

Submission to the UN Universal Periodic Review of Myanmar

July 2020

37th Session of the UPR Working Group of the Human Rights Council

January/February 2021

Human Rights Violations in the Armed Conflicts in Arakan, Burma/Myanmar

Submitted by:

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AASYC

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About All Arakan Students' and Youths' Congress (AASYC)

All Arakan Students' and Youths' Congress (AASYC) is an independent and non-profit organization founded in October 6, 1995 in Bangkok, Thailand by the Arakanese students and youths who were exiled after the 1988 democracy uprising in Burma/Myanmar. AASYC works promote democracy and human rights of the Arakanese people in Arakan/Rakhine and beyond and to establish a genuine federal democratic union of Burma through non-violent means in collaboration with other democratic alliances in Burma/Myanmar.

AASYC is a member organization of Students and Youth Congress of Burma (SYCB), Network for Human Rights Documentation (ND-Burma), Ethnic Community Development Forum (ECDF), Indigenous Peoples/Ethnic Nationalities of Myanmar (IPs/EN), Coalition of Indigenous People in Burma/Myanmar.

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A. Introduction

1. This submission was prepared for the Universal Periodic Review (UPR) of the Republic of the Union of Myanmar in July, 2020. Within it, the All Arakan Students' and Youths' Congress (AASYC) evaluates the implementation of recommendations made to the Government of Myanmar (GoM) in its previous UPR, assesses the national human rights framework and the human rights situation on the ground, and makes a number of recommendations to the government of Myanmar to address the human rights challenges outlined in this report.
2. Efforts to make the Nationwide Ceasefire Agreement (NCA) inclusive failed in Arakan State. The Arakan National Council (ANC) and its armed wing the Arakan Army (AA), as well as the United League of Arakan (ULA) and its armed wing, the Arakan Army (AA) were unable to sign the NCA due to non-negotiable terms put forward relating to a requirement to disband.
3. Furthermore, in the 2015 general election, the Arakan National Party (ANP) won the most contested seats in the Arakan State Parliament (Hluttaw) but was unable to form a government in the State. Under the 2008 constitution, the Myanmar president, rather than the State Hluttaw, selects the chief minister. For many in Arakan State, this symbolized a failure of the transition to democracy by not ensuring an equal playing field in the electoral process, or building a representative parliament.

B. National Human Rights Framework

4. In its previous review, the GoM supported eight recommendations on ensuring its National Human Rights Commission (MNHRC) was effective, autonomous and functioned in line with the Paris Principles.¹ Despite this, the GoM has failed to amend the 2014 enabling law and improve the commission, despite the institution itself putting forward recommendations for reform. In 2018, The Arakan Human Rights Defenders and Promoters Association (AHRDPA) sent 25 complaint letters to the MNHRC. None of the complaints have been resolved by MNHRC.
5. Despite supporting 3 recommendations calling for the tackling of impunity,² the GoM has not taken significant steps to address systemic impunity for human rights abuses committed by members of the Burmese military (Tatmataw). Article 445 of Myanmar's constitution exonerates military personnel from legal action within civilian courts for, "any act done in the execution of their respective duties".
6. Via Section 37 of the 2008 constitution, the union government maintain control of natural resources from ethnic states and regions. The GoM has received an estimated 3 Billion USD from selling natural gas to China from the Shwe Gas Project in Arakan. Due to this, local communities have not been included in decision making processes, nor reaped any benefit from such projects.³
7. Overly broad legislation continues to enable violations of international human rights and humanitarian law in Arakan State. The Penal Code 505 (b) has been used in order to impose large sentences for criminal incitement and treason for speaking in public at cultural events. The Unlawful Association Act and the Terrorism Law are used arbitrarily to arrest civilians in conflict areas and arrest journalists who had interviewed members of the ULA/AA retrospectively. The Peaceful Assembly and Peaceful Protest Law (PAPPL) and the

Telecommunications Law have been utilised in order to criminalise protest and freedom of association and to enforce an internet blackout in northern Arakan State and Paletwa Township.

C. Human Rights Situation on the Ground

War Crimes and Crimes against Humanity

8. On 21 December 2018, the Tatmataw began sending more troops to Arakan State as ceasefires were announced in Kachin and Shan State. Clashes intensified between ULA/AA and Tatmataw forces. On 9 May 2020, the Tatmataw announced a four month unilateral ceasefire with Ethnic Armed Organisations (EAOs).⁴ This, however, did not extend to western Burma, having passed a motion in Parliament designating the ULA/AA as a terrorist organization in March, 2020.⁵

9. From December 2018 to June 2020, AASYC has documented 296 human rights violations during armed clashes between the ULA/AA and Tatmataw in Arakan State and Paletwa Township. Among these are 157 cases of unlawful and extra-judicial killings, resulting in a confirmed 228 deaths.

Extra-judicial and Unlawful Killings

10. On 29 March 2019, Tatmataw soldiers from Light Infantry Division (LID) 22 opened fire on a group of civilians as fighting took place with the ULA/AA in the village of Aut Tha Kan, Mrauk-Oo Township. One pregnant lady, 24-year-old Ma Pauk Sa and an elderly man, 60-year-old, U Phoe Khaing were shot dead. During the incident 6 other civilians were injured.⁶

12. On 21 March 2019, 5 civilians were killed as they lay hiding, attempting to avoid cross-fire in Say Taung Village, Budhidaung Township. The bodies of the five civilians were found next to a river bank, close to the village, believed to have been killed by the Tatmataw. The civilians have been named as: U Maung Aye Twan, aged 50, Daw Than Nyunt, aged 49, Ko Mrat Chay Thein, aged 21, Maung Aung Than Htay, aged 16 and Daw Hla Su Pone, aged 95.⁷

13. On 2 May 2019, six civilians were shot dead and eight were injured by the Tatmataw in Kyauk Tan village, Rathedaung Township. Among the eight injured, 2 died as a result of their injuries after leaving hospital. Tatmataw forced a total of 275 male villagers into the village school on 30 April in order to interrogate them on suspicion of having links to the ULA/AA. Villagers were detained in the school for 3 days.⁸ The shootings took place while the civilians were detained.

14. On 28 May 2019, the MNHRC investigated the case. The subsequent report was not satisfactory to eye-witnesses of the incident. The report concluded that the situation had materialized from a “misunderstanding” between the villagers and the Tatmataw and laid the blame at the civilians who were advised to avoid such incidents in future. The MNHRC report mentioned nothing about accountability for the soldiers involved or justice for the deceased family.⁹

Indiscriminate targeting of civilian infrastructure

15. The AASYC has documented widespread instances of deliberate targeting of civilian infrastructure. During fighting between Tatmataw and the ULA/AA on 24 August 2019, at least three students were killed and three more civilians injured due to indiscriminate artillery shelling at Pan Mraung village, Minbya Township in northern Arakan State. The deceased, all children, are identified as Ma Nyo Win, aged 16, Maung Min Htet Gree, aged 9 and Maung Aung Kyaw Phyto, aged 6. Although the Tatmataw took responsibility for the incident, to date no investigations have begun.

16. Similarly, on 24 August 2019, two children and one lady were killed when heavy artillery detonated in Pan Mruang village, Minbya Township. The artillery shelling was conducted from Aung Mingalar Mountain where a Tatmataw battalion is based, located 2 miles southwest of the village. The explosion killed Maung Min Htet Kyaw, aged 10, Daw U Kyaing and her daughter instantly. Shrapnel from the blast also injured Daw Aye Shwe Hla, aged 60

17. On 13 April 2020, troops from the LIB 550 fired mortars on Kyauk Seik village, Ponnagyun Township, killing 8 and injuring 13. Although 5 people died instantly, 2 died at Sittwe General Hospital. According to a social worker who was assisting 5 of the injured persons to get medical treatment, the ambulance was halted at a Tatmataw checkpoint in Kyauktan village for more than hour. As a result one, a wounded child died before reaching the hospital. Villagers told the AASYC that there had been no fighting between the ULA/AA and Tatmataw in that area.¹⁰

Bombing and use of Religious buildings in conflict

18. In the previous review, the GoM supported a recommendation calling for the prevention of destruction of places of worship.¹¹ On 3 June 2019, a monastery compound in Sa Bar Htar village, Minbya Township was bombed by the Tatmataw. 6 villagers who had taken refuge in the monastery died in the blast and a further 7 people were injured. The civilians had been taking shelter in bunkers and ditches close to their homes but had decided to move to the monastery for safety. The deceased are named as: Daw La Prayt Kray, aged 52, Ma Ziyé Ma, aged 14, U Maung Than, aged 48, U Hla Maung, aged 55, U Maung Aye Nu, aged 77, and U Maung Fru Twan aged 52.¹²

19. In 2018, soldiers from the LIB 22 turned the Zeyarama Monastery in Buthidaung Township into a base. Due to the hill location where the monastery is located, the monastery was fortified and trenches built surrounding it.

Landmines

20. During the reporting period AASYC has documented 28 civilians killed and 61 injuries as a result of indiscriminate use of landmines.

21. On 5 March 2019, one man died and two were injured while collecting firewood. The group were walking on Kyeatinkone hill in Mrauk Oo Township when the incident took place. After the blast, locals from Aut Tha Kan village came in order to help carry the injured men to hospital. Tun Sein Oo died later in Teinnyo hospital as a result of injuries sustained from the blast.¹³

22. On 8 May 2019, U Pan Aung Chay stepped on a landmine while returning from collecting bamboo near Kha Maung Chaung old village, Kyauktaw Township. After receiving treatment in Sittwe Hospital for 1 month and 8 days his foot required amputation. Costs associated for his treatment were donated by civil society.¹⁴

Deaths in Custody, Torture and Other Ill-treatment by State Security Forces

23. During the second cycle of the UPR, the GoM supported a recommendation that called for justice and accountability for military officers accused of torture to be held accountable through the criminal justice system.¹⁵

24. Between December 2018 and June 2020, AASYC documented systematic use of torture and other cruel and inhuman treatment of civilians in Arakan State. The majority of the cases involve civilians being detained and tortured by the Tatmataw having been suspected of having links to the ULA/AA. While in detention, actions that amount to torture, including beatings, kicking, striking with blunt instruments, as well as psychological torture are common practice.

25. On 10 April 2019, the Tatmadaw arrested 27 villagers from Lar Kar village, Mrauk-Oo Township. Later, on April 25, the Tatmataw released news that 3 out of the 27 detainees namely, Ko Zaw Myo Twan, aged 25, U Thein Tun Sein, aged 35 and U Maung Than Nu, aged 41, had all died while in custody. On the Tatmataw's true news website, the reasons for the deaths were given as suicide, heart disease and, in the third instance, as a result of being unable to feed a drug addiction.¹⁶

26. On 24 June 2019, Nay Myo Twan, aged 23 from Pauktaw Byin village, Mrauk-Oo Township, died in hospital after undergoing an interrogation by the police and the Tatmataw in Kyauktaw police station. He had previously been detained, along with 8 other people, on 20 June 2019 from Wai Thar Li village, Mrauk-U Township. The family members of the detainees were not informed about the detention of Nay Myo Twan. There has been no details released regarding Nay Myo Twan's injuries by the hospital.¹⁷

Indigenous Peoples Rights

Cultural Heritage

27. In January 2018, an annually held event commemorating the anniversary of the fall of the Kingdom of Arakan was banned by the Ministry of Border Affairs one day before the event was scheduled to take place due to concerns regarding peaceful assembly and the location of the event on a national heritage site. The order superseded permission that had been granted by the Mrauk-Oo, Department of Archaeology and Cultural Heritage Conservation to hold the 233rd anniversary.¹⁸

28. On 16 Jan 2018, a protest took place in response to the banning of a literary talk to commemorate the 233rd anniversary. 7 Arakanese youths were killed and a further 12 were injured as police opened fire at protesters in front of the General Administrative Department (GAD) office in the city of Mrauk-Oo. Later, 8 people who were treated in hospital were

sentenced to 8 months in prison under the article 6 (a) of the State Property Destruction Act.¹⁹ A further 4 injured victims fled the hospital while receiving treatment in Mrauk-U hospital as they were afraid of arrest.²⁰ 5 more people were arrested in Sittwe under section 19 of the PAPPL.²¹

29. On 18 Jan 2018, following the Mrauk-Oo suppression, the police arrested Arakanese social worker, Ko Wai Hun Aung and Dr Aye Maung, an Upper House Member of Parliament from Arakan State. They were arrested for delivering speeches in Rathedaung Township, marking the 233rd fall of the Kingdom of Arakan where they shared opinions about the ongoing national political crisis and the how Arakanese people could benefit during the country's political instability.²²

30. On 19 March 2018, Dr Aye Muang and Ko Wai Hun Aung were both sentenced to 22 years for high treason and criminal incitement under sections 122 and 505 (b) of the Penal Code.²³

Internally Displaced People (IDP)

31. Myanmar supported 2 recommendations to adopt all necessary measures to improve for health care, education and humanitarian access in IDP camps.²⁴ The ongoing conflict has resulted in mass displacement and forced relocation of local populations. As of July 2020, there are approximately 160,000 IDPs in Arakan State. The Tatmataw has largely maintained a humanitarian blockade during the conflict and there has been media blackout in 7 Townships since July 2019. Within unrecognized and makeshift IDP camps there is a chronic lack of health provision and access to education for children.

Recommendations for the SUR

1. Establish an independent and impartial investigative commission mandated to investigate human rights abuses committed by the Tatmataw and hold those accountable for human rights violation in civilian courts.
2. As a matter of urgency, the GoM should sign and ratify the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT) and International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)
3. Allow unhindered humanitarian access for international aid groups to IDP camps. This includes both recognition of and access to makeshift camps in villages.
4. The Tatmataw should begin the process of withdrawing troops from cultural heritage sites, schools, and religious buildings immediately.
5. The SUR should amend the 2014 MNHRC Law to include provisions that strengthen the MNHRC's capacity and independence while bringing the commission in line with the Paris Principles.
6. Establish an independent, Arakan Human Rights Commission (AHRC) which can conduct impartial human rights investigations in Arakan State and protect and promote the human rights for Arakanese people.
7. Immediately release all civilians who remain held without evidence in arbitrary

detention for alleged ties to the ULA/AA.

8. The Tatmataw and ULA/AA should immediately call a ceasefire in order so peace talks may begin to take place. .
9. Immediately lift the Internet shutdown connection over seven townships in northern Arakan and Paletwa Township in Chin state.
10. Allows unfettered access for international and national media into the conflict areas in Arakan State and Paletwa Township.
11. Ensure full and effective reparations are made to those who have lost family members which includes compensation for property theft and destruction.
12. Amend Article 37 of the Myanmar’s 2008 constitutions and ensure the rights to ownership and benefit sharing in extracting natural resources and other extractive industries of the respective states and regions including Arakan state.

¹ Report of the Working Group on the Universal Periodic Review, Myanmar, A/HRC/25/10, 143.42- 143.49 (Nepal, Sierra Leone, Egypt, Chile, Senegal, Republic of Korea, Portugal, Thailand)

² Report of the Working Group on the Universal Periodic Review, Myanmar, A/HRC/25/10, 143.80 (Senegal) and 143.82 (Argentina)

³ Thai Biz “Myanmar earned over USD 3 billion by exporting gas to China and Thailand between October 2018 and August 2019” 2 Sept 2019,

“http://www.thaibizmyanmar.com/en/news/detail.php?ID=2499&fbclid=IwAR0ug4PFtgcfwixEr6m_rccm1Zx_jkPozeMzPrpbu-HdryB1muqF19SQ-eo”

⁴ Republic of the Union of Myanmar, Office of the Commander in Chief of Defence Services, “Statement on Ceasefire and Eternal Peace” 9 May 2020, available at <http://www.cincls.gov.mm/node/7423>

⁶ AASYC, “One Pregnant Woman Killed and one injured in Burmese army gun fires in Mrauk-u Township, Arakan/Rakhine,” 29 March 2019 available at

<https://www.aasyc.info/news/one-pregnant-woman-killed-one-injured-in-burmese-army-gun-fires-in-mrauk-u-township-arakan-rakhine/#.XwWYoKVS9sQ>

⁷ Network for Human Rights Documentation – Burma “Human Rights Situation in Burma – 2019- January to June” available at <https://nd-burma.org/human-rights-situation-in-burma2019-january-june/>

⁸ Network for Human Rights Documentation – Burma “Human Rights Situation in Burma – 2019- January to June” available at <https://nd-burma.org/human-rights-situation-in-burma2019-january-june/>

⁹ Network for Human Rights Documentation – Burma “Human Rights Situation in Burma – 2019- January to June” available at <https://nd-burma.org/human-rights-situation-in-burma2019-january-june/>

¹⁰ AASYC “More Civilians Dead and wounded due to LIB 550 Shelling to Kyauk Seik Village, Ponnugyon Township” 21 April 2020 https://www.aasyc.info/yc_tv/png_ks_550_shoot_120mm/#.XwWHn6VS9sQ

¹¹ Report of the Working Group on the Universal Periodic Review, Myanmar, A/HRC/25/10, 143.95 (Egypt)

¹² AASYC Unpublished Data

¹³ AASYC Unpublished Data

¹⁴ AASYC Unpublished Data

¹⁵ Report of the Working Group on the Universal Periodic Review, Myanmar, A/HRC/25/10, 143.81 (Lithuania)

¹⁶ AASYC Unpublished Data

¹⁷ AASYC Unpublished Data

¹⁸ AASYC “Mrauk-Oo Massacre Report” Jan 2020, https://www.aasyc.info/wp-content/uploads/2020/01/Mrauk-U-Massacre_Report.pdf

¹⁹ AASYC “Statement on Arbitrary Detention of 8 Arakanese protestors in Mrauk-Oo” 28 Sept 2018 <https://www.aasyc.info/statements/arbitrary-detention-eight-arakanesecivilians/#.XwWpHqVS9sQ> (Burmese doc)

²⁰ Ibid

²¹ Supra note 18.

²³ Frontier Magazine “Aye Maung, Way Hin Aung, handed 20-year sentences for high treason” 19 March 2019 <https://www.frontiermyanmar.net/en/aye-maung-wai-hin-aung-handed-20-year-sentences-for-high-treason/?fbclid=IwAR3aDNf6wwj53Bd5p2d-GH9IFiYLYBsPOqSAJ9SmZdZVIsdP7xwJ-QObBbl#.XJCb5-llhFA.facebook>

²⁴ Report of the Working Group on the Universal Periodic Review, Myanmar, A/HRC/25/10143.122 (Panama) and 143.121 (Kuwait)