

THERE IS NO ONE WHO DOES NOT MISS HOME



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

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to Armed Conflict in Burma/Myanmar

June 2019



About Us

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

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FOREWORD

Nearly 20 years ago I started my role as the 3rd UN Special Rapporteur on the situation of human rights in Myanmar. For eight years I reported firsthand on the abuses and violations suffered by the people of this country, especially those living in ethnic minority areas, in the borderlands where armed conflict has been a constant, and the Myanmar Military's presence is a reminder of what seems like an unending war. Today, 2019, is a different time to 2000 when I began my reporting, yet for many of those ethnic people, nothing has changed.

There are still hundreds of thousands of IDPs, displaced due to armed conflict, human rights violations, and a land ravaged by war. Some are refugees, with nearly 100,000 still living in camps along the Thai border. Yet in the changing dynamics of today, with opportunities and pitfalls emerging constantly in the flux of economic and political change, it is vital that the displaced are not forgotten. They have lost their land, livelihoods, family members, education opportunities, healthcare access, sites of important cultural and environmental value and have lived in fear for decades. Their aspirations, concerns, and needs must be a central part of any political process that reforms Myanmar into a federal democracy. They must not remain a side note in peace process. They deserve to be listened to and have their rights respected.

This includes respecting their decision not to return if they feel unsafe, if there are no opportunities for them, or if they simply do not trust the current peace process. This responsibility lies not only with the Myanmar government, host countries, and other local authorities, but the international community as well. Being pushed or pressured to return to Myanmar without adequate information, or through the reduction in rations or essential services, while security cannot be guaranteed and landmines are still widespread, is tantamount to 'constructive refoulement.' If this were to happen, as we have seen in many other contexts in the past, the trust established and the support provided for all these years by the international community will become irrelevant, and a mockery made of the principles of 'safe, dignified and sustainable return.'

Economic liberalization is sweeping through Myanmar at a much faster pace than political liberalization, and the land of the displaced, which has huge cultural and emotional value, not just in economic terms, is vulnerable. Private investors whose primary concern is extracting as much monetary benefit from the land and resources that displaced people used to live on are making significant headway in areas previously inaccessible due to armed conflict. Amendments to the Vacant, Fallow and Virgin Land Management Law is facilitating a land-grab of unprecedented nature in Myanmar and customary land use, which many ethnic communities practice, is being marginalized. Land is being transformed into monocrop plantations, cleared for infrastructure construction, and rivers are being dammed for the growing power needs of Myanmar and its' energy-hungry neighbors.

Therefore, a vital component of the aspirations of displaced persons is the restitution of their housing, land and property rights. These rights are clearly defined in the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, which I helped to author. The Principles state:

“All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.”

All stakeholders, in consultation with the displaced communities themselves, must respect this fundamental right. It is vital for the sustainability of any future return, and for peace in a land which has known war for too long. Furthermore, ensuring that refugees and IDPs' right to restitution is protected can be a component for restorative, transitional justice. While ceasefires are the first step towards peace, a process of justice and accountability is essential for refugees and IDPs to return in safety and dignity. Justice and accountability are thus paramount for sustainable peace. In this regard, I want to praise my dear colleague, the present UN Special Rapporteur on the situation of human rights in Myanmar, Ms. Yanghee Lee, for her remarkable work for the defense of the rights of Myanmar people.

This report is thus timely. It is the first of its kind in that it is a comprehensive report analyzing the situation for refugees and IDPs with a pan-ethnic voice. It is hoped that this is not the end and is simply a first step to the realization of the rights of refugees and IDPs in Myanmar. They are an essential part in the building of a nation that is inclusive, diverse, democratic, and is built on the principles of federalism. I implore decision-makers, whether from the Myanmar government, international agencies, or ethnic armed organizations to read the findings of this report, and to take on board the recommendations listed here that reflect the wishes of the refugees and IDPs themselves.

Paulo Sérgio Pinheiro

Former UN Special Rapporteur on the situation of human rights in Myanmar, 2000-2008.

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ACRONYMS

AA	Arakan Army (EAO)
BGF	Border Guard Force
CBO	Community-Based Organization
CEDAW	Convention on the Elimination of Discrimination Against Women
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
DKBA	Democratic Karen Benevolent Army (formerly Democratic Karen Buddhist Army) (EAO)
EAO	Ethnic Armed Organization
FGD	Focus Group Discussion
HLP	Housing, Land and Property
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally-Displaced Person (see Definitions)
IIFMM	Independent International Fact-Finding Mission on Myanmar
FPNCC	Federal Political Negotiation and Consultative Committee
KIA/O	Kachin Independence Army/Organization (EAO)
KNPP	Karenni National Progressive Party (EAO)
KNU	Karen National Union (EAO)
MNDAA	Myanmar National Democratic Alliance Army (EAO)
NCA	Nationwide Ceasefire Agreement
NLUP	National Land Use Policy
NMSP	New Mon State Party (EAO)

NNDMC	National Natural Disaster Management Committee
PMF	People's Militia Force
RCSS	Restoration Council of Shan State (EAO)
SLORC	State Law and Order Restoration Council
TBC	The Border Consortium (previously Thai-Burma Border Consortium)
TNLA	Ta'ang National Liberation Army (EAO)
UNHCR	United Nations High Commissioner for Refugees
VRC	Voluntary Repatriation Center

DEFINITIONS

Armed Actors: Refers to all organized groups carrying arms, including but not limited to the Burma/Myanmar military, ethnic armed organizations (EAOs), Border Guard Forces (BGF) and People’s Militia Forces (PMF), and other militias.

- **Ethnic Armed Organizations:** Armed organizations organized around ethnicity pursuing political objectives such as federalism, ethnic rights and self-determination.
- **Militias:** The term ‘militia’ refers to any armed organization that is not the Burma/Myanmar military or an EAO. This includes Border Guard Forces, People’s Militia Forces, drug trafficking organizations and other armed groups. Militias are often directly or indirectly connected with and/or supported by the Burma/Myanmar military, and may cooperate with the military including in combat or other functions such as security and intelligence-gathering. Many pursue economic activities including business ventures and natural resource extraction. Some are involved in illicit activities such as drug trafficking and arbitrary taxation of the local population including at checkpoints on roads.¹
- **Border Guard Forces and People’s Militia Forces:** Former EAOs who have reached an agreement with the Burma/Myanmar military to transform into a specific kind of militia, called a BGF or PMF, particularly during the period between 2009-2010 before the transition to quasi-civilian rule.

Displaced Person: In this report, the term ‘displaced person’ refers to any person who was displaced from their primary place of residence due primarily to armed conflict and its impact. This term applies to refugees and internally-displaced persons.

- **Internally-Displaced Person:** A displaced person who remains within the borders of his or her country of origin.
- **Refugee:** A displaced person who is displaced across international borders and whose site of displacement is in a country other than the country of his or her origin. This applies whether or not the country of displacement legally recognizes the person as a refugee.²

Displacement Site: The place in which a displaced person lives during displacement. The sub-categories described below are not fixed categories, but represent points on a spectrum.

1 For more on militias, see John Buchanan, “Militias in Myanmar,” The Asia Foundation, (July 2016). Available at <https://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf>.

2 This definition is broader than the international definition of refugee, in the 1951 Refugee Convention, which is: “any person who ... owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” (Art. 1(A)(2)).

Many locations may be a mix of various types, and locations may evolve due to subsequent displacement, or if displaced people settle more permanently in what used to be an area of temporary refuge.

- **Refugee Camp:** A formal camp structure where refugees live, which includes the provision of humanitarian assistance and formal camp management structures.
- **IDP Camp:** A more formal camp structure similar to a refugee camp but inside the displaced residents' country of origin. In Burma/Myanmar these can currently be found in Kachin, Shan, Karen and Mon States.
- **Mixed Village:** An ordinary village where some IDPs or refugees live amongst a host community.
- **Informal IDP Site:** Many IDPs live in shifting, informal locations. This includes temporary sites where people shelter for a few months before moving somewhere else. While intended to be temporary, some of these locations have become more long-term because of the protracted nature of the displacement.

Protracted Displacement: The situation in which, due to armed conflict and related lack of human security as well as human rights violations such as the presence of landmines, militarization, forced labor, forced recruitment, extortion, abduction, sexual violence, arbitrary arrest, extrajudicial killings and torture lead to displacement from a person's primary place of residence. Protracted displacement is also due to violations of economic, social and cultural rights such as land confiscation, destructive development projects, and damaging environmental effects of exploitative resource extraction projects that occur in armed conflict affected or fragile ethnic nationalities' regions. A defining factor of 'protracted' displacement over 'temporary' displacement is where viable durable solutions cannot be implemented yet.³

3 A common definition of protracted displacement was agreed upon between the partner organizations who produced this report and is described above. This definition forms the basis of this report. This definition is a convergence of both internationally recognized definitions of protracted displacement and local interpretations. The UNHCR definition of protracted refugee situation is "situations where 25,000 refugees or more have been in exile for 5 years or more after their initial displacement, without immediate prospects for implementation of durable solutions." ('Conclusion on Protracted Refugee Situations,' UNHCR Executive Committee Meeting 61st Session. 8 December 2009. See: <https://www.unhcr.org/excom/exconc/4b332bca9/conclusion-protracted-refugee-situations.html>.) The international definition of protracted displacement for IDPs, according to the 2007 Expert Seminar on Protracted Internal Displacement organized by UNHCR and the Brookings-Bern Project on Internal Displacement, is "where the process for finding durable solutions is stalled, and/or IDPs are marginalized as a consequence of violations or a lack of protection of human rights, including economic, social and cultural rights." ('Expert Seminar on Protracted IDP Situations, 21-22 June 2007. https://www.brookings.edu/wp-content/uploads/2012/04/20070621_displacement.pdf.) Crucially, this report adds the meaning and perspective of those very communities living in displaced situations due to armed conflict into the definition outlined above and which forms the basis of this report. This is crucial as the lived experiences of Burma/Myanmar's ethnic nationalities of war and displacement will be key to the success of any peace process and indeed any possible return to their homeland.

Return Site: In this report, the term ‘return site’ applies to any place that a displaced person may settle with intention to remain, whether it is that person’s place of origin, a third location officially designated for returned refugees and/or IDPs, or an existing village, town or city where a displaced person moves with or without official assistance. This does not include cases in which displaced people integrate into the host community in their displacement site or otherwise intend to stay in the displacement site for the long-term.

- **Place of Origin:** The village in which a displaced person habitually resided before displacement.
- **New Village:** A “new” village created for the specific reason of providing a location for displaced people to return to and live.
- **Existing Village:** An already-established village where formerly displaced people move with the intention of permanently settling. This village may already be a “mixed village” as described above.



EXECUTIVE SUMMARY

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.

International law and standards give displaced people a right to voluntary, safe and dignified return. Any process that seeks to facilitate the return of displaced people to their places of origin or elsewhere must comply with these standards. Above all, direct or indirect measures must not pressure displaced people to return to a situation where their lives and/or freedom would be at risk. Instead, displaced communities must be consulted on all matters that concern them, they must be included in decision making, and their concerns about, and conditions for, return must be taken seriously.

Throughout Burma/Myanmar's long civil war, ethnic nationality populations in conflict areas have been subjected to a range of human rights abuses, committed primarily by the Burma/Myanmar military. These abuses – forced relocation; military targeting of civilian areas; forced labor; confiscation of crops, property and land; torture; sexual violence and others – and the impact they had on health, education and livelihoods were the primary causes of displacement for almost all people

interviewed for this research. Likewise, it is these abuses – not only active conflict – that displaced people fear on return, meaning that ceasefires or a reduction of clashes are not an adequate measure of whether it is safe for displaced people to return home. Furthermore, the abuses they suffered in the past, combined with the lack of accountability, make displaced people fear renewed conflict and serious human rights violations if and when they return.

Conflict and displacement do not affect all people in the same way – women experienced different risks and violations than men, and were even more vulnerable because of their status as ethnic nationality women. Socioeconomic status played a role in when and to where people were displaced, as well as their ability to establish (or not) self-sufficiency after initial displacement. These differences have significant impacts on the challenges displaced populations will face in any return and reintegration.

People who are still displaced face a range of obstacles in meeting their basic needs, with most interviewees relying on outside assistance, from international and/or local actors, for survival. Restrictions on generating income while living in refugee and formal internally-displaced person (IDP) camps prevent people from seeking sustainable livelihoods. For IDPs outside formal camps, the difficult economic situation of host communities, who are also bearing some of the effects of conflict, makes it difficult for IDPs to find adequate work. Donors and international humanitarian agencies have scaled back support for displaced people, eliminating support for some IDP camps while reducing rations in refugee camps, despite the fact that most of those who remain displaced have no alternative.

Land is a major issue for displaced ethnic communities. 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. This is one of the main factors preventing their return. Access to land in sites of displacement is rare, making it difficult to make a living. Land is important not only for livelihoods, but for its sociocultural and community value, 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.

Conflict-affected communities across Burma/Myanmar, displaced and non-displaced, face serious livelihood, health and education challenges. Increasing pressures from

business and laws that do not protect their interests make them increasingly vulnerable. Community systems of land and natural resource management that have ensured sustainable livelihoods and protection of the natural environment are under threat from neoliberal marketization of land and other aspects of the rural economy. While displaced people face additional challenges due to their displacement, the land and livelihood measures suggested in this report will for the most part only put returnees in a similar situation to that of others in the host communities. It must be stressed that additional, equitable economic, land, agricultural, health and education policies, as well as political reforms to allow increased self-determination, must accompany specific return policies in order to improve the situation of all conflict-affected communities and ensure that returnees' livelihoods are sustainable. Policies to support returnees must also be accompanied by measures to address the needs of host communities so as not to cause social conflict.



Mai Yu Lay IDP camp in northern Shan State. [Credit: Progressive Voice]

Despite all of their suffering, displaced communities have shown incredible resilience and agency during displacement. They have, to the extent possible, built structures of leadership, mutual support, health and education provision, and environmental protection. A return process that lacks consultation with them and their participation in decision making for their future will not only tear communities apart but risks destroying their resilience and agency. Conversely, a process which supports existing structures of leadership, community and service provision can make return an easier, more empowering and more sustainable process.

Throughout the research process for this report, it became apparent that many within Burma/Myanmar see conflict-affected displaced ethnic populations as lazy, pitiful, and/or somehow rebellious or associated with ethnic armed organizations (EAOs). This appears to impact the treatment of issues related to displacement within the peace process, the general public perception

and media coverage of displaced people and their needs, and potentially their reintegration into society. This impression needs to be strongly contested. Displaced people must be treated as Burma/Myanmar citizens equal to all other citizens. They were displaced through no fault of their own, and they are capable of every accomplishment and sentiment of non-displaced in Burma/Myanmar. They have hopes and dreams, they yearn for home and they want to contribute to making their communities and their country a better place. All Burma/Myanmar people should be concerned about the situation of conflict-affected displaced people, and Burma/Myanmar's leaders should take the lead to respect them and make this issue a national priority. This includes, first and foremost, to develop a holistic and comprehensive plan in consultation with, and participation by, displaced people for their safe, voluntary and dignified return when the conditions are right and if they choose to return. In the meantime, they must be able to live in safety and dignity in their displacement sites.

**Ending the marginalization
of Burma/Myanmar's ethnic
and religious minority
communities living in
protracted displacement due
to armed conflict**

**Ending abuses by ensuring that
displaced people's concerns,
needs, and perspectives are
addressed in the context of
Burma/Myanmar's transition
process and the ongoing peace
process**

**Advocating for
transitional justice
and restoration for
the displaced victims
of armed conflict and
human rights violations**

OBJECTIVE

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.⁴

Incorporating displaced people's needs and perspectives into policymaking includes

international and domestic policymakers, in an inclusive consultation with affected communities, forming policies that ensure a dignified, safe, and sustainable return with their right to restitution guaranteed, while ensuring that refugees and IDPs have the time and information to make meaningful decisions. This report also aims to highlight the pressing needs that many displaced people of Burma/Myanmar still have, including the provision of humanitarian aid as armed conflict continues while the conditions for return are not yet ready for many refugees and IDPs.

⁴ 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.



[Credit: Progressive Voice]

SCOPE

This report covers refugees and IDPs living in ‘protracted displacement’ situations due to armed conflict and related human rights violations in Burma/Myanmar (see Definitions section on page xiii). The identified geographical areas match the description of ‘protracted displacement’ due to armed conflict outlined on page xiv. Thus, ethnic Karen, Karenni and Shan refugee, and Mon, Karen, Karenni, Ta’ang, Pa-Oh, and Kachin IDP areas were covered by Progressive Voice and the research partners, 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), Koug Jor Shan Refugee Camp, Kachin Women’s Association Thailand (KWAT), Pa-Oh Health Working Committee (PHWC), and Ta’ang Women’s Organization (TWO).

Originally, it was also intended that Shan and Lahu areas be covered by this research, however challenges arose that meant Shan and Lahu IDP interviews are not included in this report. While this does not cover every ethnicity affected by armed conflict, it does address the populations of most major ethnic nationality communities living in protracted displacement due to armed conflict who have also been experiencing its related human rights violations.⁵

While the field research for this report was conducted in 2017, the conflict and displacement since the research was conducted have only worsened, and the information from these interviews remains highly relevant. Thousands more civilians have been displaced by conflict in Kachin, Shan, Rakhine and Karen States. This new displacement demonstrates that, far from being safe for return, the ground situation is still dangerous for civilians throughout conflict-affected areas, and it is far too early to contemplate any return plan that can be categorized as safe and dignified.

5 One conflict-affected community this report does not cover in the research is the ethnic Kokang, many of whom have been living in protracted displacement situations since armed conflict reignited in early 2015. This is due to the relatively little connection that Progressive Voice and the partner ethnic CBOs have with ethnic Kokang communities. This is a gap for further research. At the time the research was conducted, in the first half of 2017, the situation of the Rohingya in northern Rakhine State was not one of armed conflict, but of state-sponsored institutional discrimination and human rights violations. Thus, it did not fit within the scope of this paper, despite the existence of IDP camps in Rakhine State. In terms of other displaced people from western Burma/Myanmar, including Chin and Rakhine refugees from armed conflict, there are no concentrated, protracted IDP or refugee camps or settlements inside Burma/Myanmar or along the border at the time of writing, rather displaced people take temporary shelter outside their villages, or become refugees spread throughout India, Malaysia and other countries. All refugees beyond the Thailand-Burma/Myanmar border camps were outside the scope of this research.



Research locations

- ▲ IDP sites
- ▲ Refugee camps

338 semi-structured interviews and 21 Focus Group Discussions were conducted in 9 refugee camps and 1 Shan refugee site in Thailand as well as IDP sites in Mon, Karen, Karenni, Pa-O, Talang and Kachin areas



METHODOLOGY

The research methodology for this project was designed based on consultation meetings held in August 2016 and January 2017, convened by Progressive Voice with the participation and contribution of various community-based organizations (CBOs) and civil society organizations (CSOs) that work with displaced communities, including youth groups, refugee committees, women's groups, and local development organizations. These meetings generated the foundations of the objective, scope and methodology of this research.

The research consisted of qualitative field research and desk research. Progressive Voice coordinated this project and the field research was conducted with local partners, identified at the consultation meetings. A three-pronged strategy for the research partnership was utilized. The first was used by some local partners that have experience and expertise in conducting field research. They took full responsibility for data collection and collation, based on the identified geographical areas and research targets. The second was for partners to participate in a field research training session coordinated by Progressive Voice, after which they took responsibility in conducting field research including for the data collection and collation. The third was for partners to conduct field research jointly with Progressive Voice in which they took responsibility for the organization and logistics.

The research methods themselves were of a more qualitative nature, which better reflects the information presented. The information presented is not hard statistics or numbers, but perspectives and concerns based on people's lived experiences and on real or perceived threats. Such information is more suited to qualitative research methods. The

interviews were therefore semi-structured with flexibility to delve more deeply into certain issues depending upon the context and the responses given. Interviews were 45 minutes to one hour in length although if the respondent had more to offer, more time was allocated. Similarly, if the respondent felt uncomfortable, the interview could be stopped at any time. This happened on several occasions. Focus group discussions (FGDs) were also held in various sites. The FGDs were even more flexible, comprising open questions rather than semi-structured questions. The added value of the FGDs is that they provoked interactive discussions – and possibly disagreements – about some key issues, prompting people to justify their answers and thus provide more depth to the information collected in the research interviews.

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 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 to the Burma/Myanmar context. Twenty individual interviews with key stakeholders including EAOs, civil society organizations, community-based organizations, international non-governmental organizations and UN agencies were also conducted by Progressive Voice.

Interviews were organized based on both Progressive Voice and research partners' extensive formal and informal networks that

are spread across the country, particularly in ethnic areas. While the majority of the interviews were with refugees and IDPs themselves – as they are the most important stakeholder regarding the issue of protracted displacement in Burma/Myanmar - it was important to also garner information from a broad range of stakeholders to complete a bigger picture on the current situation as well as identifying policy gaps that this report can seek to fill.

As outlined earlier, the actual interviews were conducted by different research partners as well as Progressive Voice. This may raise questions around the uniformity of the research data collection tools. However, this was not necessarily a challenge as the interview questions themselves were largely set (two-thirds) and standardized for every interview with refugees and IDPs while one-third of the interview questions differed from place to place and community to community. Certain issues were more pressing in certain areas than others and thus this format allowed the capture of perspectives on these issues based on differences between communities. Furthermore, since Burma/Myanmar is a hugely diverse country, with many different ethnic languages, some interviews were conducted in Mon, Kachin, Shan, Karen and other local languages. This flexibility allowed the interviewees to express themselves in a setting, context, and language in which they feel most comfortable, and on issues they most want to convey. This in turn facilitated the gathering of a richer and more expressive set of information. Capturing this and adding this to the report and analysis relied on careful transcription and translation of interviews from local languages into English, which was done by local research partners who have the expertise to do this or professional translators hired by Progressive Voice.

Gender considerations were taken into account and are addressed in all of Progressive Voice's research work. Thus, some specific

components of gender sensitivity were addressed in this report. One is the importance of women's perspectives to be part of any peace process or discussion on transitional justice. Women have different lived experiences of conflict, including specific threats and abuses they encounter and roles that they play. Women often take a leading role in the community and livelihoods in armed conflict situations, with their own agency and coping mechanisms that are different to men. These perspectives are vital for addressing problems and forming policy and as such there is a gender dimension regarding the interviews. These include balancing the total number of male/female interviewees and integrating gender perspective interview questions and gender sensitivity in interview settings. Key stakeholder interviews were also conducted with ethnic women's organizations.

Security issues around researchers, interviewees, and the data itself is vital. The identity of the interviewees from refugee camps and IDP sites was recorded in a separate physical document and assigned an alphanumeric code. Identifying information was not included in audio and transcripts, which were labeled only with the appropriate code. After the interviews, where possible and appropriate, interviewees provided their contact information to the researcher for accountability and any possible follow-up questions. Before every interview, the objectives of the report were explained clearly, anonymity was assured, and sufficient time was allocated after the end of the interview for any questions and comments from the interviewee. Interviews were conducted in locations in which participants felt comfortable and safe. Informed consent is a must before beginning any interview. Progressive Voice incorporates the principle of 'do no harm' as an organizational policy, and undue negative emotional effects of recounting difficult experiences were avoided where possible. Field researchers were instructed to give the interviewee the

option of stopping or pausing the interview if such an occasion did arise. Interviewers ensured no one felt pressured into talking about an issue or incident that they were not sure or reluctant to talk about or share with. Local research partners, who live and work in these communities, have vital expertise in this matter and their leadership and advice was essential. When Progressive Voice conducted the field research in certain areas, advice to take all necessary precautions, including the use of secure communications that are encrypted, was taken on board. The data itself was kept secure at all times through certain protocols and recorded

interviews were not uploaded electronically through unsecure channels.

There were some unforeseen circumstances that interviewers encountered when conducting the field research in some areas and were mitigated appropriately. In a Ta'ang IDP area, interviews were unexpectedly cut short after an aerial offensive by the Burma/Myanmar military nearby, which meant that the local IDP population, as well as two researchers needed to find a safe place. The interviews were completed after the attacks ended.



New baby mom arrival in Manli camp in Sep 2018 [Credit: Ta'ang Women's Organization]

BACKGROUND: CONFLICT AND DISPLACEMENT IN BURMA/MYANMAR

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 EAOs. This conflict and the accompanying Burmanization campaigns caused the protracted displacement of over a million ethnic civilians throughout the course of the conflict. As of December 2018, there were an estimated 97,000 refugees in Thailand,⁶ the majority of whom are Karen and Karenni; 106,000 primarily Kachin, Ta’ang and Shan IDPs in Kachin and northern Shan States;⁷

and estimated 280,000 IDPs in Southeastern Burma/Myanmar.⁸

After Burma/Myanmar gained independence in 1948, the central government failed to implement promised measures of federalism and autonomy for ethnic-minority states, and subsequent administrations implemented various policies aimed at “Burmanizing” ethnic nationalities, including declaring Buddhism the State religion and prohibiting the use of ethnic nationality languages. In response, numerous EAOs took up arms against the government, representing different ethnic nationalities and seeking self-determination, firstly in the form of independence, and in more recent decades a federal democratic union.⁹ Militia groups, including armed criminal organizations, also formed in the decades since independence, many of which focused on illicit trafficking of drugs and natural resource extraction. Through armed conflict and under the guise of the

6 The Border Consortium, “Refugee Camp Populations: December 2018.” Available at https://www.theborderconsortium.org/media/119470/2018-12-december-map-tbc-unhcr.pdf?fbclid=IwAR0em37evGPvIJg-Ta1RhohjUYlqT90hbOKzxLlp6CrzWIIVStLuIN-wL-_E

7 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.

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

9 Mary P. Callahan, “Making Enemies: War and State-Building in Burma,” 2003, pp. 209-210.

need for “non-disintegration of the Union,” the Burma/Myanmar military directly ruled Burma/Myanmar with extreme force and an iron fist from 1962 until 2011.¹⁰ In 2011 power was handed over to a nominally civilian government formed of former military generals under a constitution drafted by the military that ensures its dominance over key sectors of governance and the economy, as well as impunity for past human rights violations.¹¹

Internal displacement accompanied conflict from the beginning but increased significantly after the Burma/Myanmar military introduced the “Four Cuts” policy in 1963 and launched a major military campaign against EAOs in the 1970s. The Four Cuts policy is named for the focus on cut-

ting off EAOs’ access to food, funds, recruits and information (see Counterinsurgency Tactics text box).¹² This policy appears to still be in place to some extent, with media reporting on its application in recent years in Kachin and northern Shan States.¹³ From the 1980s, the Four Cuts policy expanded to include forcibly relocating villages from EAO-controlled territory to government-controlled or near military bases, often on short notice, and then declaring the villages “free-fire zones.”¹⁴ In Kachin State, a major Burma/Myanmar military offensive against the Kachin Independence Organization’s (KIO) headquarters in 1984 led to the first major wave of displacement along the Chinese border, consisting of people from over 40 villages.¹⁵

Counterinsurgency Tactics and Civilian Abuses

During decades of armed conflict, the Burma/Myanmar military’s tactics have developed to include strategic attacks against civilians, tactics which are clearly forbidden under international law. There are two main policies that contribute to abuses of civilians – the Four Cuts policy and the “living off the land” policy of self-sufficiency of battalions in the field.

The Four Cuts policy was started in 1963, just a year after Ne Win led a coup against the elected civilian government. The “four cuts” referred to cutting EAOs off from local communities, who were perceived by the Burma/Myanmar

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- 10 Mary P. Callahan, “Making Enemies: War and State-Building in Burma,” 2003, pp. 2-5.
- 11 Burma Lawyer’s Council, “List of the Most Problematic Provisions in the 2008 Constitution and Burmese Laws,” June 2012. Available at http://www.burmalibrary.org/docs13/Unjust_and_unfair_laws_of_Burma-BLC-red.pdf.
- 12 Martin Smith, “Burma: The Politics of Ethnicity,” 1991, p. 201.
- 13 Wai Moe, “Naypyidaw Orders New “Four Cuts” Campaign,” *The Irrawaddy*, 4 March, 2011, http://www2.irrawaddy.com/article.php?art_id=20880; Stella Naw, ““Four Cuts’ Strategy Deepens Myanmar’s War Wounds,” *Asia Times*, 15 July, 2017. Available at <http://www.atimes.com/article/four-cuts-strategy-deepens-myanmars-war-wounds/>.
- 14 Amnesty International, “Myanmar Ethnic Minorities: Targets of Repression,” June 2001. Available at <https://www.refworld.org/pdfid/3b83b6f8e.pdf>.
- 15 Kim Jolliffe, “Ceasefires and Durable Solutions in Myanmar: A Lessons Learned Review,” *New Issues in Refugee Research* No. 27, 1 March, 2014. Available at <https://www.unhcr.org/research/working/533927c39/ceasefires-durable-solutions-myanmar-lessons-learned-review-br-commentary.html>.

military as supporting the EAOs, through severing the four main links between them – food, funds, recruits and intelligence. The Four Cuts policy initiated an era of targeted attacks against civilians in order to deprive the EAOs of support and instill fear in ethnic minority populations.¹⁶

Around the same time as the Four Cuts policy was implemented, the Burma/Myanmar military began to refer to geographic areas as ‘white,’ ‘brown,’ and ‘black’ – white areas were under Burma/Myanmar military control, brown areas were contested, and black areas were under EAO control. Different rules of engagement applied to different colored zones, with brown areas the focus of forced relocation and black areas designated ‘free-fire’ zones: any civilians present in a black area were assumed to be associated with EAOs and could be shot on sight.¹⁷ Human rights organizations have also reported the use of rape as a weapon by the Burma/Myanmar military.¹⁸

Since the late 1990s, Burma/Myanmar military battalions have also been required to be self-sufficient in a “living off the land” policy, which has led to increased exploitation of ethnic communities as providers of food, land to grow crops, taxation, vehicles, labor and anything else that the soldiers need. The need for a consistent supply of labor and resources also led to forced relocation of villages to move them closer to military bases.¹⁹

Though use of the Four Cuts policy was most common under previous military governments, it remains in Burma/Myanmar military training materials, and has been reportedly ‘reactivated’ in parts of Kachin and northern Shan States in recent years.²⁰

16 Mary P. Callahan, “Making Enemies: War and State-Building in Burma,” 2003, pp. 209-210, 223.

17 Amnesty International, “Myanmar Ethnic Minorities: Targets of Repression,” June 2001. Available at <https://www.amnesty.org/en/documents/ASA16/014/2001/en/>.

18 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>. Shan Women’s Action Network, “License to Rape,” 19 June 2002. Available at http://shanwomen.org/images/reports/licenset-orape/Licence_to_rape.pdf.

19 Ashley South, “Ethnic Politics in Burma: States of Conflict,” 2008, p100.

20 Wai Moe, “Naypyidaw Orders New “Four Cuts” Campaign,” Irrawaddy, 4 March, 2011. Available at http://www2.irrawaddy.com/article.php?art_id=20880; Stella Naw, “‘Four Cuts’ Strategy Deepens Myanmar’s War Wounds,” Asia Times, 15 July, 2017. Available at <http://www.atimes.com/article/four-cuts-strategy-deepens-myanmars-war-wounds/>.

Refugees started arriving in Thailand in the mid-1970s, but more formal, externally-supported refugee camps were not established until 1984.²¹ The refugees were not recognized as such by Thailand, which allowed the camps to exist as "temporary shelters" and imposed restrictions on refugees' movement and livelihoods while allowing refugees to shelter in safety and allowing humanitarian organizations to support the camps.²² Burma/Myanmar military offensives against the New Mon State Party (NMSP) in 1990 and against the Karen National Union (KNU) between 1984 and 1995 similarly led to a wave of displacement of around 130,000 people into Thailand, and many others became displaced internally.²³ From 1996 to 1998, the Burma/Myanmar military forcibly relocated over 300,000 primarily Shan people from 1,400 villages in Shan State, causing massive internal displacement as well as at least 80,000 refugees fleeing to Thailand, where in contrast to the 'temporary shelters' in the south they live in unrecognized camps or as migrant workers throughout northern Thailand.²⁴ In the succeeding years, more Burma/Myanmar military

offensives and abusive practices led to increased displacement of ethnic nationality communities.

Throughout Burma/Myanmar's history, the Burma/Myanmar military has periodically signed bilateral ceasefires with various EAOs, often covering only military issues and business arrangements.²⁵ These ceasefires lacked transparency and guarantees of a political solution to the conflict, and thus were rarely durable. Bilateral ceasefires also often coincided with increased Burma/Myanmar military offensives against other EAOs, while the Burma/Myanmar military expanded into ethnic areas covered by ceasefires through increased militarization and taking control of land and natural resources. In some of these cases, most prominently after ceasefires with the KIO in 1994 and the NMSP in 1995, displaced people returned to their homes after the ceasefire was signed, but many were displaced again when the ceasefires broke, in 2011 and 1996 respectively.²⁶ Between 2009 and 2010, intensive military pressure resulted in some EAOs reaching ceasefires with the Burma/Myanmar military and transforming into

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- 21 Edith Bowles, "Assistance, Protection and Policy in Refugee Camps on the Thailand-Burma Border," July 1997. Available at www.repository.forcedmigration.org/pdf/?pid=fmo:1760.
- 22 Edith Bowles, "Assistance, Protection and Policy in Refugee Camps on the Thailand-Burma Border," July 1997. Available at www.repository.forcedmigration.org/pdf/?pid=fmo:1760.
- 23 Kim Jolliffe, "Ceasefires and Durable Solutions in Myanmar: A Lessons Learned Review," *New Issues in Refugee Research* No. 27, 1 March, 2014. Available at <https://www.unhcr.org/research/working/533927c39/ceasefires-durable-solutions-myanmar-lessons-learned-review-br-commentary.html>; The Border Consortium, "Brief History of the Border." Available at <http://www.theborderconsortium.org/about-us/history/> (last accessed 25 July, 2018).
- 24 Shan Human Rights Foundation, "Dispossessed," April 1998. Available at <http://www.shanhumanrights.org/eng/index.php/shrf-archives/shrf-english-newsletter/327-dispossessed>; Karen Human Rights Group, "Exiled at Home: Continued Forced Relocations and Displacement in Shan State," 5 April, 2000. Available at <http://khrhg.org/2000/04/khrhg0003/exiled-home>.
- 25 Transnational Institute, "Neither War nor Peace: The Future of the Ceasefire Agreements in Burma," July 2009. Available at <https://www.tni.org/files/download/ceasefire.pdf>.
- 26 Kim Jolliffe, "Ceasefires and Durable Solutions in Myanmar: A Lessons Learned Review," *New Issues in Refugee Research* No. 27, 1 March, 2014, pp. 11-20, 23-31. Available at <https://www.unhcr.org/research/working/533927c39/ceasefires-durable-solutions-myanmar-lessons-learned-review-br-commentary.html>.



This photo was taken on October 7th, 2016 in Htee Thay Khee Village, Lu Pleh Township, Hpa-an District. This picture shows the villagers who fled from the fighting and went to receive donations provided by ADRA and Partners Relief & Development. They took the provisions and went back to their homes after distribution. [Credit: Karen Human Rights Group]

“Border Guard Forces” or “People’s Militia Forces,” bringing them under the command of the Burma/Myanmar military but allowing them to remain active and pursue economic activities including business deals and natural resource extraction.

In 2011, some EAOs negotiated ceasefires with then-President Thein Sein’s government that were at least rhetorically a departure from past ceasefires, including in the willingness of government negotiators to put political issues including federalism on the table. These negotiations promised progression from bilateral ceasefires through

a multilateral Nationwide Ceasefire Agreement (NCA). The process envisioned a final peace agreement that addressed ethnic demands for federalism, self-determination and equality, a multilateral process EAOs had been calling for over many years.²⁷ However, progress stalled when the Burma/Myanmar government would not allow certain EAOs, including the Arakan Army (AA), the Myanmar National Democratic Alliance Army (MNDAA) and the Ta’ang National Liberation Army (TNLA), to join final negotiations, in the midst of increasing offensives against those EAOs.²⁸ Other EAOs, including the KIO and NMSP, refused to sign in soli-

27 Burma News International, “Deciphering Myanmar’s Peace Process (2013),” April 2013, p. 35-41. Available at https://www.bnionline.net/sites/bnionline.net/files/publication_docs/deciphering_english_2013.pdf.

28 HURFOM, Burma Link and Burma Partnership, “Invisible Lives,” August 2016. Available at <http://www.burmapartnership.org/wp-content/uploads/2016/09/FINAL-Eng-IDP-Report-1.pdf>. For a perspective from an EAO leader, see: Zipporah Sein, “A Brief NCA History, the NCA’s Flaws and Failings,” 14 January, 2016.

parity with the excluded EAOs. In the end, only eight EAOs signed the NCA in 2015. The signatories included one of the most powerful EAOs, the KNU, and many other smaller EAOs who already had ceasefires with the government. In 2018, two more – the NMSP and the Lahu Democratic Union – signed the NCA, while non-signatories were organized in two factions, the United Wa State Army-led Federal Political Negotiation and Consultative Committee (FPNCC) and the United Nationalities Federal Council. In November 2018, the KNU and Restoration Council of Shan State (RCSS) temporarily suspended their participation in the formal peace process, citing violations and lack of implementation of the NCA and the Burma/Myanmar military and government insisting on new conditions, including acceptance of non-secession and a single army.²⁹

Meanwhile, the Burma/Myanmar military's continued offensives against various EAOs – including clashes with the KNU, sparked by an aggressive move by the Burma/Myanmar military to build what is believed

to be a strategic military road through KNU area, which is a serious violation of the NCA. These clashes have caused the new displacement of thousands of civilians and seriously eroded what little trust has been built in the peace process thus far.³⁰ Fighting in Kachin and northern Shan States worsened in 2018 as the military increased attacks on the Kachin Independence Army (KIA) and other EAOs. Tensions have also arisen between various EAOs, and between civilians of different ethnicities in northern Shan State. Thousands of IDPs were trapped in conflict areas in Kachin State in March and April 2018 when the Burma/Myanmar military refused to allow them to leave their villages, which had been occupied by the military, and seek shelter outside the conflict area.³¹ Peaceful demonstrations by Kachin civil society in May and June 2018 resulted in the rescue of some trapped IDPs,³² but three Kachin activists were convicted and sentenced to six months in prison for criminal defamation based on statements during the demonstrations and a related press conference.³³

Available at <http://www.burmapartnership.org/2016/01/a-brief-nca-history-the-nca-flaws-and-failings/>.

- 29 Nyein Nyein, "Analysis: KNU Reiterates Hiatus in Peace Talks," *The Irrawaddy*, 12 November, 2018. Available at <https://www.irrawaddy.com/news/burma/analysis-knu-reiterates-hiatus-peace-talks.html>.
- 30 Karen Peace Support Network, "Burma/Myanmar Military Aggression Violates the Nationwide Ceasefire Agreement and Endangers Villagers in Mutraw District, Karen State," 9 March, 2018. Available at <https://progressivevoicemyanmar.org/2018/03/09/burma-myanmar-military-aggression-violates-the-nationwide-ceasefire-agreement-and-endangers-villagers-in-mutraw-district-karen-state/>; Shan Human Rights Foundation, "Year's End Brings Fresh Attacks and Human Rights Violations by Burma Army in all Parts of Shan State," 26 January, 2018. Available at <https://www.shanhumanrights.org/eng/index.php/342-year-s-end-brings-fresh-attacks-and-human-rights-violations-by-burma-army-in-all-parts-of-shan-state>; Kachin Alliance, "Statement Condemning Tatmadaw Airstrikes against Unarmed Civilians," 26 January, 2018. Available at <http://www.kachinalliance.org/statement-condemning-tatmadaw-airstrikes-against-unarmed-civillians/>.
- 31 Kachin News Group, "Thousands of Kachin Civilians Remain Trapped Amid Escalation of Fighting," 13 June, 2017. Available at <https://www.bnionline.net/en/news/kachin-state/item/3146-thousands-of-kachin-civilians-remain-trapped-amid-escalation-of-fighting.html>.
- 32 Progressive Voice, "Time to Hear Our Voices: Freedom of Assembly and the Youth Peace Movement in Burma/Myanmar," July 2018. Available at <https://progressivevoicemyanmar.org/2018/07/12/time-to-hear-our-voices-freedom-of-assembly-and-the-youth-peace-movement-in-myanmar/>.
- 33 Thu Thu Aung, "Myanmar Court Jails Anti-War Protesters for Defaming Military," *Reuters*, 7 Decem-

The formal peace process, intended to consist of twice-yearly Panglong Conferences, has been criticized due to repeated delays, lack of inclusiveness and failure to hold meaningful dialogue on political issues. Public consultations intended to feed into the Panglong Conferences have been blocked or disrupted by the Burma/Myanmar military in Shan, Karenni, Mon and Rakhine States.³⁴ The second Panglong Conference, in May 2017, resulted in an agreement to 37 “principles,” which was questioned for being rushed and lacking meaningful debate,³⁵ while the third in July 2018 was likewise criticized for the lack of discussion on key issues such as ethnic rights and federalism.

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.³⁶ 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.³⁷ While rations have been eliminated entirely in some camps, including Ei Tu Hta IDP camp in Karen State, IDP camps in Shan State and

ber, 2018. Available at <https://www.reuters.com/article/us-myanmar-activists/myanmar-court-jails-anti-war-protesters-for-defaming-military-idUSKBN1061A4>.

- 34 Htet Naing Zaw, “National-Level Dialogue Delays Troubled Panglong Conference,” 1 November, 2017. Available at <https://www.irrawaddy.com/news/burma/national-level-dialogue-delays-troubled-panglong-conference.html>; Kantarawaddy Times, “KNPP Explains Its Absence from the 21st-Century Panglong Conference,” 26 May, 2017. Available at <https://www.bnionline.net/en/news/karenni-state/item/3089-knpp-explains-its-absence-from-the-21st-century-panglong-conference.html>; Shan Herald Agency for News, “Tatmadaw Soldiers Appear at Unofficial Shan Peace Dialogue,” 15 March, 2018. Available at <https://www.bnionline.net/en/news/tatmadaw-soldiers-appear-unofficial-shan-peace-dialogue>. The Irrawaddy, “Mon Party Balks at Political Dialogue Meetings on Military’s Terms,” 13 March, 2018. Available at <https://www.irrawaddy.com/news/burma/mon-party-balks-political-dialogue-meetings-militarys-terms.html>.
- 35 Transnational Institute, “Beyond Panglong: Myanmar’s National Peace and Reform Dilemma,” Myanmar Policy Briefing 21, September 2017, p. 34. Available at https://www.tni.org/files/publication-downloads/beyond_panglong.pdf.
- 36 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/>. Ei Htu Hta 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>.
- 37 Private Conversations with Author, Yangon, January 2018.

Khong Jor, a Shan refugee camp, in most other cases rations have been reduced.³⁸ 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.³⁹ This process is not consultative, and civil society organizations have not been able to get any information or give any input.⁴⁰ In Kachin and Shan States, 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.⁴¹

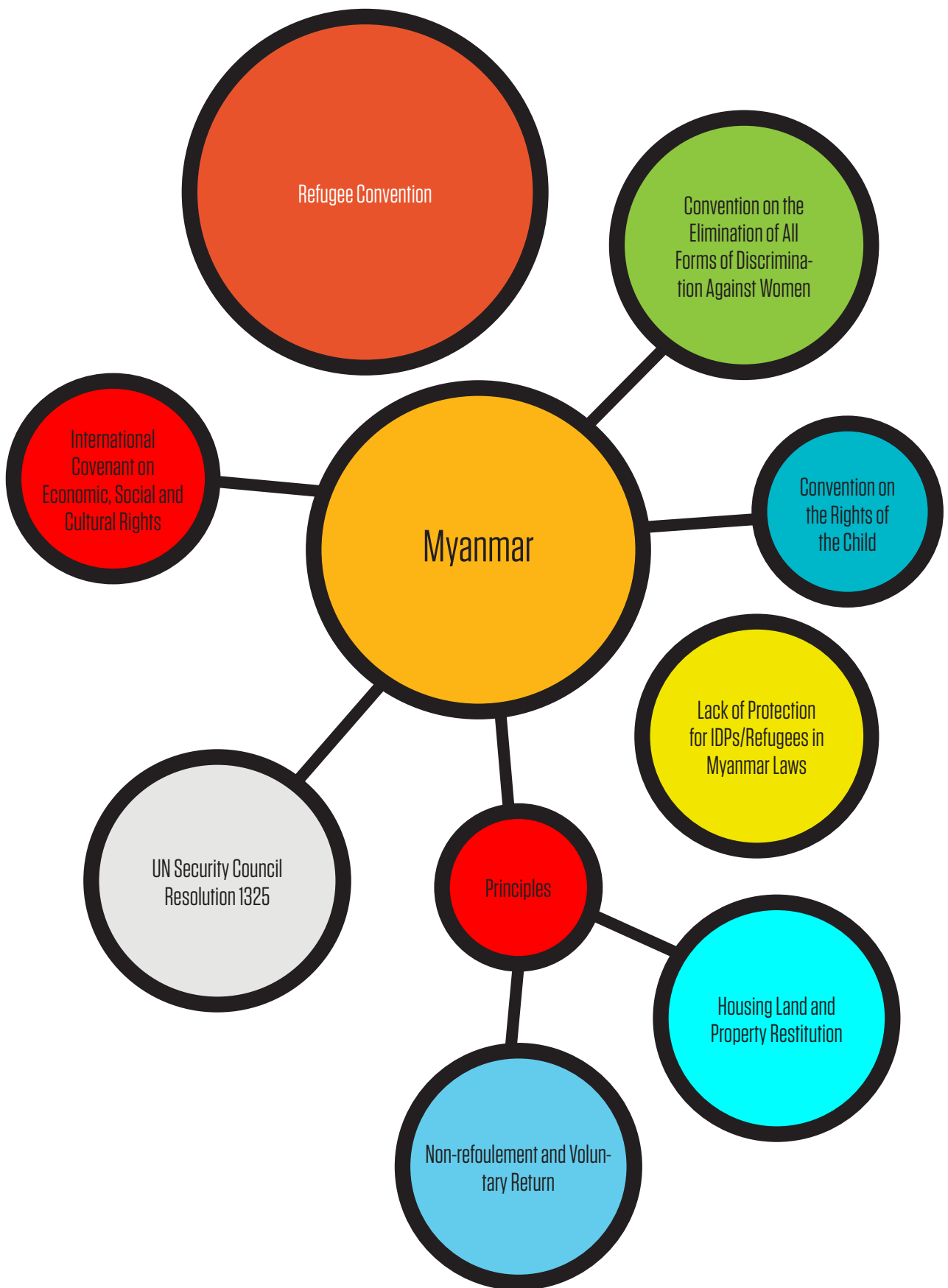
Due to the abuses accompanying the Burma/Myanmar military's clearance operations in response to attacks by the Arakan Rohingya Salvation Army in 2017 and 2018, Burma/Myanmar has come under increasing pressure to investigate and provide accountability for the abuses committed by the military. As noted by a number of ethnic nationality civil society organizations, these abuses mirrored those that ethnic communities have been facing for decades.⁴² An Independent International Fact-Finding Mission for Burma/Myanmar (IIFMM), appointed by the United Nations Human Rights Council, investigated allegations of human rights violations and international

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- 38 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/>. Ei Htu Hta IDPs Supporting Committee, "Letter of Appeal for Continued Cross-Border Humanitarian Aid," 4 September, 2017. Available at <https://progressivevoicemyanmar.org/2017/09/04/ei-htu-hta-idps-supporting-committee-letter-of-appeal-for-continue-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://progressivevoicemyanmar.org/2017/08/30/as-conflict-escalates-in-shan-state-aid-must-not-be-cut-off-to-shan-thai-border-refugees/>.
- 39 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>.
- 40 Saw Issue, "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>.
- 41 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>.
- 42 E.g. Karen Women's Organization, "Statement on Burmese Military Persecution of the Rohingya People," 18 September, 2018. Available at <https://karenwomen.org/2017/09/18/karen-womens-organisation-press-statement-on-burmese-military-persecution-of-the-rohingya-people/>. Karen Peace Support Network, "Statement in Support of Karen People Gathering in Washington, D.C.," 6 November 2017. Available at <https://progressivevoicemyanmar.org/2017/11/06/karen-peace-support-network-statement-in-support-of-karen-people-gathering-in-washington-d-c/>. Women's League of Burma, "Statement on the Current Political Situation," 31 October, 2017. Available at <https://progressivevoicemyanmar.org/2017/10/31/statement-of-the-womens-league-of-burma-on-the-current-political-situation-in-burma/>.

crimes in Rakhine, Kachin and northern Shan State from 2012. The Mission found that the Burma/Myanmar military had committed crimes against humanity and war crimes against ethnic nationality civilians in Kachin and northern Shan States, as well as genocide, crimes against humanity and war crimes against Rohingya in Rakhine State.⁴³ In response to the IFFMM's report, the UN Human Rights Council extended the Mission's mandate and created an Ongoing International Mechanism that will preserve evidence and prepare cases for prosecution, which has been supported by the UN General Assembly.⁴⁴ Meanwhile, the Prosecutor of the International Criminal

Court (ICC) announced the opening of a preliminary investigation into the alleged forcible deportation of Rohingya from Burma/Myanmar to Bangladesh, after the Pre-Trial Chamber found that the Court would have jurisdiction over that crime since Bangladesh is a State Party to the ICC. Many ethnic nationality organizations have called for international accountability, including for the UN Security Council to refer Burma/Myanmar to the ICC so that its jurisdiction may also cover abuses committed in armed conflict in other areas of the country.⁴⁵

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- 43 Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. No. A/HRC/39/CRP.2, 18 September, 2018. Available at <https://www.ohchr.org/EN/HRBodies/HRC/Burma/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>.
- 44 United Nations Human Rights Council, "Situation of human rights of Rohingya Muslims and other minorities in Myanmar," UN Doc. No. A/HRC/RES/39/2, 27 September 2018. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/293/69/PDF/G1829369.pdf?OpenElement>.
- 45 International Kachin Community, "International Kachin Community Supports Fact-Finding Mission's Call to Refer Burma to the ICC," 3 September, 2018. Available at <https://progressivevoicemyanmar.org/2018/09/03/international-kachin-community-supports-fact-finding-missions-call-to-refer-burma-to-the-icc/>; Karen Community Organizations, "Karen Communities Worldwide Welcomes UN Independent International Fact-Finding Mission's Call to Refer Burma to the International Criminal Court," 30 August, 2018. Available at <https://progressivevoicemyanmar.org/2018/08/30/karen-communities-worldwide-welcomes-un-independent-international-fact-finding-missions-call-to-refer-burma-to-the-international-criminal-court/>; FORUM-ASIA, Progressive Voice, Equality Myanmar, Kachin Women's Association Thailand and Rohingya Women's Welfare Society, "UN Must Act Urgently on Recommendations by the International Fact Finding Mission on Myanmar," 27 August 2018. Available at <https://progressivevoicemyanmar.org/2018/08/27/un-must-act-urgently-on-recommendations-by-the-international-fact-finding-mission-on-myanmar/>.



LEGAL AND POLICY FRAMEWORK

This report is mostly framed in terms of the articulated experiences and priorities of displaced communities themselves. However, it also takes into account the legal and policy framework that sets out the obligations of the Burma/Myanmar government and guides the actions of the United Nations, other intergovernmental

organizations, and international non-governmental organizations in terms of humanitarian support to displaced people during displacement, and involvement in safe, dignified and voluntary return and measures to ensure that the displaced people's rights to restitution are upheld.

International Law and Standards

The main international legal instruments governing the rights and protection of displaced people are the United Nations' Convention and Protocol Relating to the Status of Refugees (together referred to as the Refugee Convention).⁴⁶ The application of the Refugee Convention is, however, limited in the Burma/Myanmar context for a few reasons. First, it applies only to refugees – those displaced people living outside their country of origin – and not to internally displaced people. Second, neither Thailand nor Burma/Myanmar is a signatory to the Refugee Convention, so they are not legally bound by its provisions. However, certain parts of the Refugee Convention are considered to be customary international law, which means that they are binding on all states. The Refugee Convention is also useful in the Burma/Myanmar context as guidance for the work of international organizations – especially for the Office of the United Nations High Commissioner for Refugees (UNHCR), which is charged with implementing the Convention – and as a basis for policy advocacy to the Burma/Myanmar and Thai governments. Other relevant guidance documents include the 1999 Guiding Principles on Internal Displacement, which establish a definition

of IDP and a normative framework for the protection of IDPs, as well as interpret and apply existing international law and human rights standards to the context of internal displacement.

In addition, general international human rights instruments apply to displaced people as much as to the general population, and must be applied without discrimination. Burma/Myanmar ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in October 2017, and is also a party to the Convention for the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The obligations in all of these treaties are thus relevant to the situation of internally-displaced people in Burma/Myanmar, and for all displaced people on return. These include, for instance, the right to an adequate standard of living, the right to education, and the obligation of the Burma/Myanmar government to pursue policies to eliminate discrimination against women, including by ensuring “equal treatment in land and agrarian reform as well as in land resettlement schemes.”⁴⁷ Burma/Myanmar is also bound by UN Security Council Resolution 1325 and subsequent

46 Convention Relating to the Status of Refugees, 1951 and Protocol Relating to the Status of Refugees, 1967. Available at <https://www.unhcr.org/3b66c2aa10>.

47 Convention for the Elimination of all forms of Discrimination Against Women, Art 12 (a)(g), 18 Dec., 1978.

resolutions on women, peace and security to increase the participation of women in all stages of peace negotiations, peacebuilding and post-conflict reconstruction, to incorporate a gender perspective in such processes, and to take special measures to protect women and girls from rape and other forms of sexual- and gender-based violence.

Another obstacle to legal protection of refugees from Myanmar is that many who fled from conflict have become stateless due to

their lack of documents demonstrating their Myanmar citizenship. Many did not have identification documents in the first place, having lived in remote areas outside formal government control, and others left them behind while fleeing. Living in Thailand as stateless people, they do not have the protections and rights that come with citizenship either in Burma/Myanmar or in Thailand, and are thus vulnerable to exploitation, including human trafficking and labor abuses.

Non-Refoulement and Voluntary Return

The principle of *non-refoulement*, is one of the central tenets of the Refugee Convention (Article 33), and is one of the provisions considered to be customary law binding on all states. *Non-refoulement* in the Refugee Convention is a legal prohibition on returning refugees to a country where he or she "fears threats to life or freedom."⁴⁸ 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."⁴⁹ *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."⁵⁰ This prohibition forms the baseline of the legal

framework in regards to return of refugees to Burma/Myanmar, including those living on the Thailand-Burma/Myanmar border.

The right to *voluntary* return is based on the principles of *non-refoulement* in addition to the right to return to one's country found in various human rights instruments,⁵¹ and the need to ensure that circumstances in the home country have changed sufficiently so that the refugee no longer has a "well-founded fear of persecution" on return.⁵² 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."⁵³ This expands the principle of

48 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>.

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

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

51 Universal Declaration of Human Rights, Art 13(2), 10 December 1948. Available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf. International Covenant on Civil and Political Rights, 16 December 1966, Art. 12. Available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

52 UN High Commissioner for Refugees, "Voluntary Repatriation: International Protection," 1996. Available at www.unhcr.org/uk/3bfe68d32.pdf.

53 UN Office for the Coordination of Humanitarian Affairs, Guiding Principles of Internal Displacement, 2004, Principle 15. Available at <http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-inter->



This photo was taken on October 26th 2016 and it shows 30 households from Noh Poe refugee camp returning to Myanmar. These refugees from Noh Poe refugee camp are the first group that has gone back to Myanmar as part of an organised return process. They packed their belongings and prepared for their return. Some are returning to their original villages while others return to different locations in Myanmar. Each of them received 8,000 baht (US\$233.57) from the Thai government if they went back to Myanmar. It is not certain if they will get support from the Myanmar government's side, but Thai government authorities have said that the Myanmar government will give [donate] 300,000 kyat [US\$219.59] to each household. The leader of Noh Poe camp wants leaders from Myanmar to help and support these refugees. (Credit: Karen Human Rights Group)

non-refoulement to the context of internal displacement.

In UNHCR's Handbook on Voluntary Repatriation, voluntary is defined as including considerations of possible "push factors" in the host country as well as "pull factors" in the country of origin.⁵⁴ In considering whether return is voluntary, "UNHCR should be convinced that the positive pull-factors in the country of origin are an overriding element in the refugees' decision to return rather than possible push-factors in the host country or negative pull-factors, such as threats to property, in

the home country."⁵⁵ Over-reliance on push factors to pressure refugees to return may also amount to a violation of the prohibition of *refoulement*.

The focus on the "voluntary" requirement thus goes beyond the principle of non-refoulement and means that, even if certain stakeholders determine that the conditions in a displaced person's place of origin objectively meet minimum standards for return, that displaced person must still be able to decide for him or herself whether to return. This does not mean that international protection must continue after refugee or

nal-displacement.html.

54 UN High Commissioner for Refugees, "Voluntary Repatriation: International Protection," 1996, Article 2.3. Available at www.unhcr.org/uk/3bfe68d32.pdf.

55 UN High Commissioner for Refugees, "Voluntary Repatriation: International Protection," 1996, Article 2.3. Available at www.unhcr.org/uk/3bfe68d32.pdf.

IDP status no longer applies, but displaced people must have the choice not to return to an objectively safe situation. Instead, they must be free to choose from other residency options available to non-displaced people, for instance living anywhere they choose within the country of origin or pursuing legal immigration elsewhere.⁵⁶ Therefore, actors seeking to encourage voluntary return of displaced people should focus more on improving the conditions in the country or place of origin than on increasing "push factors" including reducing humanitarian aid and increasing legal restrictions in their displacement site.

In addition to being voluntary, return must also be in safety and with dignity.⁵⁷ UNHCR describes three forms of safety: legal (assurances of safety, non-discrimination and freedom from fear of arrest or punishment), physical (protection from armed attacks, landmines and other risks), and material (access to land or means of livelihood).⁵⁸ In terms of dignity, UNCHR considers such elements as "that refugees are not manhandled; that they can return unconditionally...; that they are not arbitrarily separated from family members; and that they are treated with respect and full acceptance by their national authorities, including full restoration of their rights."⁵⁹

Housing, Land and Property Rights

The rights of displaced people to housing, land and property restitution can be much more complicated in law and in practice. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provide a minimum standard, stating that victims have a right to restitution, which "should,

whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violation of international humanitarian law occurred. Restitution includes ... return to one's place of residence, ... and return of property."⁶⁰ Given that forced displacement and arbitrary confiscation or destruction of property are gross human rights violations, and may be serious violations of international

56 For instance, Article 355 of the 2008 Constitution provides: "Every citizen shall have the right to settle and reside in any place within the Republic of the Union of Myanmar according to law." Constitution of the Republic of the Union of Myanmar, 2008, Art. 355. Available at <http://www.president-office.gov.mm/en/sites/default/files/myanmarconstitution2008mm.pdf>.

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

58 UN High Commissioner for Refugees, "Voluntary Repatriation: International Protection," 1996, Article 2.4. Available at www.unhcr.org/uk/3bfe68d32.pdf.

59 UN High Commissioner for Refugees, "Voluntary Repatriation: International Protection," 1996, Article 2.4. Available at www.unhcr.org/uk/3bfe68d32.pdf.

60 Office of the High Commissioner for Human Rights, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," UN GA Resolution 60/147, 16 December, 2005, p. 19. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

humanitarian law,⁶¹ victims have a right to restitution.

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), which summarize various international legal provisions and human rights standards related to the housing, land and property rights of displaced people, and provide guidance to states and international organizations in protecting and implementing these rights in practice.

The basis of the Pinheiro Principles is the right of displaced people to housing and property restitution, or compensation when restitution is factually impossible.⁶² 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.



This image show over 50 houses built in Mae La Yu, eastern Salween as a pilot project for IDPs and refugees to return in order to implement one of the agreements in the ceasefire agreement between the KNPP and Myanmar government of 2012. However, implementation of the plan has not yet started because of the ongoing unstable situation. [Credit: Karenni Legal and Human Rights Center]

- 61 International Committee of the Red Cross, “Rule 129. The Act of Displacement,” Customary International Humanitarian Law. Available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129.
- 62 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>.

Burma/Myanmar Law

Burma/Myanmar does not have any laws that directly address the return and resettlement of people displaced by conflict, though there are a number of laws that relate to the situation of the displaced. Among these relevant laws is the military-drafted 2008 Constitution, which contains basic rights that apply to all including the displaced. However, the Constitution also contains obstacles to creating conditions for sustainable return. Laws governing the use and management of land and other natural resources are also relevant for displaced people, since land is crucial for displaced people's decisions whether to return. Overall, Burma/Myanmar laws including the 2008 Constitution present obstacles,

not protections, for displaced people, and should be amended in order to facilitate voluntary, safe and dignified return, which must include full restoration of their rights including restitution of property rights. Legal uncertainties including future arrangements under a federal system, and the future status of existing customary law and EAOs' laws governing the territory they administer, further complicates the legal situation for displaced people trying to assess their long-term options. In addition, recognition of customary and EAO-led land governance systems is crucial to protecting displaced people's land rights and ensuring an eventual sustainable return.

2008 Constitution

Basic constitutional protections still apply to displaced people, including non-discrimination, equal protection of the law and basic human rights.⁶³ Article 355 of the 2008 Constitution recognizes the right of every citizen "to settle and reside in any place within the Republic of the Union of Burma/Myanmar according to law," while Article 356 pledges the Union to "protect according to law movable and immovable properties of every citizen that are lawfully acquired."⁶⁴ Read together, these articles outline the right of displaced people to return home or resettle wherever they want, and may be the basis for a separate right to restitution of

their property or compensation.⁶⁵ However, the phrase "according to law" continues to pose a challenge in this and other laws, allowing authorities to interpret the law in light of other highly restrictive laws which leave room for arbitrary interpretation and implementation.

On one hand, the Constitution also provides that "[t]he Union ... is the ultimate owner of all lands and all natural resources above and below the ground," though on the other it provides that the Union "shall permit citizens right of private property."⁶⁶ These seemingly-contradictory provisions appear

63 Constitution of the Republic of the Union of Myanmar, 2008, Art. 347-363. Available at <http://www.president-office.gov.mm/en/sites/default/files/myanmarconstitution2008mm.pdf>.

64 Constitution of the Republic of the Union of Myanmar, 2008, Art. 155-56. Available at <http://www.president-office.gov.mm/en/sites/default/files/myanmarconstitution2008mm.pdf>.

65 Displacement Solutions and Norwegian Refugee Council, "Restitution in Myanmar," March 2017. Available at <http://displacementsolutions.org/wp-content/uploads/2017/03/Restitution-in-Myanmar.pdf>.

66 Constitution of the Republic of the Union of Myanmar, 2008, Art. 37. Available at <http://www.president-office.gov.mm/en/sites/default/files/myanmarconstitution2008mm.pdf>.

to recognize the possibility of private ownership of land, and indeed practically there is private ownership of land in Burma/Myanmar through licenses to use land, but also provide a basis for the State to deny restitution rights to the displaced by invoking its ultimate ownership of land.⁶⁷

The Constitution also generally invests enormous power in the Burma/Myanmar military, a serious obstacle to the creation of conditions for voluntary, safe and dignified return, given the role of the Burma/Myanmar military as primary actor in causing displacement.⁶⁸ Demilitarization

of conflict-affected areas, reform and accountability of the Burma/Myanmar military, and genuine federalism and self-determination are all essential for sustainable return and sustainable peace, and require constitutional change and limits on the power of the Burma/Myanmar military. However, amending the 2008 Constitution requires over 75% of the votes in Parliament, where the Burma/Myanmar military has a constitutionally-guaranteed 25% of seats.⁶⁹ Therefore, essential changes will not be possible without Burma/Myanmar military's cooperation, at least in changing the requirements for constitutional amendment.

Land Law

Governance of land and natural resources is a major issue in the peace process, and a future federal democratic union will need to devolve significant power over land and natural resource management to ethnic regions. Recognition of customary land law, the most common legal system governing land in displaced people's place of origin, is crucial for sustainable return. Currently, there are overlapping legal systems that apply to land in conflict-affected ethnic nationality areas. In addition to Burma/Myanmar government land law, which will be discussed in more detail throughout this report, many displaced peoples' places of origin are governed by EAOs and subject to EAO land policies and laws. If displaced people return to land governed by EAOs, they will need to meet their requirements for proving land ownership, and be subject to their dispute mechanisms. Furthermore, customary law is often used in ethnic

nationality areas, but is not fully recognized by Burma/Myanmar land laws. This can lead to conflict when customary land rights and land title and use documents from EAO systems are not recognized by the Burma/Myanmar government.

Recent Burma/Myanmar government laws and policy prioritize large-scale agribusiness rather than protecting the rights of current land-users, which increases vulnerability to displacement and facilitates land grabs. While the 2012 Farmland Law recognizes customary land ownership for the purposes of formalizing that ownership through a registration process, it allows only registration of individual plots of land for agriculture, not community land used, for instance, for livestock grazing or for religious or cultural purposes. The law also contributes to the vulnerability of farmers to displacement by requiring customary land owners/users

67 Displacement Solutions and Norwegian Refugee Council, "Restitution in Myanmar," March 2017. Available at <http://displacementsolutions.org/wp-content/uploads/2017/03/Restitution-in-Myanmar.pdf>.

68 Burma Lawyer's Council, "The Most Problematic Provisions in the 2008 Constitution and Burmese Laws," June 2012. Available at <http://www.burmapartnership.org/wp-content/uploads/2012/06/Top-Laws-and-Constitutional-Provisions-to-Be-Repealed-or-Amended.pdf>.

69 Constitution of the Republic of the Union of Myanmar, 2008, Art. 109(b), 141(b) and 436. Available at <http://www.president-office.gov.mm/en/sites/default/files/myanmarconstitution2008mm.pdf>.

to register their land. The registration requirement, combined with discrimination, local corruption, requirements to provide official government documents that many ethnic nationalities do not possess, and lack of legal awareness, means that many are not able to register their land, making it more vulnerable to confiscation.⁷⁰ Registration of land does not recognize or confer ownership of the land, but rather a limited lease of the land from the government (the ultimate owner of all land). The registration can be revoked if certain conditions are not met, for instance if the type of crop grown is changed without permission, or if the land is no longer used for agriculture.⁷¹ This may include displaced peoples' land which is not being used for agriculture because the owners have been displaced. As some land rights organizations have pointed out, registering land owned under customary law essentially relinquishes customary rights going back generations because of the conditions on registered land and because it brings the land under the Burma/Myanmar government's system.⁷² Furthermore, many have been displaced since before the law came into effect, so they would not have been able to formally register the land even if they wanted to. The Farmland Law also allows individual land

use certificates to be sold contrary to the requirements of many customary systems that control land use and alienability outside the village, putting poor farmers at risk of coercive transactions to meet short-term needs and adding to long-term vulnerabilities.⁷³ In addition to the Farmland Law, the Special Economic Zones Law and the Burma/Myanmar Investment Law both contribute to a centralized system for management and confiscation of land for foreign investment without consultation with land-owners or local communities.⁷⁴

Of particular importance to displaced people, the Vacant, Fallow and Virgin Lands Management Law gives considerable power to the Central Committee for the Management of Vacant, Fallow and Virgin Lands to grant permission to individuals or companies, including foreign investors, to use land it deems "vacant" or "fallow." Land designated as "vacant" or "fallow" in practice has often included land owned by displaced people, land owned by local villagers and purposely left fallow according to traditional agricultural practices, and land owned under customary systems without formal documentation even when owners are present and currently using the land.⁷⁵

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- 70 Displacement Solutions, "Myanmar at the HLP Crossroads," October 2012. Available at <http://displacementsolutions.org/wp-content/uploads/Myanmar-at-the-HLP-Crossroads-Public.pdf>.
- 71 Burma Environmental Working Group, "Resource Federalism," 2017. Available at http://www.bewg.org/sites/default/files/pdf_report_file/ResourceFederalismWEB_0.pdf.
- 72 Land in Our Hands and Myanmar Alliance for Transparency and Accountability, "Civil Society Organizations' Statement on the Vacant, Fallow & Virgin Land Management 2018 and Related Announcement," 16 November, 2018. Available at <https://www.facebook.com/landinourhands/photos/pcb.2263398110604159/2263397833937520/?type=3&theater>.
- 73 Displacement Solutions, "Myanmar at the HLP Crossroads," October 2012. Available at <http://displacementsolutions.org/wp-content/uploads/Burma/Myanmar-at-the-HLP-Crossroads-Public.pdf>. Interview with the Author, Yangon, January 2018.
- 74 Burma Environmental Working Group, "Resource Federalism," 2017. Available at http://www.bewg.org/sites/default/files/pdf_report_file/ResourceFederalismWEB_0.pdf.
- 75 Burma Environmental Working Group, "Resource Federalism," 2017. Available at http://www.bewg.org/sites/default/files/pdf_report_file/ResourceFederalismWEB_0.pdf. Durable Peace Program Consortium, "Displaced and Dispossessed: Conflict-Affected Communities and Their Land of Origin in Kachin State,

Although there is an exception in the law for land left vacant under “exceptional” circumstances, there has been no clear, authoritative government position on whether displacement due to conflict qualifies as an exceptional circumstance, and thus whether there is protection for displaced peoples’ land from being classified as vacant.⁷⁶ In practice, however, the fact that displaced people are often not nearby their land, in addition to the centralized process of determining whether land is vacant, creates great risk that displaced peoples’ land will be declared vacant and given away at the discretion of the government.⁷⁷ Amendments to the VFV Land Law in September 2018 introduced a six-month period in which those currently occupying ‘vacant, fallow and virgin’ land must register their land or face eviction, fines and imprisonment.⁷⁸ In November

2018, when the Central Committee for the Management of Vacant, Fallow and Virgin Lands issued a notice announcing that 90 days remained to register land currently being used before it is declared vacant.⁷⁹ These amendments and this announcement were met with much criticism by displaced people and organizations who work with them. IDPs in Kachin and Shan States issued a statement calling on the government to protect the land IDPs were forced to leave behind, reminding the government that they have the right to restitution of their housing, land and property under international law and that they fully intended to return to and claim their land.⁸⁰ Ethnic civil society organizations also expressed concern that displaced people’s land would be confiscated *en masse* once the notice period ended.⁸¹

In terms of conflict specifically, the Natural

Myanmar,” May 2018. Available at https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-displaced-dispossessed-land-myanmar-210518-en.pdf.

- 76 Durable Peace Program Consortium, “Displaced and Dispossessed: Conflict-Affected Communities and Their Land of Origin in Kachin State, Burma/Myanmar,” May 2018. Available at https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-displaced-dispossessed-land-Burma/Myanmar-210518-en.pdf.
- 77 Durable Peace Program Consortium, “Displaced and Dispossessed: Conflict-Affected Communities and Their Land of Origin in Kachin State, Burma/Myanmar,” May 2018. Available at https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-displaced-dispossessed-land-Burma/Myanmar-210518-en.pdf.
- 78 Republic of the Union of Myanmar, “Law Amending the Vacant, Fallow and Virgin Lands Management Law (2018),” Pyidaungsu Hluttaw Law No. (24), 11 September, 2018. Unofficial translation available at <http://www.burmalibrary.org/docs25/2018-09-11-VFV-amendment-en.pdf?fbclid=IwAR28pI4bA1HRdAVr-02RMzOf2ineF1cO86IpfJJhbZxk4hPNVwt10feNEMvE>.
- 79 Government of the Union of Myanmar, Vacant, Fallow and Virgin Lands Management Central Committee, “Notification to the persons and organizations who are occupying and utilizing the VFV lands without permits,” Letter No. 12/MaLaYa-1 (370-2018), 30 October, 2018. Unofficial translation available at http://www.burmalibrary.org/docs25/2018-10-30-VFV_Notification-en.pdf.
- 80 IDPs from Kachin and Shan State, “Statement on 2018 VFV Law by IDPs from Kachin and Shan State,” 26 November, 2018. Available at <https://progressivevoicemyanmar.org/2018/11/26/statement-on-2018-vfv-law-by-idps-from-kachin-and-northern-shan-state/>.
- 81 Land in Our Hands and Myanmar Alliance for Transparency and Accountability, “Civil Society Organizations’ Statement on the Vacant, Fallow & Virgin Land Management 2018 and Related Announcement,” 16 November, 2018. Available at <https://www.facebook.com/landinourhands/photos/pcb.2263398110604159/2263397833937520/?type=3&theater>.

Disaster Management Law (2013), which includes in the definition of natural disaster "violence and armed insurgencies," gives the National Natural Disaster Management Committee (NNDMC) the authority to manage reconstruction and rehabilitation activities in disaster - and therefore conflict - affected areas.⁸² These activities include "reconstruction of buildings and houses" and "rehabilitation in order to restore agriculture, livestock breeding and other vocations," as well as social reintegration and medical treatment for victims.⁸³ Though this law has not been much discussed in the context of the peace process, it has been used in northern Rakhine State to justify the state management of burned land and harvesting of crops left by Rohingya refugees.⁸⁴ It has also been used in natural disaster responses by the NNMD, including to particularly devastating floods in 2015. The NNMD conducted a post-disaster needs assessment after those floods, which included assessing the damage to agriculture and other livelihoods, health, education, infrastructure, gender and the environment, and proposed responses. Steps taken to

promote recovery after the floods included provision of paddy seeds and agricultural implements to farmers whose crops were destroyed, temporary shelter and restoration of health and education facilities.⁸⁵ This law creates a serious risk that the Burma/Myanmar government, through the Natural Disaster Management Committee, will lay claim to all land owned by displaced people, and through "reconstruction" initiatives allocate the land to private businesses for investment purposes. However, some aspects of the law do encourage government-funded reconstruction of houses and other property, and rehabilitation of land,⁸⁶ which if done with respect for the rights of and in consultation with the displaced are important components of rehabilitation.

The National Land Use Policy (NLUP), which is not law but intended as guidance to various government bodies and "a precursor to a consolidated national land law," does foresee a process of restitution of the property rights of displaced people.⁸⁷ Most relevantly, Article 38 provides the following:

82 Natural Disaster Management Law, Pyidaungsu Hluttaw Law No. 21,2013, 31 July, 2013, Art. 2(b), 5. Available at http://www.myanmar-law-library.org/IMG/pdf/2013-07-31-natural_disaster_management_law-en.pdf.

83 Natural Disaster Management Law, Pyidaungsu Hluttaw Law No. 21,2013, 31 July 2013: Art. 18(d)-(g). Available at http://www.myanmar-law-library.org/IMG/pdf/2013-07-31-natural_disaster_management_law-en.pdf.

84 In a stark statement of the government's position, Minister for Social Development, Relief and Resettlement Win Myat Aye, whose ministry also oversees issues related to displacement in eastern Myanmar, commented in relation to northern Rakhine State: "According to the law, burnt land becomes government-managed land." This may also apply to land that was burned or otherwise destroyed by the Burma/Myanmar military during conflict, and land left during displacement. Simon Lewis, "Government Will Take Over Burned Myanmar Land: Minister," Reuters, 27 September, 2017. Available at <https://www.reuters.com/article/us-myanmar-rohingya/government-will-take-over-burned-myanmar-land-minister-idUSKCN1C200U>.

85 National Natural Disaster Management Committee Republic of the Union of Myanmar, "Situation Report 6," 6 October, 2015. Available at http://www.myanmargeneva.org/pressrelease/20151008%20NNDMC%20Situation%20Report%206_6%20October%202015.pdf.

86 Natural Disaster Management Law, Pyidaungsu Hluttaw Law No. 21,2013, 31 July, 2013, Art. 18(d)-(g). Available at http://www.myanmar-law-library.org/IMG/pdf/2013-07-31-natural_disaster_management_law-en.pdf.

87 Displacement Solutions and Norwegian Refugee Council, "Restitution in Myanmar," March 2017. Available at <http://displacementsolutions.org/wp-content/uploads/2017/03/Restitution-in-Myanmar.pdf>.



When managing the relocation, compensation, rehabilitation and restitution related activities that result from land acquisition and allocation, unfair land confiscation or displacement due to the civil war, clear international best practices and human rights standards shall be applied, and participation by township, ward or village-level stakeholders, civil society, representatives of ethnic nationalities and experts shall be ensured.⁸⁸

Various formal committees have been formed by the Burma/Myanmar government to adjudicate land confiscation claims and return land, but none have specific mandates to cover conflict-related cases, and these committees have been able to settle only a small fraction of the land confiscation claims they have received.⁸⁹ Importantly, no Burma/

Myanmar laws address restitution of land, but instead focus only on compensation. The large majority of displaced people want restitution of their own land, which has socio-cultural value that cannot be compensated or replaced. While the NLUP envisions a process of restitution for displaced people, this vision has not yet been enacted into law.

EAO Land Law

Some EAOs have formal policies for the governance of land use and ownership, and though these policies are often not recognized by the Burma/Myanmar government, they are enforced in EAO-controlled territory and may be incorporated into a federal system in the future. Many of these systems incorporate local customary law, and are seen as more effective in protecting the rights of displaced people and other smallholders in ethnic areas.

The KNU, NMSP and the KIO have developed systems for issuing land title for areas under their control. In Karenni State, KNPP

has agreed to use the “Common Karenni Land Policy” developed in December 2018 by civil society and other key stakeholders.⁹⁰ While the KNU has a formal land policy, completed in 2016 with extensive consultation with communities and civil society, the NMSP and KIO are also drafting their own policies.⁹¹ The KNU Land Policy sets up a devolved system of decision-making and land management, giving significant power to Village Land Committees and customary leaders, and allows for individual land titling while recognizing customary land systems including community land.⁹² The KNU Land Policy also goes further than the government

88 The Republic of the Union of Myanmar, “National Land Use Policy,” Article 38, 2016. Available at <http://www.eprpinformation.org/wp-content/uploads/National-Land-Use-Policy-Myanmar-Jan2016-eng.pdf>.

89 The Republic of the Union of Myanmar, “National Land Use Policy,” 2016. Available at <http://www.eprpinformation.org/wp-content/uploads/National-Land-Use-Policy-Myanmar-Jan2016-eng.pdf>.

90 “Karenni Land Seminar Statement,” 7 December, 2018. Available in Burmese at <https://www.facebook.com/landinourhands/photos/a.1708632312747411/2276622045948432/?type=3&theater>.

91 Burma Environmental Working Group, “Resource Federalism,” 2017. Available at http://www.bewg.org/sites/default/files/pdf_report_file/ResourceFederalismWEB_0.pdf; Ethnic Community Development Forum, “Our Customary Lands,” 2016, p. 38. Available at https://www.tni.org/files/article-downloads/our-customary_land_-_eng.pdf.

92 Karen National Union, “KNU Land Policy,” December 2015, at Art. 1.2.4 and 3.5. Available at <https://www>.

laws in protecting the rights of women, and by calling for customary law to improve in its treatment of women's rights to land.⁹³ In practice, the NMSP and KIO also recognize customary land law.⁹⁴

In terms of displacement, the KNU Land Policy specifically recognizes a right of restitution for refugees and IDPs "who have been forced from their lands, livelihoods and homes"⁹⁵ and promote restitution as a possible remedy for disputes over tenure rights.⁹⁶ Article 4.2, covering restitution for displaced people, specifically incorporates the Pinheiro Principles and gives priority to restitution of land to refugees and IDPs, and, in the case that restitution is not possible, provides for a case-by-case decision on an alternative remedy with consensus from the local community.⁹⁷ Local KNU authorities are also instructed to set aside land for returnees whose land cannot be returned to them, and to consult with host communities and returnees when identifying replacement land.⁹⁸ While the policy allows the KNU to temporarily grant usage rights for others to use displaced peoples' land while they are displaced, if

the displaced owners return, the secondary occupants must move to an alternative land plot, provided by the KNU, and the original owner will be allowed to re-occupy the land.⁹⁹ Though it does not have a written policy on displacement, the KIO has issued statements expressing concern about the confiscation of land belonging to IDPs.¹⁰⁰

Dispute resolution mechanisms, formed by EAOs or community leaders in conflict area, have addressed some disputes, primarily between returnees and secondary occupants from the same village. These mechanisms are often successful in mediating cases between villagers and returnees. They may informally negotiate with businesses or the Burma/Myanmar military, but EAOs are unable to formally compel cooperation by larger landowners, including businesses and the Burma/Myanmar military, and are thus effective only in a small proportion of the cases involving large landowners.¹⁰¹

Existing Burma/Myanmar law contains many obstacles to the voluntary, safe and dignified return of displaced people. Land law in particular has contributed to reduc-

tmi.org/files/article-downloads/knu_land_policy_eng.pdf (hereinafter "KNU Land Policy").

93 KNU Land Policy, Art. 1.2.

94 Durable Peace Program Consortium, "Displaced and Dispossessed: Conflict-Affected Communities and Their Land of Origin in Kachin State, Myanmar," May 2018. Available at https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-displaced-dispossessed-land-Burma/Myanmar-210518-en.pdf; Burma Environmental Working Group, "Resource Federalism," 2017, http://www.bewg.org/sites/default/files/pdf_report_file/ResourceFederalismWEB_0.pdf.

95 KNU Land Policy, Art. 1.2.5.

96 KNU Land Policy, Art. 2.3.7.

97 KNU Land Policy, Art. 4.2

98 KNU Land Policy, Art. 4.2.5

99 KNU Land Policy, Art. 4.2.5

100 Tun Lin Aung, "KIO Releases a Warning Against Land-Grabbing," *Eleven Myanmar*, 29 November, 2017. Available at <http://www.elevenmyanmar.com/local/12603>. Nyein Nyein, "KIA Objects to Use of Vacant IDP Lands," *Irrawaddy*, 22 December, 2017. Available at <https://www.irrawaddy.com/%20news/burma/kia-objects-use-vacant-idp-lands.html>.

101 Interviews with the author, Mae Sot and Yangon, Jan. – Feb. 2018.

ing chances for a sustainable return, as many displaced people's land has been confiscated in their absence. Changes in the legal framework to recognize customary land systems and create a federal system wherein ethnic regions govern their own natural resources, including land, are a major demand in the

peace process. Relevant laws may change before, during or after displaced people return. In fact, many may see changes in the law, particularly that provide for restitution of land and improve land governance, as conditions for return.



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.¹⁰² 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.

The conflict-related reasons people were displaced can be divided roughly into four categories: forced displacement; abuse and systematic marginalization of ethnic populations; armed clashes and targeting of civilians; and conflict-related land confiscation. Additionally, a small minority of people interviewed for this report were displaced because they had been targeted for their political activity, whether based in conflict-affected areas or in central Burma/Myanmar. These categories overlap and few cases are limited to one category. Instead, people in conflict-affected areas usually experienced aspects of two or more categories, which combined led to displacement.



Forced Displacement



Abuse and Systematic Marginalization of Ethnic Populations



Armed Clashes and Targeting of Civilians



Conflict-related Land Confiscation

Four Main Categories of Reasons for Displacement

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

Forced Displacement

A significant number of interviewees experienced forced displacement brought on by forcible transfer of population and/or the burning by the Burma/Myanmar military of entire villages. In these cases, displacement was a single disruptive event that caused the entire village to flee, often without warning.

Interviewees described Burma/Myanmar military soldiers entering their villages and threatening to kill or torture any villagers who remained after they were ordered to relocate, and often systematically burning villagers’ houses and fields with fuel. Civilians who stayed behind were often tortured or killed. In many cases, civilians were forced to live in military-constructed camps next to military bases, and were then subject to frequent demands for food and labor. Some who had been displaced multiple times reported Burma/Myanmar military soldiers burning IDP camps or villages where they



were sheltering, causing a second round of displacement. This type of displacement took place across all the geographic areas covered by this research, from the 1970s in southern Shan State and southeast Burma/Myanmar, through recent fighting in northern Shan and Kachin States.¹⁰³

“

Burmese soldiers set fire to the village [eighteen years ago]. They didn’t care if people and belongings were in the village. We were kicked out of the village. We had to stay in the jungle.

**Female Pa-Oh IDP, mixed village
in southern Shan State**

103 For more information on forced displacement in Burma/Myanmar, see Burma Ethnic Research Group, “Conflict and Displacement in Karenni,” May 2000. Available at <http://www.ibiblio.org/obl/docs/responses.htm>. Karen Human Rights Group, “Cycles of Displacement,” 12 January, 2009. Available at <http://khr.org/2009/01/cycles-displacement-forced-relocation-and-civilian-responses-nyaunglebin-district>. Human Rights Watch, “Untold Miseries: Wartime Abuses and Forced Displacement in Burma’s Kachin State,” March 2012. Available at <https://www.hrw.org/report/2012/03/20/untold-miseries/wartime-abuses-and-forced-displacement-burmas-kachin-state>. Lahu National Development Organization, “Unsettling Moves: The Wa Forced Resettlement Program in Eastern Shan State,” April 2002. Available at <https://www.lndoess.org/wp-content/uploads/2016/10/The-Wa-forced-resettlement-program-in-eastern-Shan-State.pdf>.

“

The fighting continuously took place for three days and nights [in mid-December 2015], and the Burmese military intentionally burned down the village by using fuel oil and burnt the whole village, only two or three houses were left. The village was burnt not only because of the shootings or bombing.

**Ta'ang participant in a focus group discussion,
IDP camp in northern Shan State**

When the Burma/Myanmar military attempted to relocate a village closer to a military base, some interviewees mentioned fleeing because they did not want to live under military control, often because of experiences of abuses and/or discrimination. This 'state avoidance' was an exercise of villagers' agency when it was employed

as a conscious strategy to resist control by the Burma/Myanmar state.¹⁰⁴ Many interviewees continue to express a refusal to live under the control of the Burma/Myanmar government, which needs to be taken into account in discussions of their futures.

“

In 2003, Burmese soldiers came and took control of our village; as a result we did not want to live in our village anymore.

Female Karen IDP, IDP camp in Karen State

“

Some of the villagers moved [to a government-controlled village]. But for me, I think if I go there Burmese will control us. I don't want to live in a place that is controlled by the Burmese. I want to live in a place that is controlled by our [Karen] leaders, so I came to live here.

Female Karen IDP, IDP camp in Karen State

104 See, e.g., Karen Human Rights Group, "Village Agency: Rural Rights and Resistance in a Militarized Karen State," 2008. Available at <http://khrhg.org/2008/11/village-agency-rural-rights-and-resistance-militarized-karen-state>. James C. Scott, "The Art of Not Being Governed," Yale University Press, 2009.

Abuse and Systematic Marginalization of Ethnic Populations

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Since I could no longer bear the burden, I decided to run.

Female Pa-Oh IDP, informal IDP site in southern Shan State

When describing their motivation to leave their homes behind, other interviewees described an interplay of factors that included threats to physical security, human rights violations, economic distress, and poor health and education access in their villages.¹⁰⁵ Instead of a sudden event that caused the whole village to flee at once, as described above, this was a slower accumulation of factors that led individual families to decide when to flee and how much suffering and abuse they could bear in order to remain in their homes and villages and work on their own land.



“

Firstly, it was difficult to make a living in the village. Second, there was no good education and healthcare for my children. Finally, oppressive act by the military. Though there wasn't ongoing armed fighting, the military asked for what they wanted and forced us to do [things] against our will.

Male Karen refugee, refugee camp in Thailand

Many interviewees mentioned living in fear of the Burma/Myanmar military's abuses, including confiscation of food, crops and

animals; arrest and torture on accusations of supporting ethnic armed organizations; and rape and other forms of sexual violence.¹⁰⁶

105 For more information on this type of displacement, see, e.g., KHRG, “Provoking Displacement in Toungoo District: Forced Labor, Restrictions and Attacks,” 11 November, 2007. Available at <http://khr.org/2007/11/khr07f4/provoking-displacement-toungoo-district-forced-labour-restrictions-and-attacks>.

106 Incidents of sexual violence are likely to be underreported, due to lack of options to obtain legal recourse, cultural taboos and discrimination. For more information on barriers to reporting, see Women's League of

Others mentioned the burden of arbitrary taxation and forced recruitment by ethnic armed organizations. The scale and brutality of human rights violations described by interviewees is outside the scope of this report, and has been well-documented elsewhere.¹⁰⁷ These human rights violations were linked to armed conflict – they would increase when conflict between the Burma/Myanmar military and the local EAO increased or when the Burma/Myanmar

military increased its militarization activities, due to the abusive tactics described above. The prevalence of human rights violations created an atmosphere of fear that led in some cases to pre-emptive displacement – villagers would flee when they knew the Burma/Myanmar military was coming because they had experienced the military's brutality in the past, or had heard about it from other villages.

“

In the village, we were always afraid of the Burmese military; we lived with fear. At least, it is safe here [in the refugee camp]. When we were in the village, the Burmese military usually treated us in the most inhumane ways, beating and torturing the villagers.

Male Karenni refugee, refugee camp in Thailand

“

They didn't say anything to [order us to] leave, but their actions are pressuring us to leave. They extort food, forcibly recruit soldiers, and it affects the villagers when they are fighting. Sometimes, there are unexploded mortars.

**Ta'ang participant in a focus group discussion,
IDP camp in northern Shan State**

Burma and Asia Justice and Rights, “Access to Justice for Women Survivors of Gender-Based Violence Committed by State Actors in Burma,” November 2016. Available at http://womenofburma.org/wp-content/uploads/2016/11/VAW_BriefingPaper-Nov2016-Eng.pdf.

107 See, e.g., Shan Women's Action Network and the Shan Human Rights Foundation, “License to Rape,” June 2002; Human Rights Foundation of Monland, “I Still Remember,” December 2017; Karen Human Rights Group, “Foundation of Fear: 25 Years of Villagers' Voices from Southeast Myanmar,” October 2017; Kachin Women's Association Thailand, “A Far Cry from Peace: Ongoing Burma Army Offensives and Abuses in Northern Burma under the NLD Government,” November 2016; Kachin Women's Association Thailand, “Ongoing Impunity: Continued Burma Army Atrocities against the Kachin People,” June 2012; Ta'ang Women's Organization, “Trained to Torture: Systematic War Crimes by the Burma Army in Ta'ang Areas of Northern Shan State,” June 2016; Amnesty International, “Myanmar; Leaving Home,” 7 September, 2005; Amnesty International, “Crimes Against Humanity in Eastern Myanmar,” 5 June, 2008; Human Rights Watch, “Untold Miseries,” 20 March, 2012; Human Rights Watch, “They Came and Destroyed our Village Again,” 9 June, 2005.

Conflict and human rights violations had a constant, pervasive impact on livelihoods in conflict-affected areas. Villagers – particularly men – often hid overnight in the forest when armed actors clashed near their village, or when these actors, particularly the Burma/Myanmar military, entered into villages. When the situation was worse, they might stay away for days or weeks at a time. While an often-successful protection strategy against the worst violations, this constant movement interrupted time-sensitive agricultural work. When men fled to avoid forced recruitment and forced labor, they left women, children and the elderly behind under the assumption that they

would be safe from the Burma/Myanmar military’s demands. In fact, this left women, children and the elderly more vulnerable to abuses such as sexual violence, torture and forced labor. The constant demands for food and other supplies from the Burma/Myanmar military and at times ethnic armed groups and local militias also kept villagers in conflict areas at subsistence or food-insecure levels. Furthermore, the conflict and marginalization of ethnic areas exacerbated the already-impoverished situation in the country, and farmers in ethnic areas had even less access to markets, water and other essential inputs than the already-suffering farmers in central Burma/Myanmar.



When DKBA fought against KNU I could not live in my village anymore. Together with other families, I had to hide in the jungle. During that time, we could not farm independently and freely. We had to be afraid of soldiers. We could not take care of our farm, so wild animals came and ate all of our paddy. Then, we faced food difficulties and needed to find a way to start a new peaceful life.

Female Karen refugee, refugee camp in Thailand

Conflict also restricted access to health and education. In most conflict-affected areas, education was inadequate as government schools either didn’t exist, were understaffed, required unattainable school fees, or taught in Burmese language and discriminated against ethnic children and youth. However, education was sometimes available through EAO-linked service providers and community-based organizations in EAO-

controlled areas.¹⁰⁸ Periodic hiding in the forest also affect children’s school attendance. These challenges particularly affected girls’ access to education. If families were forced to choose which children attended school, they usually chose boys. In addition, parents were often reluctant to let girls leave the house during times of insecurity due to the risk of sexual violence and other abuses.

108 The Asia Foundation, “Ethnic Conflict and Social Services in Burma/Myanmar’s Contested Regions,” June 2014. Available at <https://asiafoundation.org/resources/pdfs/MMEthnicConflictandSocialServices.pdf>.



We couldn't go to school because when there were fights we have to run into the forest and after that we came back to village for two or three days only then there was fighting again and again we have to run into the forest. So there was no time for us to go to school.

Female Mon IDP, informal IDP site in Mon State

Health facilities were often unavailable in the remote areas most affected by conflict.¹⁰⁹ Parents often mentioned their concern for their children's futures as the factor that finally pushed them to leave their homes despite living with the difficulties of conflict

for many years. Others mentioned sudden health needs as spurring the decision. Some interviewees interpreted the substandard services and lack of ethnic-language access as intentional discrimination.

Gendered Differences in Experiences of Conflict

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.¹¹⁰ 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. Ethnic women faced the same marginalization based on ethnicity, but were also discriminated against within their communities because of their gender, worsening the impact of conflict and human rights violations.

The Burma/Myanmar military and the EAOs who practiced forced conscription tended to demand a certain number of working-age men from each village. This meant that when a demand was made or an armed group was nearby, men and boys often hid in the jungle, leaving women, girls, young children and the elderly at home. Women were sometimes taken for labor instead of the men,

109 Anne Décobert, "The Politics of Aid to Burma: A Humanitarian Struggle on the Thai-Burmese Border," 2016.

110 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/resources/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>.

and were subject to the same conditions as men, with the added risk of rape and other forms of sexual violence.¹¹¹ Some pregnant women were even taken as porters, often suffering miscarriages as a result of the conditions.¹¹² Women in conflict areas were vulnerable to rape and other forms of sexual violence, which has been used by the Burma/Myanmar military as a weapon of war to terrorize communities and punish support of EAOs.¹¹³

“The Burmese soldiers were busy in and out of our village at that time. They came to our village and went in to the villagers’ houses as they liked. More than that, they abused villagers’ daughters and other girls. Any time the Burmese soldiers came in to our village, they called all the male villagers for portering and all of the men had to run and hide to escape from them. ... They oppressed the women who were left at home when all the men ran and hid from them.” – **Female Mon IDP, informal IDP site in Mon State**

When men and women were captured for forced labor, they had to serve for months at a time, where they were subject to beatings, risked injuries or death from landmines and conflict, and suffered from malnutrition and disease. Women, children and the elderly left behind faced increased livelihood struggles and were more vulnerable to abuses by soldiers, including demands for information and food.

“The situation is different from place to place. Although the women stay behind in some areas, it doesn’t mean that they feel secure. They stay because they can’t run. Some people might think that they are safe, but there is no guarantee that those people would be safe. If you look back, there are women who were forced labor[er]s and porters.” – **Female Karen CBO representative**

When fleeing, families sometimes separated by gender, depending on judgments about safety and ability to find shelter. Sometimes women and children left first, it being judged that traveling would be safer for them due to the reduced risk of forced recruitment. Other times, men fled first to find shelter and then sent for their wives and children. It was also dangerous for young men to travel near conflict areas, due to the risk of being arrested by the Burma/Myanmar military on accusations of being a member of an EAO. When conflict broke out and there

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- 111 See also Women’s League of Burma, “If They Had Hope, They Would Speak: The Ongoing Use of State-Sponsored Sexual 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>.
- 112 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>
- 113 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>

was no time to plan, men often fled first, leaving women behind to gather the children and elderly.

“My wife and 4 children moved first because it is a bit easier for women and children to travel. As for me, I hid and moved from the village secretly because I was afraid of the Burmese military.” – **Male Mon IDP, informal IDP site in Mon State**

Many men also never returned from forced labor, portering or being forcibly recruited as soldiers. They were presumed dead by their families, who had often been displaced in their absence. Others were killed by the Burma/Myanmar military. Upon arrival to a displacement site with limited livelihood opportunities, some men left to find work in Thailand or China, leaving women, children and the elderly behind. Many young women also left their children in the care of grandparents to seek work in China or Thailand.

Forced Labor and Portering: Case Study of the Ye-Dawei Railway

A well-documented practice during conflict, the Burma/Myanmar military's practice of extracting forced labor and porters from conflict-affected communities illustrates the interplay between conflict, human rights violations, livelihoods, health and education. One case that illustrates these patterns is the forced labor that was extracted for the construction of a railway from Ye city in southern Mon State to Dawei in Tanintharyi Region.¹¹⁴ This project was started by the State Law and Order Restoration Council (SLORC) government in 1993, and covers approximately 110 miles between Ye and Dawei. This railway route is still in operation today, while many of those displaced from its construction also remain displaced.

One impact of the railway construction was the confiscation of land, including houses and plantations, without compensation and with little to no notice.

“When they said they would construct a railway, we didn't believe it. But on the next day, they reached our village and destroyed our houses with excavators. We had no time to pick up [even] our kitchen materials.” – **Male Mon IDP, mixed village in Tanintharyi Region**

114 For more information on forced labor in Burma/Myanmar in general, and the Ye-Dawei railway specifically, see: Report of the Commission of Inquiry appointed under Article 26 of the Constitution of the International Labor Organization to Examine the Observance by Burma/Myanmar of the Forced Labor Convention, 1920 (No. 29). Available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:50012:0::NO::P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2508280,en.

Men and women from other villages in the area were forced to porter in the construction of the railway, and even children were forced to work as labor for the construction. Another villager from Yebyu described his experience as a child during the construction of the railway:

“I was just a young boy at that time. [Burmese soldiers] asked me where was my father. I said my father wasn’t here, and they caught and took all the chickens. They did this to every house. If someone was caught and taken for portering, it took many months. ... Sometimes the Burmese soldiers took the children to do construction on the railway project. I was 12 at that time. They took one child per house to do the construction.” – **Male Mon IDP, mixed village in Mon State**

“In the year they built the railway from Ye to Tavoy [Dawei], the Burmese military forced us to work and we had to cut through rock to make way for the railroad. Even a mother with a newborn baby had to go and work for them and had to bring their own food. If we did not go to work they would beat us. The soldiers abused the girls and would take off their longgyi at night. ... When the military moved to our village, we could not work for them. We left our garden and farm, and ran to Tavoy [Dawei] with the whole family.” – **Female Mon IDP, informal IDP site in Mon State**

Even in areas where periodic forced labor was common, such long and brutal terms of forced labor for the railway, and the resulting lack of income, disruption of education and negative health impacts, pushed many people over the edge to displacement. Not everyone in these villages were impacted in the same way. According to interviewees, some villagers were able to pay money to the Burma/Myanmar military to avoid portering, while those who could not afford to pay could not avoid the portering. When they fled, villagers fled in different directions:

“Some villagers fled their village to seek shelter from the Mon Relief and Development Committee. Some villagers went to Thailand for work. Rich villagers moved to the city.” - **Male Mon IDP, mixed village in Mon State**

Armed Clashes and Targeting of Civilians

Interviewees from Kachin and northern Shan States who had been displaced since 2011 reported fleeing from a combination of particularly intense fighting and military attacks on civilian areas, including airstrikes from the Burma/Myanmar military on villages near EAO positions, in addition to forced displacement and abuse and systematic marginalization as described above.¹¹⁵ Active conflict and targeting of civilians also contributed to displacement in other areas, though it was less often the main factor.



“

It was in December [2011] to recall, the clash took place in the middle of the night, and it was so terrible that we had to hide at the bottom of the hill beside other people’s houses. Daytime clash like the incident that just happened a moment ago¹¹⁶ – without air strikes – is bearable compared to the midnight intense clash.

Male Ta’ang IDP, IDP camp in northern Shan State

This reflects the particularly intense fighting that northern Burma/Myanmar has seen in recent years. Many interviewees mentioned that they had developed strategies to avoid displacement in the past, including sheltering in the nearby forest during clashes

and returning a few days later, but said that when the fighting got worse, those strategies were no longer safe and they needed to flee farther away from the frontlines.

115 For more information, see Ta’ang Women’s Organization, “Burden of War,” 19 October, 2012. Available at <http://taangwomen.org/2012/10/19/the-burden-of-war-women-bear-burden-of-displacement/>. Kachin Women’s Association Thailand, “A Far Cry from Peace: Ongoing Burma Army Offensives and Abuses in Northern Burma Under the NLD Government,” 15 November, 2016. Available at <https://kachinwomen.com/far-cry-from-peace-ongoing-burma-army-offensives-abuses-northern-burma-under-nld-government/>.

116 During field research in this location, aerial attacks took place near the IDP camp, causing IDPs to temporarily seek shelter.

Land Confiscation

Land confiscation is both a cause and an impact of displacement. Conflict in Burma/Myanmar has created conditions for large-scale land grabs by the military and by associated companies, which cause massive displacement and threaten livelihoods, the environment and traditional land use practices.¹¹⁷ While land-grabbing affects all parts of Burma/Myanmar, conflict increases vulnerability to land confiscation, including due to the Burma/Myanmar military’s use of force to remove residents from confiscated land and increased power imbalances between local populations and the Burma/Myanmar military. For instance in Kachin State, military-linked companies including foreign investors have in recent years confiscated land in conflict areas for



use in large-scale banana and sugarcane plantations, taking advantage of lack of civilian access to conduct business without oversight or independent monitoring.¹¹⁸

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The Burmese military has confiscated more than 80,000 acres (of land). My plantation had been confiscated also. I lost 10 acres of cashew-nut plantation. They [the Burmese military] ordered the residents to move out. But the military hasn’t done anything with my plantation. They haven’t constructed any building. They just removed the cashew-nut plants. [But] in the other plantation, they constructed buildings.

Male Tavoyan IDP, mixed village in Tanintharyi Region

In Mon State and in Kachin State, the 1994 and 1995 ceasefires led to patterns of land confiscation that would be seen in other areas after the Nationwide Ceasefire

Agreement in 2015. The Burma/Myanmar military used land concessions to private businesses and other economic projects to consolidate control over ceasefire areas.¹¹⁹

117 See, e.g., KHRG, “Foundation of Fear,” October 2017, pp. 164–67. Available at <http://khr.org/2017/12/foundation-fear-25-years-villagers-voices-southeast-myanmar>. HURFOM, “I Still Remember,” December 2017, p. 38. Available at <http://www.rehmonnya.org/reports/I-still-remember-online-publishing.pdf>.

118 Htun Khaing, “Kachin IDPs Fear Land Grabs in the Villages They Once Called Home,” *Frontier Myanmar*, 19 January, 2018. Available at <https://frontiermyanmar.net/en/kachin-idps-fear-land-grabs-in-the-villages-they-once-called-home>.

119 Kevin Woods, “Ceasefire Capitalism: Military-Private Partnerships, Resource Concessions, and Military-State Building in the Burma-China Borderlands,” 38 *Journal of Peasant Studies* 747, 14 September, 2011. Available at https://www.researchgate.net/publication/233066790_Ceasefire_Capitalism_Mili-

With the reduction of conflict, business deals increased, usually with the involvement of the Burma/Myanmar military or other armed actors, as did military infrastructure-building in conflict-affected areas, particularly in Tanintharyi, Mon and Karen States.¹²⁰ Between 1995 and 2017, the Human Rights Foundation of Monland documented confiscation of over 100,000 acres of land in that region.¹²¹

Displacement due to military and/or private companies' confiscation of land has increased in recent years as the Nationwide Ceasefire Agreement has opened up even more conflict-affected areas to increased large-scale economic activity, including agribusiness, road-building and natural resource extraction, leading to widespread land confiscation without compensation

as well as other negative impacts on communities and the environment.¹²² As discussed above, Burma/Myanmar's current legal framework commodifies land and favors large-scale agribusiness, increasing small-scale farmers' vulnerability to displacement and threatening traditional practices of land use and environmental conservation.¹²³ The fact of being displaced also opens up the risk that displaced people's land will be declared vacant and granted to an investor. Ceasefires open up more areas of the country's ethnic regions to the application of these laws, threatening ethnic nationalities' crucial systems based on cultural and traditional knowledge, values and practices that have been in place and protecting land and livelihoods of ethnic communities for generations.

Political Activism

Though political activists and their families were a relatively small subset of displaced people interviewed for this study, they have a different background and set of challenges which are important to understand to develop policies for durable solutions.

Most interviewees whose cases relate to politics were not directly involved in political

activity, but rather affected by their family member's involvement in politics. In most cases, the political activists fled first. The family reportedly tried to stay behind, hoping to avoid the hardship of displacement and to remain under the radar of security forces. However, Military Intelligence and other security forces and local authorities often harassed, interrogated and arrested family

tary-Private-Partnerships_Resource-Concessions_and_Military-State_Building_in_the_Burma-China_Borderlands. HURFOM, "I Still Remember," December 2017, p. 38. Available at <http://www.rehmonnya.org/reports/I-still-remember-online-publishing.pdf>.

120 KHRG, "Foundation of Fear," October 2017, pp. 164-67. HURFOM, "I Still Remember," December 2017, p. 38. Available at <http://www.rehmonnya.org/reports/I-still-remember-online-publishing.pdf>.

121 HURFOM, "I Still Remember," December 2017. Available at <http://www.rehmonnya.org/reports/I-still-remember-online-publishing.pdf>.

122 Transnational Institute, "Neither War nor Peace: The Future of the Ceasefire Agreements in Burma," July 2009, pp. 24-29. Available at <https://www.tni.org/files/download/ceasefire.pdf>. KHRG, "Truce or Transition?," 14 May, 2014. Available at <http://khr.org/2014/05/truce-or-transition-trends-human-rights-abuse-and-local-response>.

123 Burma Centrum Nederland, "Access Denied: Land Rights and Ethnic Conflict in Myanmar," Burma Policy Briefing, Briefing No. 11, May 2013. Available at <https://www.tni.org/en/publication/access-denied-land-rights-and-ethnic-conflict-in-burma>.

members of dissidents who were in hiding or in exile. Restrictions were also placed on their livelihoods, including pressuring landlords not to rent to the family members, employers not to hire them and community members not to patronize their shops.¹²⁴

These hardships caused some families to flee to the border where they hoped to reunite with other family members or simply pursue a life without the restrictions they suffered due to their family members' political activism or affiliations.

“

My daughter, my grandchild and I came to this camp mainly hoping for the family reunion. My wife is separated from us due to her involvement in politics. She was released from prison in 2000, and she lived with us for a year, until 2001 when she finally decided to flee to Mae Sot and went to a third country because of the repeated intimidation from the military intelligence. ... When she left for the third country, our other divorced daughter and her child and I were left in Yangon. The military intelligence kept coming for us asking where she went, so we could no longer live in Yangon due to repeated intimidations and being under constant surveillance.

Male refugee, refugee camp in Thailand

124 For more information on the experience of political activists and their families, see Assistance Association for Political Prisoners and Former Political Prisoners' Society, "After Release I Had to Restart My Life from the Beginning," 2016, pp. 60-62. Available at <http://aappb.org/wp-content/uploads/2016/05/Report-eng.pdf>.



Newly born baby with mother in Manli Camp [Credit: Ta'ang Women's Organization]

SOCIOECONOMIC VULNERABILITY TO DISPLACEMENT

In some cases, socioeconomic conditions impacted people's vulnerability to displacement, though in the case of forced displacement the entire village fled, and many serious human rights violations impacted people regardless of socioeconomic status. Poverty particularly affected people's ability to sustain the demands of armed actors to provide food and money, and

to survive periodic forced labor and the impact it had on livelihoods. Interviewees from southeastern Burma/Myanmar noted that it was possible to avoid forced labor by paying others to take their place – many of those interviewed said they had lacked the money to pay so they had to flee, often after a few rounds of forced labor destroyed their meager livelihoods.

“

We could do nothing for our living so we decided to leave the village. When being forced to porter, it took one or two months. It was very difficult for the poor families to make a living. If you didn't want to porter, you had to hire a person to replace you. You had to pay 10,000 kyat for a week. The Burmese military came to the village, the men ran away. When the husband had to porter, the wife and children had nothing to eat.

Female Tavoyan IDP, informal IDP site in Mon State

Socioeconomic status also determined where people fled to, and whether they were able to establish themselves securely in their new locations. Among property owners, the few who were able to sell their property before fleeing arrived to their new locations

with some resources to purchase small plots of land or to pay rent while getting settled. Those with families in safer areas with the resources to support them went to live with family.

“

Some people had enough savings, since they moved here, they could rent a house with their own money. For people who could not afford the rent, they had to ask a space from their relatives' houses, but that wasn't good for the long term.

Male Kachin IDP camp leader, IDP camp in Kachin State



An IDP camp in Hsipaw, Shan State [Credit: Maung Ne Lynn Aung]

“

For those who have ID cards or family members they will rather move to the white [government controlled] area, if they speak Burmese and maybe they used to attend school in the town; that is a factor for those who move into a white area.

**Male Karen representative of
a community-based organization**

Becoming displaced could also be a conscious strategy to avoid the Burma/Myanmar military’s abuses, based on a person’s skills and ability to survive displacement. Some interviewees suggested that villagers who had relevant skills for surviving long-term sheltering in the forest chose displacement over relocating. These

survival skills, including knowledge of forest products, traditional medicine, and shifting agriculture, allowed people increased mobility to better protect themselves from the Burma/Myanmar military’s abuses and gave them the ability to choose to avoid living under government and military control.



For those who fled to refugee camps, or to hiding sites, it is also the nature of their livelihood, [what] opportunities [exist] for them, those who are familiar with slash and burn cultivation, and for those who used to forage for food in the jungle.

**Male Karen representative of
a community-based organization**

These distinctions are important to understand because it means that many people who were displaced were already vulnerable, and made more vulnerable by the displacement. It also suggests livelihood differences between those who remain displaced and those who were either displaced to nearby towns or who have since been able to return on their own. In terms

of return, displaced people may have fewer resources to leverage, including family connections and livelihood skills which are not dependent on use of land, in order to establish self-reliance if they are not able to obtain restitution of their land. It can also explain why some have remained displaced while others have leveraged these resources to return on their own.



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

CURRENT SITUATION: LIVELIHOODS AND ASSISTANCE

Despite the common reasons for displacement across the southeast and northeast 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. For instance, some IDPs, particularly those interviewed in Mon, Pa-Oh and Karenni areas, are living among non-displaced populations, and aspects of their situation may be similar to their non-displaced neighbors, while other aspects are specific to their identity as displaced people. Others, in refugee camps in Thailand, and in IDP camps in Karen, Kachin and northern Shan States, live separately from non-displaced populations and have more restrictions on their living space and livelihoods.

Many IDP camps and other informal IDP sites are very remote, and IDPs have little to no access to other areas, often cut off by conflict lines. For instance, in Kachin State, some IDP camps are located near the China-Myanmar border and the only way they can reach the rest of Kachin State and Myanmar is through China. Their access points are often cut off by Chinese authorities in periodic bouts of pressure related to China's interests in Myanmar and involvement in the peace process. This negatively impacts

IDPs' access to livelihoods as well as healthcare, since sparse clinics in the camps cannot respond to more difficult cases like pregnancy complications, serious injuries and more severe illnesses. Other IDP camps are in larger towns, including Myitkyina, the capital of Kachin State, with hundreds of people sharing space in church compounds in camps that were meant to last only a few months, but have remained for many years. This cramped situation causes tensions with the host community, which did not anticipate the impact when they agreed to house the displaced population.

Women face many challenges during displacement, and are vulnerable to sexual violence and domestic violence, which may increase when men become addicted to alcohol and drugs. Drug and alcohol addiction is common in many displacement sites due to easy availability of drugs and the hopelessness and frustrations of displacement.¹²⁵ 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 that can further marginalize women by forcing victims to accept minimal compensation in exchange for their silence.

Most of the interviewees have spent many years in a situation of protracted displacement with little opportunity or

125 For more on drug use and trafficking in conflict areas, see Ta'ang Women's Organization, "Still Poisoned," 25 October, 2011. Available at <http://taangwomen.org/2011/10/25/still-poisoned/>. Kachin Women's Association Thailand, "Silent Offensive," 10 October, 2014. Available at <https://kachinwomen.com/silent-offensive-how-burma-army-strategies-are-fuelling-the-kachin-drug-crisis/>.



Je Yang Camp, Kachin State [Credit: Kachin Women's Association Thailand]

ability to seek durable solutions. Some told of people who used to be displaced with them but who had returned, integrated into host communities, or resettled in third countries. Most of the interviewees felt that those who had already left had resources such as land, family ties, or professional skills that they had been able to utilize to resolve their displacement, while interviewees reported that they did not have those resources. While it is outside the scope of this study to be able to come to a conclusion on the differences between returnees and those

who remain displaced, findings from this research suggest that such differences may exist that contradict the assumption that spontaneous return will continue, if not accelerate. Instead, the remaining displaced may have fewer resources to facilitate their return and may need more assistance to do so. In the meantime, their anxiety will further increase due to their uncertain future. Thus, a holistic and comprehensive approach is essential for a sustainable and durable solution.

Livelihood during Internal Displacement: Obstacles to Local Integration

Very few IDP interviewees had been able to sustainably establish themselves in their new location, even those who had been displaced for over twenty years. However, interviewees described knowing people who were formerly displaced but had been able to establish themselves and had integrated into host communities, no longer identifying as IDPs.

Those who were able to integrate locally often had family ties in more stable areas, or existing resources that they were able to use to invest in new livelihoods. In some cases, people who were displaced early on in the conflict received land from an EAOs, or were able to occupy vacant land nearby the sheltering site. Even then, IDPs were

subject to the same difficult economic circumstances as the rest of the community, without the usual safety net of savings, land/house ownership (including customary) and community ties. Mon IDP interviewees living in mixed villages in Ye and Yephyu townships were the most likely to have integrated locally in their displacement site, but the factors that allowed local integration are relevant for elsewhere in Burma/Myanmar. Similarly, some Pa-Oh interviewees in southern Shan State had been able to access small plots of land on which they were growing soybeans or rice, though many others worked as daily laborers on others' farms. These interviewees still reported that they struggled to survive.

“

Before this area was just a forest so if someone arrived first they could take the land for free. After a while, many families moved to here and we needed to buy the land.

Female Mon IDP, informal IDP site in Mon State

“

When I came to this village, I had nothing with me so I had to struggle to get farmlands, and a house. I have no proper income without a job. It is hard living here.

Female Shan IDP, mixed village in southern Shan State

The following interview was one of the more successful cases in terms of settling down in a host community, and demonstrates the

role of family ties in providing sufficient resources.

“

We moved to Maung Ngan and lived there for 3 years. We had to live at the house of my husband’s relative and did fishing for a living. ... Doing fishing was very dangerous and we nearly lost our lives while doing fishing so we moved to Own Pin Kwin [in eastern Tanintharyi Region]. I moved to Own Pin Kwin first and my family followed me after having a place to live. We had to live in someone’s house and we didn’t have any job. We had lots of hardship and our lives were very disappointing. Later we got financial support from our sons and bought a land plot at 400,000 kyat [US\$300] and built a hut on the land.

Female Tavoyan IDP, mixed village in Tanintharyi Region

In addition to lack of social and financial capital, the displaced usually face formal or informal restrictions and discrimination that make it difficult if not impossible to be self-sufficient. Most people in rural Burma/Myanmar rely on agriculture for their livelihoods. Access to land is already difficult for established members of communities,

making it more difficult for newcomers like IDPs to access land or jobs working in agriculture or other industries.¹²⁶ Many IDPs struggle to access land due to rising land prices caused by increasing development, and in a context where many members of host communities have had land confiscated by the military or private businesses.

“

I heard that the price of the land is getting very high. That involves several factors from not having enough available land to having factories moving to our land. For example, there are land plots for sale in Loikaw. So it might be possible to give us lands to stay, but not for farming to carry on our livelihoods.

Male Karenni refugee, refugee camp in Thailand

In southeastern Burma/Myanmar, IDPs often live in remote areas that are separate from existing villages and do not have suitable farming land and/or roads to connect them to markets or other job opportunities. IDPs in those areas often resorted to collecting forest

products such as bamboo shoots, bamboo for housing, leaves for roofing material and plant material to make brooms, and selling them in nearby villages for very little money. These patterns were more common in Karen and Mon States, and Tanintharyi Region.

126 Food and Agriculture Organization, “Myanmar at a Glance.” Available at <http://www.fao.org/myanmar/fao-in-myanmar/myanmar/en/> [accessed 21 March, 2018].

“

In Halockhani, my husband made a living as a worker who cleaned plantation. He got 200 Thai baht [US\$6.50] per day. But he lost his job and went to Sangklaburi [in Thailand]. But he got just 180 baht [US\$5.75] per day there. There was nothing to do for a woman. In summer, we can collect plants to make brooms. That's all women can do.

Female Mon IDP, informal IDP site in Mon State

“

In summer, we cut plants and make brooms to get income. Sometimes we went to work on other people's farms. In the rainy season, we don't have much work. Occasionally, we go to the forest to find bamboo shoots.

Female Mon IDP, informal IDP site in Mon State

In Shan and Kachin States, IDPs reported finding seasonal work on plantations, including in China, but said they were paid less than what local workers were paid, the work was only available a few times a year during harvest, and there were not nearly enough jobs for all those who needed work. Most of the times this agricultural work also

required exposure to dangerous chemicals including pesticides that cause health problems for workers and pollute IDPs' water sources. Some IDPs in southern Shan State also reported working as daily laborers on nearby plantations and not making enough for their daily needs, despite having owned land before they were displaced.

“

We are hired for errands in other people's farm for daily [labor]. It is not okay for us. We get only 3,000 MMK [US\$2.25] or 4,000 MMK [US\$3] when the regular price is 5,000MMK [\$3.75].

Male Ta'ang IDP, IDP camp in northern Shan State

“

It is also hard to make ends meet here; sometimes I go to work in the sugarcane plantation. Even a job like that comes very seldom for us, so it is very hard to make any money when there is no job available.

Female Kachin IDP, IDP camp in Kachin State

Depending on the location of the camps and the frequency of armed clashes, some IDPs try to continue to farm on their fields in their home villages. Due to the proximity of IDP camps to villages of origin, as well as the

relatively shorter nature of displacement, this activity was more common among interviewees in Kachin and northern Shan States, and among some IDPs in the southeast.¹²⁷

“

Some people stayed behind to work in the village so that they can support their family as the aid alone isn't enough to survive in the camp.

Male Ta'ang IDP, IDP camp in northern Shan State

Conditions in the southeast gained some stability after ceasefire agreements were signed between the Burma/Myanmar military and a number of EAOs, including the KNU, in 2011 and 2012. Since then, some refugees from the Thailand-Burma/Myanmar border are reportedly starting to

return home for a few months at a time to plant crops, returning to the camps after the harvest. However, increasing clashes and militarization, and the presence of landmines, means it is still often dangerous for them to do so.



Je Yang Camp, Kachin State [Credit: Kachin Women's Association Thailand]

127 KHRG, “Villagers Risk Arrest and Execution to Harvest Their Crops,” KHRG #2007-F11, 4 December, 2007. Available at <http://khr.org/sites/default/files/khr07f11.pdf>.



If they cut rations more and more, the people will try to find a way for their livelihoods and try to go back to their villages for farming although it is not safe for them to go back.

EAO leader

While returning to farm during growing seasons can provide a means of livelihood, it also comes with risks of encounters with armed actors that could lead to conscription for labor, arrest and torture by the Burma/Myanmar military for alleged association with EAOs, or other abuses. Furthermore, there are landmines throughout conflict areas whose locations remain unmapped, so IDPs run the risk of being injured or killed

by landmines when they try to return to farm their fields. Leaving families behind in camps also increases personal security risks to the women and children left behind, including increasing vulnerability to sexual violence and human trafficking. However, many people take these risks in order to provide food for their families and to try to keep their land so that they can return when it is safe.



Before we came here, we stayed in Namtu for a while and went back to the village because it was almost harvesting time for our crops back in the village. It was too late to farm in new places. Therefore, we went back there for a while and came back here.

**Ta'ang participant in a focus group discussion,
IDP camp in northern Shan State**

Female-Headed Households

Female-headed households are common among displaced people, particularly but not limited to Kachin and Ta'ang IDP populations. Many men were killed during the conflict or have been taken as porters or for forced labor. In other cases, men may have left for migrant work, sometimes sending money but otherwise not present for months or years at a time. Female-headed households face increased livelihood challenges, including the need for women to balance childcare with livelihood activities.

“My husband died and it was just me and my children who were left in the family. To get food for our children, we cut and picked vegetables or something from the forest and sold it to get money to buy food for my children. Even now we face hardships to cover our daily expenses with our income.” –**Female Tavoyan IDP, informal IDP site in Mon State**

“It is a bit difficult to find income for the family. It is difficult for women who have small kids, like me, to go to work. I have to look after our children going to school, and it is impossible to get income. Now, I have pigs to make some income. Since we have financial problems, it also affects our health. We can’t get enough nutrition from food and the children are very skinny since they don’t get to eat well.” – **Female Kachin IDP, IDP camp in Kachin State**

Because of displacement, crucial family and community support systems may have been disrupted, so where in normal situations extended families might live together and share childcare and livelihood responsibilities, in refugee and IDP camps many women reported having no one to help with children. For women whose husbands are alive but often absent because they are migrant workers, pregnancies add to the burden by preventing them from working altogether for several months, often with serious health consequences for the baby and other children due to lack of medical care and nutritious food.

“My husband was [away] so he could not help us much. I was working hard while pregnant. After I gave birth, I needed to rest so I didn’t get income and it created difficulties for our family. We got no help from others. After my baby was six months old, I asked my sister in law to look after my child and I worked to get income. So, they were hard times for us.” – **Female Kachin IDP, IDP camp in Kachin State**

Many displaced families, especially those in and near Thailand and to a lesser degree those near China, sent family members, often young men and women, further into those countries to find work and support the family. Migrating to neighboring countries for work, particularly without legal authorization to work, can lead to exploitation, trafficking, forced marriage, forced childbearing and other abuses.¹²⁸ The

small income they are able to send back to their families in displacement sites are often the only income the family receives, particularly in more protracted displacement contexts when those left at home are elderly relatives and children of those IDPs-turned-migrant workers. For those on the China border, migration for labor is even more risky, but many IDPs still go to China to look for work.

128 Human Rights Watch, “From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand,” February 2010. Available at <https://www.hrw.org/report/2010/02/23/tiger-crocodile/abuse-migrant-workers-thailand>. Kachin Women’s Association Thailand, “Pushed to the Brink: Conflict and Human Trafficking on the Kachin-China Border,” June 2013. Available at <https://kachinwomen.com/pushed-to-the-brink-conflict-and-human-trafficking-on-the-kachin-china-border/>; Benjamin Harkins and Meri Ahlberg, “Access to Justice for Migrant Workers in South-East Asia,” International Labour Organization, 2017. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/wcms_565877.pdf. Johns Hopkins Bloomberg School of Public Health and Kachin Women’s Association Thailand, “Estimating Trafficking of Myanmar Women for Forced Marriage and Childbearing in China,” December 2018. Available at https://www.jhsph.edu/departments/international-health/news/_publications/Myanmar-forced-marriage-report-embargoed-until-07-Dec-2018.pdf.

“

Most of the young women and young people, they left from the community and migrated to China. But for the girls they get trafficked. ... They have to marry the Chinese men, they are often 15 years old but the man who they married could be over 50 or 60. It was a forced marriage but they don't think it was trafficking, they give them money and want them to marry. Because of drugs and lack of work, there is a lot of trafficking to China.

Female Ta'ang representative of a community-based organization

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 in-

crease tensions between host communities and displaced people. These tensions can increase if displaced people receive outside aid which is not available to local community members who may be in similar situations in terms of basic needs. Thus, any support to IDP populations needs to consider the needs of host communities as well to avoid contributing to tensions and potential conflict.

Restrictions on Livelihoods in 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.¹²⁹

Many reported trying to work at least occasionally despite the high risks and low reward, particularly at times of great need, for instance around the birth of a child, or when aid was decreased to levels insufficient to meet daily needs.

“

The problems is [refugees] are not allowed to work, so they have to work illegally and when the police caught them they have to pay the police more than their wages.

Female Shan refugee, refugee camp in Thailand

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

“

Since this is not our home country, of course, there is the limit on freedom of movement as we do not hold any legal or official identification rather than the cards they provided. Because of the limitations, we cannot go outside of the camp to work for better income. We solely rely on the food supplied by the camp such as rice and small income from the NGO.

Male Karenni refugee, refugee camp in Thailand

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. Rules may be created by aid agencies or other providers, conditioning rations on not working outside the camp, or by local authorities who authorize the temporary shelter, in order not to put too large a

burden on the local population. While these rules exist to ration limited resources, it can create a lose-lose situation when rations are insufficient, particularly when there are health needs in the family that require additional food or money for medicines. In the absence of formal rules about income-generating activities, tensions can rise between IDPs and host communities due to economic insecurity and limited resources.

“

If one goes out of the camp for a month, the World Food Program cuts food assistance. Also there's a specific rule whoever stays longer out of the camp, her/his household registration will be excluded in the camp.

Female Ta'ang IDP, IDP camp in northern Shan State

“

Many [had the] perception the situation would not last long, now the situation is changing so there is lots of tension and pressure for the IDPs, they need to compete for the resources. That also includes to education facility, most of the schools didn't build extra classrooms so they need to put everyone in the same classroom. ... For the time being, the church still tries to work this out with the IDPs and also the host community but if they need to stay longer, at one point that could be a breaking point, so we are very concerned about this situation.

Male Kachin representative of a civil society organization

Aid and Aid Reliance



IDPs waiting to collect their rations at Woi Chyai IDP Camp, Kachin State [Credit: Kachin Women's Association Thailand]

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, whether from international humanitarian organizations, EAOs or local community and/or religious organizations. This assistance was usually limited to rice, oil and fish paste, sometimes supplemented with beans or eggs. All interviewees who relied on aid reported a reduction in aid in

the past year or longer to levels that made them seriously concerned about survival, and in some cases pushed them to take greater risks, including increasing attempts to work outside refugee camps. 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.¹³⁰

“

For food, TBC provides 12 kilos of rice and salt for us each month. Sometimes we just go to find the vegetables in the forest for our family. Also sometimes, we work for other people then we get money. We can't go out to get a job. We just help each other in the refugee camp. We borrow money from each other and also sometimes we have debt. ... They said that they will stop supporting us for food. We also do not have anything to do for our economic [needs]; therefore this is a big problem that we face. Even though we try to find the ways, we can find nothing.

Female Karen IDP, IDP camp in Karen State

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

Aid reduction also impacts the essential functions of the camps and settlements. Many teachers, religious leaders, security personnel and other camp workers either volunteer or get paid very little, and with ration cuts many are forced to leave these positions, leaving crucial camp functions

understaffed. Those who continue to work are unable to spare time for activities that some other IDPs and refugees use to supplement rations, such as raising chickens or pigs near their houses, or tending small gardens, taking away a crucial survival strategy.

“

There are less people working for the administration of the camp and for security of the camp due to the tight budget imposed by the authority. Concern with the security is an existing issue here, but I think the budget makes it worse as we reduce the people working for the safety of the camp in each division.

Participant in a focus group discussion, refugee camp in Thailand

Many interviewees were quick to stress their thankfulness for the assistance that had been provided, and their understanding that it is difficult for donors to continue to provide the assistance. They felt that they would not have survived the displacement were it not for the aid received from host communities, local community organizations, ethnic

armed organizations and international humanitarian organizations. However, they were at a loss to know how they would survive without aid, many expressing feelings of helplessness and depression because their survival depends on others' decisions whether or not to provide assistance.

“

The problem is we can't go anywhere. We can't do any business. There are many problems. We don't know if other people can help us. If they can, we want it and we will be grateful for it. If they can't, we can't do anything. It is all depending on the people who can help us.

Male Karen IDP, IDP camp in Karen State

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We could not survive here if there is no provision of food ration. Also we do not have land to make livelihood. Not even mention about farm, we even find it difficult for a place to stay. We only survive here because there is aid.

Female Kachin IDP, IDP camp in Kachin State

Many interviewees, particularly in refugee camps in Thailand and IDP camps in Kachin State, mentioned livelihood trainings and other programs by international and local organizations to improve livelihoods and/or prepare for livelihoods on return. Many of these programs were greatly appreciated for giving useful skills to participants. However, others noted that it was difficult to apply

their new skills given livelihood restrictions and the inability to access land and capital. Due to the inability to directly implement new knowledge gained in trainings, and reports that such trainings are not available for all those interested to attend, livelihood trainings should not be a substitute for rations and other forms of immediate aid.

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The vocational training which is most needed for the refugees is agriculture training, which has the most relevance for their life [because most will work in agriculture when they return]. However, it was inapplicable in Thailand due to lack of land, but they will gain knowledge for the future. TBC and camp commander lent a small farm for the refugees who gain the skill and to be able to apply these in the farm. Even though it didn't cover all the refugees, up to 45 families get income from it.

“

Male Karen refugee, refugee camp in Thailand

[F]or livelihood, I tried to use the skill I have got from the vocational training in the camp, which is growing bean sprout. To be able to do that, I borrowed money from other people, but I failed since the business here is not good.

Female Burman returnee, new village in Karen State

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Metta [Foundation] provided capital for the people from [a certain village] who have interest in animal husbandry, and they provided seeds for farming. Farming here isn't very productive since it's very small.

IDP camp leader, IDP camp in Kachin State

Perhaps because most of the people who are able to return or move somewhere else may have already done so, the challenges that interviewees mentioned in terms of their current situation and considerations about their future plans followed similar trends largely regardless of geographic location and type of displacement site. This suggests that certain specific challenges displaced people

face should be considered when developing general humanitarian, peacebuilding and development projects, as well as during peace negotiations and other policy discussions. For instance, internationally-funded support to education in conflict-affected areas could include specific measures to tackle obstacles internally-displaced children face in accessing education in their sites of

displacement. Further research that includes the situation and needs of both displaced and non-displaced populations in conflict-affected areas could help differentiate the needs of each population and distinguish the specific impacts of displacement as opposed to generalized impact of conflict, and thus design policies to meet the needs of all conflict-affected people, including host

communities. As a first step, however, all stakeholders working on policies to support return need to recognize that displaced people face specific challenges based on their displacement, and cannot simply return and be in the same position as other, albeit also vulnerable, people, including local host communities.



INFORMATION

“

You can choose but you don't know what the consequence will be.

Female Karen refugee, refugee camp in Thailand

A major impact of protracted displacement is the loss of control over one's life. Displaced people's agency is demonstrated by their attempts to improve their situation, their support of each other and steps toward re-establishing community

during displacement. However, they have often been unable to make fully-informed decisions about their lives and futures due to legal and policy processes that lack adequate and meaningful consultation, and due to a lack of options to choose from.

“

Our situation is like a chicken trapped in a wire basket, receive food only when it is allowed. Most people suffer from depression because of that. I live with the firm belief that I too will be able to return home and grow our own food.

Female Kachin IDP, IDP camp in Kachin State

The decision whether to return to their place of origin, or to another location in Burma/Myanmar, is one of the most important decisions displaced people will make, and interviewees were very clear that they expect to be able to decide on their own.¹³¹ 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 other proposed return sites; and the peace process and realistic prospects for sustainable peace.

131 “On their own” does not necessarily mean on an individual or family basis. In fact, most interviewees expressed a preference to decide as a group, and to be led by leaders they trust and see a legitimate. For more, see Community, Displacement and Resilience section.



For the repatriation process, every organization says that it is your own choice, you can make whatever choice you want: if you will live here or not, if you will go back or something. But they just say that, ... you can choose but you don't know what the consequence will be like. It means you do not get enough information to make a decision for yourself.

Female Karen refugee, refugee camp in Thailand

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. In some places, trusted CBOs and leaders are able to provide updated, relevant information relatively easily. Other displacement sites are isolated and lack access to outside information. The amount and type of information people received and understood also had consequences in terms of trust, fear, and personal planning around return.

More concerning than the lack of information is selective information that displaced people receive from international NGOs and UNHCR. According to many CBOs that work with displaced communities, when humanitarian organizations provide information about the current situation in potential return sites, they do not provide information about recent clashes in or near those areas. Instead, they share their assessments that the peace process is going well, stating their assessment as fact. They also provide follow-up information about only those returnees who are doing well, not returnees facing challenges, and in some cases have reportedly actively discouraged CBOs from interviewing and providing information about returnees who are facing challenges since their return. Such information about

the challenges can better prepare the refugee/IDPs for their return and to make better informed decisions. Similarly, CBOs have reported inconsistent information being shared by different international actors active in the same camps, which causes confusion and mistrust. The CBOs stressed the importance of coordinated, objective information-sharing, potentially through a CBO that is trusted by the displaced community.

One of the main topics around which there was a lack of information, which led to rumors and misunderstandings, was around plans for the return process and related assistance. Refugees interviewed drew different conclusions from what they had heard, observed and experienced related to plans for return, and this confusion led to stress and depression. Inside Burma/Myanmar, the Ministry for Social Welfare, Relief and Resettlement in June 2018 announced that it would start to draft a plan to close IDP camps in four states – Rakhine, Kachin, Shan and Karen.¹³² A draft National Strategy on Closure of IDP Camps, released in November 2018, does not mention the causes of displacement or the fact that there is still on-going displacement.¹³³ The content of the plan appears to assume resettlement in new areas, and the construction of entirely new villages, instead of return to IDPs' original land. Despite references

132 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>.

133 The Republic of the Union of Myanmar Ministry of Social Welfare, Relief and Resettlement, “National Strategy on Closure of IDP Camps (Draft)” [last accessed 18 December, 2018].

to consultation with displaced people “at every level” displaced communities and civil society organizations have not been involved in the preparation of the draft Strategy, and have expressed concern about closing IDP camps while conflict continues.¹³⁴

Information-sharing efforts by all stakeholders should be increased and include follow-up and meaningful community engagement to be sure that they are adequately communicating with refugees, including in their native language, for better and more clear understanding. In the Shan refugee camp and IDP camps, information from humanitarian organizations was given in Burmese language, which most residents do not speak. Better consultation would also provide meaningful space to raise issues and propose solutions concerning their futures.

A major source of anxiety and confusion was the construction by UNHCR of Voluntary Return Centers (VRC) in the refugee camps, which caused many interviewees to think that they would need to return soon, as well as increased activities aimed at supporting livelihoods that are only applicable on return, not in the refugee camps. The reduction in aid rations also caused many refugees to believe that aid was being reduced in order to force them to return. In the absence of clear information about the return process, visible preparations to support return risk creating the impression that refugees will not have a choice whether to return. Knowledge about new villages being built for returnees, without clear information about the purpose of the sites, also adds to this confusion.

“

The refugees are getting concerned about the repatriation process because they do not have certain information about it. Recently, due to lack of information for the repatriation process, most of the refugees are getting depressed about it.

Male Karen refugee, refugee camp in Thailand

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When I went back [to my original village], I saw the newly-built house. According to the villagers, it was preparation for the refugee, when I check with the authorities, they did not answer me exactly.

Male Karen refugee, refugee camp in Thailand

Some refugees were well-informed, often stating that they tried to explain what they had learned from UNHCR to other refugees in order to help them understand the situation. However, people who felt well-

informed reported that they had sought out the information themselves, often making many trips to various offices, something many refugees are not able or confident enough to do.

134 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>; Ye Mon, “Aid Workers Concerned over Ambitious Plan to Close IDP Camps,” Democratic Voice of Burma, 5 June, 2018. Available at <https://www.burmalink.org/aid-workers-concerned-over-ambitious-plan-to-close-idp-camps/>.

“

I know a lot of information about VRC, because I already went there. I also find information. I ask them a lot of questions.

**Participant in a focus group with refugees,
refugee camp in Thailand**

Displaced people in general also lacked clear information about the current situation in their places of origin. For the most part, they had not been able to return since their displacement and did not know for sure whether there was still conflict, whether they would be able to reclaim their properties, and other important information that will be necessary in order to decide whether to return. Information about the status

of previously-owned land is particularly important given the importance of land to livelihood prospects, and the possibility that their land has been confiscated or occupied in their absence. Given the increasing availability of mobile phones and the internet, however, some have been able to re-establish contact with people in their home villages.

“

Since we can't go anywhere, we don't know. We can't see the situation and we don't hear anything about it. We don't get any information here.

Male Karen IDP, IDP camp in Karen State

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Regarding connection back to the village, a few pieces of land and houses are all [the refugees] have, so they try to go back from time to time when they can or when the Burma military's base is not there. Before, there was nothing they could use for communication, but now they have phones. Therefore, they start having a little bit of connection with their old village.

Male Karen member of a CBO

Those who did have such information usually had relatives that remained in the village or nearby, or in some cases had been able to return to visit. Others saw their properties burning as they fled, or were displaced due

to land confiscation, in which case they knew that their properties could not be reclaimed on return – at least not without some official intervention.

“

There are some families that go back to the village from time to time to go back and see their animals. We can get some information from them. In these days, fighting broke out near the village.

Male Ta'ang IDP, IDP camp in northern Shan State

However, displaced people were in general a bit more informed about the broader context in Burma/Myanmar than the situation in their places of origin. Many interviewees commented that things seemed to be relatively more open in the country, mentioning reforms in media and other freedoms, and most knew whether or not the EAO(s) in their area had signed the Nationwide Ceasefire Agreement. However, many also knew that conflict was still ongoing in Kachin and northern Shan States, which influenced displaced peoples' thinking around return even if they were not from those areas. In the past, the Burma/Myanmar

military would fight and commit abuses in one area while ceasefires held in another, then come back to fight again in the earlier ceasefire areas. Displaced people know these cycles well, and interpret ceasefires in the Southeast in this context. Knowledge about recent human rights violations committed by the military also had an impact on thinking around return. However, Burmese language media, particularly television stations available in IDP camps and other sites, does not adequately or accurately cover conflict, and human rights issues, making it difficult for people in remote areas to access comprehensive and objective information.

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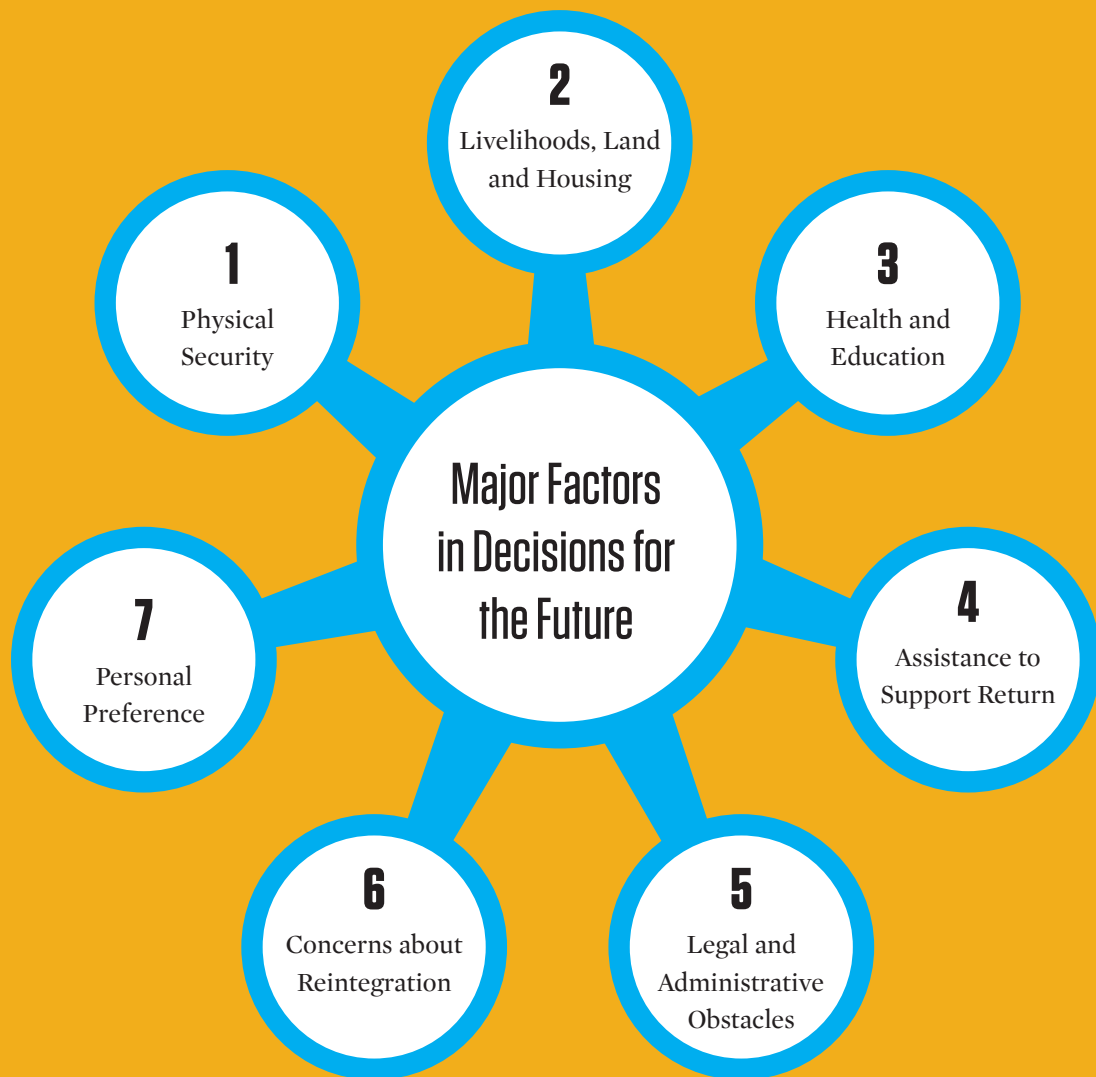
When we have the refugee repatriation process start, I and other Kachin organizations felt shocked, upset and disappointed because we know that there is ongoing fighting in Kachin and northern Shan States. We heard about the Burmese military oppression and abuses through social media and news. We are worried about people living there and there is nothing we can do except praying. They said that they have to be afraid and it's hard to survive. These are the current ongoing situation in Burma and our regions, but when we heard about the repatriation process, we can't understand why... I felt that I am hopeless now.

Participant in a focus group discussion, refugee camp in Thailand

“

My husband always listens to the radio. So, we focus on listening to the news of the Burma government rather than the news of our village. According to the news, there is nothing really changing within the government and it is the same government. There is no change happening.

Female Karen refugee, refugee camp in Thailand



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. This section aims to provide a range of stakeholders with the information necessary to start to understand what displaced people may consider when deciding about their futures, with the understanding that the displaced themselves must be consulted and involved in decision-making and implementing more detailed plans.

Women's Participation in Decision-Making for the Future

Women's empowerment during displacement continues to face challenges, and women are still not always able to assert their rights and access justice. This impacts not only their current situation, but their decision-making about return.

“In the IDP camp, mostly the leaders' roles are taken by men. In the IDP camp also in the camp committee, very few women can participate in the camp committee. That is why we are trying to struggle for more women's participation in decision-making in every level, but it is not easy to do.” – **Female Kachin representative of a civil society organization**

“Some women are very active and eager to participate in the community. They do their best to attend training and get involved in the community. They are happy to work in an organization. However, some husbands complain, and they worry that their wives will be better than them. When women can't take the nagging anymore, they stop. There are many women like that.” – **Female Karen representative of a civil society organization**

Women have gained much experience in mediation, negotiation, leadership and management during conflict and displacement. This experience should be recognized and utilized to support return, and prevent women from being forced to return to traditional systems that marginalize their voices.

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. The UN Handbook on Voluntary Repatriation stresses the importance of including women’s perspectives in consultations with displaced populations, and of ensuring women’s participation in planning and implementing all phases of return.¹³⁵ As one NGO worker who works in refugee camps in Thailand put it,

“One problem with voluntary return is that we say it is voluntary, but the decisions are made by the heads of the households, which are almost always male. That is something we have mentioned to UNHCR and others to be aware of. It is a big concern – the women’s empowerment is not yet to the level that they can negotiate about return with men in their households.” – **Female staff member of an INGO**

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 objective 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 particular 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.¹³⁶

Security Concerns of Muslim Displaced People

In addition to the physical security concerns and trust deficit that all interviewees had in common, Muslim interviewees had additional concerns for their security given a rise in anti-Muslim discrimination and violence, particularly but not limited to Rakhine State. Anti-Muslim campaigns, including “Muslim-free villages,” have increased in conflict-affected areas including Karen and Shan

135 UNH UN High Commissioner for Refugees, “Voluntary Repatriation: International Protection,” 1996. Available at www.unhcr.org/uk/3bfe68d32.pdf.

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

States.¹³⁷ Many of these Muslim interviewees had lived peacefully among communities of different religions for generations. However, they noted that in past years tensions have increased, and some have been unable to return to their communities when other displaced people of other religions have returned.

“After the conflict [in 1997], many villagers who fled the village came back to the village, but there were people who were checking us based on our identity and religious backgrounds, they let other followers of different faiths and ethnicities [return]. However, for Muslims they asked us if we want to abandon our faith and follow Buddhism. They only let us in if we want to abandon our faith and follow Buddhism.”–

Male Muslim refugee, refugee camp in Thailand

“The camp officials asked for volunteers to go home. No Muslim registered to go home. They told us they will give us accommodation and allowance; yet, no one registered because we were afraid of the internal violence inside the country as a member of the Muslim community.” –**Muslim participant in a focus group discussion, refugee camp in Thailand**

Muslim interviewees living in refugee camps in Thailand had for the most part given up hope of returning home. They felt that, given the risks facing all Muslims in the country, returnees who had been out of the community and/or country for many years had even more risk. These serious concerns must be taken into account when planning return, and efforts should be made to find a durable solution that will provide security for the Muslim displaced community.

“The main point is, I feel as a believer of Islam, we have more things to worry when it comes to repatriation of the refugees than remaining in the camp. So the Muslim community feels that the situation in the camp in regards to the security issues is incomparable to the situation inside Burma. Yet, if you ask about the future in the camp, the answer is also uncertain. But I would say this worry of uncertainty is unbeatable to the worry of the repatriation.” –**Muslim participant in a focus group discussion, refugee camp in Thailand**

“Even the Muslim people who had been living in the country over generation by generation do not access this documentation [of identity and citizenship], what will happen if we [Muslim refugees] return?” – **Female Muslim refugee, refugee camp in Thailand**

137 Burma Human Rights Network, “Persecution of Muslims in Burma,” 2017. Available at <http://bhrn.org.uk/en/component/edocman/?task=document.viewdoc&id=1&Itemid=>; KHRG, “Foundation of Fear,” pp. 245-64, October 2017. Available at <http://khr.org/2017/12/foundation-fear-25-years-villagers-voices-south-east-myanmar>.

Short-Term, Direct Threats to Physical Security

The security concerns that caused people to flee stem not only from risks associated directly with active conflict, but from human rights violations and other oppression by mainly the Burma/Myanmar military as well as other armed groups, and from militarization and development-related

displacement. While the absence or reduction of conflict changes the degrees and forms of security risks, and may drastically reduce the occurrence of the worst forms of violence and abuse, it does not necessarily remove them.

“

In some places, there are ongoing armed clashes but some places have no war anymore. But I think oppression is still there.

Participant in a focus group discussion, refugee camp in Thailand

Active armed conflict, which can include frequent or infrequent clashes between two or more armed groups, leads to risks to civilians' security. The Burma/Myanmar military has been accused of indiscriminately firing heavy artillery and hitting civilian structures such as churches, schools and IDP camps, while to a lesser extent EAOs have been accused of hiding near civilian areas and targeting infrastructure used by

civilians and military, including roads and bridges.¹³⁸ In the northeast, the Burma/Myanmar military has used air power including fighter jets to fire on targets, often hitting civilians and civilian buildings.¹³⁹ There are also landmines in all conflict-affected areas, and demining has yet to start even in ceasefire areas, posing considerable danger to civilians.¹⁴⁰

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Not everyday [there is fighting] but still in some places sometimes. Even if it's one in ten times, it's still dangerous for the civilian. We need to be worried about that.

Female Shan refugee, refugee camp in Thailand

138 Amnesty International, "All the Civilians Suffer: Conflict, Displacement and Abuse in Northern Myanmar," 2017, pp. 22-31. Available at <https://www.amnestyusa.org/wp-content/uploads/2017/06/Myanmar-report-FINAL-VERSION.pdf>.

139 Amnesty International, "All the Civilians Suffer: Conflict, Displacement and Abuse in Northern Myanmar," 2017, pp. 22-31. Available at <https://www.amnestyusa.org/wp-content/uploads/2017/06/Myanmar-report-FINAL-VERSION.pdf>.

140 Landmine and Cluster Munition Monitor, "Myanmar/Burma: Mine Action," last updated 21 November, 2017. Available at http://www.the-monitor.org/en-gb/reports/2017/myanmar_burma/mine-action.aspx.

“

I think the old place that we left because of the conflict is still dangerous because of the landmines. So, we'd end up putting our children's life in danger.

Male Karenni refugee, refugee camp in Thailand

In areas where clashes are frequent or tensions are high, civilians also face increased risks of being detained, tortured and/or killed by the Burma/Myanmar military on allegations of association with EAOs. These abuses continued through 2018, particularly

in Kachin and northern Shan States, a fact of which displaced people from all areas were aware and which cemented the perception that nothing has changed and that living near military installments, regardless of the frequency of clashes, is dangerous.

“

We could not go back to our own land as mines are set as traps by both sides. When the Burmese soldiers come into our village, soldiers bully the villagers without reason. All of our Kachin ethnic people are being treated as KIA and all of us fear those soldiers and do not even want to see them.

Kachin IDP camp leader, IDP camp in Kachin State

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If we go back to our village, there are many armed groups. We are afraid of them and worried that we will be accused of hiding any of them like before. Although we want to go back to our village, we dare not. If we meet the Burmese military on the way, we will be asked if we saw any armed group. If we answer that we didn't see, they will accuse us of lying. If we answer that we saw them, we will be detained and beaten.

Participant in a focus group, IDP camp in northern Shan State

In areas where more than one EAO and/or local militia is active, even if there is no conflict, risks of abuses may increase as groups compete for resources, including control of key roads, mines and recruits.

Displaced people have reported fear of arbitrary taxation and forced recruitment by armed actors, including EAOs and local militias supported by the Burma/Myanmar military.

“

There are a lot of different troops and the civilians need to support these troops. I think this is the main reason people do not want or dare not return.

Male Kokang refugee, refugee camp in Thailand

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There are 3-4 armed groups and we don't know whom we can trust.

**Male Pa-Oh IDP, mixed village
in southern Shan State**

In all cases where the Burma/Myanmar military and/or other armed groups are present, even where a ceasefire generally holds, there are risks due to the presence of armed actors near villages. These risks, which have been documented by human rights organizations in ceasefire and non-ceasefire areas, include arbitrary arrest, extrajudicial killings, the presence of landmines laid by all parties, confiscation of property, arbitrary taxation, extortion, forced conscription and forced labor, and rape and other sexual violence.¹⁴¹ Some types of human rights violations, such as forced labor and torture, have apparently declined in ceasefire areas but have not ceased altogether. Civilians in the southeast have also reported increased presence of the

Burma/Myanmar military, including new or expanded bases, road expansion, new checkpoints and more soldiers at existing facilities.¹⁴² More soldiers means more risks of abuses, particularly in the eyes of people who have been systematically abused by Burma/Myanmar soldiers in the past. Interviewees feared that increased militarization in their areas means that the Burma/Myanmar military is preparing to fight again, raising concerns about the risk of renewed conflict. The Nationwide Ceasefire Agreement (NCA) has also opened up opportunities for business in southeastern Burma/Myanmar, which has led to increased land grabbing and violence against civilians who contest the confiscation of their land.

“

Now, even though Burmese soldiers signed the NCA, they always come to build their checkpoints beside our village, so we have to worry about that. We are not free to go to other places.

Female Karen IDP, informal IDP site in Karen State

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We do not dare to go back to our village yet because we are afraid of Burmese soldiers. Even though there is no fighting and [there is] peace, we are still scared of them.

Male Mon IDP, informal IDP site in Mon State

141 Shan Human Rights Foundation, “Year’s End Brings Fresh Attacks and Human Rights Violations by Burma Army in all Parts of Shan State,” 26 January, 2018. Available at <http://www.shanhumanrights.org/eng/index.php/342-year-s-end-brings-fresh-attacks-and-human-rights-violations-by-burma-army-in-all-parts-of-shan-state>.

142 KHRG, “Foundation of Fear,” October 2017, pp. 38-66. Available at <http://khr.org/2017/12/foundation-fear-25-years-villagers-voices-southeast-myanmar>. HURFOM, “In Pursuit of Justice,” July 2014. Available at <http://www.rehmonnya.org/reports/Inpursuit-of-Justice-4print.pdf>.

Given the above range of security concerns, it is important not to judge a potential return site on the basis of reported clashes between armed groups. Instead, human rights documentation conducted by local organizations, as well as media reports, can supplement reports of armed clashes to provide a broader picture of the security risks that displaced people would face if they were to return. In addition, ceasefires

cannot be the only measure and solution to improving the security situation for civilians in conflict areas – armed actors, particularly the Burma/Myanmar military, need to be withdrawn from ethnic areas and reformed into an institution that is held accountable under a democratic, federal system of governance and that as such is able to earn the trust of ethnic civilians.

Lack of Trust in Present and Future Security

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I used to be a victim, so I do not dare to go back yet.

Participant in a focus group discussion, refugee camp in Thailand

Interviewees who are from or considering moving to areas not currently experiencing armed conflict, and who mentioned that the security situation had improved, nonetheless expressed reservations about returning. These reservations are based on two interrelated fears: one, that conflict will recur and pose risks to civilians; and two, that even if conflict does not recur, that the Burma/Myanmar military and/or other armed actors will continue to abuse civilians. Building trust between displaced people and the Burma/Myanmar government and military and EAOs, though a long-term process, is crucial for promoting voluntary, safe and dignified return. Since displaced people were displaced due primarily

to the wrongful actions of the Burma/Myanmar government and military, it is the responsibility of the Burma/Myanmar government to earn their trust if they want to encourage return.

Since Burma/Myanmar's independence there have been many ceasefires between the Burma/Myanmar military and EAOs that have broken or become irrelevant with the fracturing of EAOs and emergence of new forces. This precedent, in addition to ongoing clashes across the ethnic regions, makes it difficult for ethnic civilians to trust the relative peace in some areas, and makes them worry that past patterns are repeating.

“

They say things have changed, but I don't believe so since I have eyes to see and ears to hear. Things have been like this even before the 88 uprising¹⁴³ for almost 20 years and from 20 years on, I can imagine things will still be the same.

Participant in a focus group discussion, refugee camp in Thailand

143 In 1988, nationwide anti-government protests were brutally suppressed by the ruling military junta. The protests are widely considered the starting point of the modern pro-democracy movement.

Others simply mentioned the on-going conflict in the north as reasons not to trust the peace in the southeast. Seeing the peace process and security situation in the country

as a whole instead of state by state, or township by township, can help understand displaced people’s fear of return.

“

Even though the government is talking about peace and ceasefire agreement, some ethnic groups have signed the NCA, on the other hand, the military government still launches military operations in some ethnic areas. Therefore I do not think it is safe to go back now.

Female Karenni refugee, refugee camp in Thailand

Increased militarization in ceasefire areas raises concerns about the Burma/Myanmar military’s intentions, and reports of continued human rights violations in conflict areas reminds interviewees of their own experiences and reinforces distrust and fear. Thus, many interviewees mentioned that they would not return until the Burma/Myanmar military withdrew from their areas, whether or not conflict is ongoing. Many ethnic CBOs have reported that the Burma/

Myanmar military has increased bases in ceasefire and non-ceasefire areas and has informally used monasteries and temples as bases. Using these religious buildings as a base for operations is interfering with the religious lives of residents and causing fear given that monasteries and temples are usually located within communities, as opposed to military bases which are usually further away from more populated areas.

“

If I return, I will have a lot of problems. There are a lot of Burmese soldiers in my village, so I will not return. I will live here.

Male Karen IDP, IDP camp in Karen State

“

To solve this problem and get a genuine solution, the Burmese military should go back to where they belong. We would like to live in our own place and stand on our own feet and live with dignity. I would like to say that out loud.

Female IDP camp leader, IDP camp in Kachin State

Fear of Burma/Myanmar soldiers can be quite deeply entrenched, particularly among people who experienced serious abuses at

the hands of the military, or who witnessed such abuses particularly against close family members. For these people, the lack of trust

is understandably strong. As the military continues to prosecute those who denounce its abuses¹⁴⁴ and refuses to even discuss systematic security sector reform,¹⁴⁵ victims and their families have no reason to trust

that the abuses they suffered will not happen again. If those people are to choose to return to Burma/Myanmar, considerable effort will need to be made to demonstrate contrition and changed behavior.

“

The government should promise us safety and livelihood opportunities before our return. If not, I don't want to return to the same situation where we were treated badly by the Burmese soldiers.

Male Karenni refugee, refugee camp in Thailand

“

I will not go back even if it is peaceful. I am really afraid of Burmese soldiers. I still can't stand to hear their voice, even now.

Female Mon IDP, informal IDP site in Mon State

Many interviewees feared that they would be driven into displacement again if they returned, and that this time they would not be able to find shelter.¹⁴⁶ People are aware that their welcome in host communities is wearing out, and doubt that once they leave they would be able to return even if conflict breaks out again. This is particularly true

for the elderly and for people who have developed health problems since being displaced that would prevent them from fleeing if needed. For people who feel that they barely survived the first displacement, who finally made it to safety, and are in precarious situations at present, the risk of returning is simply too much.

144 Free Expression Myanmar, “66(D): No Real Change,” December 2017. Available at <http://freeexpressionmyanmar.org/wp-content/uploads/2017/12/66d-no-real-change.pdf>. Kachin Women's Association Thailand, “Recent Defamation Case in Phakant Highlights Urgent Need to Bring the Burma Army under Civilian Control,” 8 September 2017. Available at <https://kachinwomen.com/recent-defamation-case-phakant-highlights-urgent-need-bring-burma-army-under-civilian-control/>.

145 Amara Thiha, “On the Second Anniversary of the NCA, Is Myanmar Keeping Peace on Track?,” *Frontier Myanmar*, 15 October, 2017. Available at <https://frontiermyanmar.net/en/on-the-second-anniversary-of-the-nca-is-myanmar-keeping-peace-on-track>.

146 This has already happened in many places, most recently in clashes between the Burma/Myanmar military and the KNU in Mutraw district, during which over 1,700 people have been displaced, many of whom were previously displaced and had recently returned to their original villages and had started rebuilding their lives before being forced to flee again. Karen Peace Support Network, “Myanmar Military Aggression Violates the Nationwide Ceasefire Agreement and Endangers Villagers in Mutraw District, Karen State,” 9 March, 2018. Available at <https://progressivevoicemyanmar.org/2018/03/09/burma-myanmar-military-aggression-violates-the-nationwide-ceasefire-agreement-and-endangers-villagers-in-mutraw-district-karen-state/>.

“

My husband’s health condition is not good and he is afraid to return. Because the situation is not changed yet he said. If something happens he cannot flee.”

Female Karen refugee, refugee camp in Thailand

“

If we go back and have to flee again, no one will accept us here. If we lost limbs by landmines, someone will pay our medication, but the people here will not allow us to live here again.

Female Ta’ang IDP, IDP camp in northern Shan State

Deciding to return to a place where people suffered and lost so much requires a significant amount of trust that they will be protected. While it is still impossible to guarantee that conflict will never recur, it is possible to reduce the risk that conflict and militarization poses to civilians. Measures need to be taken to ensure that ceasefire agreements are sustained and conflict does not recur, and to earn civilian trust in the process. This should not mean overselling the sustainability of the current ceasefires, but a complementary process of substantive progress in the peace process and public trust-building appropriate to the situation.

First and foremost, the Burma/Myanmar military needs to refrain from committing human rights violations, and commit to a process of reform and accountability to earn the trust of civilians in conflict-affected areas. The Burma/Myanmar government should also take steps to earn displaced

peoples’ trust, including by fulfilling its obligations to provide a remedy for victims of serious violations of human rights and humanitarian law.¹⁴⁷ Also crucial to building trust is an inclusive peace process, including increasing the representation of women, especially from conflict affected areas, and specifically discussing sexual violence and the gender impact of conflict as required under UN Security Council Resolution 1325.¹⁴⁸ The peace process must also include meaningful discussion and agreements on other important issues like federalism, natural resource sharing and land rights, as well as participation by IDPs and refugees. Donors to the peace process must not lose track of the deep trust deficits and the need for substantive steps, not only high-level meetings, to rebuild trust – and accept that voluntary, safe and dignified return of displaced ethnic population is an integral part of the peace process that is not possible until trust is rebuilt.

147 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. Available at <http://www.unhcr.org/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>.

148 UN Security Council, Resolution 1325, UN Doc. No. S/RES/1325, 2000. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>.

Livelihoods, Land and Housing

After security, most interviewees expressed concerns about where they would live, and how they would make a living. The issue of livelihoods is for many tied up in access to land, as most displaced were farmers in the past and most preferred to farm on return. Approximately 70% of Burma/Myanmar's total workforce is employed in the agriculture industry, and the figure is higher for rural areas.¹⁴⁹

There are two interrelated issues in regards to land and housing for returnees. First, all displaced people have a legal *right* to the property that they owned before displacement, including housing, land, livestock and crops.¹⁵⁰ This right is independent of whether displaced people return to their place of origin, though they can waive this right if they freely choose. Second, all returnees have a humanitarian *need* for adequate housing and suitable land for farming or alternative livelihoods on return, regardless of the amount or type of property they owned prior to displacement. Enforcing people's property rights through restitution or compensation is a related but separate question from ensuring that all people have access to land or other livelihoods on return, regardless of their property-owning status before displacement. Regardless of humanitarian arrangements made by international, national and/or local actors to provide for returnees, it is ultimately the responsibility of the Burma/Myanmar government to settle housing,

land and property rights claims stemming from displacement.

Complicating the matter further is the vulnerable land position facing most people in rural Burma/Myanmar regardless of history of displacement, and the multiple waves of displacement in most conflict-affected areas. In many parts of the country, places from where people were displaced have also been places where people were displaced *to*, and where they have been living for many years. Determining how far back a land restitution process would go to determine the identity of the "original owner," and what rights secondary occupants would have, will be highly controversial but essential to avoiding conflict between parties with competing claims to the same land.

According to research by the Transnational Institute on displacement and HLP rights, "[c]oupled with the new ceasefires, the 2012 land laws also facilitated a new wave of land-grabbing in ethnic nationality regions that had previously been closed off from outside investors seeking to open up business. Without any legal documents, and without mechanisms to address problems resulting from the new ceasefires, villagers became an easy prey."¹⁵¹ Returnees will be subject to all of the same vulnerabilities in addition to those that stem from displacement, including lack of social capital and networks to assist in reclaiming confiscated land.

149 Food and Agriculture Organization, "Myanmar at a Glance." Available at <http://www.fao.org/myanmar/fao-in-myanmar/myanmar/en/> [accessed 21 March, 2018].

150 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. Available at <http://www.unhcr.org/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>.

151 Transnational Institute, "Re-Asserting Control: Voluntary Return, Restitution and the Right to Land for IDPs and Refugees in Myanmar," Myanmar Policy Briefing No. 20, May 2017. Available at https://www.tni.org/files/publication-downloads/voluntary_return_restitution_and_the_right_to_land_for_idps_and_refugees_in_myanmar.pdf.

Housing, Land and Property Rights

There are many obstacles to meaningful enforcement of HLP rights for displaced populations affected by armed conflict or political activities. These obstacles relate generally to *reclaiming* property or obtaining compensation; and *securing* physical and legal tenure on that property in a way that

will allow the person to retain ownership and possession in the future. In addition, many interviewees do not know what has happened to their property and whether they will be able to reclaim it. Lack of information in itself is a major obstacle to return.

“

I left my home about 20 years [ago]. In the past, my family had a tea plantation and a few acres of farmland. However, I have been away for 20 years and do not know their situation, if they still belong to us or not.

Male Shan refugee, refugee camp in Thailand

Some displaced people may be able to reclaim all or some of their property without significant obstacles, because the time of displacement has been relatively short, they

have been continually farming their land during displacement, or a family member stayed behind or close by to take care of it.

“

Now, we have some families who are going back to their place, leave their children in the camp and do some agriculture. The main reason is not to lose their land, they worry if they are not going back and doing it now, someone else will come and take it. Therefore, they are going back and doing it. But they are coming back after they harvest their crop. Sometimes, they stay there around four or five months and come back to the camp.

Male Karenni refugee, refugee camp in Thailand

However, most will not be able to reclaim their property uncontested. Among those who will need some dispute settlement mechanism to reclaim their property include those for whom loss of property is directly related to the cause of their displacement. In these cases, the property was either intentionally destroyed, often burned, by the Burma/Myanmar military; confiscated by the military or military-linked businesses; or destroyed by dams

and other infrastructure projects. Others' land has since been occupied by secondary occupants or confiscated by the military or private companies during the period of their displacement. Displaced people are even more vulnerable to land confiscation since they are not there to oppose the confiscation. Land laws such as the Vacant, Fallow and Virgin Land Law require that local administration officials visit the land to check whether it is vacant or fallow, and



Mai Yu Lay (new) IDP Camp in northern Shan State [Credit: Progressive Voice]

provide a notice period in which people can oppose confiscation of land deemed to be vacant or fallow. Displaced people are at a disadvantage in both parts of this process since they are not on or near their land. Interviewees from villages in Karen State reported that their land had already been

destroyed by a dam, while reports from Kachin State suggest that many IDPs' land has been taken by Chinese companies for use such as banana plantations.¹⁵² These are just some examples of confiscation that displaced people may be vulnerable to.

“

It is not easy to get our lands back. Some people in Burma and the government have stolen our lands when we were not there and discriminate against us when we are gone. My land in the village has already been flooded by a dam.

Participant in a focus group discussion, refugee camp in Thailand

152 Moe Myint, Ex-Ministers, Armed Groups Operate Farms in Kachin's Conflict Areas, *The Irrawaddy*, 3 October, 2017. Available at <https://www.irrawaddy.com/features/ex-ministers-armed-groups-operate-farms-kachins-conflict-areas.html>.

“

The person who is displaced and [the one] who is not has the same issue with land, because land issues are not only for the IDPs. It is also affecting the non-IDP but the thing is those who are not displaced, they can still see [their land], they have a bit more space to deal with this issue, for IDPs they know someone is working there, on their land, so the level of difficulty will be more on the IDP shoulder.

Male Kachin representative of a civil society organization

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.

“

Even if the refugees want their land back, it is impossible because some company already took over those places through the government agreement.

Female Karenni refugee, refugee camp in Thailand

“

In the past, I had my own land, but now other villagers took this land and work on it.

Male Karen refugee, refugee camp in Thailand

“

We want to get our land back. But they constructed buildings on our land so it's impossible to get our land back.

Male Tavoyan IDP, mixed village in Tanintharyi Region

“

When they left they leave their land behind. Some of their land went to companies, some went to Burmese military, and some of the land the other villagers used. A few cases happened like the land confiscated by the Burmese military is hard to get back. The land used by companies is very hard to get back. The land used by villagers, a few have gotten back.

Male representative of a Karen civil society organization

Burma/Myanmar Land Law and Displacement

The 2012 Vacant, Fallow and Virgin Land Law contributed to land and livelihood insecurity in rural communities, including by allowing the government to take control of “vacant” or “fallow” land that had previously been used by communities as grazing land or to sustainably harvest and sell forest products. Land left by displaced people is particularly vulnerable to being declared vacant or fallow.¹⁵³

“As far as I know in Ye township there are more than 100 villagers who are IDPs. But they are not in the EAO-controlled area but in the government-controlled area. They also have a lot of challenges and limitations, by the government, especially the new law, the 2012 Land Law. They cannot use the forest area. They cannot use wild, vacant or fallow land. They cannot use the community land to survive for their self, this is a huge challenge. This land is now slowly becoming owned by investors and companies.” – **Male representative of a Mon civil society organization**

In addition, some communities had community land that could be allocated for use for landless community members. As mentioned above, many IDPs have come to rely on harvesting forest products and working on vacant land for their livelihoods activities which the 2012 Land Law and Vacant, Fallow and Virgin Lands Law made illegal in government-controlled areas. Under the amendments to the Vacant, Fallow and Virgin Lands Law passed in September 2018,

153 Displacement Solutions and Norwegian Refugee Council, “Restitution in Myanmar,” March 2017. Available at <http://displacementsolutions.org/wp-content/uploads/2017/03/Restitution-in-Myanmar.pdf>. Private Conversations with Author, Yangon, January 2018.

unauthorized use of land that the government declares vacant will lead to fines of up to 500,000 kyat (US\$315) and/or up to two years of imprisonment.¹⁵⁴

“If you talk to some Karenni villagers, they say in our area if you have no land you can apply to the village committee who oversees it and apply to use their land, so there, things are possible. But their systems are under threat. If the [customary systems] are functioning they can deal with [landlessness], but many systems are not. ... We have seen a lot of systems that can work, that can give these places to the landless or land-poor people.”– **Male representative of an INGO**

Customary land systems in ethnic areas are often much more effective than Burma/Myanmar land laws in protecting land rights, providing for sustainable livelihoods, and ensuring access to land. Recognizing those systems and developing a federal land policy will be essential to sustainable return that allows displaced people to become self-sufficient and reintegrate into Burma/Myanmar. Returning under current land laws that does not recognize the customary land laws in addition to preservation of culture and social fabric of ethnic communities would leave returnees vulnerable to more cycles of displacement and poverty.

In order to reclaim land under the current legal system, displaced people need some form of documentation under the Burma/Myanmar government system, which most do not have. Reclaiming land through the government system would also require registering the land under the 2012 Farmland Law, which grants only usage rights and would essentially relinquish customary law rights by “opting in” to the government system. Those who return to find their land and property unoccupied, or are able to reoccupy it, will also need some form of recognition of ownership in order to protect

against future confiscation, particularly given the widespread land confiscation in ethnic nationality regions. Many displaced people lost all legal documents during displacement. Many others never had legal documents to begin with, and depended on customary ownership, which the Burma/Myanmar government does not reliably recognize and enforce, particularly when it conflicts with state or private sector interests. Legal recognition of customary land rights could provide much-needed security of tenure more effectively than registration under current Burma/Myanmar land laws.

“

For everyone here, we want housing and lands. We want the land to be legalized [our ownership rights to be recognized], so we don't have to worry for the future.

**Ta'ang IDP participant in a focus group discussion,
IDP camp in northern Shan State**

154 Republic of the Union of Myanmar, “Law Amending the Vacant, Fallow and Virgin Lands Management Law (2018),” Pyidaungsu Hluttaw Law No. (24), 11 September, 2018. Available in unofficial translation at <http://www.burmalibrary.org/docs25/2018-09-11-VFV-amendment-en.pdf?fbclid=IwAR28pI4bA1HRdAVr-02RMzOf2ineF1cO86IpfJJhbZxk4hPNVwt10feNEMvE>.

“

We still worry about the land possession because there are many armed groups around so we don't know whom to negotiate with. We don't know if the land is legal for us.

Karenni male refugee, refugee camp in Thailand

While customary law varies throughout Burma/Myanmar, some organizations that work on land rights have expressed concern about the recognition of women's ability to inherit land under at least some forms of customary law. This is a major concern for IDP and refugee return, as many displaced people live in female-headed households. The Pinheiro Principles, and the Convention on the Elimination of All Forms of Discrimination against

Women, stress the importance of ensuring women's equal access to land.¹⁵⁵ In some EAO-administered territories, EAO land policy recognizes customary law with some additional protections for women.¹⁵⁶ Including similar provisions in a national law to recognize customary land rights for both men and women could guard against any discriminatory aspects of customary law that may exist.

“

In my community, many people titled their lands in their father or husband's name. It is the same in my family, the land is in my father's name.

Female representative of a Karen civil society organization

Furthermore, simply providing individual land title will not necessarily ensure sustainable return and livelihoods. In customary forms of land governance, land in a village is not simply divided into individual plots of land which the owner can then use or sell as he wishes, but includes designation of land use and community land, and in many cases restrictions on selling land to people outside the village. Already in Burma/Myanmar, providing individual title has in

some cases caused intercommunal conflict, when individuals claim title to community land, and can increase the vulnerability of impoverished people to selling their land at predatory prices. Recent Burma/Myanmar laws, underpinned by a neoliberal marketization approach, threaten these systems by commodifying land and putting the traditional livelihoods and governance systems in ethnic nationality regions at risk.

155 UN Commission on Human Rights, "Principles on Housing and Property Restitution for Refugees and Displaced Persons," Principle 4, E/CN.4/Sub.2/2005/1, 28 June, 2005. Available at <http://www.unhcr.org/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>. Convention on the Elimination of Discrimination Against Women, 1979. Available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

156 KNU Land Policy, Art. 1.2.

“

Once you register your land, literally you can have a land entitlement, on the other hand it will create a lot of issues among the community because how can you know your land if you don't properly consult first with the community? If you do registration process as a standalone that will cause a lot of problems. Another thing is once you start doing the process there is almost 100% chance you will lose your land. Sooner or later you will sell your land. What we see is documentation now is a bit more kind of becoming a commodity, like now a lot of banana plantation investors are approaching [the IDPs], if you have this document, initially they may say you can lease the land for 4 or 5 years, we can already see this kind of trend in other countries, it will be very easy for them to lose their land.

Male Kachin representative of a civil society organization

Despite all of the challenges to reclaiming old land, most interviewees preferred to return to their original places if possible. They mentioned that they want to return because it is their home and their ancestors' home, because they already have property there, and because they are familiar and comfortable with that area. Many expressed confidence that they could make livelihoods

in their home village because of the good quality of soil, their familiarity with the soil and land conditions, and other traditional and local knowledge and community ties. Land in Burma/Myanmar also has a strong sociocultural value, tied not only to an individual's land but the surrounding areas, including sites of cultural and religious importance and belonging in a community.

“

If we go back to our old village together, I also want to go back because I am not happy living in another place. Also, I want to plant teakwood and hardwood there. Also cucumber, jackfruit and mango for food. I think there is good soil there for growing.

Male Karenni IDP, mixed village in Karenni State

“

If I return, there will be lands for me to do farming. The soil is very fertile there that we don't need to use chemical fertilizer and there are enough livelihood opportunities available for us.

Male Pa-Oh IDP, mixed village in Shan State



We have plenty of land. We do shifting cultivation, tea plantation, besides every family possesses land so everyone can do hillside cultivation.

Male Ta'ang IDP, IDP camp in northern Shan State

An effective system of enforcing HLP rights will be crucial to a future return process, as will changes to the law governing land, recognizing customary land rights and the implementation of a federal system of governance of land and natural resources. Displaced people's rights to the property they held before displacement must be respected and enforced, primarily through restitution of the original land but also through recognition of the rights of ethnic nationalities to own, control and manage land and other natural resources in their respective regions. In the case that restitution

is not possible, compensation can be an alternative. Compensation must include not only the value of the land at present but the value of crops, livestock, housing and other property, particularly in the case of intentional destruction or confiscation. Furthermore, restitution should also take into account the deterioration in the value of the land since it was destroyed or confiscated, in terms of crops and productivity, and include small grants to enable returnees to make investments to restore the land to its original condition.

Access to Land and Livelihoods

While all property-owning returnees will have a hard time accessing their previously-owned property, landless returnees, whether because they did not own land or because they are effectively unable to reclaim it, are more vulnerable to poverty and abuse on return and need increased assistance to establish sustainable livelihoods. This will all be done in a context of increasing land vulnerability for non-displaced people,

making it more difficult for the displaced to get land and secure tenure. Furthermore, traditional systems that were able to provide for landless villagers through community land and support systems are under threat from increasing outside investment in ethnic nationality regions as well as neoliberal land policies that favor large-scale agribusiness, weakening communities' ability to self-govern and ensure sustainable livelihoods.



For people who have their own farms, they could work on their own farms, but for those who don't, what sort of preparation will be made for them? Only those who have their family and own lands back in their home town can return. But those who don't have family and have no lands cannot go back.

Male Karenni IDP, informal IDP site in Shan State

“

I see that the villagers themselves do not have many economic opportunities. If we return there, it will be harmful for us and them.

Male Karen refugee, refugee camp in Thailand

Not all returnees will want to depend on agriculture as a livelihood. Some interviewees mentioned livelihood training programs they had attended during displacement that they preferred to try on return. Others have physical disabilities that would prevent them from working manual labor, including loss of limbs from landmines and other disabilities caused by torture or conflict-related violence.¹⁵⁷ Furthermore, many young people

had career ambitions beyond agriculture, often wanting to work in health or education in order to contribute to their communities. Therefore, it will be important not to assume that all returnees can/will farm, and to consider alternative livelihoods in return sites, including infrastructure connecting return sites to markets for agricultural and other products, as well as access to other jobs and educational opportunities.

“

I think if we have participated in business and agricultural workshop/training provided in the camp as capacity-building of the refugees, we will have more luck with livelihood opportunities if we return. If we didn't ... I think we will not understand any principles of business and agriculture to start working.”

Male Karenni refugee, refugee camp in Thailand

Health and Education

Education and health have been used as tools of state-building in Burma/Myanmar: as ways for the Burma/Myanmar government

to increase its control over ethnic areas, and as sources of legitimacy for EAOs.¹⁵⁸ National language policy prohibiting the teaching of

157 For more on livelihoods challenges and opportunities facing displaced people with disabilities, see: Handicap International, “Research into Refugees’ Employment and Income Generation Opportunities in Thailand and Myanmar,” January 2015. Available at http://themimu.info/sites/themimu.info/files/documents/Report_Refugees_Employment_and_Income_Generation_Opportunities_in_Thailand_and_Myanmar_HI_2014.pdf.

158 Kim Jolliffe, “Ethnic Conflict and Social Services in Myanmar’s Contested Regions,” The Asia Foundation, June 2014. Available at <https://asiafoundation.org/resources/pdfs/MMEthnicConflictandSocialServices.pdf>. Pon Nya Mon, “Education Reform and National Reconciliation in Burma,” Salween Institute, October 2014. Available at https://www.salweeninstitute.org/uploads/1/2/6/3/12630752/ed_reform_and_nation-

ethnic languages and the use of ethnic languages in newspapers, radio and other media was part of a coercive state-building process, and was linked to the “four cuts” policy by preventing spread of information.¹⁵⁹ Ethnic language education, development of a federal health and education system, and related issues are key in many ethnic demands for federalism and self-governance.¹⁶⁰ In the interim before a federal education and health system is developed and implemented, existing structures including ethnic health and education services need to be supported, as it is these structures that the communities trust and that have demonstrated the ability to deliver quality health and education under difficult circumstances.

Government education in Burma/Myanmar is not only of poor quality, but teaches only Burman history, marginalizes the histories of ethnic and religious minorities, and perpetuates negative stereotypes.¹⁶¹ Furthermore, it is taught only in Burmese, a language not widely spoken in many rural ethnic nationality areas.¹⁶² Many teachers in government schools in ethnic areas are

sent from central Myanmar and do not speak the local language, making even basic communication with their students difficult.

Healthcare is also notoriously underfunded even in central Burma/Myanmar, where Burmans are the majority, and there are few government clinics in conflict-affected areas. Private clinics charge fees that usually make them inaccessible for all but the wealthiest, and most clinics are staffed only by Burman staff who do not speak ethnic languages, causing language barriers and discrimination in care.¹⁶³ While ethnic service providers, including those linked to EAOs and those run by community-based organizations, have made great strides toward filling the gap and providing quality education and health services, they have not been able to continually provide all needed care for conflict-affected areas, in large part due to restrictions by the Burma/Myanmar government on their operations and funding.¹⁶⁴

al_reconciliation_1.pdf. Bill Davis and Kim Jolliffe, “Achieving Health Equity in Contested Areas of Southeast Myanmar,” June 2016, pp. 11-13. Available at https://asiafoundation.org/wp-content/uploads/2016/07/Achieving-health-equity-in-contested-corner-of-southeast-myanmar_ENG.pdf.

159 Lian H. Sakhong, “The Dynamics of Sixty Years of Ethnic Armed Conflict in Burma,” Burma Centre for Ethnic Studies, January 2012. Available at [http://www.burmalibrary.org/docs13/BCES-AP-01-dynamics\(en\).pdf](http://www.burmalibrary.org/docs13/BCES-AP-01-dynamics(en).pdf).

160 Karen Information Center, “Karen Communities Hold Ethnic Language Education Summit,” 12 October, 2017. Available at <https://www.bnionline.net/en/news/karen-state/item/3533-karen-committes-hold-ethnic-language-education-summit.html>. HURFOM, “MNEC to Hold Conference to Draft National Ethnic Language Policy,” 14 February, 2018. Available at <http://monnews.org/2018/02/14/mnec-to-hold-conference-to-draft-national-ethnic-language-education-policy/>.

161 Thein Lwin, “The Educational Cost of Army Rule in Burma,” September 2000. Available at http://www.ibiblio.org/obl/docs/Educational_Cost_of_Army_Rule.htm.

162 Thein Lwin, “The Educational Cost of Army Rule in Burma,” September 2000. Available at http://www.ibiblio.org/obl/docs/Educational_Cost_of_Army_Rule.htm.

163 Jared Downing, “Healing Behind Military Lines in Kayin State,” 22 November, 2017. Available at <https://frontiermyanmar.net/en/healing-behind-military-lines-in-kayin-state>.

164 Bill Davis and Kim Jolliffe, “Achieving Health Equity in Contested Areas of Southeast Myanmar,” June 2016, pp. 11-13. Available at https://asiafoundation.org/wp-content/uploads/2016/07/Achieving-health-equity-in-contested-corner-of-southeast-myanmar_ENG.pdf.

“

In my village, there is no health service. If people are sick, we have to go to call a nurse from another village. Also, there is no school in my village.

Male Karen IDP, IDP camp in Karen State

“

Some families who have money, they send their children to town and city for education but a lot of them are poor. They cannot send their children to the town or city so these kids, they couldn't get any education.

Female Shan refugee, refugee camp in Thailand

Education during Displacement

During displacement, access to education depended on the location of the displacement site, its access to international aid and/or local schools, and/or the willingness of host communities to allow students to attend school. A wide range of educational opportunities were reported. Children attended one or more of the following educational programs, all of which had wide-ranging levels of organization, funding, staffing and curriculum development: schools run by EAOs, schools run by international or local NGOs, schools run by community-based and faith-based organizations, Thai public schools, and monastery schools in larger cities in Burma/Myanmar. Some children did not attend school at all, either because their families could not afford school fees, because they moved around too much, because their labor was needed at home, or because they lived in remote areas with no education options. Girls were often

kept out of school because families thought it safer to have them at home given high levels of insecurity, while boys could be sent farther away to continue their studies. Many of the above types of schooling were at times ad hoc and lacked trained or skilled teachers, relying on whatever subject volunteers in the community could teach, and in some cases occasional foreign volunteers who stayed for short periods. Refugee children generally had the best access to education, given the access to community-organized and externally-supported education systems, though IDPs sheltering in EAO-controlled area may have been able to attend EAO-organized or community-organized schools that they preferred to the government system. Education was often a major priority for families and communities during displacement, and influenced where they fled to and how they used limited resources.

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While we are here we took what we are offered for our education, but our education is not recognized in Burma. We don't have much choice and opportunity when it comes to education and studies in the camp, but we tried everything that is being offered in the camp with the permission from this country [Thailand].

Participant in a focus group discussion, refugee camp in Thailand

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Nowadays, they learn with every teacher they meet. If that year, the student meets with a Mon teacher they have to study Mon and if they meet with a Burmese teacher, they have to study Burmese.

Male Mon IDP, informal IDP site in Mon State

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In the jungle, they study in the forest. Even if there is no school, they study in the jungle. They want this generation to be educated. Even if there is no teacher, they want to be educated. They use rocks or study under trees, they will find a way to teach their students.

Male representative of a Karen civil society organization

For internally-displaced people, even when there were government-run schools nearby, there were barriers for displaced children to attend. In Burma/Myanmar, official permission from the previous school is required for a student to change schools, and most IDPs could not return to their home

villages and obtain such permission. When local schools did allow students to attend, children from the IDP camps were often split up to attend different schools to avoid overcrowding, resulting in long, dangerous trips to and from school.

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For education in the Ta'ang area, they don't have any registration when people flee, no official permission to leave one school and join another so they can't join a school in the local area. In Burma there is a process which means that you have to have permission to transfer schools, so who will take care of that?

Female Ta'ang representative of a civil society organization

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Generally children can go to school but there are a lot of issues. One thing is that theoretically you don't need to give any school fee to the school, either here or in government [-controlled territory], but when we look at Burma/Myanmar education system, school education is very much linked to corrupt system. School teachers run extra tuition [classes outside of school hours], that means in school they did not teach properly, most of the IDP children cannot pay money for the tuition fee, what happens as a consequence is they cannot follow the exercise.

Male Kachin representative of a civil society organization

One impact of shifting, informal educational opportunities is that some children did not comprehensively learn specific subjects, rather gaining a piecemeal knowledge of subjects that were available. Children in refugee and IDP camps were also taught in a variety of languages, including the most prevalent local minority language (which

may or may not have been their mother tongue), Thai in Thai schools along the border, sometimes English in refugee camps, but rarely Burmese. The gaps in education and language challenges will pose a significant challenge in integrating returnee children into existing or new schools in Burma/Myanmar.¹⁶⁵

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My daughter started education here in Thailand, now she speaks and writes in Thai, not in Burmese. If we return, she will need to restart again and it's impossible.

“

Female Shan refugee, refugee camp in Thailand

The Mon national schools in their villages can teach only up to Grade 8. ... Most of the children had finished their education at Grade 8. The children couldn't speak and write Burmese very well.

Male representative of a Mon civil society organization

165 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.

Healthcare during Displacement

Most interviewees also reported that they did not have access to good healthcare in their original villages. Before and leading up to displacement, many people developed health problems, including disabilities from injuries sustained during forced labor, landmines and conflict. During displacement, the poor conditions of the displacement sites, lack of access to healthcare and low

income meant that many people developed preventable health conditions, and camps reported outbreaks of malaria and other diseases. While some clinics were established at displacement sites, they struggled to access appropriate medicine and health workers. As in most aspects of displacement, socioeconomic status impacted the quality of healthcare available.

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Some rich people sometimes go to get treatment in the town hospital, but poor people usually buy medicines from a snack shop and cure themselves. We also go to the KNU clinic nearby here but sometimes they have enough medicine and sometimes they do not have.

Male Karen IDP, mixed village in Tanintharyi Region

Restrictions on delivery of humanitarian aid enforced by the Burma/Myanmar military, common in Kachin and northern Shan States, also impact healthcare coverage in displacement sites. IDP camps outside government-controlled territory have very little access to healthcare. In contrast, refugee camps had community-led health systems and access to outside technical and financial support for clinics, as well as limited

access to Thai hospitals for serious cases. Community-based organizations such as Mae Tao Clinic and Backpack Health Worker Team also made significant contributions to the health of displaced populations in Thailand and along the Thailand-Burma/Myanmar border. Even in these contexts, however, resources for health are scarce and decreasing with funding cuts.

Maternal Health and Childbirth during Displacement

Women who are pregnant and give birth during displacement can have serious health risks for themselves and their children due to lack of access to nutritious food and health care, as well as the impact of fleeing and of having to face the situation of running and hiding or work in manual labor during their pregnancies. Some pregnant women and women with newborn babies were taken to do forced labor, risking the health of mother and child.

“Burmese soldiers forced us to work for them and one person from each family had to go and work as a voluntary worker. My mother had to leave her newborn baby at home and go to work for them.”– **Female Mon IDP, informal IDP site in Mon State**

When displacement comes suddenly, like in the cases of attacks on civilian villages and orders to relocate, it is likely that some of the women may be pregnant when they are displaced. Some women interviewed for this research described fleeing from armed conflict, the burning of their villages, and other abuses during their pregnancy. Some even miscarried due to hardship during the process of displacement.

"My first child was born in the worst time for the family as we were fleeing from one place to another to escape from war. Since we could not feed ourselves properly during that time, the baby was born with [health problems]."**– Female Kachin IDP, IDP camp in Kachin State**

Once they reach the displacement site, pregnant women still lack access to adequate medical care, and to the nutritious food they need to ensure the health of their baby. Many women described their attempts to secure adequate food, and the stress and depression they suffered when they knew they were not eating enough to provide for their baby's needs.

"When I was pregnant, I couldn't afford a proper nutritious diet or other supplements that other pregnant women took. I feel sad whenever I think about those times."**– Female Kachin IDP, IDP camp in Kachin State**

However, in some displacement sites, aid is prioritized for pregnant women, young children and elders, and community-based women's organizations try to provide adequate health services. These organizations also face challenges that many women lack education on maternal and newborn health, and family planning, and may also be hesitant to approach them for help or to give birth outside their homes.

"I could take good care of the two younger ones for they were born safely in the camp. Moreover, I got trained for maternal education before giving birth. That made it easier for me to look after the babies."**– Female Kachin IDP, IDP camp in Kachin State**

Due to the insufficient rations at many IDP sites, many women had to work while pregnant – often in strenuous, manual labor jobs, including in some instances exposure to harmful chemicals. Some women reported having miscarried due to working on plantations and other manual labor jobs.

"I had a miscarriage once in 2014. I think it was because I went to work in a banana plantation when I was just [recently] pregnant. ... I was in the banana plantation to work as a daily wage worker for a week. When I came back, I had severe pain all over my body, so my mother-in-law advised me to receive a massage. Then I went to the clinic and checked the situation and realized the baby is already dead inside [my body]."**– Female Kachin IDP, IDP camp in Kachin State**

Recognition of Education and Healthcare Qualifications on Return

Some of the best educational opportunities during displacement were more organized and standardized non-government schools, including primary, secondary and post-10 schools on the Thailand-Burma/Myanmar border that developed organized curriculum and trained teachers, and some EAO-run schools that also developed standard curriculum and hired trained teachers.¹⁶⁶ 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.¹⁶⁷ Teachers from these schools also cannot get jobs in government schools because their qualifications are not recognized. 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.



We want them to recognize our education because if we are going back, many students from here are going to continue their education there and also some teachers will want to continue their jobs. In order to continue those things, the government should recognize our education system. If not, it is going to be very difficult for us. In the future, I want our [ethnic] education system or curriculum to meet with international standards and I also want the international community to recognize our [ethnic] educational curriculum.

Female Karenni refugee, refugee camp in Thailand

During displacement, many trained as health workers in a variety of programs and have served their communities for many years. As

part of a pilot program between the Burma/Myanmar Ministry of Health and the Karen Department of Health and Welfare, part of

166 Su-Ann Oh, "Education in Refugee Camps in Thailand: Policy, Practice and Paucity," Background Paper: Education For All Global Monitoring Report 2011. Available at <http://unesdoc.unesco.org/images/0019/001907/190709e.pdf>. Kim Jolliffe and Emily Speers Mears, "Strength in Diversity: Towards Universal Education in Burma/Myanmar's Ethnic Areas," The Asia Foundation, October 2016. Available at <https://asiafoundation.org/wp-content/uploads/2016/10/Strength-in-Diversity-Toward-Universal-Education-Burma/Myanmar-Ethnic-Area.pdf>.

167 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.

the KNU,¹⁶⁸ some health workers have been recognized, but there are many more whose

qualifications would not allow them to get jobs in healthcare on return.¹⁶⁹

Impact of Education and Health Needs on Plans for the Future

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.

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If I stay here, my children will be educated. ... If I go back, the education access isn’t as easy as here and neither is healthcare.

Female Karen refugee, refugee camp in Thailand

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If it’s possible, I want to build a house and live near town, where hospital, clinics and school are easy to access, rather than going back to the village. I have to prioritize my children’s education doing whatever it takes so that my children’s health and education seem promising.

Female Pa-Oh IDP, mixed village in southern Shan State

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I want all my children to go to [EAO] school. If they go to Burmese school, they will not improve.

Male Karen IDP, IDP camp in Karen State

168 In August 2017, 31 ethnic health workers trained in a joint training by the Karen Department of Health and Welfare and the Burma/Myanmar Ministry of Health received certificates allowing them to practice in Burma/Myanmar. Karen News, “Ethnic Health Workers Complete Approved Government and Karen Health Training,” 11 August, 2017, <http://karennews.org/2017/08/ethnic-health-workers-complete-approved-government-and-karen-health-training/>.

169 Karen News, “Karen Health Workers Push for Recognition,” 8 October, 2013. Available at <http://karennews.org/2013/10/karen-health-workers-push-for-recognition/>.

During the ceasefire period in some parts of the country, Burma/Myanmar government services in health and education have expanded farther into conflict-affected territory. This expansion, at times supported by international donors, is often seen by local communities as a political tool used by the Burma/Myanmar government to expand its control over ethnic nationality areas and to undermine the service-provision of ethnic community-based organizations and ethnic service providers associated with EAOs.¹⁷⁰ In the context of on-going negotiations about federalism, in which local control over education figures prominently, expanding government services is not neutral, but can damage functioning local systems and decrease trust in the peace process.¹⁷¹ In addition, local CBOs have reported that these government-established clinics are simply empty buildings that do not have medical staff or supplies. Instead, they are used by the government as an excuse to prohibit ethnic service providers from operating in the area.¹⁷² These tactics not only negatively impact the health of people in conflict-affected areas but contribute to mistrust and suspicion of the government's intentions and commitment to peace, equality and federalism.

Generally, the health and education systems in Burma/Myanmar are far less developed

than other countries in the region, though initiatives by local organizations and international NGOs have made strides toward improving these sectors in recent years. Whenever displaced people return, they will face similar challenges in accessing health and education as other people in conflict-affected areas. Displaced people and others in conflict areas also have specific health needs caused by conflict, including disability and amputations due to landmines and needs for psychosocial care, that will must be addressed. However, the long-term impacts of displacement, including inadequate and/or unrecognized schooling and health problems developed in displacement, present additional challenges. These challenges should be taken into account when developing the health and education systems and programs in conflict-affected areas.

One way to improve returnees' access to health and education, and that of others in conflict-affected areas, is to support the ethnic service providers and community organizations that have developed to provide education and health services to displaced people, and reform the health and education systems inside the country to be based on a federal democratic system.

170 The Asia Foundation, "Contested Areas of Myanmar: Subnational Conflict, Aid and Development," 2017, pp. 7-72. Available at <https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmar-Report.pdf>.

171 The Asia Foundation, "Contested Areas of Myanmar: Subnational Conflict, Aid and Development," 2017, pp. 57-72. Available at <https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmar-Report.pdf>.

172 According to ethnic service providers, they are generally tolerated by the Burma/Myanmar government when they operate in remote areas not accessible to government services. When the government builds a clinic in a certain area, it can argue that the area is covered by government services and thus ethnic service providers are not needed and thus are not allowed to operate there.

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.¹⁷³ 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. If international assistance will not be able to provide more support than that, other stakeholders will need to determine how the gap between return and self-sufficiency can be filled. In fact, the prime responsibility will be of the government to ensure that returnees have all necessary resources to establish themselves sustainably.

Given the length of displacement, even if returnees regain their rights to land, it is likely that any land they recover will have decreased in quality and fertility due to one or more of the following or other factors: burning by the Burma/Myanmar military pursuant to the Four Cuts policy and/or to forcibly displace the population; confiscation and subsequent use by the military or private companies for non-agricultural purposes, or monoculture which is likely to have leached the soil of its nutrients; and lying fallow for many years. Each of these conditions will have most likely have decreased the nutritional value of the soil, contributed to the destruction of crucial features such as irrigation systems, and caused other forms of damage that will take time, various inputs, labor and knowledge to reverse.

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Normally what happens once [someone] plants a banana plantation in your land, it destroys almost everything because current banana plantations use huge amounts of chemicals, either fertiliser and also pesticides, it's quite polluted.

Kachin Male representative of a civil society organization [referring to banana plantations that have been established on IDP land in Kachin State]

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People were displaced for a long time so their farmland has been abandoned for ages, like a decade. So those who weren't able to return to their original village, they still want to recover that land to work on it again, so they need water canals, so they can divert water from the river to their farm, clearing the bushes from their land, like that. ... What we have seen is still after one or two years, maybe a bit over 50% of the farmland will be [able to be] worked on. That is, if they get some support from us in making this better, or [have a] process for clearing out the trees, because in some cases the trees are as big as tamarind trees.

Male representative of a Karen civil society organization

173 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.

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. While efforts are needed in general in Burma/Myanmar to improve the situation of the rural and urban landless poor, return policies should be designed to avoid as much as possible the risk that returnees add to the numbers of that vulnerable population.¹⁷⁴ Furthermore, productive land is not sufficient to ensure sustainable farm livelihoods – farmers throughout Burma/Myanmar struggle with access to markets, fair pricing, and climate-resilience, and even the best plans to support returnees will likely put them in the same, vulnerable position as other farmers unless accompanied with broad policies to support small farmers.¹⁷⁵

Flexible arrangements could be established to allow for what in many cases is already happening – for refugees and IDPs to spend part of the year working on their farms in order to rebuild livelihoods while maintaining partial support in a camp setting. In the case of non-agricultural livelihoods, aid may not be needed for as long. However, these cases must be carefully assessed and authorities supporting return must be sure that jobs are available that fit the skills of the returnees, including providing assistance until the main earner in the household secures employment, while also providing job training.

Vulnerable families such as female-headed households, the disabled and elderly living alone will need specifically-tailored plans of assistance and livelihoods, including social support and access to appropriate healthcare and education. While many women, including female heads of household, practice agriculture in Burma/Myanmar, their rights as landowners and their access to markets are even more restricted than men due to social stigma and assumptions about women's roles.¹⁷⁶

Lay Kay Kaw New Village

In 2015, the Karen National Union (KNU), the Nippon Foundation and the Myanmar government started a pilot 'model town' project for IDPs in Kawka-reik township near the Thai border. The settlement, called Lay Kay Kaw, houses approximately 1,700 households. Residents interviewed for this research expressed mixed opinions about living there. At the time the research was conducted, major challenges included a lack of jobs and land to farm, as well as a shortage of teachers, no electricity and few health services. Some residents re-

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- 174 Transnational Institute, "Re-Asserting Control: Voluntary Return, Restitution and the Right to Land for IDPs and Refugees in Myanmar," Myanmar Policy Briefing No. 20, May 2017. Available at https://www.tni.org/files/publication-downloads/voluntary_return_restitution_and_the_right_to_land_for_idps_and_refugees_in_myanmar.pdf.
- 175 Transnational Institute, "Re-Asserting Control: Voluntary Return, Restitution and the Right to Land for IDPs and Refugees in Myanmar," Myanmar Policy Briefing No. 20, May 2017. Available at https://www.tni.org/files/publication-downloads/voluntary_return_restitution_and_the_right_to_land_for_idps_and_refugees_in_myanmar.pdf.
- 176 Transnational Institute, "Linking Women and Land in Myanmar," February 2015. Available at <https://www.tni.org/en/briefing/linking-women-and-land-myanmar>.

ported having sent family members back to Thailand as migrant laborers given the lack of local livelihood opportunities, and one interviewee mentioned that she obtains medicine for her husband's medical condition from a relative living in a refugee camp.

"The children are able to go to school. They also have good opportunity to study. If they pass grade 10 here they can go to study in university. But, we don't have enough teachers. We also have problem for teacher's salary. Sometimes, we participate together with leaders and parents. We just collect the money to pay teachers salary." – **Male Karen resident of Lay Kay Kaw new village**

"It has been a while that we don't have jobs, so my husband and son went back to the other side [Thailand] and work there. For me, I live here as my health is not good." – **Female Burman resident of Lay Kay Kaw new village**

"For my husband's medical condition, we have to manage it by ourselves. The clinic just started. I have to order the medicine from the camp through my sister for free. With the medicine and environment here, his health has improved as we can get fresh air here." – **Female Karen resident of Lay Kay Kaw new village**

Many people who went to Lay Kay Kaw reported that they went because they had no other option – they did not have family or land in their original village so they did not want to return there, and they could not stay in the refugee or IDP camp.

"I don't have any ID card to live in Thailand. Also if we return in my own village, I don't have a place and land to live. My parents died when I was young. Therefore, finally I decided myself that to come to live here." – **Female Karen resident of Lay Kay Kaw new village**

"To be honest, I can't afford to live in my village, and I don't have anything. Living and working in Thailand is also illegal, and we can't live legally there. And I heard that there are housing and land provided here for the people, and it is also named as a city that will channel peace. I also heard that there are foreign support for the people here. People [NGOs, INGOs, ILO, and Lawyers group] told us like that, so we came here with full of hope to live here." – **Female Burman resident of Lay Kay Kaw new village**

Interviewees who had settled in Lay Kay Kaw and those who had heard of it reported confusion about who the settlement is intended for – families of KNU soldiers, IDPs, refugees, local residents or some combination of the above – as well as which authority (KNU or government) will govern the town in the future, and whether the residents own the houses or are simply allowed to live there at present. Most people arrived after having heard about the settlement by word of mouth, though some were able to visit before moving to check the

conditions.

“Before I come back to live in here, I also try to find information about Lay Kay Kaw by myself. After I know the information about Lay Kay Kaw, I know that this place is a good place for me to participate with the leaders here. So finally I come to live in here.” – **Male Karen resident of Lay Kay Kaw new village**

Despite the challenges, most interviewees were happy to have their own houses in their own country, governed by the KNU. However, they were worried that conflict might break out nearby in the future, or that the KNU would not control the town in the future.

“Before we came here, I heard that they only provide land, not housing yet. So, we requested a piece of land for us and give us some time to build a house. We planned to build a house by ourselves by getting bamboo and wood from the forest here. We didn’t know that the house will be provided for us. We were very happy when we got a house since we didn’t know in advance. And they arrange everything for us and drop us in one of the house here.” – **Female Burman resident of Lay Kay Kaw new village**

“After living there for a few years, I decided to move here now. My husband got diabetes there, and he will die if he continues to live there[in the refugee camp]. I heard that we will get a house, so we came with full of happiness. After we arrive here, his health improves a lot. [crying] And, my son can go to school, so I am happy.” – **Female resident of Lay Kay Kaw new village**

Other similar projects are reportedly being planned and currently being built, though similar confusion applies in terms of purpose, who is allowed to live there, and administrative status.

Legal and Administrative Obstacles

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. The current legal climate in Burma/Myanmar includes archaic laws, often dating from colonial times, which are still on the books and used selectively. This creates an environment of uncertainty, and it is difficult for displaced people to make decisions about return if they are uncertain about their legal status. If they do not know the legal risks, including

the likelihood that laws will be used against them, they may feel unsafe to risk returning.

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, 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. Furthermore,

children born during displacement do not have official birth certificates, and many birth certificates issued in displacement sites are not recognized by the Myanmar government.

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Well, everyone had [citizenship cards] but most of them were left behind during armed clashes. We left the scene immediately as soon as the incident took place, we couldn't care less about anything other than our lives.

Male Ta'ang IDP, IDP camp in northern Shan State

Others chose not to apply for government identification, due to lack of trust in the government and a desire to avoid the intrusive background checks required. In order to receive a government ID, an applicant must pass a background check that examines, among other things, whether the applicant or his/her family members have any connection to an EAO. If there is any family connection to a soldier in an EAO, the ID will not be granted. Some people living in remote areas simply never got a government ID card because they did not believe it was necessary for their lives, and/or because they did not want to participate in government-led enumeration, which has in the past been used to recruit forced labor and porters. If displaced people want to obtain identification now, it is necessary to prove a 6-month stay inside the country, and to provide household registration documents, which many displaced people do not have. While the government has facilitated granting of ID cards to returnees in the past, it has not made any broad

commitments to provide the same service to all future returnees. The issue of ID cards is even more difficult for Muslims, who are often not accepted as citizens.¹⁷⁷ In all cases, newly-issued ID cards must recognize people in their own self-identified ethnicity.

The act of fleeing across the border may also have triggered legal consequences. During military rule, persons who left Burma/Myanmar illegally and attempted to return could be arrested under the Immigration Act and various other legal provisions, particularly but not only if they were thought to have engaged in political activity outside Burma/Myanmar.¹⁷⁸ While there have been no known cases of similar arrests since 2011, the relevant laws remain valid and they could be used at any time. Some interviewees expressed fear of being publicly identified as refugees, for instance through photos posted on social media by organizations supporting return, and thus planned to return outside formal processes whenever they decided to return. While no interviewees could provide

177 Burma Human Rights Network, “Existence Denied,” 26 June, 2018. Available at <http://www.bhrn.org.uk/en/report/1052-burma-reinforces-muslims-statelessness-as-thai-migrant-registration-deadline-looms.html>.

178 Immigration and Refugee Board of Canada, “Myanmar: Treatment of Failed Refugee Claimants Who Return to Myanmar, Particularly Those Who Engaged in Political Activities While Outside Myanmar,” 7 August, 2007. Available at <http://www.refworld.org/docid/47d65467c.html>.

specific examples of returning refugees being arrested under the Immigration Act in recent years, many referred to the “elastic” nature of laws in Burma/Myanmar and still feared the possibility of arrest

connected to their time in a refugee camp. Interviewees also feared charges under the Unlawful Associations Act, given the common perception in Burma/Myanmar that refugees are connected to EAOs.

“

Returning publicly is concerning, because we didn't come here announcing publicly, so now that we go back, I don't want it to be public. I worry that it would affect our future generation as well as family members who remained when we left.

Male Karenni refugee, refugee camp in Thailand

“

I want to know if it is really ready to return to Burma. I do not think so. They are going to sue us with many acts, like crossing the border illegally, associating with armed groups, etc ...

Male Rakhine refugee, refugee camp in Thailand

“

Right now, there is Article 13/1, illegal border crossing. This law should not be used against people going back. I heard about it, but I am not sure whether it is actually taking place [being used against returnees] or not.

Male representative of a civil society organization

Other interviewees had more specific legal concerns. Some fled outstanding politically-motivated warrants or otherwise illegally fled from the police or military, particularly political activists and people who fled forced labor and portering. Many interviewees expressed fear about outstanding warrants or related danger from security forces if they returned. While it is unclear if the military still pursues civilians who fled forced labor

many years ago, this legal uncertainty is a significant concern and barrier to return for many. According to one interviewee who works with political exiles, there is a good chance that the Burma/Myanmar military maintains a list of defectors (possibly including from forced labor), and though there have not been known cases of arrest, it is a risk that returnees could face.

“

Personally, I have a concern if I will have to return, because I escaped from being a porter for the military. I have even taken a gun from them. Therefore, I could get arrested any time if I return.

Male Pa-Oh refugee, refugee camp in Thailand

“

I would not go back to my village because I don't dare. The government has already pronounced me as a wanted fugitive in the newspaper. I don't want to go back and it is also impossible.

Male Mon IDP, IDP village in Mon State

Some interviewees described worry from threats and arrests from ethnic armed groups.

“

If we return now, RCSS/SSA will arrest us for not letting them recruit our sons.

Male Pa-Oh IDP, mixed village in southern Shan State

Some interviewees described threats and arrests that occurred after trying to return from displacement.

“

We moved out from our village and we moved back in 1998. Within the first year we moved back, I was arrested and jailed for three years by the Burmese military. They accused me of connection with rebel groups [in violation of the Unlawful Associations Act]. They arrested me and tortured me. I had to go through a court hearing and was sentenced to three years. It was October 1998. There were five or six people from this village and there were also people from other villages. Two or three people died in prison and could not come back due to the torture in the prison. There are people who moved to the refugee camp since they dared not continue to live here.

Female Karenni IDP, mixed village in Karenni State

One of the most common legal provisions which displaced people feared in the context of return is Article 17 of the Unlawful Associations Act. According to the archaic Unlawful Associations Act, enacted in 1908, civilians and combatants can be arrested for associating with an ‘unlawful association,’ a criteria which is applied by the government in an opaque process but that is known to include at least EAOs who are not signatories to the NCA, and other political

or human rights organizations which work against military abuses.¹⁷⁹ However, it is not only current or former combatants who face this risk, but civilians have been routinely accused of association with EAOs by the Burma/Myanmar military. Recent arrests under this law include journalists who cover EAO activities¹⁸⁰ and civilians including IDPs, particularly in Kachin and northern Shan States, who deny association with EAOs.¹⁸¹

“

As long as there is Article 17, we do not dare to return. After the return process, they can re-arrest with this article any time because we have been associated with an armed group once.

Participant in a focus group discussion, refugee camp in Thailand

“

They are afraid of deportation and harassment by the national army, because it is one of the strategies practiced by the Burmese military. If you say you are not a soldier, they say but maybe your cousins, uncle, aunty serves for [an EAO] army, then they can arrest them. Many people are afraid of that. ... If you live in a Burmese military-registered [controlled] area, it might be a problem.

Male representative of a Karen civil society organization

Legal certainty is an important aspect of rule of law, and allows people to make

decisions based on a realistic assessment of the legal risks of given decisions. In the

179 The Unlawful Associations Act (India Act XIV, 1908), 11 December, 1908. Available at http://www.burmalibrary.org/docs09/UNLAWFUL_ASSOCIATIONS_ACT.pdf. EAOs who signed the NCA have been de-listed from the list of Unlawful Associations (Aik Sai, “3 of 8 Ethnic Groups Delisted from Unlawful Associations Act,” Mon News, 3 October, 2015. Available at <http://monnews.org/2015/10/13/3-of-8-ethnic-groups-delisted-from-unlawful-association-act/>. Ei Ei Toe Lwin, “Mon and Lahu Armed Groups Removed from Blacklist,” Myanmar Time, 12 February, 2018. Available at <https://www.mmtimes.com/news/mon-and-lahu-armed-groups-removed-blacklist.html>).

180 FORUM-Asia, Progressive Voice and Swedish-Burma Committee, “Joint Statement: Myanmar Authorities Must Immediately Release and Drop Charges Against Three Detained Journalists,” 14 July, 2017. Available at <https://www.forum-asia.org/?p=24400>.

181 Asian Legal Resource Centre and Asian Human Rights Commission, “Cases under the Unlawful Associations Act 1908 Brought against People Accused of Contact with the Kachin Independence Army,” January 2013. Available at <http://www.humanrights.asia/news/press-releases/AHRC-PRL-002-2013/>.

case of displacement in Burma/Myanmar, and conflict affected areas in general, people are unable to make informed decisions when there are so many opaque laws that may be used against them. Resolution of the legal situation of those displaced, including

amnesties and other legal guarantees that they will not be charged with, among other laws, the Immigration Act and the Unlawful Associations Act, are crucial to establishing conditions for voluntary return.

Concerns about Reintegration

In cases where return sites were in or near other villages, some interviewees expressed concerns about being treated differently than current occupants. A few reported that they had returned to visit their village and were treated with hostility or suspicion. Tensions could increase if returnees are seen to be receiving generous assistance packages while host communities also have trouble meeting basic needs and do not receive external aid. The understanding and trust deficit between the displaced and host communities needs to be addressed before return. Community-based and civil society organizations have already begun to facilitate dialogue between leaders of organizations working with the displaced

and communities near return sites.¹⁸² Interviewees who had already engaged with potential host communities mentioned that most host communities were willing to receive and help support returnees who were originally from that community, and to a lesser extent others from the same ethnic group, but that there might be problems if returnees of different ethnicities settle in existing villages. CBOs working with host communities and returnees have reported that reintegration is more successful when accompanied by measures that benefit the whole community, such as improving water supply or access to education or health, even when there is also special assistance to returnees.

“

When we return like this, there are some original villagers, they want to treat us differently. For us to be participating in the social issue, they do not give us opportunities. We feel very bad about that. It seems like they need us but they do not want us to contribute.

Male Karen IDP, mixed village in Karen State

“

The discrimination will be [contemptuous]. Once I went back to my village, and the villagers who know we are from a refugee camp told us we are selfish, we ran to another country and know nothing about the situation here.

Male Karen refugee, refugee camp in Thailand

182 For instance, the Committee for Internally-Displaced Karen People (CIDKP) includes representatives from refugee and IDP community-based organizations as well as from potential return sites and civil society from inside Karen State.

However, according to interviewees who have engaged with host communities in southeastern Myanmar, some villages already have dispute resolutions systems that, though often under stress from outside forces, have been able to mediate

some conflict between returnees and host communities, and to provide livelihood opportunities and support for returnees. These systems should be strengthened in order to enable voluntary return as it becomes possible in some areas.

“

They might have some reaction [of] discrimination in the host community. But in the current situation [if] a few of them have land problems and conflict with the host communities, they go to the village elder to solve the problem.

Male representative of a Karen civil society organization

Karenni Survey of Returnees

In 2017, the Karenni Refugee Repatriation and Reconstruction Working Group (KnRRWG) conducted a survey of five families who returned from Ban Mai Nai-Soi and Ban Mae Surin refugee camps. The survey found that, despite having prepared for return by checking the return site and building houses, the returnees faced many challenges related to livelihood, land, education, healthcare, proof of residency, obtaining ID cards and ensuring their physical and psychological security. Children born in the refugee camp face particular challenges obtaining ID cards, and children who went to school in refugee camps struggle with language and curriculum in government schools. Returnees report that they cannot afford healthcare costs or to buy land, and many cannot afford school fees and other costs of their children's education.

Personal Preference

The foregoing factors – security, livelihoods, education and health – are all important factors that most interviewees listed when asked what was necessary for a sustainable return. However, the decision whether to return or whether to move somewhere else is not based only on measurable, objective factors. Interviewees described many other aspects that factored into their thinking about the future, including feelings of attachment and belonging to certain areas, communal ties, hopes and aspirations for their future and their children's future, and

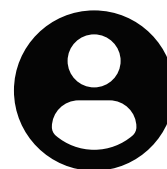
negative feelings resulting from trauma experienced in their home villages and/or during displacement. Thus, it is important to acknowledge these other, unquantifiable factors. Voluntary return means that even if objective conditions are met, individuals may still choose not to return to their original villages, and even if objective conditions are *not* met, others may choose to take the risk and return. Instead of analyzing interviewees' mental states and desires, this section simply presents a sample of displaced people's preferences in their own terms.



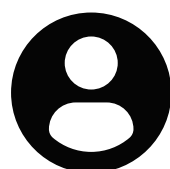
Female Karen refugee, refugee camp in Thailand

I have lived here for 20 years, and feel enough living here. If possible I would like to go back to my place the day after tomorrow. But even if I want to return, the situation is still not stable yet.

I don't want to return to Burma because all my children grew up here and relatives are living here as well. It looks like my home. So I want to live here.



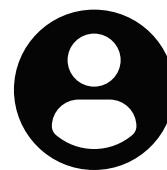
Female Shan refugee, refugee camp in Thailand



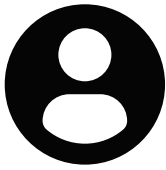
Female Karenni refugee, refugee camp in Thailand

I don't want to live in the camp anymore if possible. I want to return to Burma and have a proper job.

If we are to return, I want the place to be the village we grew up.



Male Karenni refugee, refugee camp in Thailand



Female Karen IDP, informal IDP site in Karen State

I think we should go back since there are the properties that our ancestors left for us.

My husband's parents are dead because of the offensives carried out by the military as well as had suffered from Kachin's extortion. My own parents are also no more in Burma. So I don't want to go back to the society filled with painful past to an extent that I do not wish to tell this story to my children.



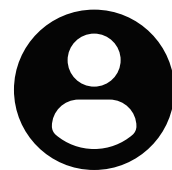
Participant in a focus group discussion, refugee camp in Thailand



Female Karen refugee, refugee camp in Thailand

If we live in Thailand, there is no document that we can live here. If possible, I would like to stay here since my two children are here; I don't have anyone in Burma. However, I don't have any document.

Oh, I already told you, I will not go back. If I go back to Burma it is better to die now. How will you do your livelihood and get treatment? So I already decided not to go back. I will die here.



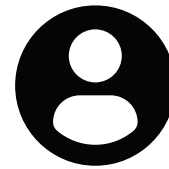
Female Karen refugee, refugee camp in Thailand



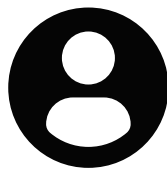
Female Kachin IDP, IDP camp in Kachin State

We are always expecting for the time we can return to our place of origin. From day to night, we wait and think of returning.

Even if the situation is continuing better in the future I will not go back to my old village, I will stay here and die here because I make my mind that here is my village. Also I look after my villagers as a village builder not to lose this village and children's future. But I will visit to my relative in the old village sometime.



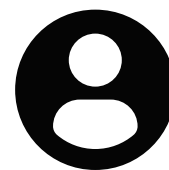
Female Karenni refugee, refugee camp in Thailand



Female Tavoyan IDP, mixed village in Tanintharyi Region

If it is possible to get our land back, we want it because it's our properties. We want to return to our land. Sometimes, I dream that our family members live together in a plantation and it's very beautiful.

But we have settled down here. It looks like our native place. As soon as we moved here, we missed our old village very much. Now we don't miss the old place too much as we have settled down here. We are familiar with the community. We had lots of hardship at the beginning. We have started from the very beginning.



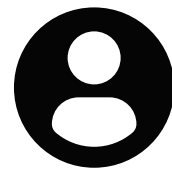
Female Mon IDP, mixed village in Mon State



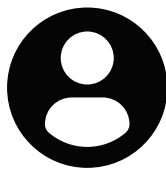
Female Mon IDP, mixed village in Mon State

I am happy where I am now. I don't want to go back but I always remember what I experienced. Now I am getting old and don't want to move anywhere. I want to live peacefully with my family.

I don't think about returning to my old village. I have no thought about returning.



Female Pa-Oh IDP, mixed village in southern Shan State



Male Pa-Oh IDP, mixed village in southern Shan State

Everyone loves home; I too, of course, want to return to my hometown. It is just the matter of peace and conflicts in the village.



Community working together [Credit: Sai Vijit, Koung Jar Shan Refugee Camp]

COMMUNITY, LEADERSHIP 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, education, financial, food and moral support as possible during displacement. They have also entrusted respected leaders¹⁸³ 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 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.¹⁸⁴ 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.

Destruction of Culture and Community on Displacement

A village is not only a collection of people and houses. Community bonds and institutions, including formal and informal structures like schools, religious worship sites and organizations, markets, the unique culture of the community and other organizations provide support and meaning to villagers’ lives. Community dispute resolution and

land management systems, developed over generations, manage conflict and competing uses of land, often serving as valuable tools of conflict prevention and natural resource management.¹⁸⁵ Displacement, especially of entire villages, destroyed these institutions. Often, villagers fled in different directions. In the chaos of fleeing, many

183 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.

184 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.

185 Interview with Author, Yangon, January 2018.

people were separated from community and family members, some still do not know what happened to them. In some cases, interviewees knew that family members were

killed in the attacks that led to displacement, but were not able to bury them and have not been able to return since.

“

The villagers fled the village as they were scared and lived in the jungle. Food was left at home. They had to cook leaves and vegetables to survive. Family members were apart.

Male IDP, mixed village in southern Shan State

“

There were many people who died on the way when we left our village. We lost everything; houses, land, livelihoods and family members.

Female Ta'ang IDP, IDP camp in northern Shan State

When villagers were able to stay together, it was still difficult to re-establish community life in their displacement site, due to lack of space and resources, and the need to focus on urgent needs of immediate family. This meant that customary sources of support, particularly for the elderly, female-headed

households, and other vulnerable groups, may have been lacking in some displacement sites. In some displacement sites, displaced people had to adopt the culture and religion of the host community in order to be accepted and allowed to remain.

Support during Process of Displacement

Community-based organizations and leaders played an important role before and during the process of displacement. Many village, religious or cultural leaders tried to lead villagers to safer places during conflict and repression, negotiated with armed groups to reduce the burden of taxation and conscription, and employed other strategies to protect civilians. Some EAOs

warned villagers before clashes broke out and directed them to safer areas outside the conflict zone, provided them with food and security during displacement, and in some cases informed them when the situation was safe to return. This history of protection made displaced people look to leaders from their own ethnic community for guidance and protection during displacement.

“

The leaders are talking about [relocation]. They said the situation in our village is not better yet. If the fighting continues, they have a plan to move us to another place.

Male Karen IDP, informal IDP site in Karen State

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During that time, one of the [EAO] members helped my family. Two of my younger children escaped with me. The elders ran away, and the Burmese soldiers asked to call them and sent them to Burmese areas but the [EAO] leader didn't allow them to do that. He helped me and my family to cross the border.

Female Shan refugee, refugee camp in Thailand

“

The village head and other missionaries pledged for [negotiated with the Burma/Myanmar military for] my husband to get him released and after he was released the village head suggested us to move to another place. So, we moved. When we visited the village again, the neighbor told us that the soldiers came and asked about us very often and suggested us to leave the village.

Female Kachin refugee, refugee camp in Thailand

Host communities and people along the route of displacement, while often still suffering themselves from conflict and economic distress, helped and protected the displaced along their journey. Local communities came together to provide land, food and shelter

for IDPs who fled to their towns or villages. In Thailand, Thai-Karen villagers helped displaced Karen from Karen State, Burma/Myanmar and others who came across the border seeking safety, and also provided some support during displacement.

“

There were three families from my village [fleeing together]. We had no idea that there is refugee camp here. So we were staying in [-- village]. There were also a lot of Karen people. So young Karen people told us it is not okay to stay there. There is no job to do, it is not safe, they said. They told us that there is a safe place to go. There is a place where the UN is taking care of. Therefore they arranged the transportation for us step by step and sent us here.

Female Karen refugee, refugee camp in Thailand

“

People came to pick us up in the morning and let us live at [--] Monastery. We stayed there for two months. After that, Ta'ang Literature and Culture group arranged a place for us to live because it is not appropriate to take shelter in monastery for a long time, and there were many IDPs. This land belongs to Pannsay village. Therefore, we asked for permission to let us live here and they allowed us to live. That's why we are here.

Male Ta'ang IDP, informal IDP site in northern Shan State

Community and Resiliency during Displacement

Despite the challenges, displaced people worked hard to re-establish community bonds and institutions during displacement. Community members organized self-governance mechanisms and elected leaders to represent them to the various authorities around them. Educated members of the community were recruited, often on a volunteer basis, to teach the children in informal schools that eventually developed more formal curricula and premises, or to provide whatever medical care was possible. Health clinics and organizations were established to train medics and provide basic care. While many of these efforts

were eventually supported by international donors, they were initiated, led and implemented primarily by displaced people, sometimes with the involvement of religious organizations, host communities or other non-displaced, often of the same ethnic group.

Leaders and community organizations also played an important role in managing refugee and IDP camps, providing and managing aid, organizing security and camp management functions, and representing the interests of displaced people to outside stakeholders.



Community working together [Credit: Sai Vijit, Koug Jar Shan Refugee Camp]

“

In 1990, the Burmese military invaded Three Pagodas Pass and lots of Mon people fled their village. In order to support those villagers, we formed the MNRC – Mon National Relief Committee. After 1995 ceasefire, we created 3 camps for them. From 1995 to 2000, we supported 1 bucket of rice for each villager.

Male representative of a Mon civil society organization

“

CIDKP was formed in 1998, I think at first it was only a grassroots community group, formed out of necessity at that time, to respond. In those years the displacement after the fall of Manerplaw¹⁸⁶ had become more of a long term displacement. ... Before there was just a short term displacement where people could return to their livelihood after a few weeks or months, but after the fall of Manerplaw it was protracted displacement and villagers [were] running out of food supplies. CIDKP was formed to respond to that need.

Male representative of a Karen civil society organization

Interviewees also referenced community efforts to help each other, including sharing rations and making small loans. Community members also pooled limited resources to provide room and board for teachers, keep

common areas clean, provide volunteer labor on camp improvement projects such as supplying clean water, and help the more vulnerable members of the community.

“

Sometimes the ration is enough but sometimes not so I have to borrow from my friends and neighbors.

Female Karen refugee, refugee camp in Thailand

186 Manerplaw was a village in Karen State that served as the headquarters of the KNU and other opposition groups, including democracy activists who had fled after the 1988 uprising. In 1995 a Burma/Myanmar military offensive, aided by the DKBA, overran Manerplaw and caused thousands of people to be displaced into Thailand.

“

Every Sunday, though people are busy with cutting sugarcane for small money, everyone in the camp does garbage cleaning.

Female Kachin IDP, IDP camp in Kachin State

“

There are about 10 or more people [from our village] who lost their lives during the armed conflicts, the villagers help each other for remaining family members to carry on with their lives.

Female Pa-Oh IDP, mixed village
in southern Shan State

“

We all collaborated to give support for those teachers in the past years. It won't be good if we can't support this year since we had supported it in the past.... Our villagers also took care of school cleaning. Villagers supported the needs of school furniture, such as desks and chairs.

Participant in focus group discussion,
mixed village in southern Shan State

Women's Empowerment

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.¹⁸⁷ 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.

“In the village, women who were left behind, they have to take leadership roles since all the men fled and don't want to become village chief. Since before they came here, their role has already changed due to the situation. Many women became village chiefs and some are very brave compared to the men.” – **Female representative of a Karen civil society organization**

187 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>.

“We women also have skills that we have learnt from the camp. If we go back, we should have opportunity to share our ideas and improve our community.” – **Female Karen refugee, refugee camp in Thailand**

Women’s organizations were founded in displacement sites (especially but not limited to refugee camps), and conducted trainings and campaigns on such topics as financial literacy, reproductive health and preventing and responding to gender-based violence. These activities allowed displaced women to take an active role in their communities, and helped them to gain knowledge and skills they may not have otherwise been exposed to. Many female interviewees found these experiences meaningful and hoped to be able to continue this work in the future.

“Back in the village, women had animals to breed and did household work. When they arrived to the camps, there was no work for them. ... After they arrive in the camps and don’t have animals, they are provided with vocational training for their livelihoods. They also participate in training or workshops in the community and become active participants in the community. ... Women became aware of health issues, as well as many other different issues in the community.” – **Female representative of a Karen civil society organization**

Division of household labor and decision-making power is still unequal in most displaced families: women are still responsible for most or all of the childcare and domestic work in addition to any activities outside the household, and their husbands may prevent them from taking an active role in the community.

“When men think that they will do something, they just leave the house and do it. For women, it is a big challenge. They have to think about their kids; what they are going to prepare for their kids. Men don’t think about those kinds of things. It is challenging for women if their husbands don’t support them. Although they try to do their best in participating in the community, it doesn’t last long and they stop at some point. Most of them are like that. Some want to participate in the community, but there is no one to help them with babysitting and cooking, so they can’t do anything.” – **Female representative of a Karen civil society organization**

Men usually dominate the leadership of camps and informal IDP sites, and may replicate traditional power imbalances. Women’s organizations have reported cases of camp leaders not taking action on reports of sexual violence or drug dealing. Displaced women are often pressured to settle rape cases with minimal compensation and are not allowed to speak out about their experience.

Return may threaten the gains that women have made. Already, organizations in Karen State report that women who took on village leadership roles during conflict have been forced to give up those roles after the ceasefire was signed and men returned to the village. While some women are ready to retire, oth-

ers resent being pushed aside. In other areas, women’s groups have expressed concerns about the future of women, especially female-headed households and widows, returning to more traditional villages.

“Culturally or traditionally, a widow or something, most of the community does not really support those women. So the government should take care of those women, especially the women and children who are facing the effect of the civil war.” – **Female representative of a Kachin civil society organization**

“After the conflict, women become housewives again. After the peace process started, women go back to the kitchen and cook again. There are a few women who are able to maintain their position as village chief, but there are many who stop.” – **Female representative of a Karen civil society organization**

“We are worried about access to services [for returnee women] in the southeast, that it will be more difficult for women to access services than it was in the camps. But on the other hand, there are so many strong women’s organizations developed in those areas, so hopefully they can help to mitigate any problems.” – **Female staff member of an INGO**

Negative Social and Community Impact of Displacement

Despite efforts to maintain community, displacement has led to a number of growing stressors on community and family ties. Hopelessness and depression based on a mix of past experiences of conflict and human rights abuses, and current/future lack of options for livelihoods have led to increased drug and alcohol use and domestic violence in displacement sites, especially in refugee camps. Research by the International Organization for Migration in 2017 found that the suicide rate in Mae La refugee camp was more than three times the global suicide rate, with 28 refugees having committed suicide and 66 more attempting from 2015-2017.¹⁸⁸ Interviewees anecdotally noted an increase in suicide, domestic violence, drug and alcohol use/dependence, and depression

in the camps over the past few years and linked that increase to rising anxiety about ration cuts and involuntary return, as well as the end of most resettlement programs. While refugee camps may have a greater negative impact in this regard given stronger restrictions on movement and employment, in practice IDPs sheltering in areas near active conflict and/or near Burma/Myanmar military bases and around landmines are also unable to move freely and make a living. Close living quarters also intensify family and community conflict, with interviewees noting that domestic disputes are often audible to neighbors and newly married couples have little to no space to establish a household of their own, but continue to live with parents and extended families.

188 International Organization for Migration, “Assessment of Suicide Risks and Factors in a Refugee Camp in Thailand,” June 2016. Available at <https://progressivevoicemyanmar.org/wp-content/uploads/2017/06/IOM-Mission-in-Thailand-Assessment-of-Suicide-Risks-and-Factors-in-a-Refugee-Camp-in-Thailand.pdf>.

In addition, some women face social and religious stigma when IDP camps are housed in Buddhist pagoda compounds

with restrictions on where women can be, particularly during menstruation.

“

As we also had to sleep altogether in a big hall, some people who didn't have children complained a lot for some of the children peed and pooped in their place. Thus, it was hard for socializing as well as for sanitation that it also affected a lot to the health of people living there.

Female Kachin IDP, IDP camp in Kachin State

“

The houses are very crowded, so they don't have any privacy and the women don't have any safe places to take a bath or go to the toilet. It's not safe or comfortable for women. Within the family, the house is crowded, there is no privacy to talk about internal issues, for example family issues, as other people will hear.

Female representative of a civil society organization

The usual family support systems that would include, for instance, relatives providing childcare when parents need to work outside the home, are disrupted when family members are separated and when each household has its own severe economic needs. This has a particular impact on female-headed households, pregnant women and women with newborn children who cannot work outside the home but have

no other means of support. While families were able to stay together more often in, for instance, refugee camps in Thailand than IDP camps in Kachin State, displacement everywhere tended to put stress on family support systems. Instead, community-based organizations and NGOs had to fill the gap, organizations which are currently facing funding cuts.

“

I faced too many challenges while pregnant. I do not want to mention all of them. It is a very important time for women. In the village, I had some relatives who could help me but not in the camp. I need to do everything myself for me and my family to survive.

Female Kachin IDP, IDP camp in Kachin State

“

The women who don't have family members face that problem. In the camps, woman gives birth at clinic, and husband has to cook, wash, and assist his wife at clinic. It is hard if there is no family member to help them. ... If it is in the village, the neighbor helps the mother if she doesn't have family members to help. Sometimes, [our organization] also provides assistance for women [in the refugee camps] when they give birth.

Female representative of a Karen civil society organization

On Return

When it comes to deciding whether, when, to where and how to return, interviewees were almost universally determined not to return alone/in a single family, but wanted to move back in a group, with the support

and guidance of their leaders, whether community leaders or EAO leaders. Most interviewees stated that they do not want to return home or resettle somewhere alone, but want to go “together.”

“

If we have to return alone, we are afraid to return. We will choose to return only when everybody returns.

Male Karen refugee, refugee camp in Thailand

“

If [the plan is] to return to my old village, I also want to return but not alone. I want to come with all people [from the old village] and go back to be a farmer.

20-year-old Karenni IDP, informal IDP site in Shan State

“

Some people are relatives and family members, although they are living in different camps now. For them, they might want to go back to the same place although they are not in the same camp now. For some people, if everyone decides to go back, they will have to choose a place to go back as they don't have their old village or home anymore. So, they will choose to go back together with their current community.

Male Karen community leader

In cases of entire villages having been destroyed, interviewees mostly did not want to go back because, in their words, “there is no more village.” Not only houses and fields were destroyed, but community institutions like schools, clinics, markets and religious buildings. Furthermore, most

did not want to return to an area where no one else was living. For these interviewees, returning to their original location was not possible unless the whole infrastructure of the village was rebuilt, not just the family’s house and land.

“

Our village is gone. There is nothing left; no one, no school, no house, and no clinic.

Male Pa-Oh IDP, mixed village in southern Shan State

“

We, ... will go back tomorrow afternoon. Our village is just developed, we just build a school and monastery so we are likely to go back. No one urges us to go back.

Male Ta’ang IDP, IDP camp in northern Shan State

Interviewees not only relied on their leaders for protection and guidance, they expected that their leaders would responsibly guide them and work on their behalf. Many also wanted to be involved in the decisions-

making process, expressing a desire to inform decisions and to make decisions for themselves, albeit with guidance, input and support from leaders and community.

“

What I want to say is, “All of my leaders, please don’t be [overly] proud of yourselves.” I hope they will care for refugees’ voice and respect and listen to the citizens.

Female Karen refugee, refugee camp in Thailand

“

I want to tell my KNU leaders, as you are trying for us, we hope you will not give up. We hope you will remember and miss refugees’ voices and tears, because we all miss our homeland.

Male Karen refugee, refugee camp in Thailand

One major complaint that refugees in camps on the Thailand-Burma/Myanmar border had about the way that the voluntary return process has been organized thus far is that it has not included the leaders that the refugees see as legitimate, which can include community leaders in the camps and EAO

leaders.¹⁸⁹ A second complaint is that the returns organized thus far by the Burma/Myanmar and Thai governments, supported by international actors, have involved individual family return,¹⁹⁰ not community return, which refugees highly prefer.

“

If we really have to return, we want to stay under the management of the KNU. However, they did not include the KNU in this agenda. KNU also has no idea about it. ... [W]e are very concerned about that. We do not have Burmese ID and do not speak Burmese. And we are not city people, and prefer staying in the jungle.

Participant in a focus group discussion, refugee camp in Thailand

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- 189 See, e.g., Saw Yan Naing, "Karen Refugee Committee Criticizes Refugee Return Process," *The Irrawaddy*, 15 November, 2016. Available at <http://www.irrawaddy.com/news/burma/karen-refugee-committee-criticizes-refugee-repatriation-process.html>.
- 190 Ron Corben, "Myanmar Refugees in Thai Camps Face Repatriation Challenges," *Voice of America*, 11 May, 2017. Available at <https://www.voanews.com/a/myanmar-refugees-thai-camps-repatriation-challenges/3847329.html>. Amy Sawitta Lefevre, "First Repatriation of Myanmar Refugees in Thailand Begins," *Reuters*, 25 October, 2016. Available at <https://www.reuters.com/article/us-thailand-refugees/first-repatriation-of-myanmar-refugees-in-thailand-begins-idUSKCN12P091>.



CHALLENGING THE PERCEPTION OF DISPLACED PEOPLE

Equal Citizens Deserving of Protection

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 government didn't give us any protection or security. We are the citizens of this country and we have the right to security. It is not only that they don't help, but they even torture us. We have to struggle by ourselves.

Male Pa-Oh IDP, mixed village in southern Shan State

“

Why isn't there a better, more promising future with safety guaranteed for us? ... We do not wish to end our life here trapped in the refugee camp as well. There is no one who does not miss home, but we wish to have a life with better livelihood opportunities, for a better future. I feel like there is no promising future for us, we are trapped between the cliff edge and the vicious tiger.

Participant in a focus group discussion, refugee camp in Thailand

“

They can ignore us because we are not living in the country. Refugee issue is hopeless to put in the discussion. Definitely, they will consider about the people who live in the country. I think it is impossible for them to receive us again because we do not belong to the government. If they force us to return, we will be second-class citizens.

Participant in a focus group discussion, refugee camp in Thailand

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 actors in Burma/Myanmar society as well as international

actors. Whatever the intention of Burma/Myanmar government stakeholders, the impression that many displaced people have internalized is that they are considered second-class citizens not worthy of attention or assistance.

Actors, Not Subjects

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.¹⁹¹ Many interviewees had messages they wanted to pass on about their situation and their agency.

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.

“

We also don't want to live a life like this, always waiting for offers from others. We have all the body parts functioning well, so we would like to show that we can also try our best to live like others if only we are sent to a place with better situations and livelihood opportunities.

Participant in a focus group discussion, refugee camp in Thailand

“

We are not living here because we want to. Just because we could no longer stay in our village so we are here to bear with so many difficulties, being apart from our relatives and families. I just want to live where I belong.

Participant in a focus group discussion, refugee camp in Thailand

191 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://teacircle-oxford.com/2018/01/15/a-journey-to-the-north/>.

“

Actually, we don't want to be refugees since we started fleeing to the border. We thought to shelter temporarily and then return home but later we became refugees due to prolonged civil conflict. We were not happy to hear the word 'refugee.' I will be 60 years old in a few years. We don't want to stay anymore in a foreign country. We want to stay peacefully in our home country.

Karenni refugee camp leader, refugee camp in Thailand

“

Some people view us like we come to live in the camp because we don't have any food to eat. I heard that we are taking food for free and it becomes a habit, so we won't be able to work anymore. What I would like to say is that we are not here because we can't work. Some organizations told us that we don't work and come get food for free, and also told us that we should work to stand on our own feet. We are here because of the situation. I would like to request the organizations not to say things like that will hurt our feelings. Are you guys happy seeing us being affected by the conflict?

Kachin IDP camp leader, IDP camp in Kachin State

Likewise, some refugees and IDPs expressed frustration that their voices had not been heard by authorities and by international actors and organizations.

“

I do not want to talk more. Other people come and they asked us so many things, but they never return back here. We feel like we are hopeless.

Participant in a focus group discussion, refugee camp, Thailand

“

The interviewers usually came up with the questions “Are you happy in this camp?” Think about it! How would IDPs be happy since they have lived in a very spacious house and yard back in their region. I just wanted to say to the interviewers' faces “Why don't you come and live here?” Thus please be mindful of the questions when you interview.

Kachin IDP camp leader, IDP camp in Kachin State



An elder in Mon IDP camp [Credit: Human Rights Foundation of Monland]

HOPES FOR THE FUTURE

Despite frequent expressions of hopelessness in their current situations, most interviewees could still imagine a better future for the country, their communities and their

families. They felt confident that they and their children could contribute, and they and their communities could stand on their own, if given the opportunity.

Aspirations for the Country

Like most people in Burma/Myanmar, interviewees had aspirations for the country that centered around peace, democracy, equality, self-determination and autonomy in the ethnic nationality regions. They

hoped for the freedom and opportunity for them and their children to live in peace and to pursue their dreams in equality with others in Burma/Myanmar.

“

We as villagers are just hoping to live with peace and not wanting to be faced with such situations in the future. We would like to live happily and peacefully with human dignity and equality without having to face armed conflicts.

Male Pa-Oh IDP, mixed village in southern Shan State

“

For me, I just want to repeat that bring us peace and stop the war. I don't want to hear guns and shooting anymore. Everyone wants to go home and be happy like before.

**Ta'ang participant in a focus group discussion,
IDP camp in northern Shan State**

Many interviewees defined peace as not only the absence of war and conflict, but the ability to live with family in one place

without worrying about being displaced, and the ability to coexist with other ethnic groups in harmony without discrimination.

“

I want all the ethnic groups in Burma to be united and live peacefully and in harmony together with restoration of genuine peace.

Male Karenni refugee, refugee camp in Thailand

“

I want to live in peace. I also want to live together with my sons and daughters. If they[Burma/Myanmar military and EAOs] fight again we have to run again and I have to be separated again with my family.

Karen male resident of a new village in Karen State

“

We want the kind of government that is just and fair. And there should be honesty. The government should love and take care of all ethnics from the country. That's what we want.

Female Karen refugee, refugee camp in Thailand

Self-governance, or being 'left alone' by the Burma/Myanmar government, was a key component of many interviewees' hopes for the future. After so many years of not being able to take charge of their lives and work

to improve their communities, many people wanted the chance to govern themselves and be governed by leaders they chose and that they feel represent them.

“

I would like the government to give us peace. Also, I want government to give us opportunity to control ourselves.

Male Karen refugee, refugee camp in Thailand

“

I hope that Burma will become a democratic country and Karen people will be able to live in freedom and our own rights as true civilians.

Female Karen refugee, refugee camp in Thailand

“

The most important matter is genuine peace. If that is achieved, we can build the country with the leaders out there. There are so many potential leaders; we have Karen leaders for Karen people, Kachin leaders for Kachin people. I am sure they will do their best for their own people and community. With lack of a genuine peace, things haven't worked out yet.

Participant in a focus group discussion,
refugee camp in Thailand

Finally, many interviewees stressed that what had happened to them and their families should never happen again, that the

next generations never suffer the abuses and violations that they had experienced.

“

We don't want war and fighting for the future. We want peace and equality for the future. I don't want Karen people and other ethnic groups to feel these situations again for the future. This is the most important thing that I need.

**Participant in a focus group discussion,
refugee camp in Thailand**

Aspirations for their Lives and their Families' Lives

When asked about their hopes for the future, many interviewees placed their hopes in their children and the next generation. They prioritized their children's education, and saw that education as the best way to improve

their family's circumstances. In contrast to the hope they had for their children, many interviewees said it was too late for them to improve their lives, and that they had little hope for themselves.

“

For the future, I have no idea what to say. Because, the government tried to force and torture us, so I don't have any hopes for the future. Anyway, I will try for all of my children to get opportunity to go to school. This is my hope for the future.

Male Karen IDP, IDP camp in Karen State

“

My expectation is all about my child. We parents are happy if they become educated people in the future. I hope them to be healthy because we don't have anything. It is better to have a job to support them for their education.

Male Karenni refugee, refugee camp in Thailand

“

Next year, my daughter is going to university. I don't know how to help my daughter. For us, we are old and we don't need anything. I just worry for our children. I want her to grow up well and become a teacher, so that she can live her own life.

Male Shan IDP, mixed village in southern Shan State

Younger interviewees mentioned their own education, and their desires to contribute to their country and community.

“

I want be a nurse. I want to help my people.

Female Karen IDP, IDP camp in Karen State

“

I just want to work for my community, so if the repatriation time comes, I will choose the only job that is related to my community. I do not really have any plan for my personal benefit like set up own business.

Female Karenni refugee, refugee camp in Thailand

“

Now, I am a student. After I finished my school, I want to share my experience to the children in my village. I want them to have knowledge and experience more than me. This is my hope for the future.

Male Karen refugee, refugee camp in Thailand



JUSTICE FOR THE PAST

In terms of displaced people's perceptions of and needs for justice, there were two overlapping types of responses. First, displaced people interviewed made specific demands for forms of justice including accountability, restitution and institutional reform. Second, interviewees' broader demands and hopes for the future, like non-repetition and security sector reform, may require specific justice mechanisms in order to be fulfilled. For instance, when asked what kind of justice they want for past abuses, many interviewees simply said they wanted to be sure that the violations never happen again.

Victims of serious human rights violations and grave breaches of international humanitarian law have the right to a remedy under international law,¹⁹² which

may include accountability, reparations (in the form of restitution, compensation, rehabilitation and/or symbolic measures), truth and institutional reform, depending on the violation and the preferences and needs of the victim(s).¹⁹³ While full restitution or compensation is not required – nor is it usually possible – the government does have an obligation to provide adequate remedy, particularly for the most serious violations including sexual violence, torture and killing. The exact form of redress will depend on the context and the victims' desires, and discussion of measures to address the past should be part of an inclusive peace process in order to ensure that IDPs and refugees' return is genuinely voluntary, safe, sustainable and with full respect for their dignity.

Obstacles to Demanding Justice

Interviewees' experience over the past decades has taught them that seeking justice from the Burma/Myanmar authorities for abuses committed by the military have at best been ignored, and at worst resulted in

retaliation against those seeking justice. Other organizations have reported in detail the challenges facing people in Burma/Myanmar who seek justice for human rights violations committed by the military.¹⁹⁴

192 OHCHR, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," UN GA Resolution 60/147, 16 December, 2005, Principle 19. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

193 Truth and institutional reform are not specifically addressed in this section, as they were less commonly mentioned in the research and were covered in part of preceding sections, including the sections on Lack of Trust in Future Security and in Challenging Perceptions of Displaced People.

194 Women's League of Burma, "Same Impunity, Same Patterns," January 2014. Available at http://womenof-burma.org/wp-content/uploads/2014/01/SameImpunitySamePattern_English-final.pdf. International Center for Transitional Justice, "Impunity Prolonged," September 2009. Available at <https://ictj.org/sites/default/files/ICTJ-Myanmar-Impunity-Constitution-2009-English.pdf>. International Commission of Jurists, "Achieving Justice for Gross Human Rights Violations in Myanmar," January 2018. Available at <https://www.icj.org/wp-content/uploads/2018/01/Myanmar-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2018-ENG.pdf>.

“

Some Burmese soldiers dragged young ladies and raped them. But no one dared to talk about that. Everyone was afraid of the army. We saw everything but we couldn't resist or make a report.

Female Mon IDP, mixed village in Mon State

“

Who do we have to report to? We didn't report to the government either. It was actually under military rule. We are just water in their hands. We can't do anything up against them.

Participant in a focus group, mixed village in southern Shan State

“

If we return, can we really ask what we want? If we ask, will we get it?

Female Karen refugee, refugee camp in Thailand

The difficult economic situation in which interviewees find themselves, in combination with a general sense of hopelessness and mistrust in the Burma/Myanmar government, means that most interviewees did not believe they would ever get justice, or that the government would

ever prioritize their rights. Furthermore, the magnitude of interviewees' losses and the challenges facing the government in general meant that many interviewees thought it would be impossible to be compensated, even for lost property, and so did not want to ask for it.

“

The Burmese soldiers were killing my relatives but I know if they have to give me the count of the deaths, they couldn't.

Female Karen refugee, refugee camp in Thailand

“

There are so many people who have suffered, so I think it is impossible for the government to give compensation. I wish to receive it but I think it is impossible.

Female Shan refugee, refugee camp in Thailand

“

They did so many things to us that if we ask them for money, I think they cannot pay for that.

Male Karen refugee, refugee camp in Thailand

Demands for justice should be understood as dependent in part on the current situation of the victims. Particularly when seeking justice is risky and has a low chance of success, people may prioritize fulfilling immediate needs.¹⁹⁵ However, experience in Burma/Myanmar as well as in other countries shows that the pain and desire for justice that stems from experiencing serious human rights violations including torture, sexual violence and killing of loved ones does not often fade over years.¹⁹⁶ In fact, many interviewees became overwhelmed with emotion when discussing their experiences

in their home villages, even when those events had occurred up to twenty or more years previous. Many simply refused to talk about it, saying that they could not control themselves when they thought of the past. This demonstrates that the abuses are still having a huge impact on victims' lives. This impact may increase when people return to their home villages and encounter Burma/Myanmar military soldiers for the first time in many years. Psychosocial counseling is thus likely to be necessary on return, when bad memories may be brought to the fore.¹⁹⁷

“

I don't want to talk about this situation. If I talk about this, I can't control my tears. I feel very hurt.

Participant in a focus group discussion, refugee camp in Thailand

“

I don't want to go back to the society filled with a painful past to an extent that I do not wish to tell this story to my children.

Participant in a focus group discussion, refugee camp in Thailand

195 Patrick Pierce and Caitlin Reiger, "Navigating Paths of Justice in Myanmar's Transition," International Center for Transitional Justice, 2014, p. 16. Available at <https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Development-Report-2014.pdf>.

196 HURFOM, "I Still Remember," December 2017. Available at <http://www.rehmonnya.org/reports/I-still-remember-online-publishing.pdf>. Network for Documentation – Burma, "To Recognize and Repair," June 2015. Available at <http://nd-burma.org/to-recognize-and-repair/>.

197 Tania Ghanem, "When Forced Migrants Return 'Home': The Psychosocial Difficulties Returnees Encounter in the Reintegration Process," Oxford Refugee Studies Centre Working Paper No. 16, October 2003. Available at <https://www.rsc.ox.ac.uk/files/files-1/wp16-when-forced-migrants-return-home-2003.pdf>.

“

Since that village is a conflict-torn area, you can imagine the amount of unimaginable hardship and pain we suffered from the conflicts. I don't want to talk about it anymore as it will only make things worse by recalling such memories.

Male Pa-Oh IDP, mixed village in southern Shan State

“

Since we left the village, my heart is not good anymore. I get heart attack easily even when I hear people fighting/arguing. If I talk about the past, it will not finish even if it takes the whole day about how the military treated us.

Female Shan IDP, mixed village in southern Shan State

The absence of a vocal demand for justice should thus not be understood to mean that victims want to “forgive and forget,” or even “forgive but remember.” When victims face such severe basic survival challenges, as those interviewed here do, demands for justice often emerge once survival is a bit more secure. Studies of prioritization of and demands for justice among post-conflict populations often show prioritization of basic needs like food, shelter and security prioritized over justice in the immediate post-conflict period, though these priority levels may change as basic needs are met.¹⁹⁸ In addition to the fact that justice demands may change over time, prioritization of basic

needs should not be seen as contrary to a need for a remedy for past abuses – in many cases the difficulties in fulfilling basic needs are directly connected to the original human rights violation, for instance in the case of the killing of a main income-earner of a family, disability due to torture, or loss of property and land due to forced displacement. This research was not able to delve deeply into interviewees’ conceptions of justice or what forms of justice they might prefer. However, most interviewees did feel that some kind of justice was owed to them for what they had suffered, even if they were not sure what form it should or could take.

“

They should give us some kinds of justice for displacing us, making us leave our homes. The process should be systematic and fair for each individual.

Male Karenni refugee, refugee camp in Thailand

198 Patrick Pierce and Caitlin Reiger, “Navigating Paths of Justice in Myanmar’s Transition,” International Center for Transitional Justice, 2014, p. 16. Available at <https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Development-Report-2014.pdf>.

“

If they don't do anything for me, as I used to be a victim, I will never be satisfied.

Participant in a focus group discussion, refugee camp in Thailand

Reparations

Almost all interviewees agreed that government should return and/or repair property that had been taken and/or destroyed, though some doubted it would be possible given the scale of displacement and confiscation. The details of preferences and needs for restitution and compensation of land are discussed above in Major Factors

in Decisions for the Future. Importantly, interviewees noted that the compensation should go beyond the direct value of a piece of land, and should include the other property and belongings that were destroyed, as well as the value of the crops and other improvements to the land.

“

Burmese soldiers burned our villages and took our lands, so we want them to give us money. We want them to rebuild the things that they destroyed.

Participant in a focus group discussion, IDP camp in Karen State

“

I want to get my plantation back. We're the poor and we did an investment in our plantation to get an easy life when getting old.

Female Tavoyan IDP, mixed village in Tanintharyi Region

In terms of compensation for other violations, including killing, torture and sexual violence, interviewees noted that monetary compensation would not repair

what they had suffered, though they wanted rehabilitation assistance in order to rebuild their lives.

“

The government must help us when we return for what we had lost, such as lands, animals, property and for those who have lost their family members because of the conflict. We should be compensated to rebuild our lives in dignity like other people.

Male Karen refugee, refugee camp in Thailand

“

Difficult to say the value, things that we had suffered can't be compensated.

Male Ta'ang refugee, refugee camp in Thailand

“

So many people died on the way when we left our village. We lost everything: houses, lands, livelihoods and family members. We don't ask to get everything back. If we can only get back half of our possessions, it will help us for our livelihood.

Female Ta'ang IDP, IDP camp in northern Shan State

Accountability

Accountability understood broadly means not only individual, criminal responsibility but institutions and individuals taking responsibility for their actions and accepting consequences, which for individuals may involve criminal sanctions but also loss of official positions and social stigma. Accountability for human rights violations is a particularly sensitive topic in Burma/Myanmar, and various legal and institutional constraints prevent criminal cases from being filed against military officials, particularly high-ranking officials. One major such obstacle is Article 445 of the 2008 Constitution, which provides that “no proceeding shall be instituted against the

[State Law and Order Restoration Council and State Peace and Development Council] or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.”¹⁹⁹

Despite political and legal constraints, accountability in some form will be a necessary element to preventing the recurrence of violations when displaced people return home. It is highly unlikely that an abusive institution like the Burma/Myanmar military will simply stop committing human rights violations without any consequences for violations that have already happened. In fact, while certain

199 While this has been interpreted as a blanket immunity for all members of the former governments, there are legal arguments that it could be interpreted more narrowly, and courts in other countries have found similar provisions unconstitutional on grounds which could apply in Burma/Myanmar.

serious abuses have declined in ceasefire areas, hopes that past abuses would not be repeated have been proven wrong in conflict areas like Kachin and Shan States. In fact, some Burma/Myanmar civil society organizations who have worked in ethnic conflict areas have noted the connection between impunity for past violations in their areas and the ongoing violations in other ethnic areas of the country, and called for an

end to military impunity in order to break the cycle.²⁰⁰

Most interviewees did not expressly discuss accountability. Of those who did, more mentioned the need for responsible parties and institutions to admit what they did and express regret, though others called for prosecutions.

“

As they used to kill our relatives, the leaders should take responsibility to investigate that and give them punishment for what they did.

Participant in a focus group discussion, refugee camp in Thailand

“

We can't forget [the crimes of the past] because it is very painful for the victims. So I hope they will investigate it and give them punishment. ... [T]he leaders must investigate it clearly.

Female Karen refugee, refugee camp in Thailand

“

They must regret everything that they have done and they must not deny the things that they did.

Female Karen refugee, refugee camp in Thailand

More discussed impunity more generally, and called for action to ensure that the Burma/Myanmar military was not able to continue in its patterns of abuses. It is hard

to imagine how the patterns of impunity could be sustainably addressed without some accountability.

200 Network for Human Rights Documentation-Burma, “ND-Burma Update on the Human Rights Situation Finds Continued Impunity for Abuses,” 15 August, 2017. Available at <http://nd-burma.org/nd-burma-update-finds-continued-impunity-for-human-rights-violations/>. Karen Women’s Organization, “Karen Women’s Organization Statement on Burmese Military Persecution of the Rohingya People,” 18 September, 2017. Available at <https://karenwomen.org/2017/09/18/karen-womens-organisation-press-statement-on-burmese-military-persecution-of-the-rohingya-people/>.

“

Even now, they are doing whatever they like to do. They could kill anyone as they wish. There is no law. We can't sue them. If we are going back one day, if the military wanted to kill us for any reason, we will have to just get killed like this.

Female Karen refugee, refugee camp in Thailand

“

For the dictators, I hope they will change their policy and establish new management. I really hope that the dictators will not do bad things and kill the citizens. The bad things that they used to do, must stop now.

Female Karen refugee, refugee camp in Thailand

Despite the challenges in seeking justice, 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.



Ethnic Ta'ang women in a temporary IDP shelter in Hsipaw Township, Shan State [Credit: Ne Lynn Aung]

CONCLUSION

The story of protracted displacement is an integral part of the history of Burma/Myanmar. Displaced people come from many different parts of the ethnic nationality regions, and have gone through many different paths to arrive in their current situation of displacement. The violence and abuses they have suffered ought to enrage every Burma/Myanmar citizen. Their resilience in the face of adversity, and the way that communities have come together to help each other, ought to be an inspiration to the rest of the country, and the world.

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. They have the skills, knowledge, passion and commitment to make the society a better one and the country a better place. Instead, displaced people are often forgotten, viewed with pity, seen as lazy, or assumed to be disloyal to and

different from the general Burma/Myanmar public. Their voices are left out of the peace process, of political reform processes, and of the discourse of much of Burma/Myanmar civil society.

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 Myanmar 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 this 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 introduce 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 timeline 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 CBOs²⁰¹ 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 to 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;
- 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;

201 In recent years new organizations professing to be ethnic CBOs have emerged, many collaborating with or in favor of the Government, claiming to represent 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.

- 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 and 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.



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