country.
8. In March 2017, the Human Rights Council authorized the Independent International Fact-Finding Mission to investigate the alleged human rights violations of security forces. Although the government blocked it, the team visited refugee camps in Thailand and Bangladesh, conducting intensive interviews with survivors. The information has since been stored by the Independent Investigative Mechanism for Myanmar (IIMM) to assist with accountability efforts.

### International Courts

9. Gambia filed a case before the International Court of Justice (ICJ) in November 2019, alleging that Myanmar's atrocities against the Rohingya violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide. The court in January 2020 ordered Myanmar to take immediate steps to prevent and protect genocide of the Rohingya minority and file periodic reports to the Court for the duration of the genocide trial.
10. In November 2019, the International Criminal Court (ICC) also completed its preliminary investigation finding sufficient grounds and the Court established jurisdiction as elements of the crime took place in Bangladesh, a state party. Unlike the ICJ matter, Myanmar refuse to acknowledge or cooperate with the ICC proceedings.

### By the next UPR cycle we recommend the following:

- Ratify the ICCPR, CAT and CERD, following accepted recommendations .
- Cooperate fully with the UN Human Rights Bodies and Mechanisms, especially Special Rapporteur and the IIMM.
- Create and support a multi-stakeholder task force to monitor compliance with the ICJ provisional measures.

## Freedom of Expression Assembly

11. Despite 16 recommendations related to freedom of expression during the second UPR cycle, Myanmar supported only 8, many of which are yet to be implemented.
12. National Record and Archive Law empowers the government to keep information and records as classified secrets up to thirty years in a manner of violating freedom of

information.

13. The Law Protecting the Privacy and Security of Citizens is to prevent police force and its “Special Branch” (SB) from surveilling its citizens but it is rarely applied in practice.
14. The Ministry of Transport and Communications announced it has established social media monitoring to prevent “dangerous speech” and harmful content without any transparent information on how they define “hate speech” and whether they are planning to target legitimate expression.
15. Over the last four years, more than 539 lawsuits have been brought against 1,051 individuals for exercising their right to freedom of expression and right to assembly. These include satirists for alleged incitement against *Tatmadaw*; journalists uncovering mass atrocities, political activists for alleging defaming the Chief Minister of Mon State; human rights defenders for organizing anti-war protests, especially in Kachin and Rakhine States.
16. In June 2019, the Myanmar government ordered an internet shutdown in nine townships in Rakhine and Chin States creating risks for affected communities and depriving them of vital information that could potentially keep them safe during armed conflicts and the global COVID19 pandemic.
17. The authorities use bureaucratic procedures to disrupt CSOs’ work, trainings and prevent public discussions/dialogues on critical human rights issues.

**By the next UPR cycle we recommend the following:**

- Amend or repeal all laws that restrict freedom of expression, including but not limited to: the Telecommunications Law, News Media Law, Printing and Publication Law, Peaceful Assembly and Peaceful Procession Law, Law Protecting the Privacy and Security of Citizens, Burma Official Secrets Act and the Penal Code.
- Drop all charges and release political prisoners imprisoned under these repressive laws.
- Stop silencing political activists, protesters, journalists and human rights defenders’ legitimate expression using threats, harassment and intimidation.
- Decriminalize defamation in accordance with international standards.
- The government’s “social media monitoring” must be transparent. It needs to consult relevant CSOs to ensure that it is not infringing people’s fundamental freedoms and is yet another tool designed to crush dissent.
- Develop policy for digital literacy and prevent dangerous speech that incite hatred and violence against ethnic and religious minorities.
- Stop internet shutdown in affected townships immediately. Such shutdowns are not proportionate or necessary.

## Freedom of Religion and Belief

18. Even though Myanmar accepted the previous UPR recommendations to end discrimination against all ethnic and religious minorities, it continues to perpetuate a range of oppressive policies that discriminate against ethnic and religious minorities.
19. Since 2012, Myanmar has witnessed the rise of a Buddhist nationalist movements hindering religious freedom and targets religious minorities, particularly Muslims and Christians. Nationalist groups have disrupted religious gatherings and have destroyed religious sites. The government has not held any these groups accountable for their actions and hate speech inciting violence.
20. The Promotion of Race and Religious Laws <sup>2</sup> regulate interfaith marriages, religious conversion and reproductive practices of religious minorities. National Interfaith Council (established in March 2018 under the Ministry of Culture and Religious Affairs) has consistently favored Buddhism over other faiths. COVID19 restrictions prohibited Muslims in Yangon and Mandalay from large religious gatherings however, exceptions were made by the Regional Chief Minister to permit for Buddhists.
21. Ethnic and religious minorities routinely face systemic discrimination. They make up the bulk of IDPs, refugees and stateless population<sup>3</sup>. Places of worship in ethnic regions have been closed and/or destroyed due to conflict. Some churches have been take over and converted into *Tamadaw* command centers.

### **By the next UPR cycle we recommend the following:**

- Eliminate all forms of religious restrictions and protect ethnic and religious minorities' freedom of religion and belief.
- Stop destroying religious sites and reopen places of worship for all religions without discrimination.
- Introduce legal standards and transparency measures for the verification of donated land, renovation of demolished worship places. Compensate and permit the renovation and rebuilding of religious sites destroyed by state and non-state armed actors.
- Institute a civic education, beginning at primary levels, to promote inter-religious understanding, diversity and tolerance.
- Ensure that National Interfaith Council represents the interests of all faiths.

## Citizenship

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<sup>2</sup> These Laws include

1. The Religious Conversion Bill stipulating that anyone who wants to convert to a different faith will have to apply through a state-governed body, in clear violation of the right to choose one's own religion.
2. The Buddhist Women's Special Marriage Bill regulates the marriage of Buddhist women with men from another religion.
3. The Population Control Healthcare Bill establishes a 36-month "birth spacing" interval for women between child births, though it is unclear whether or how women who violate the law would be punished.
4. The Monogamy Bill criminalizes polygamy and extra-marital relations.

<sup>3</sup> Rohingya are no longer recognized as citizens of the state and have had their national registration cards revoked.

22. In previous UPR cycle, Myanmar received recommendations to review their Citizenship Law, and to provide National Identification Cards to every citizen without delay or discrimination.
23. Myanmar has not amended the Citizenship Law, but it has established mobile teams to issue birth certificates. There is also a new Ministry of Immigration and Human Resource. Plans are underway for a digital identity documentation system and mandatory biometric data collection for massive national database.
24. Marginalized groups and persons with disabilities, still face difficulty obtaining identity documents including passports due to discrimination, inconsistent regulations and corrupt practices. Citizenship status can vary even within one family, solely due to the issuing officer's discretion. Religious and ethnic minorities are often asked to lie about their heritage, and identify. People have been arbitrarily assigned originating from places like India, Pakistan and Bangladesh and deemed "mixed blood" simply on the basis of their religion and color.
25. Overall, ethnic and religious minorities experience long processing delays, unnecessary paperwork, expensive fees, and discriminatory treatment. In one instance, it took a Muslim citizen, who had his citizenship card revoked on claims of falsification, four years to obtain a replacement.
26. Ethnic minorities report being unable to keep their non-Burmese names or receiving any interpretation assistance when communicating with immigration officers.

**By the next UPR cycle we recommend the following:**

- Repeal and replace the 1982 Citizenship Law in accordance with international human rights law. Eliminate requirements for citizenship that discriminate on the basis of race, religion, ethnicity or any other protected status.
- Confer citizenship and issue birth certificates to every child born in Myanmar ending statelessness. Issue National Identification Cards to every citizen without delay.
- Reform citizenship verification processes for populations deprived of identity documents. Decisions must be written and subject to administrative and judicial review.
- Ensure that all ethnic groups are not deprived of their human rights and fundamental freedoms including movement and right to education.

## Armed Conflict and Peace

27. The peace process and Nationwide Ceasefire Agreement (NCA) has not ended armed conflict in Myanmar. Clashes between the *Tatmadaw* and EAGs continue and has in fact increased. Non-signatories to the NCA report an intensification of attacks by State forces  
<sup>4</sup> The fighting has led to mass displacement and humanitarian aid for IDPs have for UNOCHA estimates over 241,000 Internally Displaced Persons (IDPs) in Rakhine,

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<sup>4</sup> A negotiating bloc of seven non-signatories (comprising 80% of non-state armed troops in the country) has called for the NCA to be replaced with an alternative peace treaty.



Kachin, Shan and Kayin States.<sup>5</sup> Over 725,000 Rohingya refugees fled to Bangladesh in 2017.<sup>6</sup>

### Active conflict areas

28. Myanmar authorities consistently reject and deny reports of human rights violations including arbitrary arrest, slaughters, torture, extrajudicial killings, shelling,<sup>7</sup> forced labour and mass gang rapes and others acts of sexual violence.<sup>8</sup>
29. People remain fearful and most human rights violations by the *Tatmadaw* go unreported. State security forces are rarely held accountable for their crimes but international scrutiny has resulted in the court martial of some low-ranking government soldiers. In 2018, seven soldiers were sentenced to ten years in prison for killing ten Rohingya men and boys. They were ultimately released after ten months
30. Satellite evidence shows entire villages in northern Rakhine being destroyed while nearby villages remain intact. Despite ample evidence, Myanmar's investigative committee refused to acknowledge the widespread rape of Rohingya women claiming that they were "dirty," and therefore "unattractive" to Buddhist men or soldiers.<sup>9</sup>

### Ceasefire areas

31. The *Tatmadaw* continue to be an occupying force.<sup>10</sup> They have expanded their base and have not disarm or demobilize. Local communities are particularly concerned about landmines, military trainings near civilian areas, destruction of property<sup>11</sup> and villagers being used as human shields.<sup>12</sup> New IDP campsites have developed in ceasefire areas as

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<sup>5</sup> UNHCR estimates 128,000 IDPs in Rakhine; 98,000 in Kachin and 15,000 in Shan and Kayin States. These numbers may be much underreported due to lack of information and access in the region.

<sup>6</sup> UNOCHA (2018). Myanmar Humanitarian Brief, September 2018. UNOCHA.

<https://reliefweb.int/report/myanmar/myanmar-humanitarian-brief-september-2018>. Accessed Feb 8th.

<sup>7</sup> Civilians living in conflict areas continue to be in danger of being killed by shelling. In a case from August 2017 an ethnic Ta'ang woman was killed by shelling during armed clashes between the military and the TNLA in Kutkai Township, Shan State

<sup>8</sup> Women and girls continue to suffer rape and other sexual violence in conflict areas. Rape continues to be used as a weapon of war by the military in order to shame and divide communities. Due to the stigma associated with this crime, it is severely underreported

<sup>9</sup> International Court of Justice (2019). Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar). International Court of Justice. <https://www.icj-cij.org/files/case-related/178/178-20191210-ORA-01-00-BI.pdf>

<sup>10</sup> Karen Human Rights Group (2019). Toungoo Situation Update: Increasing militarisation and land issues in Thandaunggyi and Htantabin townships, December 2018 to May 2019. <https://khrhg.org/2019/09/19-56-s1/toungoo-situation-update-increasing-militarisation-and-land-issues-thandaunggyi-and>

<sup>11</sup> Villagers report that the *Tatmadaw* has been conducting heavy weapons target training on their lands, resulting in crops and rubber plantations being destroyed

<sup>12</sup> Since May 2016, the *Tatmadaw* entered KNU/KNLA territories several times without prior notice, violating the NCA Code of Conduct. On 4 April 2016, *Tatmadaw* soldiers entered a KNU controlled area in Kawkareik Township, Dooplaya District, without getting permission from the KNU. Worried that the KNU soldiers were going to shoot them, *Tatmadaw* soldiers used villagers as human shields, violating International Humanitarian Law. See: Karen Human Rights Group (2017). Dooplaya Situation Update: Kawkareik Township and Noh T'Kaw Township, April to May 2016 . <http://khrhg.org/2017/03/16-57-S1/dooplaya-situation-update-kawkareik-township-and-noh-tkaw-township-april-may-2016>

many have fled active conflict unable to return home.

**By the next UPR cycle we recommend the following:**

- Demilitarize and declare a nationwide ceasefire. Withdraw all state troops from ethnic areas within a year.
- Make international humanitarian law and human rights a mandatory part of the military training and protect civilians.
- Work towards an inclusive political peace process. Allocate seats for CSO delegates (especially those from underrepresented communities) at the Union Peace Conference, soliciting their inputs into ongoing political dialogues.
- End impunity for human rights violations. Civilian courts must be given independent oversight to try and convict soldiers who are found to be guilty.
- Ratify the Mine Ban Treaty, cease the production and use of landmines. Hold meaningful consultations with all relevant actors and initiate mine clearance activities.
- Implement commitments made under the Declaration of Commitment to End Sexual Violence in Conflict; and allow an independent international investigation into crimes of sexual violence.

## Gender & LGBTI Issues

32. Myanmar accepted 17 recommendations related to gender equality and rights of women. Myanmar was asked to make its national laws comply with its obligations under CEDAW.
33. Despite launching its 10-year National Strategic Plan for the Advancement of Women (NSPAW),<sup>13</sup> there is no data on endemic levels of violence against women or gender responsive budget allocated.
34. The Prevention of Violence Against Women (PoVAW) bill, after 7 long years of drafting has still not passed. The Race and Religion Protection Law on the other hand were drafted and passed in a mere 18 months. There is clearly very little political will to address gender-based violence and end discrimination against women. Rape, intimate partner violence and sexual harassment remains widespread, normalized and bolstered by a sexist culture and rampant impunity.
35. Women's political participation and representation remains low. Women in Myanmar are powerful, untapped, national resources. They have demanded a 30% minimum quota for female representation in all levels of government, including the peace talks which has been ignored. Ethnic women's perspectives, especially survivors' needs to be represented at NCA discussion. Despite the establishment of the Women Peace and Security

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<sup>13</sup> National Strategic Plan for the Advancement of Women (2013-2022) is based on CEDAW principles and the 12 Priority Areas of the Beijing Platform for Action. Myanmar National Committee for Women Affairs (2013). National Strategic Plan for Advancement of Women (2013-2022). Government of Myanmar. [https://myanmar.unfpa.org/sites/default/files/pub-pdf/NSPAW2013-2022\\_0.pdf](https://myanmar.unfpa.org/sites/default/files/pub-pdf/NSPAW2013-2022_0.pdf)

Technical Working Group, <sup>14</sup>women rights have not been prioritized.

36. Patriarchal cultural values reinforce gendered norms and divisions of labor that limit women's participation and decision-making at all levels. Buddhist nationalist policies such as the "Protection of Race and Religion Laws" seek to further restrict women's rights pertaining to inter-faith marriage, religious conversion and reproductive rights. Myanmar has not amended laws to protect the rights LGBTI community. Discrimination based on sexual orientation, gender identity or expression (SOGIE) is not a prohibited grounds under the 2008 Constitution. LGBTI persons routinely experience violence, homophobia and discrimination in both public and private spheres. They are neglected and mistreated in their homes, schools and places of work. Their access to services including health and psychosocial support is often restricted leading to higher risks of mental health issues and suicide.
37. LGBTI persons are subjected to unrestrained policing, arbitrary arrests and detention under the Penal Code<sup>15</sup> (which criminalizes homosexuality) and the 1949 Suppression of Prostitution Act<sup>16</sup>. Detained LGBTI persons have been physically and sexually assaulted while in police custody.

**By the next UPR cycle we recommend the following:**

- Ensure the NSPAW is operationalized at all levels, with a sufficient allocated budget and effective monitoring and evaluation mechanisms.
- Address inequalities in political representation, decision-making authority, economic and leadership opportunities using any and all special measures including minimum quotas.
- Carry out mandatory gender-sensitivity trainings on intersectional discrimination issues related to women's rights and SOGIE with government officials and all civil servants including police, health care workers, legal service providers and social workers.
- Prioritize passing a strong PoVAW law in line with international human rights standards. The law must include substantive protections and services for survivors.
- Repeal discriminatory laws like the Protection of Race and Religion Laws and ensure provisions in the Penal Code and Family Law are revised.
- Protect LGBTI rights and include SOGIE as a prohibited ground of discrimination under the Constitution.
- Decriminalize homosexuality by repealing Penal Code section 377 and revise section 375 to include rape of LGBTI persons.
- Stop police brutality and abuse of the 1945 Police Act, and ensure LGBTI survivors have effective legal recourse.

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<sup>14</sup> The text of the Nationwide Ceasefire Agreement (NCA) signed in 2015 calls for the inclusion of "a reasonable number of women representatives in the political dialogue process."  
Allison Muehlenbeck and Julia Palmiano Federer (2016). Women's Inclusion in Myanmar's NCA  
<https://www.inclusivesecurity.org/wp-content/uploads/2016/09/Womens-Inclusion-in-Myanmars-Nationwide-Ceasefire-Agreement.pdf>

<sup>15</sup> Government of Myanmar. Myanmar Penal Code, Section 377.  
[https://www.burmalibrary.org/docs6/MYANMAR\\_PENAL\\_CODE-corr.1.pdf](https://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf)

<sup>16</sup> Institute of Development Studies. Sexuality, Poverty and Law Programme: Sex Work Law - Myanmar.  
<http://spl.ids.ac.uk/sexworklaw/countries>

# Human Trafficking

38. Myanmar accepted recommendations to step up efforts to combat human trafficking and the sale of children. However, human trafficking remains rampant in Myanmar. Traffickers take advantage of the poverty, instability of the country and coerce vulnerability women, men and children into forced labor and sexual exploitation/slavery. According to Myanmar's Anti-Human Trafficking Police's 2019 annual report, 188 trafficking cases from Myanmar were forced into marriages in China.
39. Most of those trafficked into forced slavery work in the fishing industry. They work long hours, performing physically intensive tasks under dangerous working conditions. Trafficked undocumented laborers have no rights and are exploited by their coworkers and supervisors in their host countries. Workers die from illness and commit suicide as a means of escaping their fate. Others perish from storms. For instance, in the 2017–2018 fishing season, 276 workers have been reported missing or dead (at a rate of one death per day) in the Pyapon, Ayeyarwady area alone.
40. Women and girls are disproportionately trafficked into sexual slavery. Cases of bride-selling and forced pregnancy have increased dramatically due to high demand in China. Lack of cooperation between the two governments exacerbates the issue. Sex trafficking has devastating consequences for victims, who may suffer from long-lasting health
41. Despite the introduction of anti-trafficking awareness sessions,<sup>17</sup> there has been limited improvement, as these talks are usually held in urban areas whereas the most vulnerable and at-risk population reside in rural communities. There is a hotline to report such cases.<sup>18</sup> However, it remains inaccessible for those in remote areas who do not have access to a phone.
42. Although the 2005 Anti-Trafficking in Persons Law <sup>19</sup>states that the maximum penalty for trafficking is imprisonment for life, there have only been a few prosecutions and arrests by the Anti-Trafficking Police Force. And traffickers are highly mobile, often fleeing abroad escaping justice. Information regarding human trafficking cases are not publicly shared making it hard for CSOs to assist and protect victims.
43. There are also inadequate resources to support survivors upon return to Myanmar. The government only offers repatriation of survivors, and lacks consideration for the victims'

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<sup>17</sup> Ministry of Information (2019). Anti-Human Trafficking Police Force give educational talks on human trafficking across the country. Government of Myanmar.

<https://www.moi.gov.mm/moi:eng/?q=news/14/11/2018/id-7865>

<sup>18</sup> US Department of State (2018). 2018 Trafficking in Persons Report - Burma. US Department of State.

<https://www.refworld.org/docid/5b3e0b8a7.html>

<sup>19</sup> The State Peace and Development Council (2005). The Anti Trafficking in Persons Law. Government of Myanmar. [https://www.burmalibrary.org/docs15/2005-SPDC\\_Law2005-05-Anti\\_Trafficking\\_in\\_Persons\\_Law-en.pdf](https://www.burmalibrary.org/docs15/2005-SPDC_Law2005-05-Anti_Trafficking_in_Persons_Law-en.pdf)

social, physical, emotional and economic recovery.

**By the next UPR cycle we recommend the following:**

- Protect the rights of migrant workers through negotiations with countries of destination and by developing comprehensive Memorandum of Understandings (MoUs) committed to anti-trafficking.
- Pursue legal actions against traffickers and ensure that perpetrators at all levels are brought to justice.
- Strengthen complaint mechanisms within Myanmar and overseas to register human trafficking violations, accessible to all, regardless of circumstances and legal status.
- Implement policies dedicated to care and protection of survivors, focusing on safety, physical and mental health, education, access to decent work, and restitution.
- Expand awareness-raising programs on human trafficking especially to rural areas with vulnerable populations susceptible to it.

## Land Issue

44. During the 2nd UPR cycle, Myanmar accepted or noted several recommendations related to land rights. These included responding to and redressing land grabbing,<sup>20</sup> and respecting the rights of Indigenous Peoples (IP's) in accordance with UNDRIP.<sup>21</sup> While Myanmar has passed laws<sup>22</sup> to address some of these concerns, much remains to be done.
45. The 2018 Vacant, Fallow, and Virgin (VFV) Land Management Law displaces and criminalize people who failed to meet the 6-month deadline to register their land.<sup>23</sup> Most of the lands classified as VFV were in ethnic rural areas. Up to 10 million IPs live or rely on this land for their livelihood. The VFV Law stipulates that people had to apply for 30-year concessions to use their own land. If they failed to do so and the land is awarded to another party, they face up to two years in prison for trespassing.<sup>24</sup>

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<sup>20</sup> Address the issue of land grabbing, including through providing redress to farmers and others whose land was illegally or arbitrarily seized (Czech Republic, comment 143.124).

<sup>21</sup> Ensure that national legislation is in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Denmark, comment 145.67).

<sup>22</sup> Myanmar has passed a series of laws and policies to address land rights concerns, including the National Land Use Policy in 2016, Forest Law in 2018, Vacant, Fallow and Virgin (VFV) Land Management Law in 2018, Protection of Biodiversity and Protected Area Law in 2018, Community Forestry Instructions in 2019, Land Acquisition, Resettlement and Rehabilitation Law in 2019, and the National Environmental Policy in 2019. Additionally, the Central Reinvestigation Committee for Confiscated Farmlands and Other Land was formed and chaired by Vice President U Henry Van Thio to investigate and redress land-grab cases.

<sup>23</sup> NAMATI & MyJustice Myanmar (2019). Most Farmers Do Not Know about the Vacant, Fallow and Virgin Land Management Law as the Grace Period to Register Closes. [https://namati.org/wp-content/uploads/2019/04/VFV-Policy-Brief-ENG\\_Final\\_April.pdf](https://namati.org/wp-content/uploads/2019/04/VFV-Policy-Brief-ENG_Final_April.pdf)

<sup>24</sup> [Ibid](#)

46. Customary land tenure by ethnic minorities and IP's is a widespread and longstanding practice. While the VFV Law provides exceptions for customary tenure from being classified as VFV. The government has not defined it or created a registration process rendering it meaningless.
47. Most rural people, including ethnic minorities, do not have sufficient written documentation of their land making them vulnerable to land grabs by government or private sector<sup>25</sup>. Land grabbing continues at an alarming rate. More than 200,000 acres in the Irrawaddy Region alone has been seized for industrial and hotel zone projects, railroad projects, mineral extraction, departmental offices and cantonment expansion. Other large tracts have been confiscated in the extension of Myanmar's Permanent Forest Estate. The establishment of this protected area was done without free, prior and informed consent from local communities, despite multiple laws<sup>26</sup> stipulating it as a requirement.<sup>27</sup>
48. Protests over land grabs have increased in recent years and hundreds of farmers were arrested and charged for exercising their right to protest and demanding an end to land grabs. The army arrested and charged 47 farmers from Kholam Sub-township and 70 farmers from Hsihseng Township in Southern Shan State with trespassing article 447 of Penal Code, during COVID19.
49. The Central Committee for Reviewing Confiscated Farmlands and Other Lands (CCRCFOL) has been ineffective. Despite the government's claims that all land confiscation issues would be resolved within six months of the Committee's creation in 2016. The Committee has sought to redress land grabbing by promulgating 47 policies, but these policies conflict with other legislation including Farmland Law of 2012.

**By the next UPR cycle we recommend the following:**

- Amend existing laws and policies prioritizing the interests of local ethnic people in accordance with ICESCR, UNDRIP and other UN treaties.
- Abolish the VFV Law and fully recognize customary land tenure rights throughout the country through a new National Land Law. Develop a digital map system in order to record customary land tenure.
- Redress the land confiscated for the extension of the Permanent Forest Estate, as well as land confiscated by government, military and private sector actors.
- Amend laws that permit the compulsory acquisition of land for use by private businesses without transparency or procedural safeguards.

## Political Prisoners, Arbitrary Detention & Torture

### Political Prisoners

50. There are 647 political prisoners in Myanmar. 141 are awaiting trial in prison, 433 are awaiting trial out of prison and 72 are serving prison sentences. The number of

<sup>25</sup> Rich Weir (2018). Nothing for Our Land: Impact of Land Confiscation on Farmers. Human Rights Watch. <https://www.hrw.org/report/2018/07/17/nothing-our-land/impact-land-confiscation-farmers-myanmar>

<sup>26</sup> These include the Ethnic Rights Protection Law and Bylaw, Forest law, and National Land Use Policy

<sup>27</sup> IPs Customary Land Study by POINT (Thandaunggyi Township, Karen state)

incarcerated political prisoners has risen, in part due to new laws that restrict peaceful protest and freedom of speech.<sup>28</sup> These include activists, journalists and human rights defenders. Many have no access to legal counsel and have been deprived of family visitation rights.

51. Myanmar has taken some positive steps. Political prisoners are included in the annual Presidential prisoner pardon. However, the committee formed to release political prisoners in 2013 has made little progress and excluded CSOs. The number of incarcerated political prisoners has risen, in part due to new laws that restrict peaceful protest and freedom of speech.

### **Arbitrary Detention**

52. Arbitrary detention has increased dramatically, particularly in areas affected by conflict. Civilians are regularly threatened and held by security forces seeking information on EAGs operating in the area.

### **Torture**

53. Even though Myanmar has prohibited torture in its Constitution and domestic laws, it is not enforced. Torture is endemic in prisons, detention and interrogation centers, and systemically used against political prisoners in both police and military custody.
54. Detainees have been beaten, electrocuted and sleep, food and water deprivation. In 2019, there were reports of at least 42 individuals tortured, and 10 deaths while in police custody. 15 have been officially reported in military custody in Rakhine, but the real figure is likely to be significantly higher.
55. There is no legal recourse for victims or the families of the deceased. Cases rarely reach the courts, and in the ones that do, victims are frequently threatened, or countersued for defamation.
56. Moreover, almost 150 people are arrested each day in Myanmar, resulting in substantial prison overcrowding which further exacerbates the inhumane treatment.

### **By the next UPR cycle we recommend the following:**

- Allow independent international monitoring of prison conditions and implement changes recommended by these bodies.
- Ensure adequate physical and psychological healthcare for all political prisoners during incarceration and on release.
- Drop all charges against political activists. Immediately release all political prisoners being arbitrarily detained.
- Relaunch the Joint Committee for Scrutinizing Remaining Political Prisoners with CSO involvement.

## **Anti-Corruption & Judicial System**

57. The judiciary has limited to no independence from the executive branch or the military. Instead of serving as a check and balance on power, the judiciary has been co-opted by

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<sup>28</sup> Linda Lakhdir (2019). Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar. Human Rights Watch. <https://www.hrw.org/report/2019/01/31/dashed-hopes/criminalization-peaceful-expression-myanmar>

these powerful forces, making them susceptible to political pressure and coercion. Military involvement in legal processes is common, and former military officers have been appointed powerful positions in the judiciary. Although the Supreme Court has made claims of reassessing its independence under the five year judicial strategic plan released in 2018, its progress is yet to be determined.

58. Despite the government's commitments,<sup>29</sup> corruption and bribery continue to pose significant challenges. Anti-corruption initiatives such as the Whistleblower Protection Laws, the Rights to Information Law and Assets Disclosure Law/Policy remain unimplemented.
59. Although the Anti-Corruption Commission (ACC) has made significant efforts pursuing high profile cases and extending its mandate to private transactions, frustration has started to set in due to government inaction on corruption affecting people's daily lives. There is a general lack of transparency regarding the Corruption Prevention Units (CPUs) and their efforts. Government officials involved in corruption cases are still able to avoid legal consequences.
60. Public awareness of anti-corruption measures remains low despite modifications to the Anti-Corruption Law in 2013. The process of filing bribery complaints is unclear and people have limited knowledge and access to relevant channels.

**By the next UPR cycle we recommend the following:**

- Amend the Constitution to ensure the independence of the judiciary from the executive and military under the Five Year Judicial Strategic Plan.
- Establish mechanisms for regular, transparent, and independent monitoring of court proceedings by experts in domestic and international fair trial standards.
- Establish a clear and accessible public complaint mechanism under the ACC and expand branch offices across all states.
- Ensure legal protection of whistleblowers exposing corruption practices.

## Disability Rights

61. As a signatory to the CRPD, Myanmar is in the process of developing its Persons with Disabilities Law and by-laws, with various federal, regional and local associations. Although Myanmar accepted the previous UPR cycle's recommendation to ensure education for all persons with disability, little progress has been made and most people with disabilities still struggle for basic needs including food, shelter, clothing and health care. Many reported not being given vital health information by the government pertaining to COVID19 pandemic.
62. Notwithstanding a disability cash allowance introduced in 2014,<sup>30</sup> most public service for people with disabilities is limited. Current infrastructure limits their mobility and access

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<sup>29</sup> Myanmar has ratification of the United Nation Convention against Corruption (UNCAC) in 2012, and voluntarily participates in the Implementation Review Mechanism.

<sup>30</sup> Help Age International (2018). Disability and ageing in Myanmar. Help Age International [https://www.lift-fund.org/sites/lift-fund.org/files/Policy\\_brief\\_eng/Disability%20and%20Ageing%20Myanmar\\_Briefing.pdf](https://www.lift-fund.org/sites/lift-fund.org/files/Policy_brief_eng/Disability%20and%20Ageing%20Myanmar_Briefing.pdf)



to public services and transport. Most people with disabilities (about 85%) lack access to formal education. They are also less likely to be employed <sup>31</sup>as the majority continues to face discrimination and exploitation at the hands of employers and business owners. There are no targeted vocational or training programs limiting them to low-skill jobs.

**By the next UPR cycle we recommend the following:**

- Redesign public spaces and places of public service provision to ensure accessibility and accommodate persons with disabilities, including transport, hospitals, and religious sites.
- Establish laws that prohibit workplace discrimination, create inclusive workspaces and incentivize employers to hire more persons with disabilities.
- Ensure materials and classrooms are adapted for children with disabilities. Develop training and vocational centers for persons with disabilities helping them gain technical and professional skills.

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<sup>31</sup> The Republic of the Union of Myanmar (2014). Policy Brief on Disability. The Republic of the Union of Myanmar.  
[https://myanmar.unfpa.org/sites/default/files/pub-pdf/policy%20brief%20and%20infographics\\_Disability.pdf](https://myanmar.unfpa.org/sites/default/files/pub-pdf/policy%20brief%20and%20infographics_Disability.pdf)