

The Coming Extinction:

The Moken People of Burma's Mergui Archipelago

A Research Report
by



Acknowledgement

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About Burma Human Rights Network (BHRN)



The Burma Human Rights Network (BHRN) was founded in 2012 and works for human rights, minority rights, and religious freedom in Burma. BHRN has played a crucial role in advocating for these principles with politicians and world leaders. BHRN is funded by the National Endowment for Democracy (NED), Unitarian Universalist Service Committee (UUSC), American Jewish World Service (AJWS), Tide Foundation, and private individuals. We employ local researchers across Burma and neighbouring areas in Rakhine State, on the Thai-Burma border, and on the Bangladesh border investigating and documenting human rights violations.

Any information we receive is carefully checked for credibility by experienced senior research officers in the organisation. BHRN publishes press releases and research reports after investigations are concluded on concerning issues. BHRN is one of the leading organisations from Burma conducting evidence-based international advocacy for human rights, including statelessness, minority rights, and freedom of religion and belief.

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i Introduction

The Moken people¹ are an indigenous tribal group that resides in the Mergui (Myeik) archipelago, which is considered to be part of Burma (Myanmar) in the Tanintharyi Region. The archipelago has remained a remote island despite Burma's "democratic" opening. The Moken have resided on this archipelago for hundreds of years. They are a group that is not well known around the world and are barely discussed within the context of Burma's ongoing human rights violations and mass atrocities. This is in large part due to the larger groups that reside in the country who are far more visible to the international community and the grotesque human rights violations perpetrated against them are easier to document compared to those perpetrated against the Moken.

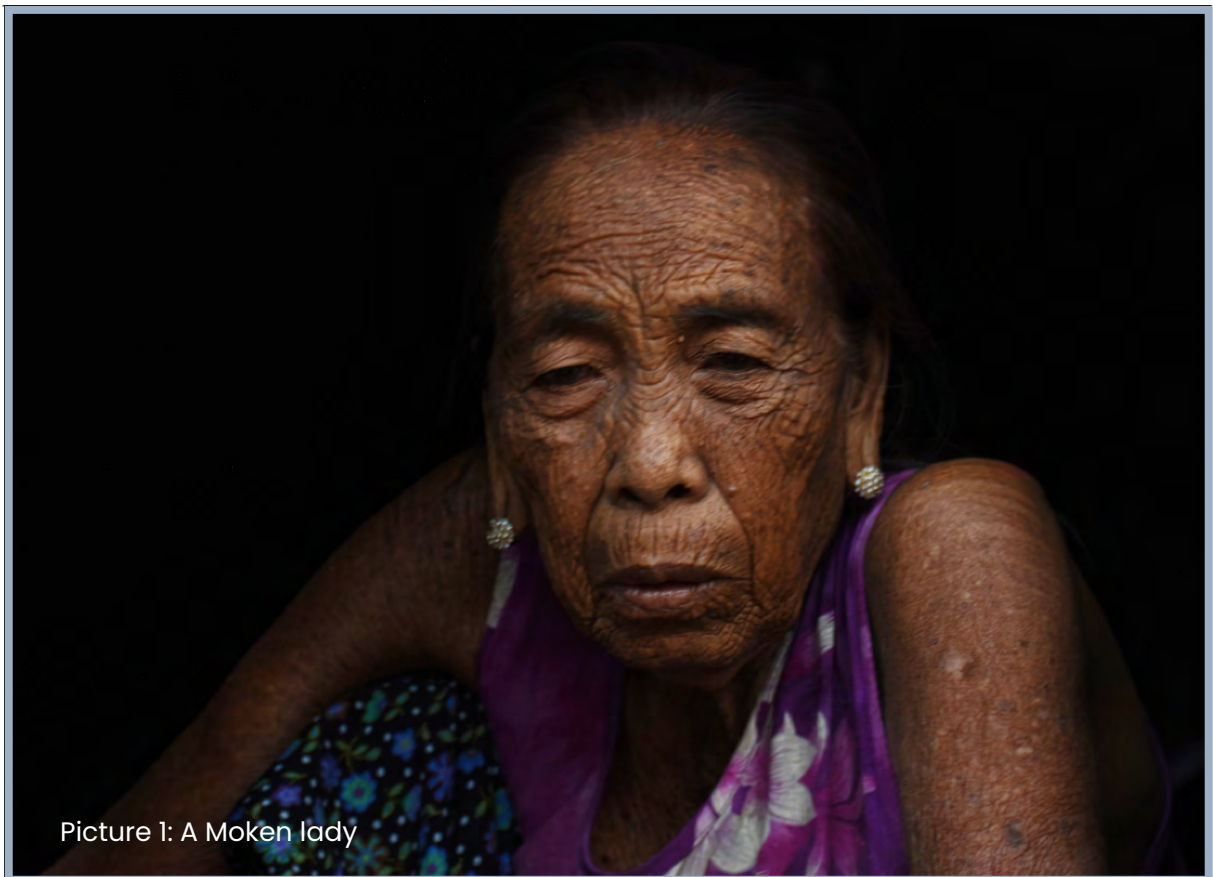
This report examines the history of the Moken people and questions whether Burma and other entities are engaged in behaviour which violates international human rights. This report is divided into five parts. Part I introduces the reader to the Moken people and their history. Part II will discuss the Moken's cultural practices and religious beliefs. Part III examines the relationship between the Moken and Burma, including the Burmese government. Part IV highlights applicable international human rights. Part V will make recommendations on the protection of the remaining Moken people.

ii Methodology

Burma Human Rights Network (BHRN) set out to interview Moken people in Burma. Researchers physically visited the Mergui archipelago and visited Moken people including each location of where the Moken people resided. BHRN researchers also had discussion with Moken activists who are working hard to raise the issues of their people so that they can prevent the erasure of their group. This report is prepared with the consent of the Moken activists and Moken people who participated in sharing their experiences with BHRN field researchers.

1. Generally, Burma identifies this group as the Salone or Salon people. The translation of this term is "sea gypsy." This term has negative connotations. See David Nathaniel Berger (ed), *The Indigenous World 2019*, pg 313, https://www.iwgia.org/images/documents/indigenous-world/IndigenousWorld2019_UK.pdf.

This report solely discusses the Moken people who reside within the territory of Burma (Myanmar). Thailand refers to this group as the Chao Le or Chao Nam and the group here may also be referred to as Molken. The tribe refers to itself as the Moken, which is the name the authors use.



Picture 1: A Moken lady

iii Introduction to the Moken Peoples

The Moken people are a nomadic tribal group who are descendants from Austronesians, who are ancient people who lived in Southeast Asia. The Moken people's origins are assumed to be from the area now known to be Malaysia. Historian J.P. Andrew has suggested that the Moken people had their own kingdom situated on the Island of Sumatra before 6th Century AD. Due to persecution from other tribal groups, they fled to the Myeik archipelago². There are multiple versions of where they may have come from. Historians suggest that they first migrated to the southern parts of Thailand and from there migrated to Myeik and Kawthaung or they may have fled from islands near present day Indonesia. Other historians suggest that some of the Moken people who are now in Burma came from present day Thailand and then migrated to the Myeik archipelago. Regardless, by the 17th and 18th century the Moken people considered the Myeik archipelago their home. BHRN researchers who interviewed Moken representatives shared that their tribe has occupied the island continuously for more than 300 years.

2. Ellen Hines, U Mya Than Tun, et. al, "Interviews about dugongs and community conservation issues in the Myeik Archipelago of Myanmar," Ocean Park Conservation Foundation, January 2008, pg. 3, citing Ivanoff, J., Lejard, T., Gansser, L, and G. Gansser. 2002. A Journey through the Mergui Archipelago. White Lotus Press, Bangkok, Thailand.

The total land size of Taninthayi is more than 16,700 square miles and there are 804 islands in the archipelago. The eastern and southern part of the Taninthayi region share borders with Thailand and to the west is the Andaman Sea. The region shares a northern border with the Mon state. The region's natural resources provides for the Moken, who are generally labeled "sea nomads" to live according to their cultural and spiritual beliefs.

The Moken people reside in a total of 49 places which include islands, villages, and wards³. Sadly, the Moken appear to be, for numerous reasons highlighted below, a tribal group on the verge of extinction. In the last 30 years there has been a steep decline of the Moken tribal peoples indicating that close to 1,700 people remain. The issues surrounding the census are important to discuss in that they paint a picture of a dwindling tribal group.

In 1881 a census was conducted in the areas between Dawei Islands and St Matthew Island (now known as Zar Det Gyi Island). The census was conducted in three different zones. The census result showed 5,000 Moken people were there at that time. The next census, in 1976, indicated that 6,000 Moken people were living in Kawthaung District, however, in 1996 the numbers of Moken people were only in the hundreds. In actuality, there were more than 10,000 Moken people at that time. In 2001, the authorities invented a statistic as they could not reach the island. They reported, 2,274 people settled in the area and 1,726 were living nomadic life, for a total of 4,000 Moken people. Eventually, the Taninthayi region created its own parliament after a civilian government came to power in Nay Pyi Taw in 2011. According to a proposal submitted to the regional parliament in 2012, the Moken population at that time totalled 3,438 people. In February 2019, the last population count to be taken the number of Moken people were reported around 1,727 people.

Table 1 Population of Moken people in each of the village are as follow

1	Zar Det Gyi Island	No of genuine Salon people 487	Total = 487
2	Ja Lan Island	No of genuine Salon people 132	Total = 132

3. In Kyunsu Township they live in Done Palae Aww, Lin Lunn, Paway Wa, Done Nyaung Mei, Done Kamar Chaung, Wae Kyun, Mee Sein Island, Gatgalet, Let Sut Aww Island, Pantaung Island, Pyinsabu Island, Sit Tat Galet, Galan Aww, Powell Island, Yekan Taung Island, Zayaw Ywa Ma situated on Katan Kyun Gyi, Zayaw Mee Thway Saung. In Kawthaung District, they live in Lampi Island, Lagan Island, Kan Gyi Maw village, Ahlaei Man Island, Ko Phaw Aww, Bo Cho Island, Nyaung Wee Island, Jalan Island, Talun village, Kawnyhar village, Pulawkar Kyanlo Island (Tarpu village), Pulei Island, Setlet Galaet, Warlei Island, Kanzargyi Island, Pulone Tone Island, Salon Island, Aww Gyi village, Chan Phan Village, 10 Mile Village, Pulaw Baline Village, 7 Mile Chaung Wa Pyin, Staine, Ma Htay Aww (Sanine) Island, Sakaw Island, Taw Wat Island, Khin Oo Island, Saw Mun Hla Island, Saw Pu Kyun. In Kawthaung town they live in Vitoria Point and near the town's main market.

Table 1 Population of Moken people in each of the village are as follow

3	Nyaung Wee	No of genuine Salon people 128	Total = 128
4	Ma Kyone Galat	No of genuine Salon people 288	Total = 288
5	Kan Maw Gyi	No of genuine Salon people 38	Total = 38
6	Ah Lei Man	No of genuine Salon people 45+ 18 Bamar	Total = 45
7	La Ngan	No of genuine Salon people 218+ 44 Bamar	Total = 218
8	Done Nyaung Mei	No of genuine Salon people 89	Total = 89
9	Done Palere Aww	No of genuine Salon people 150	Total = 150
10	Pa Yaw Waa	No of genuine Salon people 85	Total = 85

Total = 1713

Based on this table, created by Moken tribal activists, if the 14 Moken living in Ko Hpaw Aww village are added to the figure it would become 1727, which is the number of genuine Moken people left in the area⁴. It is said that there are Pathe and Moken mixed people living in Ahlae Man village. Some of them now call themselves Kayin. So this means that the genuine number of Moken must be lower than the established figure 1,727. BHRN was able to determine based on a physical visit to the areas that there are only 10 villages of Moken people left. Another report indicates the number may be less, they "have dwindled to only 1,630, according to a count conducted ... by village tract administrators under the General Administration Department⁵."

4. The data compilation for this particular number faces a small challenge. Some of the Moken reported that they were 100% Moken, but in fact were born of a Burman parent. Therefore, this should be taken into consideration when determining the actual remaining Moken that are left. See Recommendations section on how this can be rectified.

5. Hein Thar and Ben Dunant, "Moken fear a sea grab in the Myeik Archipelago" Myanmar Frontier, December 29, 2019, <https://frontiermyanmar.net/en/moken-fear-a-sea-grab-in-the-myeik-archipelago>.

iv Cultural Beliefs and Practices



Picture 2: Moken women in ritual dance

The Moken language is unique, distinct, and an endangered Austronesian language⁶. Generally, the Moken people are isolated and do not mix with other groups of people.

Western countries are likely to classify the religion of the Moken people as an “animistic” religion. The kabang (wooden cultural boats) “is an anthropomorphic boat that forms part of the Moken creation story, which describes their nomadic life as a submerged people”⁷.

The Moken have strong faith based traditions. The Moken wear sarongs and recite their prayers to their deities. Their preachers are called Macaoputi. The Moken are devout to their religious practices as they will completely uproot from where they are living when they are persecuted for such beliefs instead of relinquishing their faith.

6. See generally Michael Larish, “Moken and Moklen” in *The Austronesian Languages of Asia and Madagascar*, eds. Alexander Adelaar and Nikolaus P. Himmelmann, Routledge Publishing (NY), 2005, pg 513 -534.

7. Alice Driver, STRANDED, *Cultural Survival Quarterly Magazine*, December 2008, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/stranded>

In their religious practice, traditional drums are played and maidens dance around the idols they worship. They perform acts which include talking to the idols, persuading them with songs and praying to seek forgiveness. In some rituals, frying pans and bottles are used as musical instruments. There is a spirit inaugural ceremony, which is a big feast for ghosts, where a tithe is given for the deceased family members. It includes an offering of foods to the participants of the feast. They believe some of the deceased have been blessed and some have turned into ghosts after their passing.

As with most religions, their faith influences their beliefs about the afterlife and burial customs. In the Moken cemeteries, the dead bodies are kept on stands until they are decomposed and only after that they are buried. Those who think they are closer to their death tend to come back to the place where their ancestors are buried. They use their ancestors in making their grievances, they worship the custodian spirits of their boats and they do so according to the instruction of their spiritual masters, named Ohlaungputi⁸.



8. For a visual introduction to the Moken people and their customs, visit "Project Moken" <http://projectmoken.com/>

V Relationship with Burma

The Moken people have been classified – inaccurately – as part of the Burman ethnic composition, instead of as a separate and distinct indigenous group in Burma⁹. Some reports indicate that Moken are not considered citizens by the Burmese government¹⁰. However, they do have identification cards. Regardless, the invisibility of the Moken people causes them to be vulnerable to “discrimination, exploitation and abuse of their rights, as well as making them easy prey for human traffickers”¹¹.



Picture 3: Moken children

There is not much information regarding the Moken people prior to the late 1960's before the Burmese military took control of the country. The Moken have reported to BHRN that Burma's government had left the Moken alone until the military came into power. At that point, the focus on exploiting natural resources became a priority, regardless of the cost to human life¹².

a. Persecution

The Moken state that they began to face persecution from the Tatmadaw in the 1970's. The Tatmadaw fabricated a story that pearls were being lost, which served as the pretext for the events that followed. The Tatmadaw entered Hpawaw village using its usual euphemism of an “area clearing” operation, and several villagers were shot dead. In an incident in 1972, the military forcibly evicted Moken people by using the loss of pearls as its basis. In 1988 the situation worsened further. The Moken people relocated from Salon Kone and moved to more remote parts of the archipelago. The “clearance” of the land was a successful strategy by the Tatmadaw as they were able to economically develop Salone Kone. It is reported that forcible evictions continue so that the Tatmadaw can occupy the land. In 1992 Moken people were evicted from Sakaw Island and their houses were burned down. A former commander of the Coastal Command, Brigadier General Aye Kywe, who served in the position from 1998 to 2000, had tried to relocate all Moken people to live in Makyune Galat village.

9. See Shan Herald Agency for News, 135: Counting Races in Burma, September 26, 2012, <http://panglongenglish.blogspot.com/2012/09/135-counting-races-in-burma.html>

10. Human Rights Watch, “Stateless at Sea” June 25, 2015, <https://www.hrw.org/report/2015/06/25/stateless-sea/moken-burma-and-thailand>

11. Mya Kyone Galet and Noel Caballero, “Myanmar's last nomads, the Moken, threatened by development, political change” EFE-EPA, December 19, 2018, <https://www.efe.com/efe/english/patrocinada/myanmar-s-last-nomads-the-moken-threatened-by-development-political-change/50000268-3847109>

12. It should be noted that there is a distinction in treatment between Moken in Burma versus those that reside near Thailand. See generally, Taylor Weidman, “Moken Sea Nomads” Global Oneness Project, <https://www.globalonenessproject.org/library/photo-essays/moken-sea-nomads> (accessed September 2, 2020).

The military also used pirates to murder Moken people. The military used its fight against sea pirates as an excuse to attack the Moken areas, in which they forced many Moken people to leave the island they have been living in for decades. However, as the pirates continued to dominate the sea areas and the Myanmar military occupied the archipelago, the situation intensified and left the Moken people in fear of both the military and the pirates. Therefore, many Moken people left the territory. The Moken were unable to keep count of how many of their people escaped alive or how many were killed.

The Moken continued to face severe persecution under the reign of U Nay Win. Moken people report that U Nay Win would use staple food items of the Moken to help his hormones. He also built a resort on "Pearl Island" as his vacation home. The Moken were forced to work for him as gardeners, they were asked to grow coconut, betel, and other trees in a garden near his bungalow. After these staples were grown, he accused the Moken people of stealing his pearls and called the military in to force the Moken to leave the area. The military used different methods of force against the Moken people which was included but not limited to physical beatings and other forms of torture such as waterboarding¹³.

b. Forced Assimilation

In addition to persecution, the Moken people continue to face forced assimilation¹⁴, resulting in extinction and loss of their cultural practices. This forced assimilation is partly a result of the Tatmadaw and partly a result by other ethnic groups in Burma which have also moved to the archipelago as they fled from the Tatmadaw. The people who relocated to the archipelago took advantage of the Moken people, and the Moken fled once again to another area of the archipelago – some fleeing as far as Thailand. The remaining Moken people settled in a small village. The Moken state that the Burmese people have exploited the indigenous group for illegal business pursuits. Many Moken were forced to get involved in drugs. Some have reached the stage where they cannot work without taking drugs. The worst period was in the 1990s, when they were addicted to drugs ranging from marijuana to heroin. At one point the amount of Moken facing drug abuse has become as high as 80 per cent of their total population. This rate has not levelled off¹⁵. This is in large part to the fact that zero resources have been allocated to helping them combat this issue¹⁶.

13. See generally, ACLU, "What is Waterboarding?" <https://www.aclu.org/other/what-waterboarding> (accessed September 2, 2020) and Eric Weiner, "Waterboarding: A Tortured History" NPR, November 3, 2007, <https://www.npr.org/2007/11/03/15886834/waterboarding-a-tortured-history>.

14. Walter Kailin, "Assimilation, Forced" Max Planck Encyclopedias of International Law [MPIL], October 2020, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e754>

15. Athens Zaw Zaw, "Dynamite fishing, drugs, threaten Myanmar's 'sea gypsies'", July 3, 2017, <https://phys.org/news/2017-07-dynamite-fishing-drugs-threaten-myanmar.html>

16. It should be noted that the challenges of drug use and addiction are not limited to one area of Burma. See Patrick Winn, "How an Isolated Mountain Outpost Became One of the World's Most Heroin Addicted-Addled Places" GlobalPost, September 2, 2020, <https://www.businessinsider.com/why-theres-so-much-heroin-use-in-myanmar-2013-12>



Picture 4: Moken's traditional boats

It should be noted that in some places where the Moken people reside, there has been a voluntary integration with other members of society. The Moken live in the two northern villages Done Palerle Aww and Pa Yaw Waa, where they cohabit with Kayin¹⁷ and Bamar people, but tend to mingle more with Kayin people. They tend to follow powerful factions in the village. Many Moken people in Done Parle Aww and Pa Yaw Wa villages are married to Kayin people. Some even transformed their lifestyles to mirror Kayin culture and started to call themselves as Kayin.

c. Loss of cultural practice

The Moken are engaged in activities as running businesses, foraging, and working on fishing vessels. Given the severe amount of persecution by the Tatmadaw, the Moken people have had to assimilate with Bamar, Mon, Dawei, Kayin, and Rakhine people. They go out for fishing every day and come back to their homes. Prior to the persecution their culture was solely based on a nomadic sea life with their kabang¹⁸; unfortunately the majority has switched to use boats with engines because of smugglers and the corrupt activities of the Burmese Navy. The Moken also do not give birth on the kabang, according to their cultural traditions, due to this challenge. Many Bamar people have also gotten involved in foraging activities by using big oxygen vessels, so this has caused a group that used to forage to abandon because of dwindling of resources and competition.

The Moken have also had to forgo their traditional food items because of the challenges that currently exist in the status quo. The Tatmadaw has forced the Moken to live on land, instead of pursuing their nomadic life.

17. They are also known as the Karen people of Burma.

18. See Narumon Hinshiranan, "Kabang: el barco viviente" *Techniques and Culture Journal*, pg 499-507, (2001), <https://doi.org/10.4000/tc.310>

d. Freedom of Religion

The Moken have attempted to continue their faith traditions in Myeik. BHRN researchers found that the Moken have not been able to celebrate most of their religious traditions since 2004 as some religious practices have been cut. The Myanmar government claims that since 2016 it has funded Moken festivals¹⁹.

In southern villages like Ja Lan and La Ngan, Buddhist missionaries are strong. Ja Lan is a Buddhist monk famous in the region for preaching Buddhism to Moken people. The Moken people tend to transform themselves to the customs of the religious groups they are close to. For Buddhist missionary work, the Myanmar government provides support. It is reported that after the 2004 tsunami the Burmese government have also allowed Christian missionaries to operate in the area.

In the 2018 Freedom of Religion report, Burma has continued to retain its "Country of Particular Concern" status for violations to freedom of religion for many groups in the country²⁰. Unfortunately, the Moken people do not feature in the report. BHRN researchers, however, have noted that there are restrictions to the practice of religious traditions by the Moken.

e. Corporate abuse



As previously stated, the Moken view their environment as a central element to their culture and religious practices. Environmental degradation has impacted the Moken people²¹. Food scarcity is now a problem as huge fish trawlers owned by Bamar ethnic people have been overfishing in their waters.

The Moken have suffered immensely due to occupation in their region by the Tatmadaw and pearl exploration companies. Expansion of territory by pearl exploration companies, has now forced the Moken to the brink of cultural extinction, given the limitations on their space. Moken people state that because of pearl exploration companies, the Moken villages have been burned down and they are

19. Nan Lwin Hnin Pwint, "Minister Calls for Action to Save the Moken" The Irrawaddy, November 20, 2017, <https://www.irrawaddy.com/news/burma/minster-calls-action-save-moken.html>

20. See US State Department, "Burma 2018 International Religious Freedom Report" <https://www.state.gov/wp-content/uploads/2019/05/BURMA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>

21. The oceans are a critical part of the cultural survival of the Moken people. For general information regarding the marine areas see Flora Fauna Organization, "Marine Biodiversity of Myeik Archipelago Survey Results 2013 – 2017" <https://www.fauna-flora.org/projects/ridge-reef-conservation-tanintharyi>

forced to take refuge on other islands. It comes as no surprise that Moken people are concerned as new pearl exploration companies continue to pour into their region. The response by the regional government is lacklustre as it does not want to pit itself against the pearl exploration companies for fear of losing tax revenue from these companies.



The Tasaki Pearl Exploration Company has signed a production sharing contract with the government's Pearl Exploration and Trading Enterprise, it gives the company 75 per cent share in the venture. The contract was signed on March 6, 1997 after permission from the Myanmar Investment Commission (ref: Order no 245/97 dated 21 February 1997) and the Ministry of Mines (ref: order no 2/97 (6 March 1997)). The contract grants the company rights to conduct exploration work on the Do Mei Island on the Mergui Archipelago. The government and Tasaki have expanded its work of pearl culture and benefit-sharing, under a new contract signed on April 1, 2000. After the 15 years, the agreement between the government and Tasaki Company had expired on March 31, 2015; however the deal was extended for five years until March 31, 2020, by the military-backed Union Solidarity and Development Party government. The contract between the government and Tasaki is due to expire in 2020 and the company is working hard to secure an extension of the contract along with ensuring control over the area²². The Tasaki Company is seeking for extension of the contract until March 31, 2025 and currently, the Union Minister has asked the opinion of the Regional Government²³.

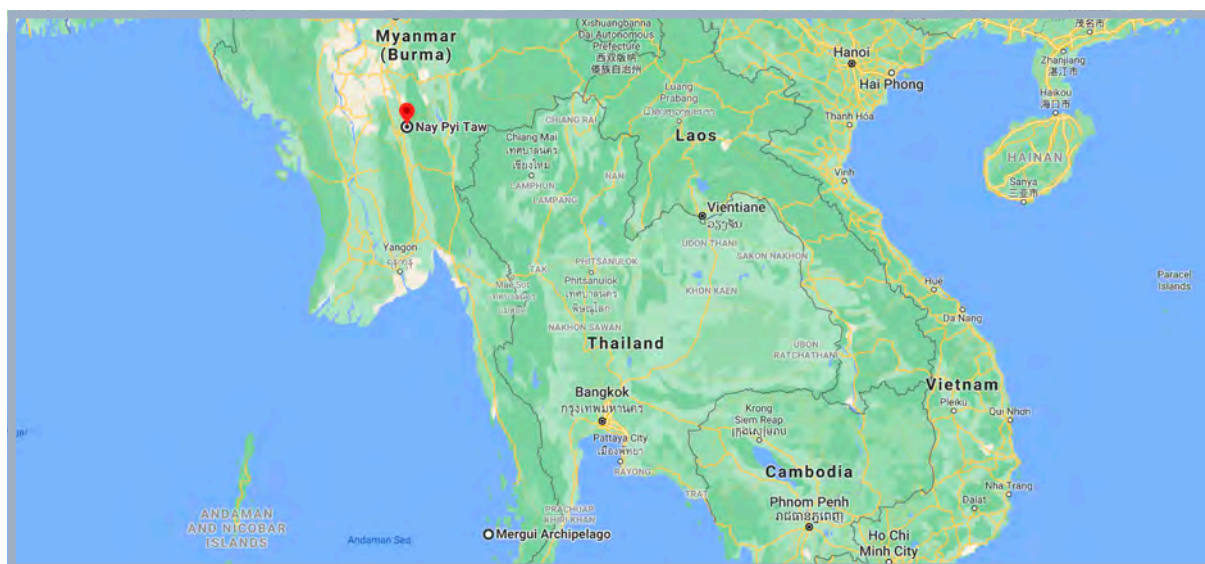
22. Aye Nyein Win and Su Phyo Win, "Myeik island developer runs into Japanese pearl farm" Myanmar Times, February 26, 2016, <https://www.mmtimes.com/business/19204-myeik-island-developer-runs-into-japanese-pearl-farm.html>

23. It should not be lost on the reader how much profit is made in this region, particularly by Tasaki. "In fiscal 2019-20, some 400 pearl lots producing more than 100,000 pearls worth more than €2.6 million were sold, mostly to buyers from Hong Kong, China, Japan and the US. The biggest producer of pearls in Tanintharyi is Myanmar Tasaki Co Ltd, a Japanese joint venture with the MPE." Thiha, "Myanmar invited JVs pearl farms for the first time since 2016" Consult-Myanmar, July 14, 2020, <https://consult-myanmar.com/2020/07/14/myanmar-invites-jvs-pearl-farms-for-the-first-time-since-2016/>

The regional government is asked to give its opinion on the extension of the contract which involves granting the exploration rights to the company for 25615.26 acres of sea and 4796.03 acres of land areas. The public have had no ability to seek information surrounding the deal between the military and Tasaki. Also, the public is not aware of whether the Environmental Impact Assessment and the Social Impact Assessment were carried out before signing of the contract.

The larger problem posed by the environmental constraints is that it will lead to the forced displacement of the Moken which will cause them to lose their ancestral areas which are crucial to their religious practices. The ten villages where Moken people are living could be their last stand on the Mergui Archipelago. If they have to move out from these villages, the Moken people would be entirely wiped out from the island.

Recently, a group of Moken people met Deputy Minister Dr. Ye Myint Swe in Nay Pyi Taw, Union Minister of Natural Resource and Environmental Protection. It was the first time a Moken delegation met senior officials. The delegation included two elderly Moken women along with two advocates for the Moken people. The journey to have this meeting is worth noting as it was arduous. First, they had to travel by sea to Mergui from Pinlae Hte Township, where the two Moken delegation members live and take a flight to Nay Pyi Taw from Mergui. During the meeting, the delegation pleaded with the government to help to resolve the challenges they are facing and described the risk of extinction of their people in the Mergui Archipelago. However, they received a lukewarm response from the Deputy Minister, who only gave the delegation gifts as a courtesy and asked them to return to their region. The two Moken women had refused to accept the gift from the Deputy Minister.



However, there have been no actions yet from the authorities and the regional government is also reluctant to favour the Moken people. They know the reasons behind why the regional authorities are reluctant to give their consent. The members of the delegation said they regretted to see that the government is only interested in business interests and it appears the Tatmadaw has more control in the region than the central and regional authorities²⁴.



Picture 5: State Counsellor Daw Aung San Su Kyi visiting Moken's Island

During the five years since the National League for Democracy (NLD) party came to power, it did not do much to protect the Moken people and they even ignored the events that have been taking place on the Mergui Archipelago. Although there have been media reports that Aung San Suu Kyi has visited the Moken, it appears that promises made were based on Moken people assimilating rather than valuing and protecting nomadic cultural traditions. In case there was any question as to how far assimilation has gone, the island has been dubbed "Pearl Island" already erasing the connection between the Moken and the archipelago. BHRN interviewed Moken people who reported that some gestures have been made by the government to appease them, like delivering lifejackets, rice, and plastics toys to use for fishing. They have ignored the Moken people's requests for designated grounds for fishing as well as access to healthcare and education, in line with their traditions²⁵.

24. Hein Thar and Ben Dunant, *supra* note 5

25. Global New Light of Myanmar, "State Counsellor visits Pearl Island, Lampi Marine National Park, meets Salon ethnic people," February 15, 2019, <https://www.globalnewlightofmyanmar.com/state-counsellor-visits-pearl-island-lampi-marine-national-park-meets-salon-ethnic-people/>

The Union government and the regional government continue to point the finger at each other stating that one of the entities needs to take action. Currently, the government only gives importance to helping pearl exploration companies. Even though a ground survey was conducted by the government to find out the challenges being faced by Moken people, the teams could not give any recommendations on how to alleviate the situation for Moken people. The officials only talked about the interest of the pearl exploration companies.

In January 2020 a team representing the regional government conducted a survey and a month later by a team of 18 Members of Parliament from the upper house of parliament conducted a similar survey of the archipelago but these teams could not give any concrete recommendations to address the challenges Moken people are facing.

It appears to BHRN that in order to gain more from the pearl exploration companies, the government is attempting to buy off the Moken people given the destitution their policies have created. They are offering a monthly stipend of Kyat 500,000 to the Moken village elders and offering to dig drinking water wells and a jetty in the area. Based on their previous experiences, the Moken are concerned that they may have to flee their areas again as the pearl exploration work expands.

Sadly there is no place for them to retreat to within the Archipelago. The only remaining option may be for the Moken people will be to retreat to Thailand. Reports indicate however, that life will not be any better for them there. If action is not taken, it means that Myanmar will have successfully caused the extinction of an indigenous group from their ancestral abode. The international community, given its indifference to indigenous peoples, would be none the wiser.



Picture 6: A Moken girl at beach

vi Considerations under of International Law

The Moken people's current predicament illustrates that there are human rights violations that need to be addressed before it is too late for the Moken people. This section will examine the legal framework that Burma has voluntarily acceded to and will examine the facts gathered by BHRN as applied to these frameworks.



United Nations

Department of Economic and Social Affairs
Indigenous Peoples

- **The United Nations Declaration on Rights of Indigenous People**

The United Nations Declaration on Rights of Indigenous Peoples (UNDRIP) is a non-binding legal declaration that was adopted in 2007 after years of negotiation between state parties. UNDRIP is considered "the most comprehensive international instrument on the rights of indigenous peoples"²⁶. Burma adopted the UNDRIP in 2007. Burma has asserted that the framework relating to indigenous peoples does not apply as all its "rightful" citizens are indigenous to the country²⁷, a line similarly made by other countries in the Asian region. This may explain why the Moken are counted as Burman in the national census figures, as opposed to an indigenous group. The technical categorisation of the Moken people as an ethnic racial group within Burma means that rights in the UNDRIP are not applied to the group, which is detrimental to the cultural heritage and survival of the group itself. In order for the Moken to access principles within UNDRIP, the instrument needs to be integrated into national laws. The UNDRIP is not integrated into national mechanisms in Burma.

One of the most notable tenants of UNDRIP (Article 19) is "Free Prior Informed Consent" (FPIC) which is required by government from indigenous groups before engagement on ancestral lands and territories. FPIC stems from the principle of "self-determination" which is contained in treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. FPIC essentially allows for indigenous peoples to "give or withhold consent to a project that may affect them or their territories." Under FPIC, indigenous peoples may "negotiate the conditions under which the project will be designed, implemented, monitored and evaluated." Once consent is given the indigenous peoples may withdraw it at any stage²⁸. This is not to be interpreted as "veto" power but rather "meaningful engagement."²⁹ The Moken people have not been able to utilise FPIC and the result of their lack of engagement in their

26. UN Department of Economic and Social Affairs Indigenous Peoples, "United Nations Declaration on the Rights of Indigenous Peoples" <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (accessed February 19, 2020).

27. ISEAS, "Indigenous Peoples Work to Raise their Status in Reforming Myanmar," *PERSPECTIVE*, May 22, 2017, pg 2, https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2017_33.pdf

28. Food and Agriculture Organization of the United Nations, "Free, Prior and Informed Consent Manual" <http://www.fao.org/3/a-i6190e.pdf> (accessed on March 13, 2020)

29. Agnes Portalweska, "Free, Prior and Informed Consent: Protecting Indigenous Peoples' Right to Self-Determination, Participation, and Decision-Making" *Cultural Survival Quarterly Magazine*, December 2012, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-indigenous>

ancestral territory shows.

Burma is likely to argue that two legal instruments, namely its Constitution and the Ethnic Rights Protection Law afford the Moken people protection, thereby making the UNDRIP redundant. However, all iterations of the Constitution have failed to protect the Moken people. The updated 2008 Constitution specifically prohibits trafficking³⁰, yet there appears to be no concerted effort on the part of the national government to prevent trafficking in persons among the Moken people. The 2008 Constitution claims to protect cultural heritage³¹, however the Constitution expressly states that "every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security..."³² Essentially, the Tatmadaw and the Union may create laws which legislate the Moken out of existence. This is evident by the free passes that are granted to the Pearl companies to destroy the native areas to the Moken people.

The Constitution also states that the Union shall, "strive to improve the living standards of the people and development of investments."³³ As BHRN has already described, the living conditions and forcible evictions of the Moken people means that the Constitution serves as empty promises.

The Ethnic Rights Protection Law applies to those ethnic groups who "have resided continuously within the Republic of the Union of Myanmar."³⁴ It is unclear whether this law would apply to the nomadic sea people, the Moken. Further, the law provides protection of cultural heritage, as stated in the Burmese Constitution, yet has not provided access to justice to the Moken people to determine whether this law achieves its stated aims. Section 4 explicitly provides protection for cultural heritage and representation of the group in political affairs. The Moken have no such protection of their culture and it is clear they are not represented in the region appropriately.

- **United Nations Guiding Principles on Business and Human Rights (UNGPBHR)**

The UN Guiding Principles on Business and Human Rights provides that states respect, protect, and fulfil human rights obligations. It should be noted that Myanmar has not incorporated the UNGPBHR into existing laws within the country. The UNGPBHR asks states to ensure that businesses are held to specific standards that are in line with international human rights laws and it also asks businesses to ensure that they also are following international human rights laws. Business compliance to international human rights norms is best achieved through corporate education, due diligence, reporting mechanisms, and through accountability and redress mechanisms. Myanmar has more to do in order to meet

30. 1957 Constitution, para 19, 2008 Constitution, para 358.

31. 1957 Constitution, para 43

32. Emphasis added. 2008 Constitution, para 354

33. 2008 Constitution, Article 36

34. The Ethnic Rights Protection Law, The Pyidaungsu Hluttaw Law No. 8, (2015), https://www.pointmyanmar.org/sites/pointmyanmar.org/files/document/the_ethnic_rights_protection_laweng-myanmar.pdf

baseline requirements under the UNGPBHR. The principles in the UNGPBHR are also found in other treaties which will be mentioned further in this report.

- **International Human Rights Treaties**

International Covenant on Economic, Social, and Cultural Rights (ICESCR)

ICESCR is an international human rights treaty that specifically focuses on the economic, social, and cultural rights that people should have access to. Burma ratified the ICESCR in 2017. Since that time, there appears to be no major improvement in the lives of the Moken or any new types of legislation that would protect the Moken from the invasive practices of other Burmese groups.

ICESCR has some notable provisions which Myanmar is violating with regards to the situation of the Moken people. This includes Article 10 which prevents economic exploitation of children and Article 15 which gives people the right to “take part in cultural life. The General Comments on Article 15 emphasise this right particularly among indigenous peoples:³⁵

“The decision by a person whether or not to exercise the right to take part in cultural life individually, or in association with others, is a cultural choice and, as such, should be recognised, respected and protected on the basis of equality. This is especially important for all indigenous peoples, who have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, as well as the United Nations Declaration on the Rights of Indigenous Peoples.”

Myanmar also has an obligation under the ICESCR to protect Moken people from forced relocation and exploitation by businesses such as the pearl companies that frequent Moken heritage areas. Specifically, General Comment number 24 states:

“The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered in the context of investment projects.”³⁶

Recently independent legal researchers found Burma has failed to apply the ICESCR appropriately to larger groups that are also indigenous to Myanmar, based on direct testimony from those groups.³⁷ Therefore, it is clear that the civilian

35. UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, para 7, available at: <https://www.refworld.org/docid/4ed35bae2.html>

36. UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para 12, available at: <https://www.refworld.org/docid/5beaecba4.html>

37. See Narissa Ramsundar, Regina Paulose, and Tabitha Nice, “Catalysts for Change: ICESCR and Indigenous Groups in Asia,” March 2020, www.actwithus.org.

government is failing the positive obligation it has to ensure that economic, social, and cultural rights are afforded to the Moken, whose cultural could be saved as a result of a strong rights regime.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Burma ratified CEDAW in 1997. CEDAW aims to eliminate all practices that may create structural or societal inequalities against women. Generally speaking, BHRN researchers did not examine whether or not there was discrimination particular to women as it was evident the Burmese government discriminates against the entire group. In a report on indigenous women, The Tebtebba Foundation noted succinctly, "for both indigenous women and men, a core problem is the non-recognition by the state of their specific rights, and in some countries even of their existence as peoples."³⁸

Although CEDAW has defined "discrimination" to include gender based violence³⁹, BHRN's discussions with the Moken people highlighted the explicit concern of trafficking and exploitation of the Moken people. In Article 6 states are obligated to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." Therefore, Myanmar has a specific obligation under CEDAW to prevent this reported form of violence against Moken people, including children.

Further, in 2004, Myanmar signed the United Nations Convention against Transnational Organised Crime (UNTOC) and Protocol to Prevent, Suppress, and Punish Trafficking in Persons (Palermo Protocol). Therefore, Myanmar has obligations under the UNTOC and Palermo Protocol to suppress and punish this activity. It is clear that Burma on some level is attempting to respond to this challenge in the country. A recent report indicates,

"Myanmar has signed bilateral agreements condemning human trafficking with neighbouring countries Thailand and China, and is a member of the Coordinated Mekong Ministerial Initiatives against Trafficking (COMMIT) and the Asia Regional Trafficking in Persons (ARTIP) Project. In 2017, the government also increased the number of personnel working in anti-trafficking law enforcement units and task forces. This year, the government is expected to amend the 2005 anti-trafficking law to strengthen investigations of trafficking cases by authorising anti-trafficking police to follow-up and take more stringent actions against traffickers."⁴⁰

38. Tebtebba Foundation, "A Handbook on CEDAW Realizing Indigenous Women's Rights" 2013, pg 4, <https://www.forestpeoples.org/sites/fpp/files/publication/2014/03/realizing-indigenous-women-s-rights-handbook-cedaw.pdf>

39. General Recommendations Adopted by the Committee on the Elimination of Discrimination against Women (1992), General Recommendation No. 19 Violence against Women, para 6, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf

40. Mi Ki Kyaw Myint, "Can Myanmar's Libraries Help Combat Human Trafficking?" Asia Foundation, March 28, 2018, <https://asiafoundation.org/2018/03/28/can-myanmars-libraries-help-combat-human-trafficking/>



Picture 7: Moken boys playing traditional top at the beach

If Myanmar is making efforts to combat this issue, then any exploitation and violence perpetrated by the military and corporations must also be disrupted and addressed.

Convention on the Rights of the Child (CRC)

Burma ratified the CRC in 1991. It ratified the optional protocol regarding the sale of children, child prostitution, and child pornography in 2012 and the optional protocol on children in armed conflict in 2019. As Professor Goodwin notes,

“Most frequently cited for its affirmation of the best interests of the child principle and for its endorsement of non-discrimination without exception, the Convention also clearly calls for the substantive protection of rights we might otherwise take for granted – protection against unlawful and arbitrary killing, torture, cruel and inhuman treatment; protection against sexual and gender-based violence, against arbitrary detention, or denial of access to education, healthcare and food. These rights call for protection in good times and bad, with no exceptions and no derogation.”⁴¹

The CRC specifically protects a child's right to their cultural heritage under Article 8, 14, 20, 29, 30. Under Article 32 which prohibits exploitation and Article 36 governments have a positive obligation to prevent children from “activities that could harm their development.” Therefore, the presence of pearl companies in the archipelago and the impact it has on the Moken culture, as illustrated, has a severe impact on the cultural practices and traditions of the Moken. The children are the source of transmission of cultural practices to the next generation. Myanmar's inability to put people before profit has severe repercussions for the Moken children.⁴²

The companies which operate in the archipelago to the detriment of the Moken

41. Guy Goodwin, “One year on: Myanmar and the Convention on the Rights of the Child” August 24, 2018, <https://www.kaldorcentre.unsw.edu.au/news/one-year-myanmar-and-convention-rights-child>

42. Andreas Wiesand, et. Al, Culture and Human Rights: The Wroclaw Commentaries, citing CRC GC No. 17, pg 108, DE GRUYTER publishers, 2016.

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should also take heed to the fact that the CRC committee “has also recognized the role and responsibilities of the private sector in the areas of recreation, cultural and artistic activities, as well as civil society organizations providing such services for children.”

While BHRN continues to take actions on behalf of the Moken people,⁴³ BHRN calls upon the international community to do the following:

- Call upon UNESCO to recognise the archipelago and the practices of the Moken people as valuable cultural heritage which deserves appropriate cultural protection.
- Call upon UNESCO and the Special Rapporteur on Indigenous Rights to emphasize protection of the Moken language, which is threatened with extinction.
- Call upon Myanmar to abide by its international obligations by the treaties and covenants that it is a party to, notably the ICESCR, CEDAW, and the CRC.
- Call upon the international community to pressure Myanmar to enforce and punish perpetrators who exploit the Moken people.
- Call upon Myanmar to allow the Moken people to practice their religion freely and without interference.
- Call upon Myanmar to integrate the principles of the UNDRIP into existing laws, in order to protect the Moken people from extinction.
- Boycott all pearl companies doing unsustainable business in the region until those companies document and are able to prove their relationship with the Moken protects and reveres their cultural traditions and way of life.



43. BHRN and the Common Good Foundation have filed a joint report for the Universal Periodic Review, which Myanmar is scheduled to participate in 2020 at the Human Rights Council in Geneva. BHRN has also notified the United Nations regarding the practices of the Pearl Companies operating in the region at the expense of the survival of the Moken peoples. Further, this report has been sent to the United Nations Rapporteur on Indigenous Peoples and has been sent to the Expert Mechanism on the Rights of Indigenous Peoples.

The Moken people are an ancient tribe of sea nomads who reside in the waters around Burma. During this report launch we will discuss the human rights violations that will erase the Moken out of existence if not stopped.



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