

Report Briefer
September 2019

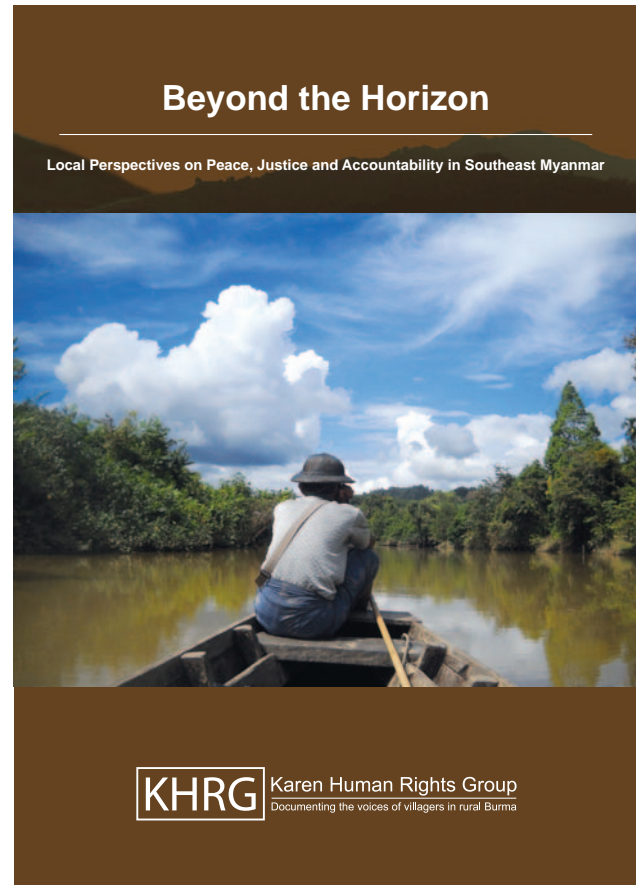
Beyond the Horizon:

Local Perspectives on Peace, Justice and Accountability in Southeast Myanmar

Inhabitants of Myanmar's ethnic minority regions continue to struggle with the enduring effects of past human rights violations and abuses, both those suffered in the midst of war and those experienced as a result of militarisation and economic depredation. Efforts to address these abuses and their effects are hampered by on-going armed conflict, the existence of parallel justice systems, lack of political will, and by the fact that civil war and human rights abuses continue throughout the country, in both traditional and different forms.

Despite significant improvements since the signing of the 2012 Preliminary Ceasefire Agreement between the Karen National Union (KNU) and the Myanmar government, the population of Southeast Myanmar continues to face a broad range of human rights violations. Reduction in armed conflict has paved the way for new and increased forms of abuse such as land confiscation, exacerbating existing forms of vulnerability and worsening conditions for some villagers. Conflict-affected communities also struggle with the effects of decades of armed conflict, ethnic discrimination and deeply ingrained societal trauma.

In 2015, the signing of the Nationwide Ceasefire Agreement (NCA) created some possibilities for positive change. As the peace process is now at a deadlock, it remains unclear to what extent it will be able to address the historical legacy of human rights abuse and emerging patterns of abuse in Southeast Myanmar. Indeed, the consequences of past abuses continue to impact the daily lives of local people, often combining with new forms of abuses to compound people's economic marginalisation. It is therefore paramount to guarantee that victims of human rights violations have access to both justice and reparation. Whether or not these concerns are being effectively addressed can only be determined by the civilians affected.



The full report is available in English and Burmese for download at www.khr.org

This report presents their perspectives on changing patterns of abuse, set against historical trends in Southeast Myanmar, as well as on access to justice and remedies for past and present human rights violations. In order to understand some of these changes, KHRG focused on asking villagers about their lives in the context of the 2015 NCA. However, it should be understood that many of the changes in terms of military behaviour and human rights abuses actually date back to the 2012 Preliminary Ceasefire Agreement. The report refers to both agreements throughout, in part as a reflection of the fact that many villagers see the two as part of one on-going process.



This photo was taken in May 2006 in Lu Thaw Township, Hpapun District. It shows a widow with four children at a displacement site. Her husband was killed by Tatmadaw soldiers in 2006. *[Photo: KHRG]*

Chapter 1: Human rights abuses during the pre-ceasefire period: an enduring legacy

Chapter 1 looks at historical patterns of human rights abuses and violations in Southeast Myanmar during the pre-ceasefire period. It gives a review of the abuses that civilians faced mostly before 2012, with a focus on the phenomenon of displacement and the more enduring effects of human rights abuses. This history and its enduring legacy are crucial for understanding civilian perspectives in Southeast Myanmar, the challenges facing the peace process and the desire for justice among victims.

Section A - Overview highlights how the Tatmadaw carried out systematic attacks against Karen villages and subjected civilians in conflict-affected areas to a wide range of human rights violations. These included killings, torture and other inhumane or degrading treatment, the use of widespread sexual violence against women as a weapon of war, and destruction of property. The Tatmadaw also consistently used civilians as an unpaid labour force, including for military purposes, often subjecting victims to violence, threats and life-threatening conditions. It also engaged in looting and extortion, as well as in land confiscation along with other Myanmar government agencies.



This photo shows villagers who were shot on sight by the Tatmadaw in the Plah Day Th'Dah area, Hpapun District on March 21st 2007. [Photo: KHRG]

“The Tatmadaw prohibited us from traveling outside of the delimited area, and ordered us to obtain permission letters [to travel]. We could be arbitrarily arrested or killed if we did not respect their rules. [...] Many villagers were killed while they went to fish or to find vegetables in the forest outside of the delimited area.”

Male interviewee from Mone Township, Nyaunglebin District/eastern Bago Region

Section B - Displacement analyses the causes and consequences of conflict-related displacement. It shows that Karen and other communities routinely had to abandon their villages to flee from fighting between armed actors. In some instances, the Tatmadaw deliberately targeted villages or forced civilians to relocate with threats. Some people also left because they were afraid of being subjected to human rights abuses, while others had to abandon their village following land confiscations. Relatives of Karen National Liberation Army (KNLA) soldiers were usually targeted by the Tatmadaw, and therefore particularly vulnerable to displacement. Displaced populations had to leave behind their plantations, and therefore faced livelihood difficulties and food shortages, including in IDP or refugee camps. They were also affected by a wide range of health issues, mostly because of poor living conditions and lack of access to healthcare services.

Section C - Impacts of human rights violations looks at the short- and long-term impacts of human rights abuses and conflict on livelihoods, health and education.

Key findings:

- As the majority of rural communities in Southeast Myanmar have long relied on subsistence farming or day wage labour, the loss or temporary absence of the main breadwinner as a result of human rights abuses had dire and sometimes long lasting livelihood consequences for families.
- The loss of lands or livestock, either through confiscation or deliberate destruction, threatened the economic survival of many; while heavy restrictions on freedom of movement by the Tatmadaw prevented villagers from carrying out their daily work or accessing healthcare.
- Several survivors of human rights violations interviewed by KHRG are still struggling with long-term physical health issues, including post-traumatic stress disorders.
- Fighting, attacks against villages, livelihood difficulties and displacement also affected access to education for Karen youth, leading many children to drop out of school. Some families whose main breadwinner died before 2012 are still unable to support the education of their children.



This picture was taken on August 3rd 2006 in Lu Thaw Township, Hpapun District. It shows displaced school children attending class in a shelter for buffaloes. *[Photo: KHRG]*



This picture was taken on August 4th 2006 in Lu Thaw Township, Hpapun District. This woman delivered her child while being displaced in the forest. She is receiving care from a field medic. *[Photo: KHRG]*

Chapter 2: The situation in Southeast Myanmar since the signing of the Nationwide Ceasefire Agreement

Chapter 2 examines villagers’ current engagement with the peace process, how they feel that the ceasefire has affected their lives, and what they anticipate for the future. This chapter assesses whether past abuses have lessened and presents data on the new threats villagers confront.

Section A - Life after the Nationwide Ceasefire Agreement analyses the current situation in Southeast Myanmar and concludes that it has improved over the course of the peace process. Although some challenges remain, freedom of movement has increased, allowing some civilians to resume their livelihood activities. However, some communities still face hardship due to displacement and lack of lands or job opportunities.

Key findings:

- Interviewees from some areas reported to KHRG that they now feel safer than before, even though skirmishes between armed actors still occur in a context of increasing militarisation, notably in Hpapun District, sometimes resulting in displacement.
- Access to health and education has also improved in the region, but many challenges remain in that regard.
- KHRG has documented the persistence of traditional forms of abuses, such as killings, sexual and gender-based violence, child rights violations, physical abuse, religious discrimination, forced labour and extortion.
- Emerging trends of abuse include an increase in land confiscation and a complete disregard for the rights of rural Karen populations over natural resources.



This photo was taken on October 14th 2015 in Ler Doh Town, Kyaukkyi Township, Nyaunglebin District. It shows more than 4,000 villagers from Mone, Kyaukkyi and Shwegyin townships gathering together to celebrate the upcoming signing of the Nationwide Ceasefire Agreement. *[Photo: Villager]*



This photo was taken in December 2017 in Htantabin Township, Toungoo District. It shows Tatmadaw trucks sending more food and more soldiers to Hkler La and Kaw Thay Der army camps. *[Photo: KHRG]*

Section B - Local perspectives on the peace process shows that a significant number of the villagers interviewed by KHRG lack basic knowledge about the NCA and the peace process. Many expressed their desire to learn more and even to engage with decision-makers, to raise their suggestions and help achieve sustainable peace.

Key findings:

- A number of factors contribute to a lack of trust in the peace process and to the feeling that it will not bring about sustainable peace. These include ceasefire violations, on-going militarisation and clashes between the KNLA and the Tatmadaw in several areas of Southeast Myanmar, as well as the confiscation and use of customary land by the Myanmar military.
- Some civilians also expressed concern that the Tatmadaw is using the peace process to consolidate its power in the region, and that fighting may resume in the future.
- Others voiced that sustainable peace is undermined by the slow pace of political reforms in Myanmar to create a democratic, federal governance structure; while some feel unsafe with the Tatmadaw proposal to move towards a single army model.

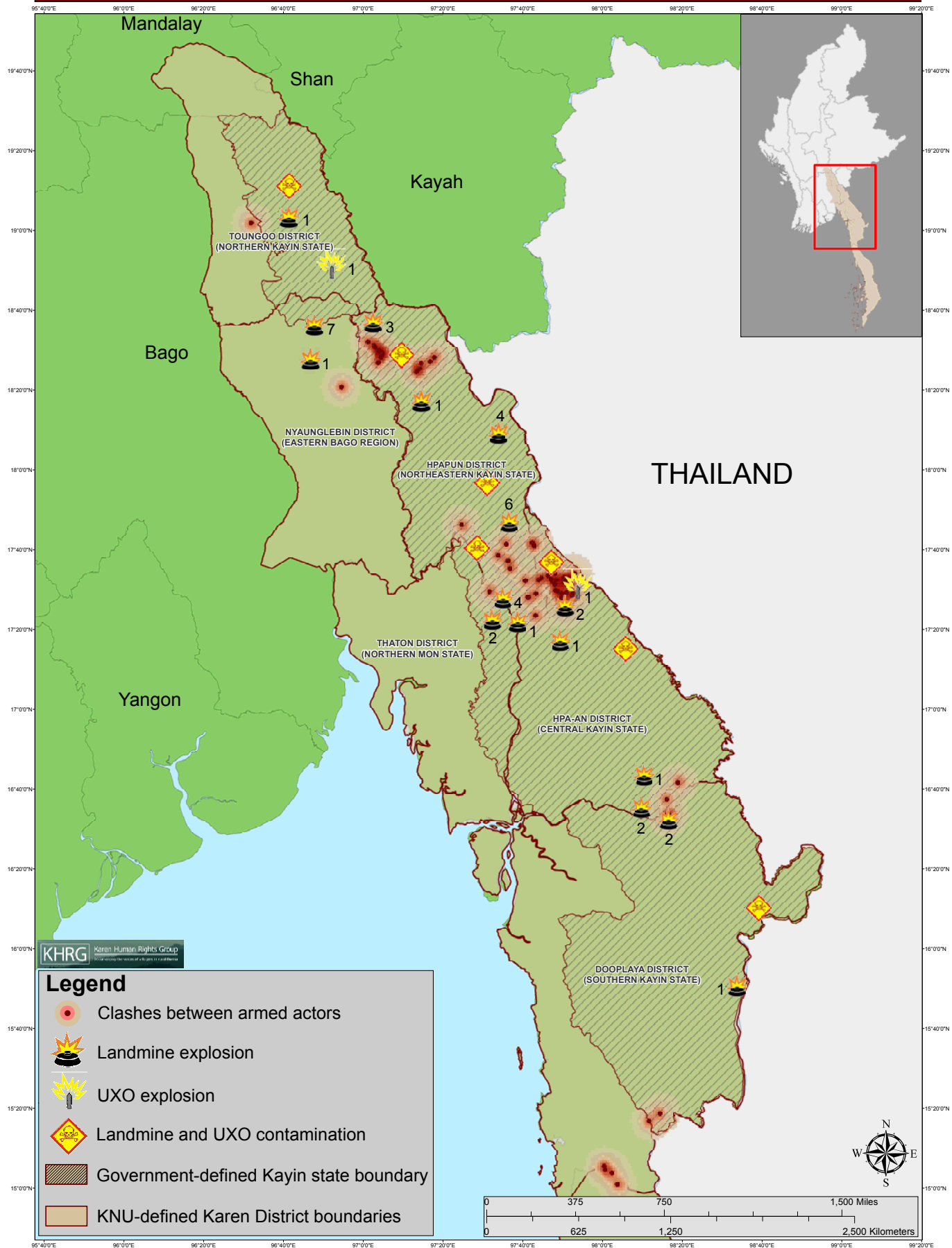


This photo was taken on August 15th 2016 in Thandaunggyi Township, Toungoo District. It shows a signpost that was planted on local villagers' land by the Tatmadaw's military school commander from Ba Yint Naung army camp, Major Kyaw Kyaw Lwin, on August 10th 2016. The signpost says that this land is now a military target practice area and forbids the local population from entering it. *[Photo: KHRG]*



This photo was taken in Kheh Der village tract, Kyaukkyi Township, Nyaunglebin District on March 21st 2019. It shows villagers from Kheh Der village tract demonstrating against a Tatmadaw road construction project. *[Photo: KHRG]*

Security incidents in Southeast Myanmar from (October 2015 to April 2019)



Chapter 3: The issue of justice in Southeast Myanmar

Chapter 3 considers issues of formal justice. First, it analyses the challenges around seeking justice for human rights abuses that occurred mostly before the peace process; and second, experiences engaging with the various justice systems in Southeast Myanmar after the signing of the NCA. The underlying question this chapter seeks to answer is whether the legal/judiciary infrastructure in Southeast Myanmar can now deal with human rights abuses that took place during the peace process.

Section A - Lack of accountability for pre-ceasefire human rights abuses establishes, based on interviews conducted by KHRG, that the vast majority of abuses perpetrated before the ceasefire were met with impunity. Villagers identified several barriers to justice:

- A fear of armed actors that prevented them from reporting human rights violations.
- The lack of judicial independence and due process of the Myanmar government justice system.
- A general lack of rule of law during the period of military dictatorship.
- The absence of civilian jurisdiction over abuses committed by the Tatmadaw.

“They just ruled the country as they liked. They did not actually comply with the law. During the era of the military government, we only feared the gun. At that time, no one dared to keep their chin up because the military simply followed orders. Therefore, nobody raised their voice about justice. Instead, it was better for us to stay silent. I have never felt or touched justice.”

Male interviewee from
Thandaunggyi Township,
Toungoo District/northern Kayin State

Interviewees also suggested a wide range of solutions to deal with past human rights violations. These include prosecuting perpetrators under formal justice mechanisms or removing them from their positions of authority. Non-punitive approaches were also put forward, such as acknowledgement, apologies and guarantees of non-repetition. Several villagers also voiced their desire to recover their confiscated lands and to receive fair compensation for the abuses they suffered. Others stated that they would like to benefit from financial, material or psychological support programmes.

Section B - Perspectives on the current administration of justice in Southeast Myanmar looks at local villagers’ perspectives on this issue, and concludes that none of the three local justice systems are equipped to deal with post-ceasefire human rights violations in a satisfactory way.

Key findings:

- The customary justice system is inconsistent, unable to deal with larger cases and to enforce judgements, and corruption at the village head level remains a problem.
- The Myanmar government justice system does not have jurisdiction over the Tatmadaw, is perceived as biased against ethnic minorities, lacks transparency, takes too much time to process cases and is plagued by bribery and corruption. In addition, it is too expensive for rural communities in Southeast Myanmar, who also often lack the Burmese language skills to engage in proceedings.
- It appears that the Karen community has a strong preference for the KNU justice system. However, it often fails to take action on villagers’ complaints, applies legislation inconsistently and lacks both resources and qualified staff. It is also perceived as too lenient, and corruption and bribery undermine its credibility.

Conclusion

Serious human rights violations were committed by the Tatmadaw against the civilian population in Southeast Myanmar prior to the 2012 Preliminary Ceasefire Agreement, including widespread and systematic killings, torture, and sexual and gender based violence. To date, the Myanmar government has shown no genuine will to establish meaningful accountability mechanisms for military atrocities.

While the signing of the 2012 Preliminary Ceasefire Agreement has brought about a decrease in situations of violence and an improvement in the enjoyment of fundamental human rights, many challenges remain. Notably, violations of the 2015 NCA and land confiscations plague Southeast Myanmar. The current justice systems are ill-equipped to effectively address current human rights violations and abuses due to a lack of transparency, corruption, discrimination and a general lack of judicial capacity within the systems.

The peace process in Southeast Myanmar cannot move beyond the current deadlock without fair, impartial, effective, and independent justice systems to hold accountable perpetrators of past and current human rights violations and abuses. A holistic approach to justice should also include guarantees of fundamental human rights, redress for past violations, and consideration of the voices of local communities.

“How can we build peace without accountability? Actually, accountability has to go parallel with the peace process.”

Member of the Karen Women’s Organization

Recommendations

i. To the Tatmadaw and BGF

Human rights and fundamental freedoms

- Respect, protect and fulfil the fundamental human rights of civilians as listed in international human rights and international humanitarian law treaties to which Myanmar is a State Party.
- Respect the freedom of movement of civilians, including by refraining from imposing travel restrictions such as checkpoints and curfews, and ensure that civilians can travel safely.

Peace, safety and security

- Cease establishment of new military bases, supply of ammunition and weaponry, and reinforcement of troops in ceasefire areas unless agreed to by both parties, in compliance with Section 5(c) of the NCA.
- Halt all military activities, including target practice, taking place in or in the vicinity of villages and residential areas.
- Avoid movement of armed troops in areas controlled by the opposing forces pursuant to Section 8(b) of the NCA, and avoid armed confrontations with or use of force on other EAOs.
- Avoid road construction and improvement, and construction of other infrastructure, in EAO-controlled or mixed-control areas without prior consent from impacted civilians and relevant EAOs.

- Cease on-going violations of Section 9 of the NCA concerning the protection of civilians – including targeting civilians, other extrajudicial killings, land confiscations, forced labour, extortion and looting, and sexual and gender-based violence – and respect all other obligations under the aforementioned Section.
- Remove troops and military infrastructure, including, but not limited to, army bases and training camps, from all civilian populated areas.

Land confiscations

- Cease on-going confiscations of civilians' lands and return all confiscated lands to their rightful owners, along with compensation for damage caused to these lands, in line with the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons. Where lands have been used for military purposes, clearance of dangerous items and structures should be carried out prior to handing back the land.

ii. To the Tatmadaw and EAOs

Armed conflict, violence and the peace process

- Comply with international humanitarian and human rights law in the conduct of hostilities, including protecting all civilians affected by situations of violence.
- Enforce a comprehensive ban on the use of landmines and undertake de-mining activities pursuant to Sections 5(a) and (e) of the NCA; ensure that all landmine-contaminated areas are clearly marked; and ensure that all civilians are informed of their existence.
- Avoid confrontations in areas where there is direct contact between troops, by acting immediately using radio, ground or other methods of communication pursuant to Section 7(a) of the NCA. Instead of responding with violence to violations of the NCA, signatories should, in coordination with each other, take appropriate measures to prevent armed clashes from happening and submit reports of breaches to the Joint Monitoring Committees.
- Allow humanitarian aid providers, media and human rights monitoring regimes full and unfettered humanitarian access to people in need in areas affected by conflict and other situations of violence.
- Hold inclusive and participatory dialogue on all relevant issues in the peace process with all relevant stakeholders; ensure participation of ethnic minorities and integrate a gender perspective in these dialogues.

iii. To the Myanmar Government:

International human rights and humanitarian law treaties

- Comply with international obligations for treaties to which Myanmar is a State Party, namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (ICESCR), and Convention on the Rights of the Child (CRC), and Common Article 3 to the Geneva Conventions.

Land use and ownership

- Abolish the Vacant, Fallow and Virgin Land Management Law (VFV); avoid confiscating civilians' land; and refrain from charging civilians with trespassing under the VFV.
- Immediately cease all coercive measures used to appropriate land.
- Halt all large-scale natural resource extraction, agriculture investment, and infrastructure projects in ethnic areas until all stakeholders have provided free, prior and informed consent.

Policy and governance

- Cultivate and build trust in local communities to build sustainable relationships.
- Provide genuine opportunities for rural communities to meaningfully engage with the government and participate in decision-making processes.

Justice and accountability

- Take all measures necessary to ensure accountability and end impunity for all human rights violations and abuses that pre- and post-date the NCA.
- Establish independent and impartial mechanisms to investigate, in a transparent, fair, and timely manner, allegations of all violations and abuses of international human rights law and violations of international humanitarian law (pre- and post-NCA).
- Fulfil the right to effective remedy for victims of (gross) human rights violations, through both judicial and/or non-judicial means, including through compensation, restitution, and reparation, in line with the Universal Declaration of Human Rights and the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Health

- Improve access to basic healthcare infrastructures and services, including services for maternal, child and reproductive health, especially in rural communities and scarcely populated villages, towns and cities.

Education

- Take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse in schools, in conformity with Myanmar’s obligations under article 19 of the Convention on the Rights of the Child.

iv. To the Myanmar government and KNU/KNLA*Humanitarian aid*

- Allow humanitarian aid providers, media and human rights monitoring regimes full and unfettered humanitarian access to people in need in areas affected by conflict and other situations of violence, and coordinate with each other in doing so.

Education

- Ensure that teachers cease infliction of corporal punishment on children in schools; respect children’s right to protection from corporal punishment and other cruel or degrading forms of punishment, in conformity with Myanmar’s obligations under the Convention on the Rights of the Child. Train teachers adequately in non-violent disciplinary mechanisms.

v. To the KNU/KNLA*Policy and governance*

- Conduct legal awareness workshops for civilians and local administrators to increase their awareness on KNU laws.

Armed conflict and other situations of violence

- Comply with all duties and responsibilities stipulated in the Geneva Call's Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination and the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict.

vi. To business enterprises and investors

- Respect human rights of civilians in Southeast Myanmar in accordance with the United Nations Guiding Principles on Business and Human Rights.
- Before implementing any economic or infrastructure project, consult with and receive approval from local communities in accordance with the principles of free, prior and informed consent. This includes:
 - holding timely consultations to ensure that the concerns of the local community are taken into account prior, during and following project implementation.
 - providing relevant information on the nature, size, reversibility and scope of the project, tailored to the local linguistic and cultural contexts.
 - guaranteeing consent and transparency throughout the consultation process by documenting issues raised by the local population.
 - facilitating the participation of groups traditionally excluded from decision-making processes, including women and minorities.
 - meaningfully engaging in negotiations by taking steps to formalise and follow-through with commitments made to local community members.
 - ensuring that no manipulation or coercion occurs during the implementation of the project.
- Before acquiring or leasing land for their operations, conduct assessments to understand the customary land practices, and recognise the rights of both formal and customary landowners in the area; do not rely on assurances from Myanmar government that no displacement or land confiscations occurred.
- Immediately cease all coercive measures used to appropriate land and ensure proper compensation for those affected, regardless of their possession of a land title. In particular, refrain from taking advantage of the lack of recognition of customary land tenure in Myanmar's legal framework by subjecting customary landowners to judicial harassment to take over their lands.
- Carry out a thorough environmental and social impact assessment analysis before implementing any economic or infrastructure project, and make the results available to communities in local languages; take measures to provide fair compensation to local communities that are affected by the negative environmental impacts of ongoing activities.
- Refrain from collaborating with companies associated with members of the Myanmar security forces; refrain from colluding with members of the Myanmar government, security forces or other armed actors in implementing economic or infrastructure projects.
- Train private security personnel in carrying out their duties without violating the rights of local communities; take measures to provide fair compensation to individuals who were subjected to human rights abuses by private security personnel and to hold perpetrators to account.

Karen Human Rights Group (KHRG) was founded in 1992 and documents the situation of villagers and townspeople in rural Southeast Myanmar through their direct testimonies, supported by photographic and other evidence. KHRG operates independently and is not affiliated with any political or other organisation. Examples of our work can be seen online at www.khrg.org, or printed copies of our reports may be obtained subject to approval and availability by sending a request to khrg@khrg.org.