



# MYANMAR

23rd Session of the Working Group on the Universal Periodic Review

Human Rights Council

9 November 2015

Joint submission prepared by the Alternative ASEAN Network on Burma (ALTSEAN-Burma) and the International Federation for Human Rights (FIDH)

## Summary

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1. The submission by the Alternative ASEAN Network on Burma (ALTSEAN-Burma) and the International Federation for Human Rights (FIDH) focuses on: Myanmar's adherence to international human rights instruments; its domestic legislation and the rule of law; the intimidation and targeting of human rights defenders (HRDs); armed conflict and displacement; the rights of ethnic and religious minorities, including Muslim Rohingya; rape and gender-based violence; human rights abuses in prisons and in conflict areas; and the National Human Rights Commission.
2. This submission analyzes important accepted recommendations that have not been implemented adequately or at all. Out of 190 recommendations made during its Universal Periodic Review (UPR) in 2011, Myanmar accepted 74, rejected 70, and considered 46.
3. During its last UPR in June 2011, Myanmar made commitments to: continue efforts to promote and protect human rights and freedoms; ratify all universal core human rights treaties; take steps to review domestic legislation to guarantee fundamental rights to freedom of expression, association, and assembly; ensure the independence and impartiality of the judiciary; strengthen and promote ethnic rights; resolve conflicts with ethnic armed groups; protect women's rights; and improve conditions in prisons and bring detentions in compliance with international standards.
4. Since 2011, Myanmar has failed to fully implement these commitments. This has led to ongoing abuse of its citizens' fundamental rights. Laws regulating peaceful assembly continue to be used to imprison activists and HRDs. Parliament has failed to amend the 2008 Constitution and key pieces of domestic legislation that lack adherence to international standards. Continued hostilities between the *Tatmadaw* (Myanmar's Armed Forces) and ethnic armed groups have displaced tens of thousands in ethnic areas. The government's failure to constructively engage with ethnic groups has resulted in the deterioration of conditions for Muslim Rohingya and other minorities. *Tatmadaw* soldiers have continued to commit human rights abuses in conflict areas. Women are often targets of sexual violence by *Tatmadaw* personnel who engage in such acts with impunity. Authorities have perpetrated abuses against prisoners in detention. In many cases, no investigations are undertaken into such violations, and investigations are inadequate even when conducted. Numerous UN

mechanisms have documented widespread and systematic abuses in conflict areas, which may amount to crimes against humanity and war crimes as defined by Articles 7 and 8 of the Rome Statute.

### **Key international human rights instruments not ratified**

5. During its 2011 UPR, Myanmar agreed to ratify and fully implement core international human rights treaties, including: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).
6. Despite its commitment to ratify and implement core international human rights treaties, Myanmar has failed to sign or ratify any of the above-mentioned conventions. Myanmar has also failed to take concrete steps to effectively implement all the instruments to which it is a party, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
7. During its 2011 UPR, Myanmar agreed to continue to engage with the UN Office of the High Commissioner for Human Rights (OHCHR). In November 2012, President Thein Sein promised to open an OHCHR office in the country. Despite two UN General Assembly (UNGA) and two UN Human Rights Council (HRC) resolutions on this matter, Myanmar has yet to establish an OHCHR country office.
8. Recommendations to the government:
  - Sign, ratify, and effectively implement core international human rights instruments, including: ICCPR, ICESCR, ICERD, CAT, and ICPPED.
  - Allow the establishment, without further delay, of an OHCHR country office with a full protection mandate.

### **Repressive laws remain on the books**

9. During its 2011 UPR, Myanmar agreed to amend many of its laws to ensure that all people are able to enjoy their fundamental human rights and that such amendments incorporate its international obligations. This includes guaranteeing the right to freedom of expression, association, and peaceful assembly.
10. Many repressive laws remain on the books. Out of the 14 laws identified by the former UN Special Rapporteur on the situation of human rights in Myanmar Tomás Ojea Quintana as not in line with international standards,<sup>1</sup> the government has only repealed three: Law 5/1996, the Printers and Publishers Registration Act (1962), and the Law Relating to Forming of Organizations (1988).

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<sup>1</sup> 14 laws identified by the former UN Special Rapporteur on the situation of human rights in Myanmar Tomás Ojea Quintana as not in line with international standards: the State Protection Act (1975); the Emergency Provisions Act (1950); the Printers and Publishers Registration Act (1962); Law 5/1996; the Law Relating to Forming of Organizations (1988); the Television and Video Law (1985); the Motion Picture Law (1996); the Computer Science Development Law (1996); the Unlawful Association Act (1908); the Electronic Transactions Law (2004); Criminal Code Articles 143, 145, 152, 505, 505(b) and 295-A; the Code of Criminal Procedure; the Official Secrets Act (1923); and the Wireless Telegraphy Act (1933).

11. New legislation legalizes peaceful protests. However, legislation approved since 2011 falls short of international standards and has been used to limit freedom of association and peaceful assembly. For example, the Peaceful Gathering and Demonstration Law (adopted in November 2011 and amended in June 2014) has been frequently used to detain and imprison activists. The amended law still requires individuals to seek permission prior to the protests from local authorities, who use this clause to deny the right to peaceful assembly and arrest protesters who do not comply with the restrictions proscribed by the law. From January 2014 to February 2015, at least 135 people were arrested and/or sentenced under the Peaceful Gathering and Demonstration Law.
12. New laws governing the media eliminate pre-publication censorship. However, they still fall short of international standards and limit freedom of expression. The Printing and Publishing Law, adopted by Parliament on 4 March 2014, replaced the Printers and Publishers Registration Act (1962) and removed prison terms for violators. However, the new law authorizes the Ministry of Information to grant and revoke publishing licenses and bans the publication of material that “insults” religion, undermines the “rule of law,” or harms ethnic unity. The Media Law, which was also adopted on 4 March 2014, similarly contains a clause that cautions against writing about nationality, religion, and race.
13. The adoption of new media laws has not stopped authorities from using oppressive legislation enacted prior to 2011 to imprison journalists. In July 2014, five media workers from Unity Weekly were sentenced to ten years in prison with hard labor – later reduced to seven years – under the 1923 Official Secrets Act for publishing an article on 25 January that claimed that the military had a secret chemical weapons factory in Pauk Township, Magwe Region. In October 2014, three Bi Mon Te Nay Journal employees and two publishers were sentenced to two years in prison each under Article 505(b) of the Criminal Code for publishing a story on 7 July that referenced a statement from activist group Movement for Democracy Current Force (MDCF). They were originally arrested under the 1950 Emergency Provisions Act.
14. During its 2011 UPR, Myanmar agreed to continue to improve its judicial system to be in line with international norms, guarantee due process of law, and ensure independence and impartiality. However, courts continue to issue verdicts that are not in keeping with the standards of due process. In addition, authorities continue to engage in multiple prosecutions for the same offense. For example, from 4 June to 30 October 2014, MDCF leader Htin Kyaw received 14 sentences totaling 13 years and four months under Article 505(b) of the Criminal Code and Article 18 of the Peaceful Gathering and Demonstration Law by several different Yangon courts for a series of protests.
15. In November 2012, Rohingya HRD Tun Aung was sentenced to 11 years in prison on a number of trumped-up charges related to his efforts to prevent violence between Buddhists and Muslims in Rakhine State during the June 2012 sectarian unrest. Prior to trial, he was denied family visits, was not allowed to appoint his own lawyer, and was denied private meetings with his court-appointed lawyer. Following an appeal by the prosecution for an increased sentence, the court sentenced him to an additional six years. Tun Aung was released on 19 January 2015.
16. In September 2014, Rohingya HRD Kyaw Hla Aung was sentenced to one year and six months in prison on trumped-up charges of rioting in connection with an April 2013 protest in Rakhine State in which Rohingya IDPs refused to self-identify as ‘Bengali.’ Kyaw Hla Aung’s lawyer was prevented from attending several of his court

hearings. Kyaw Hla Aung was released under a presidential amnesty on 7 October 2014.

17. Recommendations to the government:

- Amend legislation that is not in line with international human rights standards.
- Amend legislation in order to guarantee the rights to freedom of expression, peaceful assembly, and association.
- Repeal domestic laws that criminalize peaceful political dissent.
- Amend legislation to ensure freedom of the media.
- Ensure the independence of the judiciary and adherence to due process in all criminal prosecutions.

**Dozens of political prisoners remain behind bars**

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18. Since Myanmar's last UPR, more than 1,000 political prisoners have been released in presidential amnesties, while others have been released upon the completion of their terms. In July 2013, President Thein Sein pledged to release all remaining political prisoners by the end of 2013. By the start of 2014, however, approximately 40 political prisoners remained behind bars. Throughout 2014, the government continued to imprison activists and HRDs. By the end of January 2015, there were 159 political prisoners in jail, including farmers protesting against land confiscations, and another 213 people awaiting trial for their political actions.
19. In 2014, HRDs Sein Than and Htun Htun Oo were repeatedly charged and sentenced for their actions advocating for farmers' land rights and environmental rights respectively. Sein Than, a land rights activist and leader of Yangon's Michaungkan community, was arrested and sentenced to a total of two years in prison by five different township courts in Yangon for leading peaceful community protests against land confiscation. Htun Htun Oo, who is a Human Rights Watch and Defender Network (HRWDN) member, was sentenced to six months in prison for his environmental activism in the Irrawaddy Delta. Both have been charged under Article 18 of the Peaceful Gathering and Demonstration Law as well as other laws that limit the right to freedom of peaceful assembly.
20. Land rights defenders at the site of large-scale projects have also been targeted. Thaw Zin and Phyu Hnin Htwe have been targeted for helping local farmers protest against the Chinese-operated Letpadaung copper mine in Salingyi Township, Sagaing Region. Authorities arrested HRD Thaw Zin in April 2013 and February 2014. On 24 March 2014, Thaw Zin was sentenced to 15 months in prison under Articles 447 and 505(b) of the Criminal Code for helping local villagers protest against land confiscation related to the Letpadaung copper mine. He was freed on 26 September 2014. No reason was given for his early release. Phyu Hnin Htwe, a political activist and a member of the All Burma Federation of Student Unions (ABFSU), was held incommunicado for two days following her arrest on 13 September 2014 on fabricated charges of kidnapping under Articles 364 and 368 of the Criminal Code for her alleged involvement in the abduction of two Chinese workers near the Letpadaung copper mine. She was detained and held without bail for one month while on trial before charges were dropped.
21. On 5 June 2014, land rights activist and National League for Democracy (NLD) member San Tun was shot and killed near his home in Ming Pyin Village Tract, Hopong Township, Shan State. Witnesses reported that two men took San Tun from his home late in the evening and then heard gunshots. San Tun had been active in supporting villagers challenging land confiscation. On 12 September 2014, police

claimed to have accidentally shot and killed Sai Shwe, a suspect in San Tun's murder. Authorities did not identify any additional suspects in his murder and the case remains unsolved.

22. There has also been an increase in the number of farmers arrested for protesting the confiscation of their land. In July 2014, at least 56 farmers were sentenced to prison terms for their involvement in peaceful plow protests in Kantbalu Township, Sagaing Region. A total of 226 farmers were charged. The farmers were accused of trespassing and destruction of military agricultural land after they plowed land that had been confiscated by the military in 1999. As of February 2015, at least 101 farmers were serving sentences related to land confiscation protests.
23. Recommendations to the government:
  - Immediately and unconditionally release all political prisoners and prisoners of conscience.
  - Ensure the support, protection, and safety of HRDs and investigate, prosecute, and punish those responsible for human rights abuses against HRDs.
  - Amend laws that criminalize peaceful political activities and bring them in line with international human rights standards.
  - Protect rights prescribed under the Universal Declaration of Human Rights (UDHR), including that no one be subjected to arbitrary arrest, detention or exile.
  - Constructively address and resolve all land confiscation cases, and provide adequate compensation and redress for the farmers.

### **Armed conflict and displacement continue**

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24. During its last UPR, Myanmar agreed to resolve its many long-standing conflicts with ethnic armed groups around the country. Since then, the *Tatmadaw* broke a 17-year ceasefire with the Kachin Independence Army (KIA) and resumed hostilities against other ethnic armed groups in Kachin and Northern Shan States. The conflict there has continued into its fourth year and the *Tatmadaw's* actions, notably attacks against civilians, may amount to crimes against humanity and war crimes. The *Tatmadaw* also conducted military operations against ethnic armed groups in Karen and Mon States, in violation of a 2012 ceasefire with Karen groups.
25. The government's engagement in the peace process has lacked genuine commitment. While it has engaged with many ethnic armed groups by signing accords, hostilities have continued. In August 2014, the government promised it would cater to the ethnic groups' demand for the establishment of a federal union. However, it retracted its promise a month later. As a result, ethnic groups remain distrustful and have indicated they will not proceed with the signing of a nationwide ceasefire agreement until they have political guarantees.
26. The ongoing conflict in Kachin and Shan States has created approximately 100,000 IDPs, most of whom have spent the majority of the last three years in temporary shelters. Many IDPs have been displaced three or four times, as the military has indiscriminately shelled camps and villages.
27. During its 2011 UPR, Myanmar agreed to facilitate the return of Burmese refugees in Thailand in cooperation with the relevant UN agencies. However, ongoing conflict and loss of land and livelihoods, caused in part by the presence of landmines, has prevented a large number of IDPs and refugees from returning home. Myanmar is one of only four nations currently producing landmines. Troops actively use them against civilians, in violation of international humanitarian law. Although the

government has allowed several humanitarian mine clearance agencies to establish a presence within the country, they have not been allowed to perform mine clearance activities.<sup>2</sup> The number of refugees and people living in refugee-like situations from Myanmar has risen since its last review from 414,626 as of the end of 2011<sup>3</sup> to 479,606 as of the end of 2013.<sup>4</sup>

28. Recommendations to the government:

- Protect rights proscribed under the UDHR, including the right to life, liberty, and security of person.
- Sign and ratify the Rome Statute.
- Take immediate steps to ensure full protection of all civilians in conflict areas, including prohibiting indiscriminate attacks against civilians.
- Immediately allow humanitarian mine clearing agencies to perform mine clearance activities.
- Launch thorough, independent, and impartial investigations into allegations of human rights abuses by the *Tatmadaw* and punish those found responsible.
- Create conditions for the safe and voluntary return of IDPs and refugees to their homes.

**Human rights situation deteriorated in Northern Rakhine State**

29. During its 2011 UPR, Myanmar agreed to strengthen the promotion and protection of human rights of ethnic groups in Northern Rakhine State. However, human rights abuses in Rakhine State have continued. In 2012, 2013, and 2014, state authorities failed to prevent multiple outbreaks of sectarian violence that predominantly targeted Muslim Rohingya. Violence against Rohingya has been fueled, in part, by hate speech, particularly on online social networks, which the government has failed to take meaningful steps to address. Reports of extrajudicial killings, arbitrary arrests, torture, rape and sexual violence, intimidation, threats, and extortion against Rohingya by security forces persist.
30. From June to October 2012, several waves of sectarian violence hit Rakhine State. According to official figures, the violence resulted in the death of 211 people – 152 of whom were Rohingya. However, various organizations estimated that the actual death toll was much higher. The violence resulted in the displacement of 140,000 people, the overwhelming majority of whom were Rohingya. Authorities failed to take necessary steps to determine those responsible for attacks targeting Rohingya. The abuses included: arbitrary arrests; forced displacement; extrajudicial killings; rape; torture; destruction of property; and restrictions on religious activities and freedom of movement.
31. Despite repeated calls by six UNGA and six UNHRC resolutions to grant Rohingya citizenship rights, the government has not amended the 1982 Citizenship Law. In March 2013, President Thein Sein said the government had no plans to amend the law. The authorities also maintained restrictions on marriage and freedom of movement for Rohingya. In May 2013, authorities in Rakhine State resurrected a longstanding ban on Rohingya having more than two children.

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<sup>2</sup> ICBL (22 Dec 14) Press Conference and release of Landmine Monitor 2014 Myanmar/Burma Country Report

<sup>3</sup> UNHCR Statistical Yearbook 2011

<sup>4</sup> UNHCR Statistical Yearbook 2013

32. During its 2011 UPR, Myanmar pledged to ensure that ethnic minorities were granted fundamental rights, including the free enjoyment of culture and religion without discrimination. However, Rohingya and other minorities are still denied access to these fundamental rights. In December 2014, the government submitted the 'National Race and Religion Protection' package to Parliament. The set of four bills provides a legal basis to discriminate against Muslims and other religious minorities. The bills, as introduced, restrict interfaith marriage and religious conversion and enable the selective institution of population control measures. These bills contravene Myanmar's legal obligations as a state party to CEDAW and CRC by restricting women's marital and reproductive rights and potentially denying birth registration to certain children.
33. On 22 September 2014, Parliament approved a bill amending the Political Parties Registration Law, removing the right of temporary ID card holders, which include many Rohingya and other minorities, to form political parties. On 11 February 2015, President Thein Sein announced that all temporary ID cards would expire on 31 March 2015, effectively disenfranchising all temporary ID card holders as well as denying them access to education and healthcare benefits they were previously entitled to.
34. During its 2011 UPR, Myanmar agreed to continue its development activities in Northern Rakhine State. However, Rakhine State remains the second poorest state in Myanmar (behind Chin State). In addition, as of January 2015, over 139,000 IDPs (approximately 138,000 Rohingya and 1,700 Rakhine) remain displaced as a result of the 2012 sectarian violence in Rakhine State. In mid-2014, the government introduced the Rakhine State Action Plan, which proposed the permanent segregation of Rakhine and Rohingya communities, and the internment of Rohingya who do not qualify for citizenship. However, the plan was sent back for review after UN Special Rapporteur on the situation of human rights in Myanmar Yanghee Lee and several INGOs criticized it. An amended version has yet to be made public.
35. Myanmar also agreed, during its 2011 UPR, to continue efforts to engage with various ethnic groups and address their humanitarian and socio-economic needs as an integral part of its democratization and reconciliation process. However, from July 2012 to September 2013, the government granted UN humanitarian organizations access to IDPs in KIA-controlled areas on only three occasions – one in June and two in September 2013. Since September 2013, international humanitarian organizations have gained more regular access to non-government controlled areas, but access was again limited by bureaucratic delays towards the end of 2014. In Rakhine State, communities had limited access to aid after the government expelled Médecins Sans Frontières (MSF)-Holland for ten months (March-December 2014), after the organization said it had treated victims injured in attacks against Rohingya in Du Chee Yar Tan Village, Maungdaw Township, Rakhine State, in January 2014.
36. Recommendations to the government:
- Protect the right of all ethnic minority groups to the realization of their economic, social, and cultural rights indispensable to their dignity.
  - Amend the 1982 Citizenship Law to give Rohingya access to full citizenship rights.
  - End the policy and practice of religious persecution and discrimination against Muslim Rohingya and other non-Buddhist groups.
  - Withdraw the 'National Race and Religion Protection' package.
  - Take stronger measures to combat hate speech and incitement to violence against minority communities, particularly Rohingya and other Muslims, and hold those responsible for hate speech to account.

- Allow unrestricted access to aid organizations in all parts of the country, especially to ethnic nationality areas that have been worst hit by conflict and sectarian violence. Provide aid organizations with the necessary assistance to ensure that those who most need aid have unimpeded access.

### **Rape and gender-based violence continue unabated**

37. During its 2011 UPR, Myanmar pledged to adopt effective measures to fight violence against women and girls. This included a commitment to ensure that violence against women, including domestic violence and all forms of sexual abuse, is treated as a criminal offence and that perpetrators are prosecuted and punished. In addition, Myanmar agreed to adopt and enforce strict legislation which criminalizes rape in every context, and which ensures legal punishment of all perpetrators, including those from the police, military, and other authorities. They also committed to conduct investigations, bring perpetrators to justice, and provide reparation to the victims of sexual violence involving members of the armed forces.
38. Myanmar is a party to the 4th Geneva Convention, which prohibits the waging of war against civilian populations, including using rape as a weapon of war. Myanmar is also party to CEDAW. However, it has not ratified the Optional Protocol, which allows CEDAW to hear complaints from individuals and to investigate “grave or systematic violations” of women’s rights. In June 2014, Myanmar endorsed the Declaration of Commitment to End Sexual Violence in Conflict. Domestic law recognizes the rights of women and prohibits gender-based violence. In February 2015, Parliament unanimously approved a proposal urging the government to finish drafting a bill on the prevention of violence against women. However, no specific legislation has yet been enacted to address domestic violence or sexual violence. The Criminal Code provides punishment for rape and harassment, but does not recognize marital rape.
39. Despite these commitments, the reality on the ground remains unchanged. Of particular concern is sexual violence and abuse against women by *Tatmadaw* soldiers in conflict areas. The *Tatmadaw* continues to use rape and sexual violence as a weapon of war against women in ethnic areas with impunity.<sup>5</sup> Following the resumption of conflict between the *Tatmadaw* and the KIA, between June 2011 and June 2014, more than 70 cases of sexual violence by *Tatmadaw* soldiers against women and young girls in Kachin State and Northern Shan State were recorded. At least 20 of the victims were killed.<sup>6</sup>
40. Women have been victims of other *Tatmadaw* abuses and violence, including arbitrary arrests, forced displacement, and enforced disappearance. In October 2011, according to eyewitness testimonies, *Tatmadaw* soldiers from Light Infantry Battalion (LIB) 321 abducted Sumlut Roi Ja, a 28-year-old Kachin Woman, in Momauk Township, Kachin State. More than three years since her disappearance, no investigation has taken place and the fate and whereabouts of Sumlut Roi Ja remain unknown.
41. Myanmar committed to increase its efforts to prevent and combat human trafficking and adopt a National Plan of Action for the advancement of the human rights of women. However, violence against women and human trafficking persists. Myanmar has been ranked at “Tier 2 Watch List” (the second to lowest ranking) for three consecutive years (2012-2014) in the US Department of State’s Trafficking in

<sup>5</sup> WLB (14 Jan 14) Same Impunity, Same Patterns

<sup>6</sup> KWAT official figures (Oct 14)



Persons (TIP) report. In October 2013, the government adopted the National Action Plan for the Advancement of Women (2013-2022).

42. Recommendations to the government:

- Implement all recommendations made by the Committee on CEDAW at its 42nd Session to the government of Myanmar.
- Sign and ratify the Optional Protocol to CEDAW.
- Ensure rule of law and effective access to justice for all victims of rape and gender-based violence, as well as sufficient means of protection, such as counseling services and shelters.
- Independently and credibly investigate instances of rape, sexual violence, and enforced disappearance, particularly where the accused are members of the *Tatmadaw*, and hold perpetrators accountable.
- Sign and ratify the ICPPED, and incorporate its provisions into national law.
- Immediately cease violations of international humanitarian and human rights law against ethnic minority civilians in conflict and ceasefire areas, including violence against women.

**Human rights abuses in prisons and in conflict areas remain unaddressed**

43. Myanmar agreed to improve detention conditions and bring them into compliance with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners. While there have been some improvements, there remain troubling conditions that prevent effective compliance with international standards.
44. On 13 October 2014, Home Affairs Deputy Minister Brig Gen Kyaw Kyaw Tun rejected a parliamentary request to close Myanmar's 46 labor camps. Kyaw Kyaw Tun told the People's Assembly that there was nothing inhumane about the treatment of inmates serving hard labor sentences. However, according to government statistics, 120 inmates died in the camps between 1 April 2011 and 31 August 2014. Kyaw Kyaw Tun claimed the deaths were "mainly because of the weather, diet, lifestyle, and accidents." Government figures indicate there are over 10,000 inmates serving the hard labor part of their sentences in labor camps across the country.
45. During its 2011 UPR, Myanmar pledged to end and prohibit torture. In January 2014, Foreign Affairs Deputy Minister Thant Kyaw promised to ratify the UN CAT. So far, the government has failed to fulfill both of these obligations. Torture is still used by security forces during interrogations in prisons and in conflict areas.
46. The cases of Myo Myint Swe and Than Htun highlight the use of torture during police interrogations. Myo Myint Swe died in police custody on 8 July 2012 after being tortured during an interrogation over a murder. Than Htun, who had been working with farmers trying to re-obtain confiscated farmland in Bago Region, was detained for interrogation and died in police custody on 22 May 2013. Evidence shows he was tortured.
47. The practice of torture has also continued in conflict areas, with reports of civilians being arrested and tortured for their alleged affiliation with ethnic armed groups. *Tatmadaw* soldiers arrested Kachin farmers Laphai Gam and Brang Yung for alleged ties to the KIA. They were tortured during interrogation and both provided false confessions as a result. Since June 2012, Laphai Gam and Brang Yung have been serving 20- and 21-year prison terms respectively in Myitkyina prison after being

found guilty or violating the 1908 Explosives Act and the 1908 Unlawful Associations Act.

48. In January 2013, the Asian Human Rights Council (AHRC) released a dossier of 36 cases of arrest, detention, torture, and extortion carried out by *Tatmadaw* and police officers in Kachin State in 2012. All victims were civilians accused of contact with the KIA and were held under the 1908 Unlawful Associations Act.<sup>7</sup>
49. Between 28 August and 5 September 2014, *Tatmadaw* troops from LIB 344 tortured seven Chin farmers from Paletwa Township, Chin State, after accusing them of having links to the Chin National Army (CNA). On 19 September 2014, two days after six of the farmers made public accusations of torture, *Tatmadaw* troops from LIB 344 again detained them and forced them to sign a statement dropping allegations of torture. After their release, the farmers went into hiding.
50. Abuses committed by the *Tatmadaw* in the context of ongoing armed conflicts include: extrajudicial killings; rape and sexual violence against women and girls; arbitrary arrests; torture; forced displacement; the use of human shields and minesweepers; forced labor; the recruitment of child soldiers; and enforced disappearances. On 4 October 2014, *Tatmadaw* soldiers from LIB 208 shot and killed Aung Kyaw Naing (also known as Par Gyi), a freelance journalist who was covering an outbreak of conflict in Mon State, after they had arbitrarily detained him on 30 September 2014. His body bore signs of torture.
51. Recommendations to the government:
  - Improve detention conditions to fall in line with the UN Standard Minimum Rules for the Treatment of Prisoners, particularly with regard to the adequate provision of food, housing, water and sanitation facilities, and medical services.
  - Take steps towards the progressive closure of labor camps and the relocation of inmates to adequate detention facilities.
  - Protect rights prescribed under the UDHR, including that no one be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
  - Eliminate the use of torture and of other cruel, inhuman or degrading punishments for prisoners and detainees.
  - Ensure remedy for civilians injured, detained, or killed in conflict.

### **National Human Rights Commission does not conform to Paris Principles**

52. In September 2011, the government established the Myanmar National Human Rights Commission (MNHRC). The commission does not conform to the Paris Principles. The selection and appointment of the members lacks transparency, and the commission lacks the required independence from the executive branch. The commission includes officials from the previous military regime, such as former Ambassador to the UN in New York Win Mra and former *Tatmadaw* Colonel and Deputy Ambassador to the UN in Geneva Nyunt Swe, who have routinely denied the existence of human rights violations in Myanmar and defended the State Peace and Development Council (SPDC)'s abysmal human rights record at the UN.
53. The MNHRC has not been effective in responding to complaints. The commission has failed to effectively investigate human rights violations including the January 2014 Du Chee Yar Tan violence, in which, according to the UN, at least 48 Rohingya

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<sup>7</sup> AHRC (21 Jan 13) Special Dossier: Cases under the Unlawful Associations Act 1908 brought against people accused of contact with Kachin Independence Army

were killed, as well as attacks against civilians in Kachin and Shan States. In February 2012, Commission Chairman Win Mra said the Commission would not investigate human rights abuses in Myanmar's conflict zones.

54. Many complaints are ignored, and, in some cases, action is taken against those calling for an investigation. Ethnic Kachin man Brang Shawng was charged in February 2013 for making "false charges" against the *Tatmadaw* after he filed a complaint with the MNHRC calling for an investigation into the September 2012 killing of his 14-year-old daughter during a *Tatmadaw* attack in Hpakant, Kachin State. In February 2015, he was found guilty by the Hpakant Township Court and fined 50,000 kyat (US\$50) for defamation under Article 211 of the Criminal Code. No investigation into his daughter's death has been conducted.
55. Recommendations to the government:
  - Establish a genuinely independent national human rights commission in line with the Paris Principles.
  - Ensure the national human rights commission has an effective complaints mechanism that protects the complainants and addresses their grievances.