

THERE IS NO ONE WHO DOES NOT MISS HOME



A Report on Protracted Displacement Due
to Armed Conflict in Burma/Myanmar



About Us

This report is a collaborative effort between fifteen ethnic community-based organizations and locally-based civil society organizations, coordinated by Progressive Voice.

Written and Published by:

1. Human Rights Foundation of Monland
2. Karen Student Network Group
3. Karen Human Rights Group
4. Karen Refugee Committee
5. Karen Women's Organization
6. Karenni Refugee Committee
7. Karenni Legal and Human Rights Center
8. Karenni Education Department
9. Karenni National Women's Organization
10. Karenni Social Welfare and Development Center
11. Koun Jor Shan Refugee Camp
12. Kachin Women's Association Thailand
13. Pa-Oh Health Working Committee
14. Progressive Voice
15. Ta'ang Women's Organization

Contact Information:

Progressive Voice

 www.progressivevoicemyanmar.org

 info@progressive-voice.org

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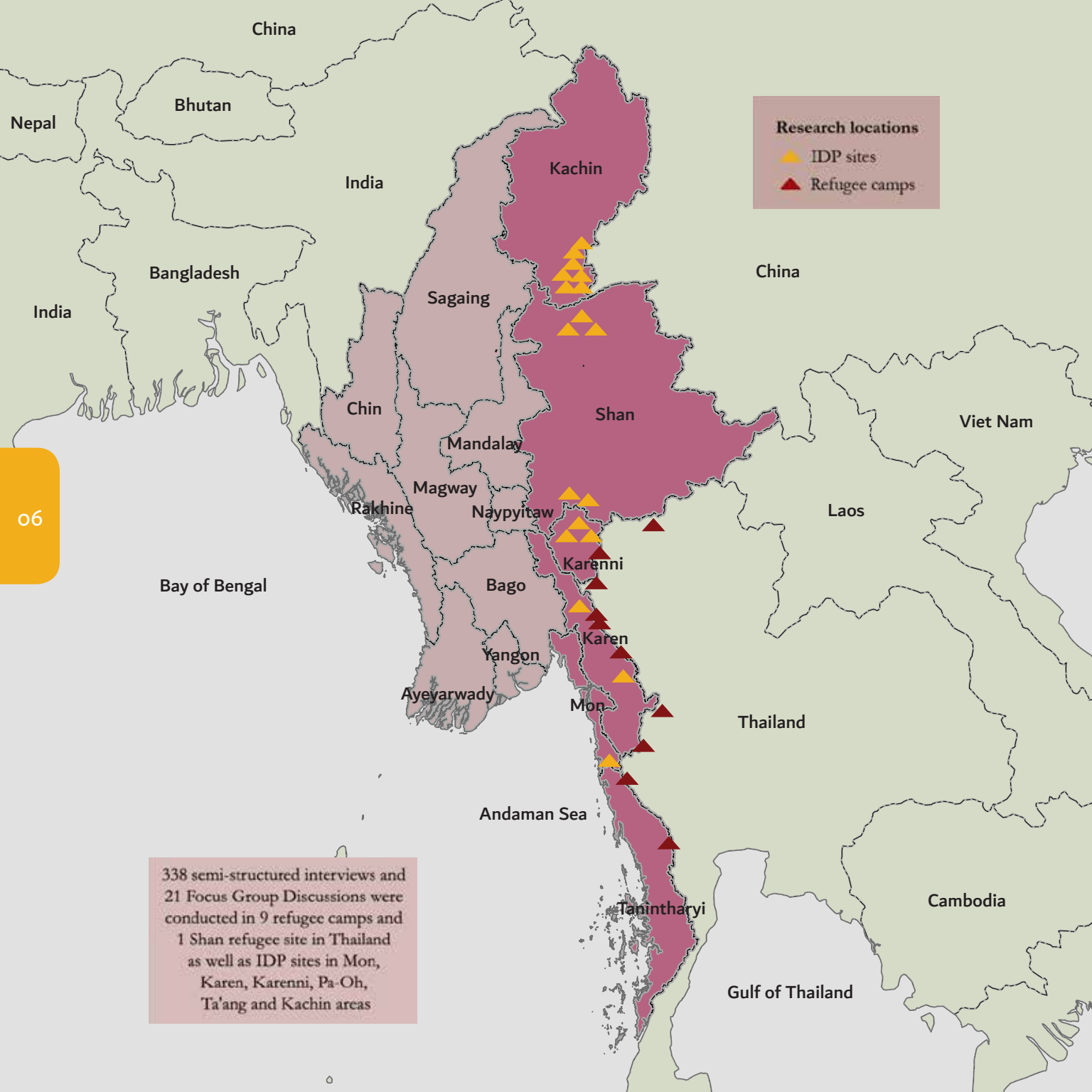
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New baby mom arrival in Manli camp in Sep 2018 [Credit: TWO]

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Throughout Burma/Myanmar's history, ethnic nationality communities who have been displaced by conflict have been on the margins of national politics and policymaking. They are on the literal peripheries of the country, and are a side-note in the peace and political reform processes. Displaced peoples' needs are left to the humanitarian efforts of local or international humanitarian organizations. Despite this marginalization, however, displaced people have continued to demonstrate their resiliency, surviving through extreme circumstances and pushing back against attempts to make them return to a situation which is unsafe and ill-prepared to receive them.

This briefing paper is an executive summary based on a full report produced by Progressive Voice, Human Rights Foundation of Monland, (HURFOM), Karen Student Network Group (KSNG), Karen Human Rights Group (KHRG), Karen Refugee Committee (KRC), Karen Women's Organization (KWO), Karenni Refugee Committee (KnRC), Karenni Legal and Human Rights Center (KnLHRC), Karenni Education Department (KnED), Karenni National Women's Organization (KNWO), Karenni Social Welfare and Development Center (KSWDC), Koungh Jor Shan Refugee

Camp, Kachin Women's Association Thailand (KWAT), Pa-Oh Health Working Committee (PHWC), Ta'ang Women's Organization (TWO). The objective of this report is to end the marginalization of Burma/Myanmar's ethnic and religious minority communities living in protracted displacement due to armed conflict and related abuses by ensuring that their concerns, needs, and perspectives are addressed in the context of Burma/Myanmar's transition process and the ongoing peace process. A further objective is to advocate for transitional justice and restoration for the displaced victims of armed conflict and human rights violations, including women and youth.¹

This briefing paper covers refugees and IDPs living in 'protracted displacement' situations due to armed conflict and related human rights violations in Burma/Myanmar. The research consisted of qualitative field research and desk research. The research consisted of 338 semi-structured interviews with refugees and IDPs, and 21 FGDs were held. All nine refugee camps and one Shan refugee site in Thailand and 27 IDP sites in Mon, Karen, Karenni, Pa-Oh, Ta'ang, and Kachin areas were visited. Participant observation was also utilized to form a more contextual and nuanced picture of the situation for

¹ The above objective was decided upon at a large consultation meeting with various ethnic community-based organizations (CBOs) and civil society organizations (CSOs) that have worked with displaced populations of Burma/Myanmar for many years. The objective, scope and methodology for this report is based on partnership and consultation with such organizations and is thus aimed to best reflect the needs and concerns of those living in protracted displacement situations.

communities. Desk research, including a literature review, was also conducted by the research department of Progressive Voice to

apply the relevant international standards, policies and principles relevant to the Burma/ Myanmar context.

Background: Conflict and Displacement

Conflict remains the main driver of displacement in Burma/Myanmar, particularly for the protracted displacement which has seen hundreds of thousands of ethnic nationality people living in ‘temporary’ camps inside and outside Burma/Myanmar for decades, though natural disasters and land confiscation for development projects also contribute to displacement across the country. Successive military regimes’ policies of majority domination over, and forced assimilation of, minorities (also known as “Burmanization”) has led to internal conflict between the Burma/Myanmar military and

dozens of Ethnic Armed Organizations (EAO). This conflict and the accompanying Burma/ Myanmar military abuses of civilians and Burmanization campaigns has caused the protracted displacement of over a million ethnic civilians throughout the course of the conflict. As of December 2018, there are an estimated 97,000 refugees in Thailand,² the majority of whom are Karen and Karenni; 106,000 primarily Kachin, Ta’ang and Shan IDPs in Kachin and northern Shan States;³ and estimated 280,000 IDPs in Southeastern Burma/Myanmar.⁴

2 The Border Consortium, “Refugee Camp Populations: December 2018.” Available at <https://www.theborderconsortium.org/media/119470/2018-12-december-map-tbc-unhcr.pdf?fbclid=IwARoem37evGPvIJgTatRhohjUYlqT9ohbOKzxLlp-6CrzWliVStLuIN-wL-E>

3 United Nations Office for the Coordination of Humanitarian Affairs, “Myanmar: Civilians Displaced by Fighting in Kachin/ Shan 2018-28 (As 10 December 2018)”. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/MMR_Kachin_Shan_Displacement_Snapshot_20181212.pdf.

4 There is no authoritative estimate of IDPs in southeastern Myanmar, due to the shifting patterns of displacement, remote nature of displacement sites and differences in definitions of internal displacement. In 2012, a survey conducted by The Border Consortium (TBC) estimated 400,000 IDPs in southern Shan, Karenni, Karen and Mon States and Tanintharyi Region. In 2018, another survey by TBC estimated 156,700 remaining IDPs in Karenni, Karen and Mon States and Tanintharyi Region. While the 2018 TBC survey could not fully cover southern Shan States, it noted that IDP population in that area is estimated to be fairly stable since its 2012 survey, which found 125,000 IDPs. Therefore, this estimate is based on the 2018 estimate for

Despite continuing clashes and a faltering peace process, humanitarian assistance for the refugee camps in Thailand and IDP camps within the country, as well as for cross-border civil society organizations and ethnic service providers, has significantly declined in recent years.⁵ International donors have decreased humanitarian funding for these displaced populations while increasing funding for programs aimed at developing conditions to encourage return, supporting the peace process and its formal architecture, and health, education and development projects inside Burma/Myanmar.⁶ The Burma/

Myanmar Ministry of Social Welfare, Relief and Resettlement is also reportedly leading the development of plans to close down IDP camps in Rakhine, Kachin, Shan and Karen States.⁷ This process is not consultative, and civil society organizations have not been able to get any information or give any input.⁸ In Kachin and Shan State, the military has also pressured churches and other entities hosting IDP camps to close the camps, and aid workers have been arrested by the military under the Unlawful Associations Act for delivering aid to IDPs in KIA-controlled areas.⁹

most of southeast Myanmar, plus the 2012 estimate for southern Shan State.

- 5 Karen News, "Karen Groups Concerned Cross-Border Humanitarian Aid Decreasing," 3 June, 2013. Available at <http://karennews.org/2013/06/karen-groups-concerned-decreased-cross-border-humanitarian-aid/>. Joint Strategy Team, "World Humanitarian Day Key Message from Joint Strategy Team for Solidarity with IDPs in Kachin and northern Shan States, Myanmar," 19 August, 2017. Available at <https://progressivevoicemyanmar.org/2017/08/19/world-humanitarian-day-keys-message-from-joint-strategy-team-jst-for-solidarity-with-idps-in-kachin-and-northern-shan-states-myanmar/>. EiHtuHta IDPs Supporting Committee, "Letter of Appeal for Continued Cross-Border Humanitarian Aid," 4 September, 2017. Available at <https://karenwomen.org/2017/09/05/ei-htu-hta-idps-supporting-committee-letter-of-appeal-for-continued-cross-border-humanitarian-aid/>. Shan State Refugee Committee (Thai Border), "As Conflict Escalates in Shan State, Aid Must Not Be Cut Off to Shan-Thai Border Refugees," 30 August, 2017. Available at <https://www.shanhumanrights.org/eng/index.php/333-as-conflict-escalates-in-shan-state-aid-must-not-be-cut-off-to-shan-thai-border-refugees>.
- 6 Private Conversations with Author, Yangon, January 2018.
- 7 Nan Lwin Hnin Pwint, "Ministry Announces Plan to Close IDP Camps in Four States," The Irrawaddy, 5 June, 2018. Available at <https://www.irrawaddy.com/news/burma/ministry-announces-plan-close-idp-camps-4-states.html>.
- 8 Saw Isue, "Government Urged to Address Root Causes before Closing Down IDP Camps" Karen Information Center, 26 June, 2018. Available at <https://www.bnionline.net/en/news/govt-urged-address-root-causes-closing-down-idp-camps>.
- 9 Ye Mon, "Military Orders Kachin IDPs to Leave Camps Despite Ongoing Hostilities," Democratic Voice of Burma, 10 May, 2018. Available at <http://www.dvb.no/news/military-orders-kachin-idps-leave-camps-despite-ongoing-hostilities/80788>. Lawi Weng, "Military Frees Last of Baptist Group Members in Kachin, NGO Says," Irrawaddy, 5 November, 2018. Available at <https://www.irrawaddy.com/news/burma/military-frees-last-baptist-group-members-kachin-ngo-says.html>.

International Law and Standards

The principle of non-refoulement is considered to be customary law binding on all states. Non-refoulement is a legal prohibition on returning refugees to a country where he or she “fears threats to life or freedom.”¹⁰ Refoulement is not limited to official deportation procedures – constructive refoulement can occur when “pressure is exerted on refugees to return to a place where their lives or freedoms are at risk.”¹¹ Under customary international law, non-refoulement is generally understood as a “prohibition of return in any manner whatsoever of refugees to countries where they may face persecution.”¹² The Guiding Principles on Internal Displacement similarly provide for the right of displaced people to “be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.”¹³ This expands the

principle of non-refoulement to the context of internal displacement.

Principles related to housing, land and property (HLP) rights of displaced persons are set forth in the Principles on Housing and Property Restitution for Refugees and IDPs (also known as the Pinheiro Principles). The basis of the Pinheiro Principles is the right of displaced people to housing and property restitution, or compensation when restitution is factually impossible.¹⁴ The right to restitution is a separate but related issue to the need to provide adequate land and housing when displaced people return. Wherever displaced people decide to live, they have a legal right to restitution or compensation for their previously-owned property that was unlawfully taken prior to or after displacement.

10 Convention and Protocol Relating to the Status of Refugees, Introductory Note by the Office of the High Commissioner for Refugees, December 2010. Available at <http://www.unhcr.org/3b66c2aa10>.

11 Amnesty International, “Syrian Refugees at Risk of Being Returned,” 17 October 2014. Available at <https://www.amnestyusa.org/files/uaa26014.pdf>.

12 Guy Goodwin-Gill and Jane McAdam, “The Refugee in International Law,” Oxford University Press (March 2007).

13 UN Office for the Coordination of Humanitarian Affairs, Guiding Principles of Internal Displacement, 2004, Principle 15. Available at <http://www.unhcr.org/protection/idps/43ceicff2/guiding-principles-internal-displacement.html>.

14 UN Commission on Human Rights, “Principles on Housing and Property Restitution for Refugees and Displaced Persons,” Principle 10, E/CN.4/Sub.2/2005/1, 28 June 2005, Principle 2. Available at <http://www.unhcr.org/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>.

Reasons for Displacement



The underlying reason for displacement amongst the vast majority of interviewees was a systematic pattern of abuses and oppression that has accompanied the armed conflict and marginalization raging in Burma/Myanmar for decades.¹⁵ Displacement was at times an intentional strategy of the Burma/Myanmar military in its efforts to assert control over ethnic nationality populations. Displacement was also a result of decades of abuse, marginalization and discrimination against ethnic minorities. In few cases was displacement a result only of clashes between two armed groups, but was instead usually

caused by targeting of civilians and serious human rights violations perpetrated primarily by the Burma/Myanmar military.

¹⁵ While land confiscation unrelated to conflict and natural disasters also cause displacement across Burma/Myanmar, this report focuses on conflict-related displacement.

Current Situation: Livelihoods and Assistance

Despite the common reasons for displacement across the southeast and northern ethnic regions, the time that has passed since displacement varies from over twenty years to a few months. Likewise, the conditions in which those who are still displaced find themselves vary widely, from having mostly integrated into host communities to living in informal sites separate from existing villages, to living in more formally-organized refugee and IDP camps.

In refugee camps in Thailand livelihood challenges are among the starkest, with clear restrictions on leaving camps to work (with the potential to lose camp residency and rations), difficulty obtaining required documents to comply with Thai labor law, and receiving lower pay than Thai workers.¹⁶ IDPs who live in more formal camps may also face restrictions on earning income. Some IDP camps have rules about leaving the camp to find work, and aid can be reduced or withheld if it becomes known that someone was working outside the camp. In all places where IDPs are living, the local community

around them is also suffering from the effects of conflict, including human rights violations, inadequate access to education and health care, discrimination and difficulties securing adequate livelihoods. The presence of displaced people in these host communities creates a larger burden on already-inadequate resources, which can increase tensions between host communities and displaced people.

Given all of the above difficulties in re-establishing self-sufficiency, most interviewees who lived in refugee or IDP camps, and some IDPs outside camps, relied on some form of assistance for daily survival. Reduction of aid coupled with uncertainty about the future and a lack of options has led to higher rates of depression and suicide in refugee camps in Thailand, as well as reports of increased domestic violence, gambling, drug and alcohol dependency, and other social impacts.¹⁷

¹⁶ Human Rights Watch, "Thailand: Refugee Policies Ad Hoc and Inadequate," September 2012, <https://www.hrw.org/news/2012/09/13/thailand-refugee-policies-ad-hoc-and-inadequate>.

¹⁷ Karen News, "In Thai Border Camps, Funding Cuts Leave Refugees in Limbo," 21 November, 2017. Available at <http://karen-news.org/2017/11/in-thai-border-camps-funding-cuts-leave-refugees-in-limbo/>.



Information

In order to make an informed decision, displaced people need adequate and clear information, preferably in their mother language or at least another language they can understand, about: the process of return including what specific kinds and amounts of assistance will be provided and for how long; the current security and socioeconomic situation in their places of origin and proposed relocation sites; and the peace process and realistic prospects for sustainable peace.

Interviews conducted for this report revealed many gaps in the information displaced people have about their options and the context, though the levels of information varied widely. More concerning about the lack of information is selective information that displaced people receive from international NGOs and UNHCR, including failing to report clashes near return sites and giving overly-optimistic information about the progress of the peace process.

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Major Factors in Decisions for the Future

The ultimate goal of many displaced people is to return to or near their place of origin, and the factors below describe what they say will be necessary before they can feel confident to decide to return. Others prefer either to

stay where they are, but need support to make their livelihoods sustainable, or prefer to move to another place entirely, often where they feel they and their children would have better access to health and education.

Physical Security

Physical security was almost universally the most important factor for return among interviewees, and most did not feel that the situation in their places of origin or in other return sites was currently safe enough for them to return. Given the reduction in active

conflict in some areas of Burma/Myanmar, this logic has been challenged by a variety of actors seeking to encourage refugee and IDP return. However, displaced people have clear and well-founded reasons for their fear of returning, and understanding those reasons

can help develop plans for return that protect the safety and dignity of returnees. These reasons include a mix of assessments of the direct security risks they may face in the short-term, and the lack of trust that they will remain safe in the long-term and that those charged with providing security will actually

protect, and not abuse, them. These security concerns must be taken seriously to avoid violating the principle of non-refoulement by forcing or pressuring displaced people to return to a situation in which their lives and freedom are at risk.¹⁸

Livelihoods, Land and Housing

After security, most interviewees expressed concerns about where they would live, and how they would make a living. Most displaced people interviewed for this research owned land, individually and/or as a community, before they were displaced, and few have been able to regain possession of and title to that land. Land confiscation is a major challenge to rural populations' livelihoods in Burma/Myanmar in general, and displaced people and other victims of land confiscation face an uphill battle in obtaining restitution of or compensation for their land, particularly when it was taken by the military or private business. In conflict-affected areas, many follow customary land governance systems that are not recognized by the Burma/Myanmar government, which often leaves them unable to defend their land rights including to reclaim confiscated land. In addition to the challenges that face victims

of land confiscation elsewhere in Burma/Myanmar, displaced people face additional challenges. First, displacement has taken place over decades. Many displaced people are now living on land belonging to people who were displaced before them, which creates complex layers of claims to land. Second, many displaced people have lost any documentation they once had, including tax receipts, which can be used in the absence of a formal title. However, even if they can prove ownership they may not be able to recover land, as many across Burma/Myanmar have discovered over the past years. Furthermore, Burma/Myanmar's land registration process does not provide secure tenure, as registration only acknowledges the right to use the land for agriculture, not ultimate ownership.

Land is important not only for livelihoods, but for its sociocultural and community value

¹⁸ Amnesty International, "Syrian Refugees at Risk of Being Returned," 17 October, 2014. Available at <https://www.amnestyusa.org/files/uaa26014.pdf>.



Mai Yu Lay IDP Camp in northern Shan State [Credit: PV]

including its importance for displaced peoples' ethnic identity. Restitution of land is one of the most common preconditions displaced people make to consider return. Restitution must be the default remedy, but if restitution

is impossible, compensation must be given in the current value of the land and any crops and livestock that were destroyed/confiscated with the land.

Health and Education

Given the lack of access to adequate education and healthcare in their home villages, many interviewees noted that new schools and clinics would need to be built as a precondition to returning to their original villages. This was particularly the case when a family member was disabled, as is common due to landmines, forced labor and torture during the conflict. Some IDPs preferred to move to a larger town in Burma/Myanmar, often nearby their old village or near where they were currently sheltering, where they could more easily access education and health care, though most noted that even in larger towns the quality of education and health needs huge improvement. In some cases, refugee children had been able to attend Thai schools and the parents preferred that they remain in those schools. Desire to avoid Burma/Myanmar government

schools also informed interviewee's decisions about where and when to return.

One specific challenge to return is the need for recognition of education certificates and health worker qualifications that were issued by these schools, as well as certificates from EAO-organized and community-organized schools in other displacement sites. The Burma/Myanmar government does not recognize certificates issued by informal schools. This impacts the students' ability to enter the appropriate grade at government schools and/or to apply for university and undermines the years of effort by displaced people themselves to develop quality educational opportunities for future generations.¹⁹ Teachers from these schools also cannot get jobs in government schools because their qualifications are not recognized.

19 Karen Refugee Committee Education Entity, Karenni Education Department, Karen Education Department, Karen Teachers Working Group, and Karen Women's Organization, "Refugee Student Transition: Policy Position and Program Recommendations," October 2015. Available at http://themimu.info/sites/themimu.info/files/documents/Report_Refugee_Student_Transition_Policy_Position_Program_Recommendations_Oct2015.pdf.

While some CBOs have made progress getting students from refugee and migrant schools accepted into Burma/Myanmar government schools, transfer usually depends on an

organization's prior relationship with the relevant local education officials, and not a result of a nationally-applicable policy.

Assistance to Support Return

International donors have recognized the need for assistance in support of return or relocation by promising voluntary returnees transportation grants and three months of food grants as part of a “return package” for those returning from refugee camps.²⁰ However, this is clearly inadequate when considering the challenges that returnees will face establishing a sustainable livelihood, particularly given that the majority have been displaced for decades and will rely on agriculture upon return. In the time that it takes farms to be productive, families

will need food support and access to free education and healthcare. If such support is not provided, there is the risk that returnees will sell their land for a low price in order to meet immediate food needs, and return to dependence on substandard daily wage labor or migrate to the cities and join urban slums of internal migrant workers seeking poorly-paid work in dangerous conditions. The prime responsibility will be of the government to ensure that returnees have all necessary resources to establish themselves sustainably.

Other Obstacles to Return

There are a number of potential obstacles or risks to return that relate to legal and/or administrative documentation, as well as the legal status of refugees and IDPs. People who had to flee urgently, whether due to active conflict or to burning of villages, or escaping

forced labor, often left all of their legal documents, if they possessed any in the first place. Because there was no way to go back to retrieve them, and the documents were often destroyed, they have lost important tools to regain or prove citizenship, land ownership,

20 UNHCR, “Supporting Durable Solutions in South-East Myanmar: A Framework for UNHCR Engagement,” 15 June, 2013. Available at http://www.burmalibrary.org/docs21/UNHCR-2013-06-Supporting_Durable_Solutions_in_SE_Myanmar-en-red.pdf.

and other entitlements that would make any return sustainable. Many others never had the documentation, including ID cards and birth certificates, in the first place due to the marginalization and remote nature of rural ethnic nationality areas and displacement sites.

The current legal climate in Burma/Myanmar, where archaic laws, often dating from

colonial times, are still on the books and used selectively. The Immigration Act and the Unlawful Associations Act are two of the main laws that could be used against displaced people who have lived outside Myanmar or in areas controlled by EAOs. If displaced people do not know the legal risks, including the likelihood that laws will be used against them, they may feel unsafe to risk returning.

Women's Experiences During Displacement

The way that men and women experienced conflict and human rights violations differed, which impacted patterns of displacement and led to the prevalence of female-headed households in some displacement sites.²¹ Women also often faced multiple levels of discrimination and violence, as an ethnic person and as a woman, particularly in situations of conflict where they are even more frequently targets of certain forms of human rights abuses due to their gender.

When the Burma/Myanmar military was nearby, men and boys often hid in the jungle to avoid conscription, forced labor or arrest, leaving women, girls, young children and the elderly at home. Women were sometimes taken for labor instead of the men, and were subject to the same conditions as men, with the added risk of rape and other forms of sexual violence.²² Women in conflict areas were vulnerable to rape and other forms of sexual violence, which has been used by the

²¹ For more on the impact of conflict on women, see: Karen Women's Organization, "State of Terror: The Ongoing Rape, Murder, Torture and Forced Labour Suffered by Women Living under the Burmese Military Regime in Karen State," February 2007. Available at <https://karenwomen.files.wordpress.com/2011/11/state20of20terror20report.pdf>. Trocaire and Oxfam, "Life on Hold: Experiences of Women Displaced by Conflict in Kachin State, Burma/Myanmar," June 2017. Available at <https://www.trocaire.org/sites/default/files/resourcess/policy/life-on-hold-trocaire-oxfam-2017.pdf>. Women and Child Rights Project (Southern Burma), "Mon Women, the Military and Forced Labor in Mon State," March 2009. Available at <http://www.burmalibrary.org/docs07/WCRP2009-03.pdf>.

²² See also Women's League of Burma, "If They Had Hope, They Would Speak: The Ongoing Use of State-Sponsored Sexual

Burma/Myanmar Army as a weapon of war to terrorize communities and punish support of EAOs.²³

During conflict and displacement, many women had to take on roles outside their traditional roles. In some conflict-affected areas, women became village administrators or took other leadership roles when men were not available.²⁴ Given the prevalence of female-headed households, women often had to shepherd their children and elderly members of the family through the process of displacement, secure sufficient aid and seek livelihood opportunities during displacement. Many women also volunteered as teachers

or healthcare providers during displacement. Despite advances in women's empowerment, governance still replicates traditional power structures and women are left out of decision-making. Violence against women is either not addressed or dealt with through traditional systems with minimal compensation in exchange for the victim's silence.

In addition to women's participation in policy discussions and community decisions about return, the concept of 'voluntary return' needs to be understood from a gender lens to ensure that women are actually making a voluntary decision to return.

Community and Resilience

Before, during and after displacement, displaced people have demonstrated incredible agency and resilience in the face of difficult situations. They have worked

hard not only to survive, but to develop and maintain community structures and strategies of mutual support that have provided as much protection, health care,

Violence in Burma's Ethnic Communities," November 2014. Available at <http://womenofburma.org/if-they-had-hope-they-would-speak/>. Shan Human Rights Foundation and Shan Women's Action Network, "License to Rape," May 2002. Available at <http://www.shanwomen.org/reports/36-license-to-rape>.

23 Karen Women's Organization, "State of Terror: The Ongoing Rape, Murder, Torture and Forced Labour Suffered by Women Living under the Burmese Military Regime in Karen State," February 2007. Available at <https://karenwomen.files.wordpress.com/2011/11/state20of20terror20report.pdf>.

24 Karen Women's Organization, "Walking Amongst Sharp Knives: The Unsung Courage of Karen Women Village Chiefs in Conflict Areas of Eastern Burma," February 2010. Available at <https://karenwomen.files.wordpress.com/2011/11/walkingamongstsharpknives.pdf>.



education, financial, food and moral support as possible during displacement. They have also entrusted respected leaders²⁵ with legitimacy, and those leaders have sought to protect them and negotiate for their survival. While many displaced people are still reliant on outside support and displacement has been overall a disempowering experience for most, efforts made to maintain community and independence should be recognized and supported, instead of ignored, undermined

or destroyed by the return, integration or resettlement process. International organizations supporting return must adhere to their 'do no harm' principles in regards to the fragile bonds of community and resiliency carefully created over years of displacement.²⁶ This means, among other things, supporting the continued functions of community-based service provisions and including the communities' chosen leaders and representatives in discussions related to their futures.

Challenging the Perceptions of Displaced People

Interviewees particularly had messages for the Burma/Myanmar government in terms of how they are treated and wondering why they had not benefited, and still do not benefit, from equal protection as citizens of Burma/

Myanmar. The recognition of the displaced as valued citizens, including honest and open efforts to understand their experience, is important not only for the Burma/Myanmar government but other influential

²⁵ This report uses "leaders" to mean any person in a leadership role, whether informally in the community, formally in camp governance, in a religious institution, in an EAO or otherwise, which an interviewee has identified as a source of legitimate leadership and authority. This report does not prejudge the legitimacy or representative-ness of any particular leaders, or identify specific leaders who should be taken to represent entire populations. The intention here is to emphasize that displaced people have identified leaders they trust and view as legitimate and look to them for guidance on return.

²⁶ For an assessment of the relevance of 'do no harm' principles and the negative impact of reduction in cross-border aid, see Norwegian Church Aid, "Do No Harm: Cross-Border and Thailand Based Assistance to Refugees, IDPs and Migrants from Burma/Myanmar – Report on Findings from Consultancy," April 2012. Available at http://www.burmalibrary.org/docs13/NCAMyanmar_consultancy_report-public-ocr-red.pdf.

actors in Burma/Myanmar society as well as international actors.

The ways that leaders and communities have worked together to protect each other before, during and after displacement demonstrate that displaced people are not passive, but active agents trying to make the best choices for their families and communities and trying to improve their situation despite enormous odds. However, displaced people interviewed for this research felt that their fellow citizens

of Burma/Myanmar viewed them as lazy and expecting handouts.²⁷ Many interviewees wanted the Burma/Myanmar public and leaders to understand that they have a lot to contribute to the country, and that they are not refugees/IDPs because they are lazy or greedy. They emphasized their desires to contribute to their communities and country, and wanted to be recognized as full citizens and given the opportunity to fully participate in social and political life of society and the country.

Justice for the Past

Despite the challenges in seeking justice in Myanmar, many interviewees clearly stated that the government should do something to address the serious human rights violations that so many civilians suffered in the past to date. In full acknowledgment of the legal, political and fiscal constraints, they nonetheless emphasized that they could not rebuild their lives without some efforts by the

government to return and rebuild what was destroyed. The violations that displaced people suffered, that led to displacement, must be an integral part in discussions about their futures. These violations still impact people today, and the effects – in terms of lack of trust, mental and physical health, and loss of land and property – will have serious impact on the process of return.

²⁷ For an example of a young, urban Burma/Myanmar woman's change in perception of IDPs in Kachin State, which discusses how the author experienced common public perceptions of displaced people, see Thinn Thinn, "A Journey to the North," Tea Circle Oxford, 15 January, 2018. Available at <https://teacircleoxford.com/2018/01/15/a-journey-to-the-north/>.

Conclusion

The story of protracted displacement is an integral part of the history of Burma/Myanmar. Displaced peoples' participation in the peace process and political transition is essential in securing not only sustainable peace in Burma/Myanmar, but in developing the country to its full potential. The way that Burma/Myanmar's political, military and civil society leaders treat the displaced demonstrates their lack of commitment to fostering a democratic, inclusive and peaceful society. The concerns that displaced people articulate about return are crucial measures

of the progress of Burma/Myanmar's peace and reconciliation process. Displaced people in Burma/Myanmar teach us that peace and security means more than the absence of war and conflict, and that sustainable peace requires treating all citizens of Burma/Myanmar equally, with dignity and respect. They teach us that the wounds of Burma/Myanmar's past cannot easily be forgotten, but that they continue to impact prospects for peace and reconciliation.

Recommendations

To the Burma/Myanmar Government

- ◆ Take concrete steps towards a genuine peace process that addresses the root causes of the conflict, including ending military offensives, holding the Burma/Myanmar Military to account for human rights violations, the removal of Burma/Myanmar Military from ethnic areas, with villager settlements as priority, and amending the 2008 Constitution to establish a genuine federal democratic system of governance based on equality and self-determination;
- ◆ Take steps to begin a process of security sector reform that includes border guard forces and other militia forces under the command of the Burma/Myanmar military and bring the Military under full civilian control in order to earn public trust;
- ◆ Cooperate with international criminal accountability mechanisms to hold accountable those responsible for serious crimes committed against ethnic populations in situations of armed conflict in a public, transparent and fair judicial and/or administrative process;
- ◆ Ensure the full and meaningful participation of displaced populations in the decision-making level of all policy processes which affect them;
- ◆ Repeal and/or amend all relevant laws, including the Immigration Act and Unlawful Associations Act and provide guarantees through a publicly declared official policy that displaced persons returning will not face legal consequences under such legislation;
- ◆ Allow unrestricted humanitarian access to all sites of displacement, including allowing humanitarian actors to reach EAO-controlled areas without legal consequence or other types of harassment, intimidation or threat;
- ◆ Adopt the issues of humanitarian assistance and protection for displaced persons as a formal agenda item during peace negotiations;
- ◆ Ensure that housing, land and property rights for any returning IDPs and refugees are explicitly discussed and agreed for implementation as an integral component in the peace process, in line with the Pinheiro Principles;
- ◆ Undertake comprehensive reform of land policy and legislation that recognizes ancestral land ownership of ethnic nationalities and customary land use and ownership, ensures women's

- equal rights to land ownership and is based on the principles of federalism;
- ◆ Develop a policy and implement a system to provide restitution of housing, land and property for displaced persons with an appropriate time-line that complies with the Pinheiro Principles, and if restitution is not possible, provide adequate compensation for the current value of the land, crops and livestock that were destroyed due to confiscation or displacement;
- ◆ Immediately declare that displacement due to conflict is an “extraordinary circumstance” under the Vacant, Fallow and Virgin Lands Management Law and thus land owned by displaced persons cannot be deemed to be vacant or fallow and cannot be used by private sector interests or for government development projects;
- ◆ Issue a moratorium on large-scale natural resource extraction, infrastructure and agriculture investment projects in ethnic areas until a federal system of land and natural resource governance has been adopted, all stakeholders have been fully and meaningfully consulted, and consent has been given based on the provision of all relevant information;
- ◆ Recognize existing ethnic governance and service provision structures established, administered and maintained by EAOs;
- ◆ Decentralize Government service provision to Region and State Governments with the long-term aim of establishing a federal structure;
- ◆ Recognize civil society and ethnic CBOs as equal partners with mutual respect in reforms of relevant sectors including health, education and security sector reform;
- ◆ Publicly recognize displaced ethnic populations as equal citizens of Myanmar, with a clear and accessible process to attain relevant documents with the full recognition of their ethnic identity including names, family names and honorifics;
- ◆ Jointly develop, in collaboration with EAOs, a system of legal documentation services so that all displaced persons can obtain legal identification, register land and/or obtain necessary documentation in order to register for available service provisions in their sites of displacement including those in refugee camps and to enable them to work as legal migrant workers in neighboring countries;
- ◆ Recognize documentation issued in displacement sites including birth certificates, education and vocational certificates and identification issued by EAOs and other authorities international NGOs and agencies and higher education institutions; and
- ◆ Establish a systematic humanitarian mine clearance program with relevant local, national, and international stakeholders to remove landmines from civilian areas upon the achievement of an inclusive peace settlement agreed upon by all stakeholders.

To the Burma/Myanmar Military

- ◆ Cease war crimes, crimes against humanity and all human rights violations against civilians, including the use of rape and sexual violence as a weapon of war;
- ◆ Immediately declare a unilateral ceasefire in regards to **all** EAOs, and abide by the terms of the NCA and bilateral ceasefire agreements;
- ◆ Cease all military operations and remove all troops, their families and settlements, and military installations from ethnic areas;
- ◆ Cease land confiscation and return land previously confiscated;
- ◆ End the production and use of all anti-personnel mines; and
- ◆ Withdraw from politics and support the amendment of the 2008 Constitution to establish a genuine federal democratic system of governance based on equality and self-determination.

To Ethnic Armed Organizations

- ◆ Hold regular consultations with displaced populations and the CBOs which work with them, to hear and understand their concerns, needs and perspectives on the future, to seek their inputs and recommendations and to provide information on all policies and programs that affect them;
- ◆ Incorporate the needs, concerns and perspectives of displaced populations in policies and peace negotiations, including advocating for humanitarian assistance and the promotion and protection of the rights of refugees and IDPs including restitution;
- ◆ Work together with CBOs to produce a common policy and develop an action plan, aligned with ethnic CBO's positions and recommendations, and international standards set out in instruments such as the Pinheiro Principles, on the issue of restitution of housing land and property for displaced populations;
- ◆ Ensure that housing, land and property rights for any returning IDPs and refugees are explicitly discussed and agreed for implementation as an integral component in the peace process, in line with the Pinheiro Principles;
- ◆ Ensure that land policies are developed that recognize and protect women's equal rights to land use and ownership;
- ◆ Strengthen existing service provision structures and facilitate humanitarian actors to work

- ◆ with local CBOs to deliver aid to all displaced persons in EAO-controlled areas;
- ◆ Recognize and support the vital role of local ethnic CBOs²⁸ and place no restrictions on their operations;
- ◆ Recognize community leaders, particularly women, to lead governance of displacement sites and towns and villages under EAO-controlled territories;
- ◆ Take measures to avoid intra- and inter-ethnic armed clashes and work together for a pan-ethnic voice and protect civilians;
- ◆ Establish a systematic humanitarian mine clearance program with relevant local, national, and international stakeholders to remove landmines from civilian areas upon the achievement of an inclusive durable peace settlement; and
- ◆ Immediately inform communities of the locations of landmines, particularly in and around roads, villages and agricultural land used by civilians.

To the International Community including Peace Donors, UNHCR and International Non-Governmental Organizations

- ◆ Continue to provide essential services for refugees and IDPs, living both in Myanmar and in neighboring countries, until voluntary, safe and dignified return is possible, and ensure the adequate provision of funding for ethnic service providers, CBOs and other key providers of essential services to displaced persons and other conflict-affected areas;
- ◆ Urgently resume food and other essential assistance to displaced populations, including cross-border aid, up to previous levels and according to the UNHCR's Guidelines for Estimating Food and Nutritional Needs in Emergencies;
- ◆ Deliver all humanitarian assistance in a timely manner without delay;

²⁸ In recent years new organizations professing to be ethnic CBOs have emerged, many collaborating with or in favor of the Government, claiming a legitimacy of representing the concerned communities while misrepresenting the situation on the ground to international donors, UN agencies, and INGOs due to the lack of accurate information they provide. Ethnic CBOs that have originated in, and have been working with, local communities for many years have legitimacy, capacity, are truly representative of, and amplify the voices of the conflict-affected communities, including those that have been displaced. International actors must ensure to reach out and partner with those ethnic CBOs who are rooted in and truly represent the concerned populations and ensure their work is supported.

- ◆ Push for the adoption of the issue of humanitarian assistance for, and protection of, displaced populations as a formal agenda item during peace negotiations;
- ◆ Adhere to the principle of 'non-refoulement' that is established in customary international law;
- ◆ Set benchmarks for support of the Government-led peace process conditional on concrete steps to address the root causes of the conflict, including ending military offensives, holding the Burma/Myanmar Military to account for human rights violations, the removal of Burma/Myanmar Military from ethnic areas, and amending the 2008 Constitution to establish a genuine federal democratic system of governance. End all support to the Government until such benchmarks have been met;
- ◆ Support a moratorium on large-scale natural resource extraction, infrastructure and agriculture investment and development projects in ethnic areas until a federal system of land and natural resource governance has been adopted, all stakeholders have been fully and meaningfully consulted, consent has been given based on the provision of all relevant information.;
- ◆ Ensure information-sharing on any decision, policy or process that affects displaced populations is objective, comprehensive, coordinated and consistent, and prevents confusion based on different information coming from different international actors;
- ◆ Provide information on international standards of voluntary, safe and dignified return that is clear and accessible and make clear commitments to abide by those standards; and
- ◆ Conduct full and meaningful consultation with displaced populations and CBOs timely and regularly and ensure they take part in all decision-making process concerning their future. Hold separate consultations with women on their needs and concerns for their futures.

In addition to this, any current or future return process must:

- ◆ Support displaced persons to take 'go and see' trips to get information about their land and the security situation in their place of origin and potential area of return;
- ◆ Develop a policy under which some displaced persons can remain as a camp resident while returning to their land for part of the year, in order to start to rebuild their livelihoods without risk of losing their rations and/or camp resident status;
- ◆ Support local ethnic CBOs to assist returnees including with the rehabilitation of land in conflict-affected areas so that returnees can re-establish sustainable agricultural livelihoods;

- ◆ Work with ethnic CBOs to ensure equal assistance reaches all returnees, regardless of the location of their return, whether controlled by EAOs, or Government, including establishing a mechanism for monitoring and receiving complaints;
- ◆ Provide support to a restitution process, based on the Pinheiro Principles, only when conditions are suitable for safe, dignified and sustainable return, including by advocating to all stakeholders involved in the peace process to include discussions and agreement on Pinheiro Principles in peace negotiations;
- ◆ Include psychosocial counseling for returnees in any return program, particularly those who suffered or witnessed serious human rights violations before or during displacement;
- ◆ Include a 'displacement analysis' in all development projects that take place in areas of potential return and/or origin of displaced persons, considering and responding to the unique challenges displaced and formerly displaced persons may face including discontinuing project plans; and
- ◆ Provide technical assistance and financial support to a systematic and nationwide humanitarian demining program after the achievement of an inclusive and durable peace settlement and security sector reform.



Contact Information:

Progressive Voice

www.progressivevoicemyanmar.org

info@progressive-voice.org