

Human rights situation in Burma/Myanmar

A briefing
paper by



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Burma Partnership

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1. Introduction

The year 2015 will be remembered as a momentous year for Burma/Myanmar as the National League for Democracy (NLD), led by Daw Aung San Suu Kyi, clinched an emphatic victory in the 8 November polls. However, the main challenges that impede a full and genuine democratic transition remain. Impunity remains deeply entrenched in the key institutions and structures of governance and the Burma/Myanmar Army- the main perpetrator of pervasive human rights violations and abuses in the country for decades- remain untouched and still wield far-reaching powers despite the bruising electoral loss by the Army backed Union Solidarity and Development Party (USDP).

No amount of optimism or plaudits can hide or gloss over the gross human rights situation that has admittedly worsened this past year, particularly in ethnic areas. Despite the on-going peace process, which includes the signing of the non-inclusive 'Nationwide Ceasefire Agreement' (NCA) in October 2015, and the Union Peace Conference (UPC) in January 2016, the Burma/Myanmar Army continues to commit gross human rights violations that may constitute crimes against humanity and war crimes, including the routine use of torture, sexual violence and extra-judicial killings, in both ceasefire and non-ceasefire areas. The escalation of conflict, particularly around the NCA signing and General Elections, now includes the regular use of aerial firepower and has led to a continuation of forced displacement of civilians in ethnic minority areas.

The rise of extremist nationalist ideology has worsened the plight of the Rohingya and saw increased anti-Muslim rhetoric and violence. The passage of a legislative agenda in the name of protecting 'race and religion' institutionalised discrimination against minority Muslims in the country, while also denigrating women and restricting their rights. In Arakan State, a "boat crisis" in May/June 2015 saw tens of thousands flee via human traffickers to other Southeast Asian nations. Root causes of their flight from Burma/Myanmar are yet to be addressed.

Meanwhile, the rule of law, human rights protection and governance remain weak in the face of a pliant judiciary, an ineffective Myanmar National Human Rights Commission (MNHRC), and the abuse of repressive and archaic laws alongside a draconian Penal Code which are used to harass, intimidate and criminalize human rights defenders. The existence of political prisoners in Burma/Myanmar remains a pressing issue that the government glosses over through its "revolving door" prisoner amnesty policy.

Breakdown of the rule of law has enabled unscrupulous private sector and military interests to pursue investments regardless of environmental and social costs to local communities, including land grabs and abuses relating to extractive industries in contested ethnic areas, persecution of land and environmental rights defenders, displacement and high death tolls at mining sites.

This is the reality that the incoming NLD Government has to deal with. Unless major institutional reforms occur, it is misguided to think that the successful conduct of elections and non-inclusive NCA-signing signal the robust protection of human rights in Burma/Myanmar. Under the 2008 Constitution, the military is guaranteed 25% of Parliamentary seats; control of three powerful ministries; extensive powers through the General Administration Department (GAD); and has the upper hand in the powerful National Defense and Security Council (NDSC). Recent legislative initiatives, such as the proposed NDSC bill, approval of the Presidential Security bill and extension of the commander in chief's term despite reaching retirement age, are further bids to shore up the military's power.

Against this backdrop, it is imperative that the Human Rights Council demonstrates heightened vigilance and support by maintaining the resolution on the situation of human rights in Burma/Myanmar under Item 4 of the Council's agenda, including the extension of the UN Special

Rapporteur on the situation of human rights in Myanmar's current mandate. Echoing the calls made by over 120 Burma/Myanmar civil society organizations in an open letter to the member and observer states of the UN Human Rights Council, it is paramount at this critical juncture in the country's history that the Council and the Special Rapporteur work towards establishing clearly benchmarked guidelines that will act as a road map for the future of human rights in Burma/Myanmar.¹

This briefing paper provides an update on the current situation of human rights in Burma/Myanmar for the consideration of member and observer states of the UN Human Rights Council and presents critical recommendations that will need to be implemented if the country is to look forward to a new and progressive era of democracy.

2. Armed Conflict and Elusive Peace

The past 12 months have seen armed conflict reach almost unprecedented intensity as the Burma/Myanmar Army re-launched large-scale offensives in numerous parts of Shan, Kachin and Arakan States, which intensified around and after the signing of the NCA and the General Elections in an apparent act of retaliation.

Despite all being party to the drafting and deliberations prior to the signing of the NCA signing (such as assuming key stakeholder positions in joint committees or dialogues with the Union Government and its interlocutors) only eight out of the 15 armed groups finally signed. Intransigence on the part of the Burma/Myanmar Army led to the non-inclusion of all ethnic armed organizations (EAOs) and the marginalisation of civil society actors, especially women, throughout the process. Ongoing human rights violations committed against civilians in ethnic communities and continued military operations against EAOs all continue to undermine a peace process, which has been admittedly unsuccessful.

An alarming development since the signing of the NCA has been the increasing division between signatory and non-signatory EAOs; a situation that is worryingly familiar given the long history of 'divide-and rule' tactics employed by successive military regimes when dealing with EAOs. This is manifest in the reported clashes between the NCA signatory, the RCSS, alongside the Burma/Myanmar Army troops, and the non-signatory, the Ta'ang National Liberation Army (TNLA), in northern Shan State.²

Issues:

- Massive military offensives, including the use of aerial firepower by the Burma/Myanmar Army against the ethnic Kokang in February and March 2015, against the Shan State Army – North (SSA – North) in October 2015, the TNLA, the Arakan Army³ (AA) and the Kachin Independence Army (KIA) throughout the year.⁴

¹"Open Letter to Permanent Representatives of Member and Observer States of the UN Human Rights Council", *121 Civil Society Organizations*, February 24, 2016. <http://www.burmapartnership.org/2016/02/open-letter-to-permanent-representatives-of-member-and-observer-states-of-the-un-human-rights-council/>

² Win Naung Toe, KyawHtunNaing, and Kyaw Thu, "Myanmar Military, Shan Army Launch Offensive Against Ta'ang Rebels," *Radio Free Asia*, January 12, 2016. <http://www.rfa.org/english/news/myanmar/offensive-12012015151415.html> (accessed January 29, 2016).

³ Richard Potter, "Myanmar: New Front in an Old War," *The Diplomat*, July 22, 2015. <http://thediplomat.com/2015/07/myanmar-new-front-in-an-old-war/> (accessed February 3, 2016).

⁴ Saw Yan Naing and Nan LwinHninPwint, "Airstrikes, Ground Offensives Continue in Kachin, Shan States," *The Irrawaddy*, 17 November, 2015. <http://www.irrawaddy.com/burma/airstrikes-ground-offensives-continue-in-kachin-shan-states.html> (accessed February 3, 2016).

- In June 2015 the Burma/Myanmar Army used jets to bomb villages in Kachin State, having already used aerial firepower in a major offensive in late 2012/early 2013, displacing thousands.
- Escalating figures of forced displacement over the past 12 months include 6,000 people due to the October offensive against the SSA – N (Shan State), 5,000 people due to the conflict between the RCSS and the TNLA in northern Shan State in February 2016,⁵ up to 70,000 displaced in the Kokang area in March 2015 (northern Shan State),⁶ hundreds displaced after an offensive in Arakan State in December 2015 and up to 10,000 displaced due to conflict with the KIA throughout the year (Kachin State).⁷ The Burma/Myanmar Government, however, has been restricting the delivery of humanitarian aid to internally displaced persons (IDP) camps in Kachin State and Kokang areas of Shan State.
- Widespread and systematic human rights violations and abuses committed by the Burma/Myanmar Army include torture, extrajudicial killings, arbitrary arrest, rape and sexual violence. For example in the Kokang conflict of February and March 2015, reports emerged of beatings, torture and even beheadings.⁸ In Shan State, indiscriminate shelling of civilian-populated villages, rape, beatings and torture amounting to possible war crimes during the October 2015 offensive were documented by Shan community based organisations.⁹
- Lack of full and meaningful participation of women in the peace process throughout the ceasefire negotiations and subsequent UPC. Provisions in the NCA text for representation of women were subsequently watered down despite efforts by the Women’s League of Burma (WLB) to secure 30% minimum that was initially agreed upon by EAOs.
- Relatedly, despite the signing of an agreement with the International Labour Organisation (ILO) to eliminate the practice by 2015, forced labor persists and spans a wide range from meeting military-imposed crop/harvest quotas, portering for military camps, forced recruitment and construction of military installations.¹⁰

⁵Thu Thu Aung, “Thousands fleeing, in need of aid as Shan clashes continue,” *The Myanmar Times*, February 15, 2016. <http://www.mmtimes.com/index.php/national-news/18975-thousands-fleeing-in-need-of-aid-as-shan-clashes-continue.html> (accessed February 25, 2016).

⁶Zue Li, “Can China Untangle the Kokang Knot in Myanmar,” *The Diplomat*, May 20, 2015. <http://thediplomat.com/2015/05/can-china-untangle-the-kokang-knot-in-myanmar/> (accessed September 15, 2015).

⁷“Myanmar: Snapshot of Displacement and Population Movement in 2015,” *UN Office for the Coordination of Humanitarian Affairs*, 25 January, 2016. http://reliefweb.int/sites/reliefweb.int/files/resources/Snapshot_Humanitarian_OCHA_25Jan2016.pdf (accessed February 3, 2016).

⁸“Killing, beheading, and disappearance of villagers instill fear of return for Kokang villagers,” *Shan Human Rights Foundation*, May 11, 2015. <http://www.shanhumanrights.org/index.php/news-updates/212-killing-beheading-and-disappearance-of-villagers-instill-fear-of-return-among-kokang-refugees> (accessed February 3, 2016).

⁹“International Community Must Break its Silence on Naypyidaw’s War Crimes in Central Shan State,” *Shan Community Based Organizations*, November 26, 2015. <http://shanhumanrights.org/index.php/news-updates/237-international-community-must-break-its-silence-on-naypyidaw-s-war-crimes-in-central-shan-state> (accessed February 3, 2016).

¹⁰Nyein-Nyein, “ILO: Current Govt ‘Reluctant Partners’ in Fight Against Forced Labor,” *The Irrawaddy*, February 12, 2016. <http://www.irrawaddy.com/burma/ilo-current-govt-reluctant-partners-in-fight-against-forced-labor.html> (accessed February 16, 2016).

Myanmar: Recent displacement in northern Shan State (as of 16 Feb 2016)



On 7 February, fighting between the Restoration Council for Shan State (RCSS) / Shan State Army South (SSA-S) and the Ta'ang National Liberation Army (TNLA) broke out in Kyaukme Township, northern Shan State. As of 16 February, over 3,300 people were displaced to Kyaukme town and surrounding villages, according to the Relief and Resettlement Department in Shan State and humanitarian organizations. The situation remains fluid.

The government, private donors, local civil society organizations, the Myanmar Red Cross Society, the UN and partners have provided relief materials.

On 9 February, armed conflict also erupted between the RCSS/SSA and TNLA in Namhkam Township. According to CSOs and WFP, over 1,000 people were displaced to Mong Wee village. Local organisations and private donors provided initial assistance, which is reported to be sufficient for the moment. However, buildings where IDPs are staying are crowded and additional assistance may be required. The area is difficult to access due to the security situation.

The UN and partners are liaising closely with relevant authorities and CSOs and are assessing the situation to identify gaps and provide further aid if needed.



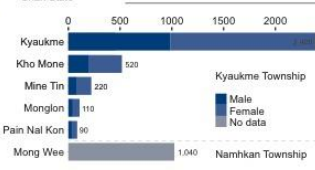
DISPLACEMENT

>4,300 New IDPs

>20 New temporary IDP sites

- New temporary IDP sites
- Conflict area
- Displacement
- Major roads
- Rivers / water bodies

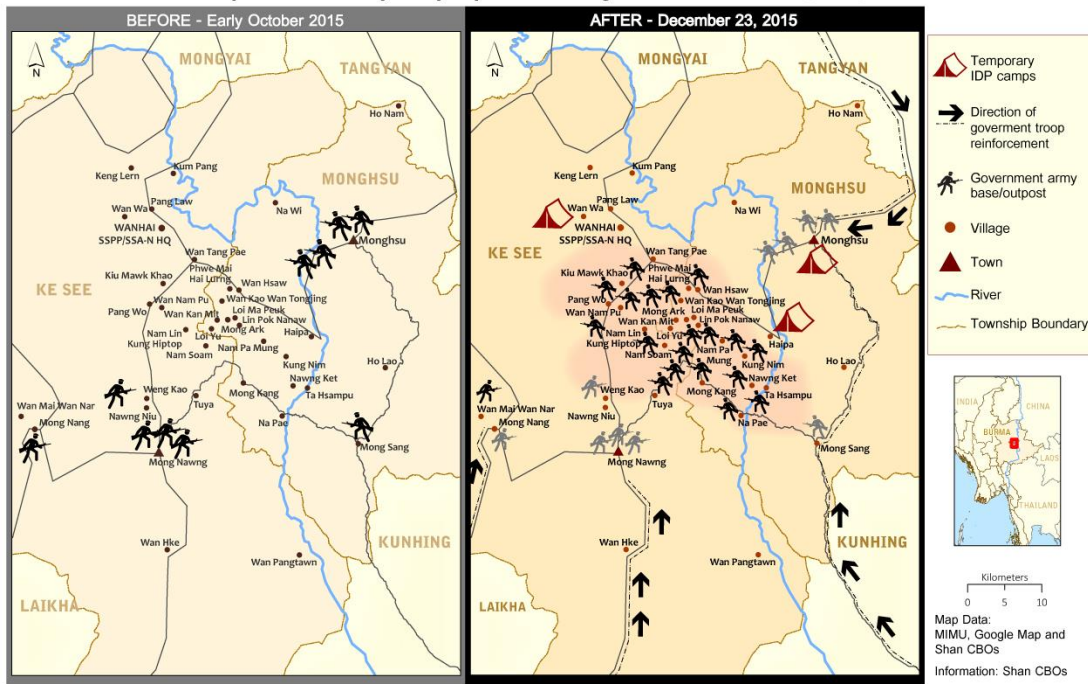
LOCATION OF NEW IDPS



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.
 Creation date: 17 Feb 2016 Sources: OCHA, UNICEF, WFP, INGOs, CSOs Feedback: ocha@myanmar@un.org www.unocha.org www.reliefweb.int

(Source: United Nations Office for the Coordination of Humanitarian Affairs <http://reliefweb.int/map/myanmar/myanmar-recent-displacement-northern-shan-state-16-february-2016-enmy>)

Map of Burma Army troop expansion during offensive in central Shan State



(Source: United Nations Office for the Coordination of Humanitarian Affairs http://reliefweb.int/sites/reliefweb.int/files/resources/Snapshot_Humanitarian_OCHA_25Jan2016.pdf)

Recommendations: Burma/Myanmar must:

- Immediately and unconditionally cease all military offensives throughout the country;
- Establish effective accountability and redress mechanisms for the victims and survivors of human rights violations;

- Take necessary steps and measures to comply with international human rights and humanitarian law such as the Geneva Conventions that it has ratified and relevant UNSC Resolutions, especially Resolutions 1325 and 1674, thus ending human rights abuses against civilians, women and children and hold perpetrators accountable;
- Allow humanitarian access to IDPs camps; and
- Repeal Article 17/1 of Unlawful Association Act (1908) which has been notoriously used to designate the members and activities of EAOs, and anyone deemed to be affiliated with EAOs, as illegal.

3. On-going and Systematic Use of Sexual Violence with Impunity

The deliberate and routine use of rape and sexual violence, mainly by the Burma/Myanmar Army in ethnic areas, continues with complete impunity. The Women's League of Burma (WLB) documented 104 cases of rape and sexual assault between the 2010 elections and January 2014. A follow up report in November 2014 found 14 more cases.¹¹ The actual number is believed to be much higher due to the cultural barriers such as social stigma that victims and survivors face. The use of rape and sexual violence are on-going and systematic, and possibly constitute war crimes and crimes against humanity. This trend has continued in 2015.

Issues:

- On 19 January, 2015, two Kachin school teachers, Maran Lu Ra and Nan Tsin, were found raped and murdered in Kawng Kha village in northern Shan State. Strong evidence pointed towards the Burma/Myanmar Army soldiers who had arrived in the village the night before. However, obstruction by the military and an ineffective police investigation, ostensibly acting in deference to the Burma/Myanmar Army, denied the victims justice.¹² Threats of legal action against linking government troops to the murder of two Kachin teachers were issued in both state-owned and the Burma/Myanmar Army-owned media outlets. In the earlier Ja Seng Ing case in Kachin State, her father Brawng Shang even faced criminal prosecution for filing "false information" against the army for her death.¹³
- The WLB documented over 70 cases of rape of Kachin women by the Burma/Myanmar Army between June 2011 and January 2015 since the 17 year ceasefire between the Kachin Independence Organisation and the Burma/Myanmar Government ended.¹⁴
- The Shan Human Rights Foundation documented eight cases of rape and sexual assault between April and November 2015 by the Burma/Myanmar Army.¹⁵

¹¹ "If they had hope, they would speak," *Women's League of Burma*, November 2014, http://womenofburma.org/wp-content/uploads/2014/11/VAW_Iftheyhadhope_TheywouldSpeak_English.pdf (accessed February 3, 2016).

¹² "Justice Denied, Justice Delayed: Seeking Truth about Sexual Violence and War Crime Case in Burma," *Legal Aid Network and Kachin Women's Association – Thailand*, January 2016, <http://www.burmapartnership.org/2016/01/justice-delayed-justice-denied/> (accessed February 3, 2016).

¹³ "Who Killed Ja Seng Ing?," The Ja Seng Ing Truth Finding Committee, December 2014, http://www.burmapartnership.org/wp-content/uploads/2014/12/REPORT_Who-Killed-JSI_6.Dec_14.pdf (accessed February 8, 2015)

¹⁴ "Ongoing Sexual Violence Highlights Urgent Need for Burma Army to Stop Offensives and Pull Back Troops From Kachin Areas," *Women's League of Burma*, January 22, 2015, Ongoing Sexual Violence Highlights Urgent Need for Burma Army to stop Offensives and Pull Back Troops from Kachin Areas," *Women's League of Burma*, January 22, 2015, <http://womenofburma.org/wp-content/uploads/2015/01/WLB-statement-Kachin-murders-English.pdf> (accessed February 1, 2016).

¹⁵ "Sexual violence by Burmese government troops continues despite ceasefires in Shan State," *Shan Human Rights Foundation*, 25 November, 2015, <http://www.shanhumanrights.org/index.php/news-updates/236-sexual-violence-by-burmese-government-troops-continues-despite-ceasefires-in-shan-state> (accessed February 3, 2016).

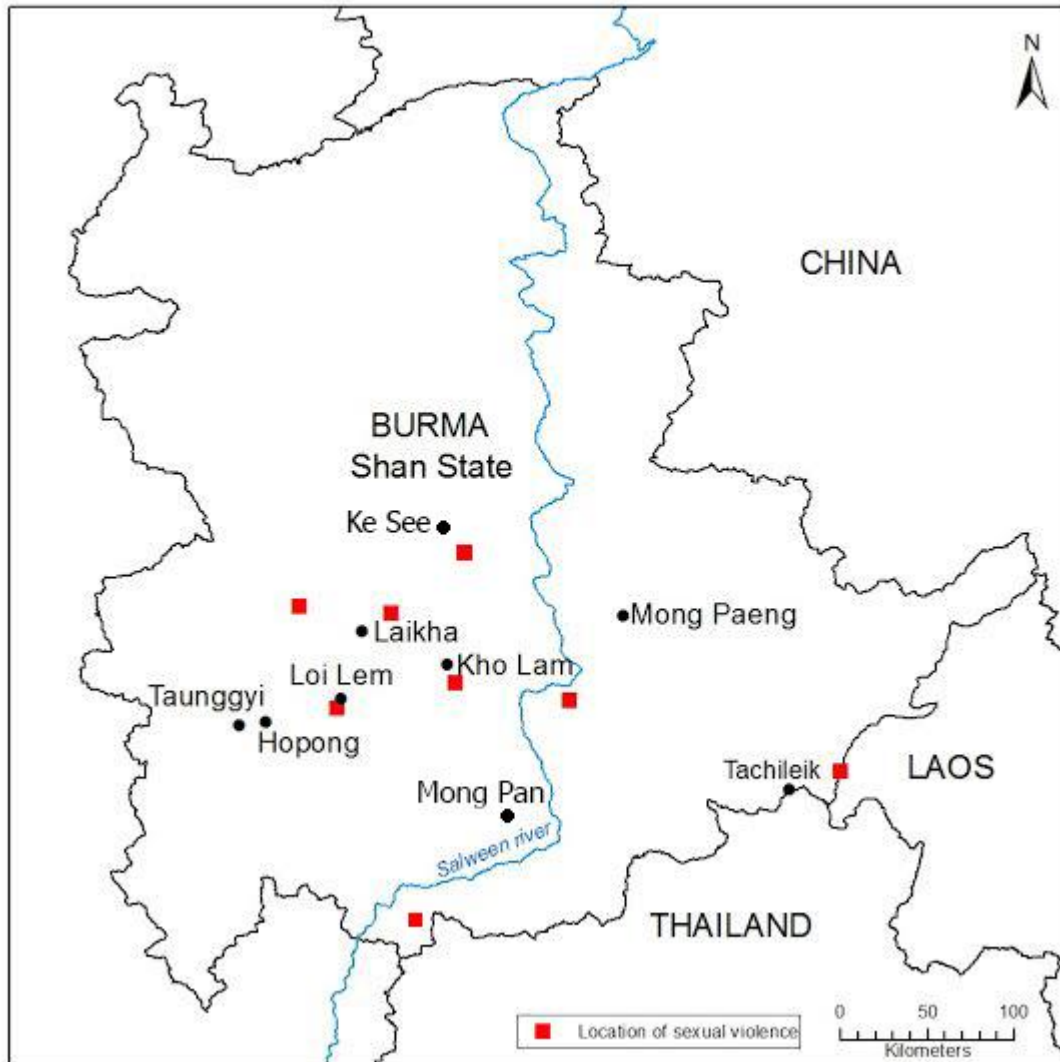
Refugees fleeing conflict in the Kokang region in Shan State in Spring 2015 spoke of rape and sexual assaults being committed by the Burma/Myanmar Army. One refugee stated, "*The Myanmar army...comes at night, when you can't see them, because they think that the local people are working for [Kokang commander] Peng Jiasheng. If they see a woman, they will rape her. They tie her hands up with wire, twisted tight with pliers, so that it tears into her flesh. When they are done raping her, they let her go.*"¹⁶

The victims and survivors of these cases are systemically denied justice. Inept police investigations that range from poor handling and collection of evidence cast a shadow on police neutrality, while questions over their deference to the Burma/Myanmar Army remain. In the KawngKha case above, both the Police Chief and his deputy were former officers in the Burma/Myanmar Army.

The military remains constitutionally immune from prosecution by civilian courts and the lack of political will from military leadership to find those responsible perpetuates this decades-long practice. In doing so, it renders meaningless international standards and legal obligations such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Geneva Conventions, Declaration of Commitment to End Sexual Violence in Conflict and UNSC Resolution 1325 on Women, Peace and Security.

¹⁶ Xin Lin and Qiao Long, "Myanmar Army Commits Rapes, Beatings, Killings of Kokang People: Refugees," *Radio Free Asia*, 25 March, 2015, <http://www.rfa.org/english/news/myanmar/myanmar-kokang-03252015123347.html> (accessed February 3, 2016).

Reported cases of sexual violence by Burma Army in S. and E. Shan State (April - November 2015)



(Source: Shan Human Rights Foundation <http://www.shanhumanrights.org/index.php/news-updates/236-sexual-violence-by-burmese-government-troops-continues-despite-ceasefires-in-shan-state>)

Recommendations: Burma/Myanmar must:

- Allow the establishment of an independent and credible international investigation into rape and sexual violence in both conflict and ceasefire areas; and
- Ensure meaningful and full women's participation in all negotiations and peace-building process. Especially in decision-making processes, through specific mechanisms or measures including the developing of a National Action Plan. This should particularly be in consultation with women's organizations from armed conflict affected areas to implement the UNSC Resolution 1325.

4. Forced Displacement: Refugees and IDPs

Despite the five year old peace process initiated by the outgoing government, the numbers of conflict induced IDPs continues to increase by tens of thousands in ethnic areas. In addition, 101,784 refugees along the Thailand-Burma/Myanmar remain displaced and worry about the possibility of a safe and dignified voluntary return.¹⁷

Issues such as the ongoing armed conflict, widespread human rights violations, loss of land and livelihood, and the presence of landmines (which led to the refugees and IDP's displacement in the first place) remain unresolved, while new patterns such as increased militarisation by the Burma/Myanmar Army in ethnic areas emerge further threatening lives. Though these threats to their lives and livelihoods remain of grave concern to refugees, the preparation for their return is advancing without the inclusion of the refugees in the discussions and decision-making processes.

Issues:

- Ceasefires have allowed the Burma/Myanmar Army to gain further footholds in ethnic areas which were previously inaccessible to them. The Burma/Myanmar Army has increased its military presence, strengthened existing bases, and resupplied soldiers, rations and weapons.¹⁸ Militarisation has led to subsequent clashes and fear of renewed conflict, fostering further distrust towards the sustainability of the ceasefires, the ongoing peace process and political dialogue.¹⁹
- Burma/Myanmar has not signed the Mine Ban Treaty and mines continue to be used. Children and women were among the 251 casualties of landmines recorded in 2014.²⁰ While the NCA states that the Burma/Myanmar Army and the EAOs "agree to end the following activities: planting of landmines...", it falls short of an absolute ban on landmines.²¹
- Since 2012, the slow but drastic decrease in aid and funding to refugees and support for groups working with refugees along the Thailand-Burma/Myanmar border has led to reductions in supplies such as rice, oil and coal and cuts in service provisions in refugee camps. In certain households, food rations fall substantially below the minimum amount stipulated by World Health Organization.²² Many refugees feel they are being squeezed out of the camp, leading to potential cases of 'constructive refolement'.²³
- During the 2015 elections, the Union Election Commission cancelled voting in approximately 600 village tracts nationwide due to security reasons.²⁴ Many refugees do not have legal

¹⁷ "Refugee and IDP Camp Populations: December 2015." *The Border Consortium*.

<http://www.theborderconsortium.org/media/65465/2015-12-dec-map-tbc-unhcr.pdf>

¹⁸ "Truce or Transition? Trends in Human Rights Abuse and Local Response in Southeast Myanmar since the 2012 Ceasefire." *Karen Human Rights Group*. May 13, 2014. <http://www.khrg.org/2014/05/truce-or-transition-trends-human-rights-abuse-and-local-response>

¹⁹ "Afraid to Go Home: Recent Violent Conflict and Human Rights Abuses in Karen State (KRW Report)." *Karen Women Organisation*. November 6, 2014. <http://karenwomen.org/2014/11/07/afraid-to-go-home-recent-violent-conflict-and-human-rights-abuses-in-karen-state-krw-report/>

²⁰ Myanmar-Burma Casualties and Victim Assistance" *Landmine and Cluster Monition Monitor*, http://www.the-monitor.org/en-gb/reports/2015/myanmar_burma/casualties-and-victim-assistance.aspx

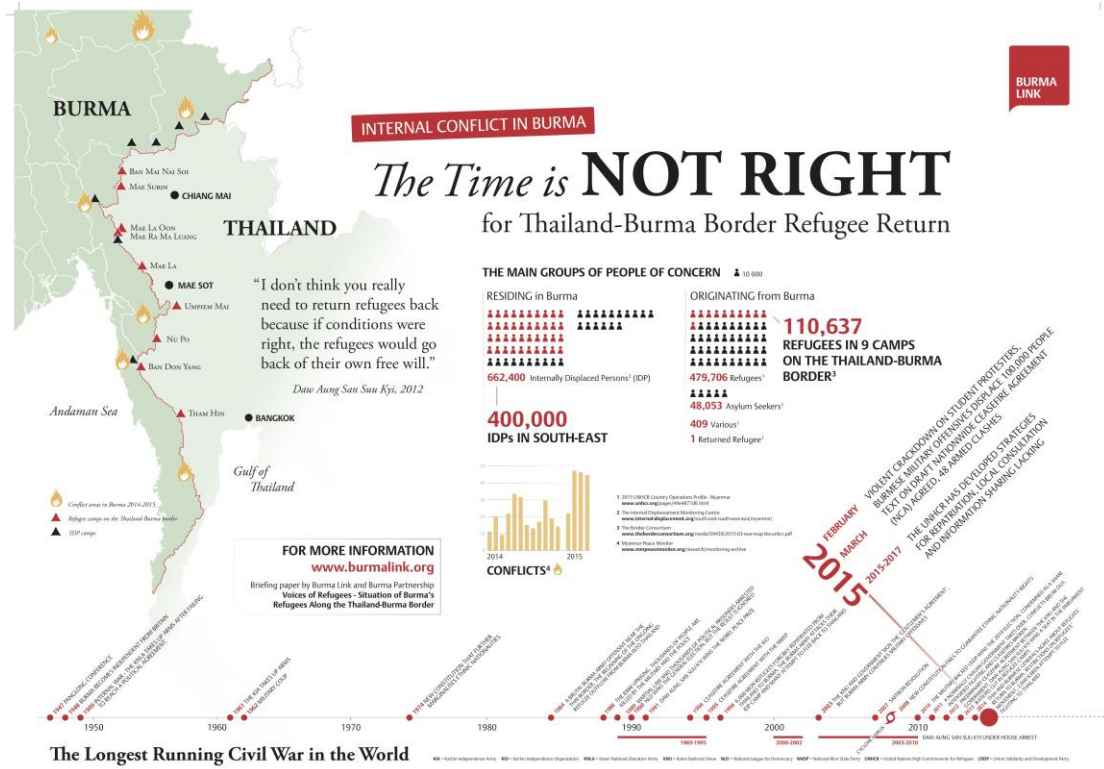
²¹ "The Mine Ban and the National ceasefire process" *Mine Free Myanmar*, November, 10 2015, <http://burmamineban.demilitarization.net/?p=641>

²² "Rice Rations Being Changed for Refugees from Burma/Myanmar in November" *The Border Consortium*, September 18, 2013, Accessed March 20, 2015. <http://www.burmapartnership.org/2013/09/rice-rations-being-changed-for-refugees-from-burma-myanmar-in-november/>

²³ When pressure is placed on refugees to return to a location where their lives and freedoms maybe at risk is known as constructive refolement. For further examples of constructive refolement, see the following briefing paper "Syrian Refugees at Risk of Being Returned." *Amnesty International*. October 17, 2014. <http://www.amnestyusa.org/sites/default/files/uaa26014.pdf>

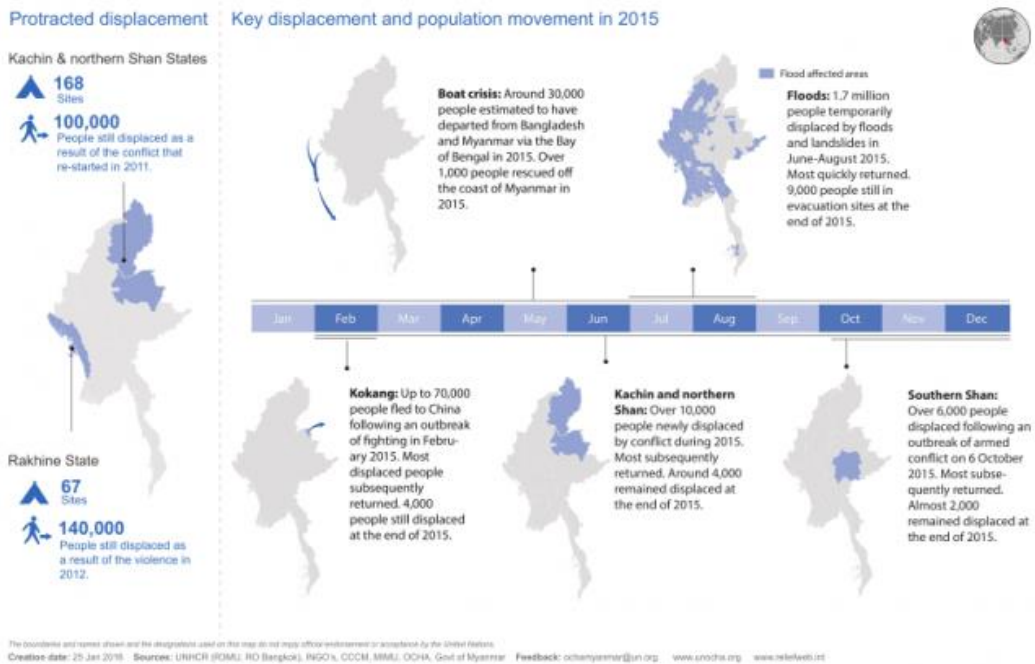
²⁴ Lun Min Mang and EiEi Toe Lwin "Vote Cancellations in Conflict areas Higher than in 2010," *Myanmar Times*, October, 14 2015, <http://www.mmmtimes.com/index.php/national-news/16991-vote-cancellations-in-conflict-areas-higher-than-in-2010.html>

documentation from Burma/Myanmar and are still unable to return to validate or restore their identities, or are born without official birth certificates in camps. As a result, hundreds of thousands of refugees and displaced persons along the Thailand-Burma/Myanmar border were also unable take part in the 2015 elections. Such exacerbation of their exclusion from political processes is detrimental to the process of national peace building and reconciliation.²⁵



(Source: Burma Link http://www.burmalink.org/wp-content/uploads/2015/07/BurmaLink_infographics_poster_700x500_2.jpg)

²⁵ "Burma 2015: Ballot Denied Disenfranchised Voters in Kyau Inn Seik Gyi Township, Karen State," *Human Rights Foundation of Monland*, November 2015. <http://www.burmapartnership.org/wp-content/uploads/2015/12/Ballot-Denied-Full-Report-Eng.pdf>



(Source: United Nations Office for the Coordination of Humanitarian Affairs <http://reliefweb.int/report/myanmar/myanmar-snapshot-displacement-and-population-movement-2015-25-jan-2016-enmy>)

Recommendations: Burma/Myanmar must:

- Allow meaningful and full participation of refugees, displaced persons and border-based civil society and community based organisations from the refugee camps in all stages of preparations, planning and return. This should include holding timely, regular consultations on the timing and condition of the refugees’ and IDPs’ possible return or resettlement. Their return must be truly voluntary; and
- Present a clear timeline to accede to the Anti-Personnel Mine Ban Convention and ensure that refugee return is conducted with dignity and with guarantees of safety by implementing demining activities and strengthening mine-risk education programs and other programs deemed relevant and needed as identified by the refugees themselves.

5. Business and Human Rights, Natural Resource-related Violations

Burma/Myanmar’s economy has gone through major changes since 2011 as it seeks to liberalise and attract foreign direct investment. However, the break-down of the rule of law as well as the absence of an independent judiciary; continued disputes over land ownership and title deeds; and disregard of community concerns in private or government-approved projects continue to characterise this development shift. In addition, farmers and affected communities have not only been protesting against the current wave of land-grabs, but also against past military confiscations that occurred in the 1990s.

The land and resource problem is also intimately linked to the ethnic conflict and is creating new patterns of human rights violations and challenges for ethnic minority communities. These regions are

plagued by ongoing daily military offensives and egregious rights violations, and have resulted in large-scale forced displacement of civilians and a mounting humanitarian crisis. Simultaneously, for the hundreds of thousands of IDPs, refugees and migrants who used to occupy and use land in these areas, the right to ownership of these lands upon their possible return is forestalled. Article 18 of the Peaceful Assembly and Procession Act continues to be deployed with other sections of the Penal Code such as 505(b), 427, 447 and 114 against land and environmental rights defenders from these areas and communities.

Since 2012, a series of laws designed to change the legal basis for domestic and foreign investment have been exploited, resulting in the phenomenon of “legal land seizures”.

The Law and Vacant, Fallows and Virgin Lands Management Law (2012) allows the authorities to arbitrarily classify “squatters”, “unproductive” or “vacant”/“unused” lands. Land and other community-managed resources such as rivers and forests are vulnerable to confiscation for corporate and military purposes. There is also no requirement for Environmental Impact and Social Impact Assessments to be conducted for non-agricultural or industrial development projects.

The Farmland Law (2012) formalises a market-based land use and ownership policy through Land Use Certificates. It does not, however, recognise ownership of hereditary land, and lacks further safeguards such as ensuring access to registration or an independent appeals process. The state’s wide and discretionary powers in imposing and determining conditions of land make land tenure security particularly weak.

Issues:

Land Grabs and Forced Evictions under Previous Regime/Administration

Many land grab claims have been made against military owned or affiliated companies, such as the Myanmar Economic Holdings Limited (MEHL). At the time of writing, the GAD (under the Ministry of Home Affairs) has been carrying out evictions of tenants in Mingaladon Township in Rangoon/Yangon with the assistance of the police.²⁶ Claims made at the highest levels of government that “all land plots located in Yangon [Rangoon] Region and Kayin [Karen] State have been returned” are patently false.²⁷ In a joint mission conducted by Burma Partnership and FORUM-ASIA in November 2015, villagers from farming communities and land rights activists from Taikkyi Township in Yangon/Rangoon Region claimed otherwise, even producing documentary evidence of title deeds and land taxes.²⁸

Land Grabbing and Confiscation in Karen State²⁹

A report by the Karen Human Rights Group (KHRG) documents land confiscation relating to the construction and development of infrastructure projects (such as the Asian Highway), natural resource

²⁶Ye Mon, “Evicted Residents to lobby NLD for Resettlement,” *The Irrawaddy*, February 10, 2014. <http://www.mmtimes.com/index.php/national-news/yangon/18892-evicted-residents-to-lobby-nld-for-resettlement.html> (accessed February 17, 2016).

²⁷Editorial, “Land Grabbing Tops the List of Rights Violations,” *The Nation*, September 3, 2014. www.nationmultimedia.com/aec/Land-grabbing-top-the-list-of-rights-violations-30242458.html (accessed November 18, 2015).

²⁸“End of Mission Statement on the Impact and Effectiveness of the Myanmar National Human Rights Commission (MNHRC),” *Asian Forum for Human Rights and Development and Burma Partnership*, November 18 2015. <https://www.forum-asia.org/?p=19742>

²⁹“With Only Our Voices, What Can We Do?,” *Karen Human Rights Group*, June 2015, <http://khr.org/2015/06/with-only-our-voices-what-can-we-do-land-confiscation-and-local-response> (accessed June 30, 2015).

extraction (gold mining), commercial agriculture projects, and by armed actors for military purposes from 2012-2015 despite the prior preliminary ceasefire in 2012 and the subsequent NCA in 2015. Extensive barriers in responding to abuses, including lack of access to, or knowledge of, formal registration, complaint and legal mechanisms, were often ignored by actors involved in land confiscation. The Hat Gyi Dam, one of six hydropower dams planned by the government along the Salween River, also exposes Karen villages at project sites to new vulnerabilities. Most of the energy will be sold to Thailand and China, and it is yet unknown how resumption of construction will impact the fragile peace between the Burma/Myanmar Government and the Karen National Union and other Karen armed groups such as Democratic Karen Benevolent Army.

Dawei Deep Seaport and Special Economic Zone Project

A trilateral project between the Thailand, Burma/Myanmar and Japan is proposed to be Southeast Asia's largest industrial complex, with an estimated infrastructural investment of over US\$50 billion that would include a deep seaport, industrial estate (including large petrochemical industrial complex, heavy industry zone, oil and gas industry, as well as medium and light industries), and a road/pipeline/rail link. Concerns for human rights abuses and environmental damage are serious as the industrial zone has the potential to produce an enormous amount of toxic emissions polluting the air, fresh water sources, rivers and coastal areas. The proposed petrochemical industrial development plan has raised strong apprehensions regarding health, livelihood and environmental consequences and hazards towards local communities, which remain largely unaddressed. Loss of land is a major concern and there is an urgent need to address the issue of land entitlements as thousands face displacement, resettlement and loss of livelihood by the project.³⁰ The initial development phase was launched in August 2015 despite complaints of forced evictions; limited information and coercion to sign compensation and relocation agreements; lack of free, prior and informed consent (FPIC); and a flawed compensation process.³¹

Letpadaung Copper Mine

A joint project started in 2010 between Wanbao Mining Limited from China and the government of Burma/Myanmar owned MEHL. Local people of Letpadaung, Sagaing Region, have protested against land confiscation and related loss of livelihoods. In November 2012, police brutally attacked protesters using phosphorus bombs and caused dozens of people including monks to be hospitalised and many more were arrested. On December 22, 2014, Khin Win, a 56 year old local woman, was killed by police gunshot during a protest against the project. In January 2016, Letpadaung locals staged a protest against Wanbao demanding compensation for the loss of crops but Wanbao Mining Limited rejected their demands. Protests are ongoing. At least 6 human rights activists including Naw Ohn Hla, Tin Htut Pai, Sein Htwe, Than Swe, Tin Htut Paing and Nay Myo Zin were arrested and imprisoned for holding a prayer memorial to mark the death of Khin Win, who was fatally shot by law enforcement officers during the 2014 protest, in front of the Chinese Embassy in Rangoon/Yangon following the incident.

Kyaukphyu

In Arakan State, against the backdrop of longstanding human rights abuses and a humanitarian crisis confronting the state's Rohingya population, a 120 sq km SEZ in Kyaukphyu has been started. This SEZ is also the start of the Shwe Oil and Gas Pipeline that crosses central Burma/Myanmar and northern Shan State into China's Yunnan Province. It has already dislodged 40 nearby villages in areas

³⁰"Corporate Accountability in ASEAN: A Human Rights-Based Approach," *Asian Forum for Human Rights and Development (FORUM-ASIA)*, 2013, <http://www.forum-asia.org/uploads/publications/2013/September/Corporate-Accountability-ASEAN-FINAL.pdf> (accessed February 3, 2016).

³¹"Voices from the Ground: Concerns Over the Dawei Special Economic Zone and Related Projects," *Dawei Development Association*, September 2014. www.ddamyanmar.com/wp-content/uploads/2014/10/Voice-from-the-Ground-Engonline-1.pdf (accessed February 2, 2016)

that contain both Rohingya and Rakhine communities and has intruded into Burma/Myanmar's second largest mangrove forest while damaging farmland and fishing areas. Its effects are potentially devastating and toxic on the ecosystem. Despite protests by local Rakhine communities against the adverse impacts of the Shwe gas pipeline construction in 2013, the project has already been constructed and gas is already being transported to China.

Hpakant Jade Mines

Hpakant, the heart of the mining industry in Kachin State, suffered 7 landslides in 2015, the most deadly of which killed over 100 people after the discarded waste soil collapsed. In addition, deforestation, pollution of the Uru River, and displacement of people are simultaneously taking place. Heavy and active conflict between the Burma/Myanmar Army and the KIA continues. There have also been reports of possible illegal import of heavy machinery from China being used for speedy, intensive and large-scale operations in the mines of Kachin State.

Labor Rights and the Garment Industry

Despite the introduction of a contested minimum wage, labor disputes continued in 2015, with a violent police crackdown of widespread strikes in February 2015 and the imprisonment of labor rights defenders and activists. The legislative framework that is supposed to protect the rights of workers, including the right to unionise, does not include provisions to ensure good faith bargaining, meaning many employers simply renege on decisions by arbitration councils. The garment industry, which is expanding rapidly, is particularly vulnerable to abuses by factory owners.

Recommendations: Burma/Myanmar must:

- Ensure democratic and just land and resource policies by consulting widely and inclusively with affected communities, implement the principle of free, prior and informed consent and provide adequate compensation for those who are relocated;
- Review and repeal laws which are abused in order to carry out land confiscation, and recognise customary land use practices and systems, including community-managed resources;
- Establish strong public safeguards, such as ensuring registration processes are easily accessible with no corrupt practices by different levels of authorities;
- Refrain from natural resource extraction in ethnic areas until a comprehensive peace settlement is reached that addresses natural resource management;
- Ensure that the issues of land and natural resource distribution are included in the agenda of the peace process and establish mechanisms for EAOs as well as ethnic political parties and civil society organisations to bring forward, develop, and express their own perspectives on the right to land and to ensure they are reflected in policies and proposals; and
- Enact legislation that protects the rights of workers and ensures good faith bargaining practices in labor disputes.

6. Freedom of Religion and Belief

Religious minorities, especially the Muslim population and particularly Rohingya population, were consistently subjected to state sponsored discrimination and violence in 2015, while simultaneously being denied representation in the political sphere or in civil society. At the same time, advocates for human rights and other members of civil society who condemn racial discrimination, hate speech and the politicisation of religion have come under attacks ranging from physical assault to criminalisation.

In May 2015, the plight and oppression of the Rohingya became a topic of global concern after a clampdown on human trafficking in Thailand and the discovery of mass graves at trafficking camps along the border. The Andaman Sea became a vast and watery graveyard for thousands of Rohingya refugees who were abandoned by their traffickers.

Issues:

- The scale of the exodus out of Burma/Myanmar – reportedly nearly 25,000 refugees in the first quarter of 2015 – undoubtedly means that Rohingya people still face desperate problems in the country.³² The conflict has resulted in hundreds of casualties and the displacement of over 140,000 Rohingya in Arakan State.³³
- Confined to camps and restricted in their movement, the growing population of IDPs will continue to suffer without access to timely and adequate humanitarian aid.³⁴ At the Aung Mingalar city quarter in Arakan State's capital, Sittwe, barbed wire and numerous checkpoints segregate 4,000 Rohingya from the surrounding community. Former UN Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, described the Aung Mingalar as a "ghetto in the heart of Sittwe."³⁵
- Against this backdrop, a network of ultra-nationalist monks organized as the "Ma Ba Tha" (The Patriotic Association of Myanmar, or more commonly known as the Association for the Protection of Race and Religion) has grown rapidly. It has already grown into one of Burma/Myanmar's most powerful socio-political forces, marked by the passage of all four 'Protection of Race and Religion Laws' that the group had drafted and lobbied for.³⁶
- The Rohingya community was entirely disenfranchised in the historic elections, while the newly-formed Parliament does not feature a single Muslim MP. Elected representatives from the Arakan National Party have vowed to fiercely safeguard against any legislative initiatives to repeal or amend the 1982 Citizenship Law as well as four Race and Religion laws.³⁷

While no mass outbreaks of fresh violence have erupted since 2012, the human rights situation in Arakan State remains abysmal. Rohingyas continue to live in internment camp-like conditions, with restrictions on their mobility and severe limitations in accessing basic services. There also appears to

³² United Nations High Commissioner for Refugees 2015, *UNHCR report shows sharp increase in sea crossings in Bay of Bengal*, viewed 21 July 2015, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=554c8adf&query=rohingya>.

³³ Human Rights Watch 2013, *Burma: end ethnic cleansing of Rohingya Muslims*, HRW, April 22, viewed 21 July 2015, <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>.

³⁴ United Nations High Commissioner for Refugees 2015, *2015 UNHCR country operations profile – Myanmar*, UNHCR, viewed 21 July 2015, <http://www.unhcr.org/pages/49e487d6.html>.

³⁵ Office of the High Commissioner for Human Rights 2014, *Statement of the Special Rapporteur on the Situation of human rights in Myanmar*, OHCHR, February 19, Yangon, viewed 21 July 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14263>.

³⁶ "Myanmar: Scrap 'Race and Religion Laws' that Could Fuel Discrimination and Violence," By *Amnesty International and International Commission of Jurists*, March 3, 2015. <http://www.burmapartnership.org/2015/03/myanmar-scrap-race-and-religion-laws-that-could-fuel-discrimination-and-violence/>

³⁷ MyoMyint, "ANP Lawmaker Fires Warning on Preserving Controversial Laws," *The Irrawaddy*, February 5, 2016. <http://www.irrawaddy.com/burma/anp-lawmaker-fires-warning-on-preserving-controversial-laws.html> (accessed February 6, 2016)

be little progress in addressing both their return and their legal identity, including a review of the 1982 Citizenship Law.

Recommendations: Burma/Myanmar must:

- Allow free and unhindered international humanitarian access in Arakan State; and
- Address discrimination and other forms of human rights violations against ethnic and religious minorities in the country, including by repealing discriminatory legislation such as the 1982 Citizenship Law and four 'national race and religion protection' laws, and the cessation of other discriminatory policies and practices.

7. Civil Society and Democratic Space: Human Rights Defenders (HRDs), Fundamental Freedoms, Political Prisoners

The year 2015 saw the contraction of democratic space for Human Rights Defenders (HRDs) and civil society in Burma/Myanmar. They face newer and heightened threats such as surveillance, judicial harassment and criminalisation of legitimate and peaceful political activities on trumped up charges. This includes even division and alienation of communities (particularly interfaith activists and advocates) and the escalation of threats to personal safety such as arbitrary arrests and detentions (sometimes incommunicado), extrajudicial killings, and disappearances. A new pattern emerged in 2015, signaling the collusion (or tacit approval) between government authorities and ultra-nationalists group 'MaBaTha' in the constraining and suppression of rights.³⁸

Violations of fundamental freedoms continue to take place in an environment where the rule of law and an independent and impartial justice system are still largely absent. The right to freedoms of expression, peaceful assembly and association of particular groups, including former political prisoners, labor and land/environmental rights activists, and student activists, continues to be selectively denied.³⁹

An end to the crisis of the existence of political prisoners appears elusive as resistance against peaceful protests and legitimate dissent remain deeply entrenched in the security sector. This accounts for the ever-increasing number of detainees arrested on trumped-up charges enabled by repressive and archaic legislation. Despite the latest presidential amnesty on 22 January, 2016, according to Assistance Association for Political Prisoners, as of 29 February, 2016, 90 political prisoners remain behind bars and 416 are awaiting trial. Such practice is routinely used by the government to score political points at critical junctures.

³⁸ "How to Defend the Defenders? A Report on the Situation of Human Rights Defenders in Burma and Appropriate Protection Mechanisms," *The Assistance Association for Political Prisoners and Burma Partnership's Progressive Voice Policy Research Project*, July, 2015. <http://www.burmapartnership.org/wp-content/uploads/2015/07/HRD-Report.pdf> (accessed February 8, 2016).

³⁹ "Burma/Myanmar: New Forms of Control and Threats to Freedoms of Expression, Assembly and Association amidst Reforms Fanfare," Asian Forum for Human Rights and Development, March 2013. <http://www.forum-asia.org/uploads/books/2013/March/FA-FFM-Burma-2013March.pdf> (accessed February 9, 2016).

Restrictive Legislation and Cases:

A recently released briefing paper by the All Burma Federation of Student Unions (ABFSU), the Justice Trust and the Letpadan Justice Committee supporting the detained students highlights a mounting medical crisis that the detained students confront.⁴⁰ 127 students and their supporters were arrested during and after the brutal crackdown in Letpadan Township on 10 March, 2015, and around the General Elections. Even though some of them were released or are on bail, at least 74 detainees continue to face numerous and unduly lengthy trials due to foot-dragging by the courts.

The courts have also slapped multiple illegal assembly charges, some of which were newly-laid in 2016, (across various townships and divisions throughout the country) on the students for their leading role in the student protests. Phyo Phyo Aung, a leader of the ABSFU, was further indicted with additional counts of unlawful protest.⁴¹ She is facing over 30 criminal charges, including Article 505(b) of Burma/Myanmar's Penal Code and Article 18 of the Peaceful Assembly and Procession Act, both of which have been notoriously used to criminalise activists and human rights defenders. Nanda Sitt Aung, another leader of ABFSU, is facing 78 charges including at least 68 counts under Article 18 in various townships where he led demonstrations, according to Assistance Association for Political Prisoners. He also faces additional criminal charges under sections 143, 145, 147 and 505(b) of the Penal Code.

Htin Lin Oo, a writer and former information officer of the NLD, was sentenced to two years imprisonment and hard labor on 2 June, 2015 for courageously speaking out against the use of Buddhism as a tool for extremism, violence and hate speech as well as racial discrimination in Burma/Myanmar. He was arrested in December 2014 and charged under Article 295(a) of the Penal Code for "insulting religion" in a speech he made in October 2014.

Chaw Sandi Tun, an activist and NLD campaigner from Maubin, Irrawaddy Region, was sentenced to six months imprisonment on 28 December, 2015. She was arrested in October 2015 and charged under Article 500 of the Penal Code and the broad 66(d) of the Telecommunications Act "for defamation" in a satirical Facebook post deemed offensive to the military.

Patrick Khum Jaa Lee, an ethnic Kachin aid worker and peace activist, was sentenced to six months on 22 January, 2016 over a Facebook post. He was arrested in October 2015 and also charged for defamation under Article 66(d) of the Telecommunications Act for allegedly sharing a Facebook post mocking the army chief. His appeals for bail on health grounds have persistently been denied.

On 28 January, 2016, Zaw Myo Nyunt was sentenced to one year imprisonment with hard labor under Article 66(d) of the Telecommunications Act and 505(b) of the Penal Code ("Public Tranquility") for defaming the Commander in Chief, Senior General Min Aung Hlaing in a Facebook post.

Clampdowns on freedom of expression extend even to ethnic areas. In Karen State, Zaw Ye Htet, Chief Editor of Hpa-an based *Hpa Si Than Journal*, was charged on 1 February, 2016 under Article 34(a) and 38 of the Electronic Transactions Law for a Facebook post about illegal trucks hauling cargo in Karen State. The journal has since been suspended.

⁴⁰ "Briefing Paper: Medical Crisis for Political Prisoners of Letpadan Case," *ABFSU, Justice Trust and Letpadan Justice Committee*, December, 2015. <http://www.burmapartnership.org/2016/01/myanmar-political-prisoners-face-medical-crisis-denied-health-care/> (accessed January 25, 2016).

⁴¹ Tin ThetPaing "No Reprieve for Student Activists as Courts Pile on More Charges," *Irrawaddy*, February 3, 2016. <http://www.irrawaddy.com/burma/no-reprieve-for-student-activists-as-courts-pile-on-more-charges.html>

Article 66(d) of Burma/Myanmar's 2013 Telecommunications Act provides for up to three years' imprisonment for "extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person by using any Telecommunications Network".

Article 34 (d) of Burma/Myanmar's Electronic Transactions Law details the following as a punishable offense:

Creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person.

The government had promised the repeal of the Electronic Transactions Law in 2013, which was originally released by the previous ruling State Peace and Development Council in 2004 and was one of several repressive laws that has been used in the past to target activists, including prominent Burmese blogger Nay Phone Latt, dissident and well-known comedian Zarganar, and 88-generation student leader Ko Ko Gyi.

Recommendations: Burma/Myanmar must:

- Review, amend or repeal repressive legislation, to ensure that all legislation are in line with international human rights law and standards;
- Ensure that any legislation enacted in the future is in line with international human rights law and standards and involves civil society and communities in a transparent and inclusive consultation process;
- Ratify all remaining core international human rights treaties, and incorporate them into domestic law;
- Immediately cease the stifling of political activists, peaceful protestors and HRDs – including through criminalisation of their activities under restrictive legislation and trumped up criminal charges, as well as other forms of threats, harassment and intimidation – and ensure that their fundamental rights to assembly, association and expression are respected and protected at all times;
- Release all political prisoners unconditionally, and put an end to the era of political prisoners by refraining from further judicial harassment and/or imprisonment of people for their legitimate activities;
- Drop all charges against those activists and HRDs detained and awaiting trials and release them unconditionally; and
- Establish the rule of law and undertake urgent judicial reforms to ensure the independence, impartiality and accountability of the judiciary, lawyers and prosecutors.

INTERNATIONAL STANDARDS

The minimum daily nutritional standards for prisoners set by the International Committee of the Red Cross in 2004



Carbohydrates:
400g of grains and cereal products, such as rice



Proteins:
130g of beans, pulses, meat, fish and dairy



Fat:
65g of butter, ghee or margarine



Nutrients:
200g of fruit and vegetables



Flavour:
6g of salt and 30g of sugar



Water: Free access to clean drinking water on request, plus 10 to 15 litres a day for each person to meet all other needs. UN rules on the standard minimum treatment of prisoners and the ICRC both forbid the withholding of water for control, punishment and interrogation purposes.

MYANMAR

Prison diet in Myanmar's jails, based on the testimony of former and current prisoners*



Rice plate with fish paste for breakfast



Highly salted, watery vegetable soup for lunch and dinner



Meat or fish curry 1-2 times per week

***Regimen varies widely depending on prison;** authorities in some prisons have been reported to withhold meals as punishment



Water: Most prisons do not have a regular supply of clean water; student detainees in Thayawady prison last year reported guards withholding water from hunger strikers as punishment



Health issues:
A 2014 report by the US State Department found that the ailments of prisoners in Myanmar due to a poor diet and spoiled food included heart disease, malnutrition, chronic stomach

problems and high blood pressure. Some of these conditions are likely the result of high salt content in prison food. Many prisoners have contracted waterborne diseases such as dysentery, typhoid and cholera.

(Source: Frontier Myanmar <http://frontiermyanmar.net/en/features/prison-food-101>)

8. Myanmar National Human Rights Commission (MNHRC)

The MNHRC as it is today suffers from severe legitimacy and public confidence deficits as it falls substantially short of the minimum international standards mandated in the Paris Principles and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights - Sub Committee on Accreditation's (ICC-SCA) General Observations for a national human rights institution (NHRI) to be considered credible, legitimate, relevant and effective. Indeed, the MNHRC is arguably in a stage of "crisis" barely four years since its inception, and the ICC-SCA [accredited the MNHRC with a "B" status in January 2016](#).

In January 2014, reports emerged of clashes between security forces, Buddhist Rakhine and Muslim Rohingya in Du Chee Yar Tan village, Arakan State. Two investigations – one by the government and one by the MNHRC – claimed to have found no evidence to substantiate allegations of any violence.

The MNHRC called the news "unverifiable and unconfirmed."

Win Mra, who heads the MNHRC, said he has made some attempt to get remaining prisoners on the agenda, but acknowledged it is not a government priority.

"If there are prisoners of conscience remaining, yes, they should be released," Win Mra said. "But it's a moot point right now because there are so many other things happening."

..."the Home Ministry stated clearly that they freed all of them," Win Mra further added.

Commission chairman Win Mra had explicitly stated that the panel could not investigate abuses in active conflict zones, it said, "ruling out Kachin State and the ongoing atrocities there". When Brang Shawng, a civilian from the Kachin ethnic community complained to the commission this year that soldiers had unlawfully shot and killed his daughter, his letter was forwarded to the army, which sued the man for filing false charges. The commission has acknowledged that it will not investigate abuses in conflict zones, in particular those reportedly perpetrated by the Burma/Myanmar Army.

"We do whatever we can," Win Mra says. "Why would people expect us to do more than what we have the authority to do?"

Paris Principles Compliance in Law and Practice

Selection and Appointment

Selection and appointments are conducted without disclosure of criteria or a transparent screening process, while key stakeholders including civil society are not included. On 25 September, 2014, the previous 15-member commission was disbanded without prior public notice of the dismissal or subsequent nomination process and replaced with a new body of 11 commission members. Some members were not even given any reason of their dismissal. The MNHRC's lack of independence from

the Executive has also been repeatedly asserted by former UN Special Rapporteur Mr. Quintana and his successor, Ms. Yanghee Lee in their reports to the UN Human Rights Council.

Situations of Conflict or Unrest

The country has been plagued by rights violations committed against ethnic and religious minorities for many decades occurring as a result of armed conflict between the government and different ethnic groups, as well as communal violence between different ethnic and religious groups. In such instances, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence, and to promote and ensure respect for the human rights of all individuals in all circumstances without exception. Yet the MNHRC has made a habit of conducting inquiries and making public statements without any substantive follow up.

Where it has taken action or intervened in the form of inquiries and investigations, the MNHRC has proved ineffective in its ability to render justice to victims. In many instances, violations are ignored and even contribute to further abuses. The handling of the cases of Ko Par Gyi, Brang Shawng and Duu Chee Yar Tan village are emblematic examples, which have prompted civil society organisations and HRDs to call the MNHRC an “alibi of the state” to legitimise or whitewash the state’s human rights violations.

Impact and Effectiveness

The MNHRC’s silence on repressive legislation, crackdowns on rights activists and dissent, and even on pressing issues like land grabs and abuses related to extractive industries has drawn much criticism particularly from rights-based independent civil society and the regional and international human rights community. As of 29 February, 2016, 90 political prisoners remain behind bars and 416 are awaiting trial. On the Letpadan students case, the MNHRC issued a statement last year calling for the release of student demonstrators. However, it did not follow up on findings that law enforcement officials had applied excessive force and failed to comply with standing orders and guidelines for managing protests. Just days after the MNHRC statement, however, arrests of other student activists from the Letpadan incident resumed and fresh charges have since been slapped on the students, but have been met with a wall of silence from the MNHRC. A medical crisis is mounting in the face of unduly lengthy court trials and lack of access to adequate medical and healthcare.

Reporting

Reports of the MNHRC are submitted to the President rather than tabled in Parliament. As such, MNHRC findings, analyses and recommendations are kept in secret, and lend credence to the idea that MNHRC investigations are window-dressing measures to showcase that the government is actually taking action, while simultaneously serving to deflect further criticism, scrutiny and attention on the government. MNHRC reports and opinions must be discussed and considered by the legislature and relevant parliamentary committee(s) for action on the country’s human rights situation and issues facing the population. It must also be mainstreamed and widely disseminated to the public.

Recommendations: The MNHRC must:

- Ensure a clear, transparent and participatory selection process that promotes merit-based selection, ensures pluralism and promotes the independence of and public confidence in the MNHRC;
- Undertake rigorous and timely investigations and systematic follow-up activities in response to critical human rights issues in the country, recommend concretely and advocate for the consideration and implementation of its findings and recommendations at relevant platforms, including in Parliament or *amicus curiae* before the courts; and

- Pro-actively engage in legislative processes, including providing inputs and recommendations for amendments to the MNHRC's enabling law as well as inputs to draft legislation; in particular those that restrict, suppress or criminalise the work of HRDs.

Recommendations: Burma/Myanmar must:

- Amend the MNHRC enabling law and rules of procedures, regulations or binding administrative guidelines; to allow for public participation in the nomination and appointment process of Commissioners, including by requiring vacancies to be advertised in a timely manner as well as ensuring broad participation in application, screening, selection and appointment process;
- Grant the MNHRC full autonomy in selecting its own staff;
- Ensure appropriate level of funding in order to guarantee its independence and its ability to freely determine and allocate funds according to its priorities and activities;
- Allocate government funding as a separate budget line applicable only to the MNHRC;
- Ensure, through an appropriate and relevant mechanism, that the annual reports of the MNHRC which are submitted to the President are subsequently tabled and robustly debated in Parliament to address and take action on both substantial human rights situation/issues in the country as well as the administrative, legal and financial constraints that inhibit the effective work and functioning of the MNHRC;
- Implement the Belgrade Principles on the relationship between NHRIs and Parliaments so that the functioning, independence and accountability of the MNHRC can be secured, in particular those relating to independence, financial autonomy and appointment/dismissal processes.