



**Asian Forum for Human Rights and Development (FORUM-ASIA)
Burma Partnership**

**Briefing Paper on the Situation of Human Rights in Burma/Myanmar
25th Regular Session of the UN Human Rights Council**

1.0 Introduction

While acknowledging the positive developments that have occurred in some areas relating to human rights in Burma/Myanmar, in other areas, progress has been lacking, while in some others still, significant backsliding has taken place. The areas that have witnessed significant backsliding or lack of progress include:

- the continued criminalisation and harassment of political activists and human rights defenders (HRDs);
- the continued existence of repressive laws in the country;
- the lack of progress in achieving sustained peace as well as the ongoing gross human rights violations in ethnic areas;
- the escalation of communal conflict and the continued failure to address the systemic discrimination against ethnic and religious minorities, especially the Rohingya; and
- the rise in human rights violations as a result of development and business investments.

It is thus vital to maintain pressure on the government of Burma/Myanmar through a resolution on the situation of human rights in Myanmar under agenda item 4 of the UN Human Rights Council to highlight these concerns, and to ensure that it continues with its reforms and addresses these issues as a matter of extreme urgency. This call has also been made by 46 civil society groups in an open letter to the Member States of the HRC on 10 March 2014.¹

2.0 Political Prisoners and the Continued Stifling of Political Activists and HRDs

Despite President Thein Sein's pledge on 15 July 2013 that all political prisoners in Burma/Myanmar would be released by the end of 2013 and the issuance of Presidential Pardon Order Number 51/2013 in December 2013,² as well as the subsequent series of release of political prisoners throughout the year, including on 11 December (41 freed)³ and 31 December (16 freed),⁴ there are at least 30 political prisoners documented by the Assistance Association for Political Prisoners (AAPP) as of 3 March 2014, with 167 awaiting trial on various charges.⁵ Such prisoners include Kachin internally displaced people and land rights activists, Rohingya HRDs and civil society organisation workers from across the country.⁶

¹ Open Letter from civil society to the UN Human Rights Council regarding the situation of human rights in Burma, dated 10 March 2014.

² "Thein Sein pledges to free all political prisoners by end of year," Democratic Voice of Burma (DVB), 16 July 2013, <http://www.dvb.no/news/politics-news/thein-sein-pledges-to-free-all-political-prisoners-by-end-of-year/29926>.

³ "Burma Releases 41 More Political Prisoners," The Irrawaddy, 11 December 2013, <https://www.dvb.no/news/burmese-president-pardons-all-remaining-political-prisoners-burma-myanmar/35635>.

⁴ "Burmese president pardons all remaining political prisoners," DVB, 31 December 2013, <https://www.dvb.no/news/burmese-president-pardons-all-remaining-political-prisoners-burma-myanmar/35635>.

⁵ AAPP, Total List of Those Facing Trial in 2014.

⁶ "Burma: President Thein Sein fails to keep his promise to release all political prisoners by year-end," The International

Furthermore, while the Burma/Myanmar government released some political prisoners, other arrests continued. In February 2014 alone, eight people have been arrested on similar political charges to those employed over the last few years – and in response to similar civil society activities.⁷

Besides pressing charges for political offences under controversial and repressive legislation the Burma/Myanmar authorities are also increasingly using trumped up charges under standard criminal legislation against political activists and HRDs. Such criminal charges include counterfeit (Section 236 of the Penal Code) and trespass (Section 447 of the Penal Code), which are legitimate criminal provisions and therefore non-controversial in themselves. The effective use of trumped up criminal charges against political activists and HRDs has to a large extent been enabled by a judiciary that lacks independence.

In addition, many political prisoners granted amnesty are released conditionally under Article 401 of the Code of Criminal Procedure with outstanding criminal records. This means that they are in a state of limbo and are constantly at risk – and in fear – of being re-arrested and sent straight back to jail without warrant at any time for any violation of existing laws, at the discretion of the executive branch of government, to serve the remainder of their sentences – often exceeding 50 years. Many recently released political prisoners also face harassment and restrictions on their civil rights, including their freedom of movement, such as via the denial of passports.

2.1 Restrictive Legislation

- **The Peaceful Assembly and Peaceful Procession Act 2011 (Assembly Law):**⁸ Section 18 in particular has been used extensively to silence political activists, peaceful protestors and HRDs – especially those reacting to land confiscations and forced evictions – by judicial harassment and/or imprisonment. Section 18 imposes a maximum jail sentence of one year and/or a maximum fine of 30,000 kyat for conducting a peaceful assembly or peaceful procession without obtaining prior permission from the authorities. While minor amendments to this law, such as reducing prison sentences, were made in Parliament in February 2014, the requirement to obtain prior permission to assemble remains.⁹ This reluctance to make necessary amendments comes despite President Thein Sein's 30 December amnesty for all political prisoners held on Section 18 charges.
- **The Unlawful Associations Act 1908 (UAA)**¹⁰ and the draft Associations Law: In October 2013, a fourth draft of the Associations Law was agreed between civil society representatives and Parliament, which made improvements to previous drafts, and which allows for voluntary rather than mandatory registration.¹¹ The draft law is still to be enacted. The highly repressive colonial-era UAA, however, is still on the books and should be repealed as associations and CSOs continue to operate under the constant threat of repercussions for being officially unregistered.¹² Any legislation that regulates civil society space must ensure

Federation for Human Rights (FIDH), 10 January 2014, <http://www.fidh.org/en/asia/burma/14452-burma-president-thein-sein-fails-to-keep-his-promise-to-release-all>.

⁷ AAPP, List of Those Arrested in February 2014.

⁸ The Peaceful Assembly and Peaceful Procession Act 2011, available online at http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf.

⁹ "Section 18 amended, not abolished in report," Myanmar Freedom Daily, <http://www.mmfreedom-daily.com/?p=20421>.

¹⁰ Amended in 1957.

¹¹ "Civil Society and MPs Draft 'Progressive' Association Registration Law," The Irrawaddy, 21 October 2013, <http://www.irrawaddy.org/burma/csos-mps-draft-progressive-association-registration-law.html>.

¹² In June, three activists from the Nattalin Social Network and the Meikhtila Social Network were detained in Bago Region

that registration is genuinely voluntary rather than imposing *de facto* mandatory registration by making it difficult or impossible for associations and CSOs to function viably due to logistical and administrative restrictions, as per the second draft of the Associations Law.¹³ It must protect fundamental rights to freedom of association, and be in line with international human rights norms and standards.¹⁴

- **The Draft Printing and Publishing Enterprise Law (PPE Law):** Before its passing in the Union Parliament on 4 March 2014,¹⁵ some welcome amendments were made to the earlier draft, such as abolishing prison sentences, reducing financial penalties for infringements, and removing the prohibitions on criticisms of the military-drafted 2008 Constitution and personal attacks intended to discredit an individual.¹⁶ However, the main concern with the government-drafted PPE Law still remains: the Burma/Myanmar government will retain discretion in the issuance and revocation of publication licences. Coupled with the requirement for submission of publications to the newly-instituted Copyright and Registration Division for post-publication review, there is potential for abuse by authorities to curb media independence and freedom.¹⁷ Furthermore, any individual or media outlet printing or publishing without registering with the Burma/Myanmar authorities will be subject to sanctions.

First praised as one of the most significant areas of progress in reformist Burma/Myanmar, media freedom is now slowing down and arguably backtracking on reforms made since 2012. Beyond the immediate threat that the adoption of the draft PPE Law represents, media freedom is facing many challenges, including restrictions on coverage of sensitive topics such as the recent wave of anti-Muslim and anti-Rohingya violence and human rights violations committed in ethnic and/or conflict areas, as well as journalistic ethics and self-censorship.¹⁸

- **The Official Secrets Act 1923:** This law has been used to judicially harass, sentence and imprison political activists and HRDs.¹⁹ Indeed, five journalists from *Unity Weekly* journal were arrested on 30-31 January 2014 for reporting on an alleged chemical weapons factory and charged under Article 3(a) of the Official Secrets Act 1923.²⁰
- **The Penal Code 1861 (Penal Code):**²¹ Section 505(b), which prohibits the inducement of crimes against the state or against public order by means of any statement, rumor or report, is often used in conjunction with Section 18 of the Assembly Law to target peaceful protestors who are legitimately exercising their fundamental rights to freedom of assembly

and charged under the UAA for belonging to an unregistered CSO having supported farmers protesting against land grabs.

¹³ Under the second draft, all CSOs were required to register to avail themselves of “benefits” to which any legal person is entitled, such as initiating judicial proceedings, seeking funding, opening a bank account, or even having a logo. It is near impossible for CSOs to function viably with such restrictions imposed.

¹⁴ “Guidelines for Laws Affecting Civic Organizations,” Open Society Institute and the International Center for Not-for-Profit Law, 2004, <http://www.icnl.org/search/index.html?x=0&y=0&q=association+law+guidelines>.

¹⁵ “Burma’s Parliament Approves ‘Parallel’ Media Laws,” 5 March 2014, <http://www.irrawaddy.org/burma/burmas-parliament-approves-parallel-media-laws.html>.

¹⁶ “Burma amends controversial publishing law,” DVB, 13 November 2013, <http://www.dvb.no/news/burma-amends-controversial-publishing-law/34369>.

¹⁷ The Copyright and Registration Division was instituted after the dissolution of the press censorship board previously known as the Press Scrutiny and Registration Division.

¹⁸ “Journalists and Freedom of Speech Under Threat in Burma,” Burma Partnership, 11 February 2014, <http://www.burmapartnership.org/2014/02/3-9-february-journalists-and-freedom-of-speech-under-threat-in-burma/>.

¹⁹ “Burma: identifying and freeing remaining political prisoners,” Asian Human Rights Commission, 19 July 2013, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-135-2013>.

²⁰ “Unity Weekly journalists in court for ‘disclosing state secrets’,” DVB, 17 February 2014, <http://www.dvb.no/news/unity-weekly-journalists-in-court-for-disclosing-state-secrets-burma-myanmar/37331>.

²¹ Amended in 1948, <http://www.burmalibrary.org/show.php?cat=1860>.

and expression. This provision should be repealed on the grounds of the potential for abuse posed by dangerously vague terms such as “crimes against the state” and “public order”. Sections 122 and 124 are offenses of “high treason” and are thus overtly political charges. Section 500 stipulates a prison sentence for defamation, in contravention of international human rights standards, as elaborated in General Comment 34 of the Human Rights Committee (CCPR/C/GC/34), which calls for decriminalisation of defamation, as well as in the report of the UN Special Rapporteur on promotion and protection of the right to freedom of opinion and expression (A/HRC/20/17), which calls on States to repeal criminal defamation provisions.

Existing repressive laws, including some of those listed above as well as the others that have been highlighted by Special Rapporteur Quintana (A/HRC/22/58), such as the Electronic Transactions Law 2004, the Emergency Provisions Act 1950, and the State Protection Act 1975, should be reviewed, amended or repealed to ensure that all laws in Burma/Myanmar are in full compliance with international human rights norms and standards.

3.0 Peace Process and Human Rights Violations in Ethnic Areas

No significant progress has been made to ensure sustained peace, especially in Kachin and northern Shan State. While preliminary ceasefires were signed up to 2 years ago, there have been no moves towards a political settlement with ethnic armed groups in the country. Underlying issues such as regional autonomy, natural resource management, transitional justice, human rights abuses committed by the Burma Army, the formation of a federal army or ethnic rights remain unresolved. Meanwhile the Burma Army continues its offensives against the Kachin Independence Organization (KIO), and the Ta’ang National Liberation Army (TNLA) while human rights abuses persist, both in ceasefire and non-ceasefire areas.

There is still no ceasefire with the KIO and its armed wing, the Kachin Independence Army (KIA) or with the TNLA, based in northern Shan State. In Ta’ang areas, the number of Burma Army battalions has doubled, from 16 to 30 and in the first 6 weeks of 2014, over 30 clashes have occurred. In Kachin areas, there has been heavy fighting in Mansi Township and in northern Bhamo Township.

3.1 Human Rights Abuses in Non-Ceasefire Areas

3.1.1 Rape and Sexual Assault

The Women’s League of Burma have documented over 100 cases of rape committed by the Burma Army since President Thein Sein came to power, most of which have been in Kachin and northern Shan State, where fighting is heaviest. Victims were as young as eight years old, and 47 of the reported incidents were instances of gang-rape. 28 of the victims were subsequently killed or died of their injuries. The number of documented cases is believed to be a fraction of the real number as fear, and the very remote chance of accountability factors hugely influence a victim’s decision not to report such atrocities. Furthermore, these cases were spread across 38 Burma Army battalions, demonstrating how such acts are systematic and used as tools of war.²²

3.1.2 Torture and Extrajudicial Killing

- In August, 2013 in Nhka Village, northern Kachin State, ten men were hung upside down

²² “Same Impunity, Same Pattern: Report of Systematic Sexual Violence in Burma’s Ethnic Areas,” Women’s League of Burma, 14 January, 2014, <http://womenofburma.org/same-impunity-same-pattern-report-of-systematic-sexual-violence-in-burmas-ethnic-areas/>

from a church and beaten by Burma Army soldiers. Two villagers were also killed.²³

- On Ta'ang National Day in February 2013, Burma Army soldiers entered a village in the Ta'ang areas and beat monks due to their participation in the celebrations.
- The UN Working Group on Arbitrary Detention found that a Kachin farmer, Laphai Gam, was forced to commit sexual acts with other prisoners as well as inflicting other means of torture in order to extract a confession that he was part of the KIA. He was taken away from the IDP camp he was living in June 2012 and is still in jail.²⁴

3.1.3 Arbitrary Detention

- Kachin activist, Bauk Ja, was arrested in July 2013 and spent 6 months in prison for trumped up charges of negligent homicide after giving medical treatment without a license. She has stood up for land rights of local villagers against cronyism and corruption and is the Kachin chairperson of the opposition party, National Democratic Force.²⁵
- An Asian Legal Resource Center report, released last year, documented 36 instances of arbitrary arrest of Kachin villagers on charges of affiliation with the KIO. They explain that often it is the case that an incident has occurred and they need to detain someone, or it is because they have refused to pay money.²⁶
- The past three years have seen a huge increase in these abuses and this is directly related to the offensives conducted by the Burma Army.²⁷

3.2 Human Rights Abuses in Ceasefire Areas

Since the signing of the ceasefire in January 2012 with the Karen National Union (KNU), the Karen Human Rights Group have documented the following patterns of human rights abuses:

- **Continued human rights abuses directly related to conflict** – There have been improvements for villagers in their day to day lives; they are able to travel more freely and demands for forced labour have reduced. Yet human rights abuses continue. Extrajudicial killing of villagers by the Burma Army and the Border Guard Forces that are under its control still occur; one killing in June 2012²⁸, two in March, 2013²⁹ and a family of four in June 2013.
- **New abuses related to economic development** – Cessation in armed conflict and willingness by the government and the Karen National Union (KNU) to work with domestic and international companies, but without an adequate regulatory framework, has provided an environment for land grabbing. Villagers in these areas are not genuinely consulted and informed about the development projects affecting them and are often not provided adequate compensation.

²³ "Two Kachin civilians tortured and killed by government soldiers," Kachinland News, 19 September, 2013 <http://kachinlandnews.com/?p=23720>

²⁴ "Kachin farmer still in jail despite victory," The Irrawaddy, 27 February, 2014 <http://www.irrawaddy.org/burma/kachin-farmer-still-jail-despite-international-legal-victory.html>

²⁵ "Kachin activist Daw Bauk Ja arrested over 2008 death," The Myanmar Times, 22 July, 2013 <http://www.mmtimes.com/index.php/national-news/7573-kachin-activist-daw-bauk-ja-arrested-over-2008-death.html>

²⁶ "Govt forces detain, torture Kachin civilians: Rights group. The Irrawaddy, 19 February, 2013 http://www.irrawaddy.org/z_kachin/govt-forces-detain-torture-kachin-civilians-rights-group.html

²⁷ See "Untold Miseries" by Human Rights Watch, http://www.hrw.org/sites/default/files/reports/burma0312ForUpload_1.pdf, "Same Impunity, Same Pattern" By Women's League of Burma, http://womenofburma.org/wp-content/uploads/2014/01/SameImpunitySamePattern_English-final.pdf, "An Unseen Crisis" by Ta'ang Women's Organization, <http://eng.palaungwomen.com/index.php/news-page/176-new-report-burma-army-expansion-attacks-and-abuses-cause-increased-displacement-in-palaung-areas>

²⁸ "Torture and Killing in Thaton District," Karen Human Rights Group, 26 October, 2012, <http://khr.org/2012/10/12-135-d1/torture-and-killing-thaton-district>

²⁹ "Hpan-an Situation Update: T'nay Township, March to May, 2013," Karen Human Rights Group, 14 August, 2013, <http://khr.org/2013/08/13-66-s1/hpa-an-situation-update-tnay-hsah-township-march-may-2013>

- **Militarisation** – The Burma Army is rearming, resupplying and reinforcing its positions in ceasefire areas. Furthermore there is more troop movement as soldiers continue to walk into and around villages with weapons, and often do not stay within their limited operation areas.
- **Border Guard Forces committing human rights abuses** -The Border Guard Forces, under the control of the Burma Army, are now heavily involved in the production and sale of methamphetamines, (or Yaba) causing devastating social effects on Karen communities. They are also attempting to forcibly recruit soldiers. Many villagers are refusing to join and as such, are forced to pay money for either a different villager to serve in their place or for soldier's salaries and using forced labour.

3.3 Impunity

Human rights abuses committed by the Burma Army are happening with impunity. The 2008 Constitution protects the military from civilian oversight with regard to atrocities committed. Military tribunals are ultimately under the control of the commander-in-chief, Min Aung Hlaing. The lack of accountability for human rights abuses by the Burma Army is illustrated, for example, in the case of the killing of a four year old girl on the Ta'ang area during an exchange of fire between the Burma Army and the TNLA. The bullet was found to be from the Burma Army and this was reported to the authorities. The family was offered \$100 compensation with no further recourse.

Furthermore, the Myanmar National Human Rights Commission has publicly stated that it will no investigate abuses in conflict areas, where the worst human rights abuses are taking place.³⁰

4.0 Escalation of Communal Violence and Discrimination Against Ethnic and Religious Minorities

2014 has already seen the disturbing trend of violence against Rohingya in Rakhine/Arakan State continue without much sign of abating. The Arakan Project, a Thailand-based Rohingya rights group, reports that on 13 January 2014 alone 40 Rohingya women and children in Du Char Yar Tan Village in southern Maungdaw Township of Rakhine/Arakan State were killed, with more reportedly raped. Reports allege the involvement of local police and security officials along with Rakhine/Arakanese Buddhists in these violent attacks against Rohingya in Du Char Yar Tan Village on 13 January.³¹ Hundreds remain displaced as a result of this violence. Reports from Maungdaw Township also confirmed mass and arbitrary arrests of Rohingya men and boys in Muangdaw Township in violation of their fair trial rights. However, the Burma government has denied any civilian deaths but admitted that violent clashes occurred after a human rights group reported the incident.³²

Journalists remain barred from the area where the incident took place. In late February, the Burma/Myanmar government also forced the suspension of work by Médecins Sans Frontières (MSF) in the country alleging that they prioritised treatment to Rohingya, and produced reports alleging massacres of Rohingya by Buddhists.³³ However, the Burma/Myanmar government has now allowed MSF to resume its aid activities in all areas of the country except in Rakhine/Arakan State.

Meanwhile, discriminatory and hate speeches against Muslims by Buddhist monks continue without

³⁰ "Head of HR commission rules out conflict-zone inquiry," The Irrawaddy, 15 February 2012 http://www2.irrawaddy.org/article.php?art_id=23037.

³¹ Buddhist mob, police raid Rohingya village, many left dead: Rights Group, The Irrawaddy, 17 January 2014, <http://www.irrawaddy.org/burma/buddhist-mob-police-raid-rohingya-village-many-left-dead-rights-group.html>.

³² Rohingya deaths denied by Myanmar government, Al-Jazeera, 17 January 2014, <http://www.aljazeera.com/news/asia-pacific/2014/01/rohingya-deaths-denied-myanmar-government-2014117144738400365.html>.

³³ 'Medecins Sans Frontieres' shock at Myanmar suspension, BBC, 28 February 2014, <http://www.bbc.com/news/world-asia-26379804>.

check, many of which amount to incitement to violence. There have also been reports of doctors at a Sittwe hospital turning away Rohingya patients after Buddhists purportedly threatened to kill them.³⁴

Fortify Rights, an independent human rights monitoring and advocacy organisation, in its recently published report,³⁵ also finds evidence of explicit, official government policies of imposing extensive restrictions on the freedoms of Rohingya, especially in Rakhine/Arakan State. Such abusive practices include enforcement policies designed to control Rohingya population, such as restrictions on marriage and childbirth, and other restrictions on movement, construction and repairs of homes and places of worship.

5.0 Human Rights Violations in the Context of Development and Business Investments

Irresponsible private investment, especially in Burma's ethnic areas, is causing human rights violations for local people. Increased militarisation to protect projects near conflict zones, increased land confiscation in ceasefire areas, and exploitation of natural resources with little benefit to the local community is increasing.

5.1 Special Economic Zones (SEZs)

There are three special economic zones planned for Burma; **Thilawa** (just 20km from Rangoon, heavily backed by Japanese investment as well as domestic companies), **Dawei** (on the coast of Tanintharyi region, southern Burma, which will be Asia's largest industrial zone, and includes a road link to Bangkok), and **Kyaukphyu** (a planned 120sqkm SEZ in Arakan state that is also the start of the Shwe Oil and Gas Pipeline). All three are in early stages of development but human rights violations are already occurring, including:

- The Principle of Free Prior and Informed Consent (FPIC) has been ignored. Most villagers were not informed of the project before it began
- Villagers have been pressured and coerced into signing agreements and accepting compensation from authorities.
- Compensation generally has been allocated on an arbitrary and inconsistent basis, rather than systematically and consistently, and has been riddled with corruption, bias and incompetence.
- Inadequate assessments of the environmental and social impacts of these projects: In the case of Thilawa, the environmental and social guidelines of JICA, a major investor in Thilawa SEZ, were not adhered to. Communities have not been given adequate space to air grievance and full information, including the full version of the Resettlement Action Plan (RAP), which many villagers did not see, nor had sufficient opportunities to provide input. Meanwhile, in Dawei, the Environmental Impact Assessment was commissioned 2 years after construction began.

5.2 Mining

- The Latpadaung Copper Mine, in Monywa, Sagaing Region, has resulted in land confiscations (7,800 acres confiscated), environmental degradation, as well as a violent crackdown on

³⁴ Burma Partnership, 27 January 2014, 20-26 January: New Year, Same Story – Yet More Massacres and Rights Abuses Targeting Muslims, <http://www.burmapartnership.org/2014/01/20-26-january-new-year-same-story-yet-more-massacres-and-rights-abuses-targeting-muslims/>.

³⁵ Fortify Rights, February 2014, Policies of Persecution: Ending abusive state policies against Rohingya Muslims in Myanmar, http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf

protesters by authorities, including with the use of phosphorus grenades and water cannons, and dozens of arrests of demonstrators, many of whom have subsequently been charged and imprisoned under various laws, most notably the Peaceful Assembly and Peaceful Procession Law and the Penal Code.³⁶ The local community do not want this project as their livelihoods are being destroyed and compensation offered has been inadequate while simultaneously facing violent crackdowns, arrest, imprisonment and torture.

- Land confiscation for mining also exacerbates conflict and risks derailing the peace process. The Mawchi Tin Mine in Karenni State, is backed by a Chinese company and is on confiscated land. Furthermore, it contradicts the peace agreement between the Burma Army and the Karenni National Progressive Party that states that any major new projects must be accountable and local communities must not “suffer loss.”³⁷

5.3 Oil and Gas Extraction

The recently completed Shwe Gas Pipeline transports oil and gas across Burma into China. A raft of human rights violations have occurred during the building and maintenance of this project. The oil and gas pipelines and the offshore gas fields involve Chinese, Korean, and Indian companies in partnership with the Burmese military owned, Myanmar Oil and Gas Enterprise. The Burma Army is contracted to secure the pipeline that runs around 800km across the country, resulting in significant militarisation.³⁸

- Militarisation has resulted in more clashes with ethnic armed groups, especially in northern Shan State with the Ta’ang National Liberation Army as well as the Kachin Independence Army.
- Increased presence of Burma Army soldiers has also resulted in more human rights violations, including sexual violence, forced labour, extortion, and forced displacement.
- People have been forced off their lands to make way for the pipeline with inadequate or no compensation.
- Construction of the pipeline has resulted in environmental damage that has consequently had negative impacts on people’s livelihoods, especially in agriculture and fishing.³⁹

5.4 Hydropower

There are six planned dam sites on the Salween River that runs through Burma’s Shan, Karen, Karenni and Mon areas, with Thai, Chinese, and domestic companies invested in their construction. Over 90% of electricity generated from these hydropower dams will be exported out of Burma. Many of the dam sites, forcibly confiscated from local communities, are situated in conflict areas or areas where ceasefires are preliminary and fragile. This is exacerbated by increased militarisation in these areas. These include:

- The **Tasang Dam** in Shan State, from which Thailand intends to purchase most of the power

³⁶ FORUM-ASIA, “Burma/Myanmar: New Forms of Control and Threats to Freedoms of Expression, Assembly and Association amidst Reforms Fanfare”, International Fact-finding Mission, 24-30 October 2012, <http://www.forum-asia.org/?p=15946>

³⁷ “Burma’s plans to expand Mawchi tin mines risk derailing Karenni peace process,” Molo Women Mining Watch Network, 11 July, 2013 http://ecdfburma.org/index.php?option=com_content&view=article&id=212%3AAburmas-plans-to-expand-mawchi-tin-mines-risk-derailing-karenni-peace-process-&Itemid=1

³⁸ “Not Open for Business: Despite Elections, Investor Risk Remains High in Burma” Conflict Risk Network, April, 2012, <http://www.burmapartnership.org/wp-content/uploads/2012/04/CRN-burma-not-open-for-business.pdf>

³⁹ “Photo Essay: Selected Impacts of the Shwe natural gas and Myanmar-China oil transport projects” Earth Rights International, 10 April, 2013, <http://www.earthrights.org/multimedia/essay/photo-essay-selected-impacts-shwe-natural-gas-myanmar-china-oil-transport-projects>

generated. Repeated clashes with the Shan State Army North, which is based near the dam area, have been ongoing despite the ceasefire.

- The **Hatgyi Dam**, a joint venture with Thailand, is fiercely opposed by two local ethnic armed groups, the Democratic Karen Benevolent Army (DKBA) and the Karen National Union. Clashes and standoffs are common between Burma Army controlled, Border Guard Force (BGF), and the local ethnic armed groups. For example in May 2013, the BGF ordered the DKBA to leave their base near the dam site resulting in armed clashes after the DKBA refused.⁴⁰
- The construction of the **Myitsone Dam** in Kachin State on the Irrawaddy River has also exacerbated conflict. If completed it will displace 10,000 Kachin villagers and cause widespread environmental damage. Offensives launched by the Burma Army on the Kachin Independence Army, who are active in that area, as well as a civil society campaign opposing the Myitsone Dam, forced President Thein Sein to suspend the project in 2011. However, many powerful interests are lobbying for construction to restart.
- The **Kunlong Dam** in Shan State, one of 6 dams to be built on the Salween River, is a joint partnership between the Burma government and Hanergy, a private Chinese company and a 100km road that links China will also be built. Human rights concerns, including land confiscations, increased militarisation and military offensive, have been highlighted by local Shan community groups.⁴¹

5.5 Labour Rights

Although two new laws, the Labor Organization Law and the Labor Dispute Settlement Law, have been promulgated, workers, particular in Rangoon's industrial zones where many garment factories are located, face difficulties when organising for better working conditions. A report released by labour activists⁴² as well as a parliamentary commission⁴³ find that workers are grossly underpaid, and a complex system of overtime pay forces them to work an average 12 hour day, 6 days per week. Typically they work in hot, overcrowded, unsafe factories and live in factory provided hostels that are squalid. Labour rights in Burma, in general, are hampered by:

- Factory owners' refusal to recognise unions.
- Legislation that does not protect collective bargaining, resulting in factory owners renegeing on dispute settlements.
- Intimidation and firing of workers involved in organising collective action.
- Attempts to divide the workforce through co-opted unions initiated by employers.⁴⁴

6.0 Conclusion and Recommendations

Given the significant backsliding in some areas of human rights in Burma/Myanmar, including those

⁴⁰ "On Salween River, growing concerns that work on Hat Gyi Dam resumes," The Irrawaddy, 22 May, 2013, <http://www.irrawaddy.org/conflict/on-salween-river-growing-signs-that-work-on-hat-gyi-dam-resumes.html>

⁴¹ "Large-scale land confiscation for Salween Dam infrastructure in northern Shan State," Shan Human Rights Foundation, 13 February, 2014, http://shanhumanrights.org/index.php?option=com_content&view=article&id=395:february-13-2014&catid=75:action-updae

⁴² "Modern Slavery: A Study of Labour Conditions in Yangon's Industrial Zones," Labour Rights Clinic, Cooperation Program of Independent Labourers, Construction-based Labour Union, and Workers Support Group, 15 November, 2013, <http://www.burmapartnership.org/2013/11/modern-slavery-a-study-of-labour-conditions-in-yangons-industrial-zones/>

⁴³ "Commission report highlights mistreatment of workers in Myanmar factories," Eleven Media, 3 September, 2013, http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=3274:commission-report-highlights-mistreatment-of-workers-in-myanmar-factories&catid=44:national&Itemid=384

⁴⁴ "Worker organisations still struggle for rights," The Myanmar Times, 10 October, 2013, <http://www.mmtimes.com/index.php/national-news/8427-worker-organisations-still-struggle-for-rights.html>

highlighted above, which has undermined the progress that has been made in other areas in the country, **it is vital to maintain the resolution on the situation of human rights in Burma/Myanmar under agenda item 4 of the Council** to highlight these concerns, as well as to pressure for further reforms in Burma/Myanmar. The resolution should:

1. Renew the mandate of the UN Special Rapporteur on the Situation of Human Rights in Myanmar with a full monitoring mandate to ensure continued monitoring and reporting to the Council of human rights concerns in the country; and
2. Strongly call for the prompt establishment of a UN Office of the High Commissioner for Human Rights in the country, with a full human rights promotion and protection mandate, to ensure proper monitoring and reporting of progress or violations in respect of the areas highlighted above.

In addition, the resolution should address the particular areas which have witnessed backsliding or lack of progress by calling on the Burma/Myanmar government to:

1. Review, amend or repeal repressive legislation, including all listed by the UN Special Rapporteur on the Situation of Human Rights in Myanmar (A/HRC/22/58), to ensure that all legislation is in line with international human rights law and standards;
2. Ensure that any legislation enacted in future is in line with international human rights law and standards and involves civil society and communities in a transparent and inclusive process in the discussion, formulation and enactment of legislation;
3. Ratify all remaining core international human rights treaties, and incorporate them into national legislation;
4. Immediately cease the stifling of political activists, peaceful protestors and human rights defenders – including through criminalisation of their activities under restrictive legislation and trumped up criminal charges, as well as other forms of threat, harassment and intimidation – and ensure that their fundamental rights to assembly, association and expression are respected and protected at all times;
5. Release all political prisoners unconditionally, including those detained since the start of 2014, refrain from any further judicial harassment or imprisonment of people for their legitimate activities, and resolve any discrepancies regarding the number detained by ensuring a thorough investigation by an independent review panel composed of competent domestic and international experts, including UN representatives;
6. Establish the rule of law and undertake urgent judicial reforms to ensure the independence, impartiality and accountability of the judiciary, lawyers and prosecutors, and to draw on the assistance of the UN and other international organisations in this regard;
7. Ensure that the Myanmar National Human Rights Commission (MNHRC) fully complies with the Paris Principles;
8. Undertake full, transparent and independent investigations into all allegations of violations of human rights and humanitarian law;
9. Address discrimination and other forms of human rights violations against ethnic and religious minorities in the country, including by repealing discriminatory legislation such as the 1982 Citizenship Law, and the cessation of other discriminatory policies and practices;
10. Consult widely and inclusively with affected communities of development projects, implementing the principle of free prior, and informed consent and providing adequate compensation and livelihood opportunities for those who are relocated;
11. Enact legislation that protects the rights of workers and ensures good faith bargaining practices in labour disputes; and
12. Refrain from natural resource extraction in ethnic areas until a comprehensive peace settlement is reached that addresses natural resource management.