

INVISIBLE LIVES:

The Untold Story of Displacement Cycle in Burma



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A boy riding a bicycle in Halockhani
IDP site, Burma

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About the Organizations

Human Rights Foundation of Monland (HURFORM) was founded by pro-democracy students from the 1988 uprising and more recent activists and Mon community leaders and youths. Its main aim is for the restoration of democracy, human rights and genuine peace in Burma. HURFORM provides information and reports to all campaign organizations to receive help from the international community for democratic reform in Burma.

Burma Link advocates for Burma's ethnic nationalities and displaced people, and shares their voices and stories locally and internationally.

Burma Partnership is a network of organizations throughout the Asia-Pacific region supporting the collective efforts of all peoples working towards democracy, peace and human rights in Burma.

Contents

| | |
|--|-----------|
| Acronyms | 7 |
| Executive Summary | 8 |
| Introduction | 10 |
| Methodology | 12 |
| Section One: Background | 13 |
| 1.1 Democracy, 2015 Elections, NLD-led Government, Refugee Return | 13 |
| 1.2 A Fledgling, Uncertain Peace Process | 16 |
| 1.3 UN Guiding Principles on Internally Displaced Persons in Context of Burma | 18 |
| Section Two: Protracted Displacement - Mon IDPs in Southeast Burma | 21 |
| 2.1 Forced to Flee..... | 21 |
| 2.2 Mon Armed Struggle and Displacement | 24 |
| <i>CASE STUDY 1 Fleeing Sexual Violence from Yebyu Township to the Thailand-Burma Border</i> | 26 |
| 2.3 Ceasefire and More Forced Returns..... | 27 |
| 2.4 20 Years on and No Durable Solutions | 29 |
| 2.5 Excluded from International Aid | 32 |
| <i>CASE STUDY 2 Landmine victim in Jo Haprao, Bee Ree</i> | 36 |
| Section Three: Obstacles to Returns - Land and Security | 39 |
| 3.1 No Return as Concerns Over Land and Security Remain | 39 |
| 3.2 Ongoing Security Concerns | 43 |
| <i>CASE STUDY 3 Burma Army Continues to Act with Impunity</i> | 43 |
| 3.3 Splinter Groups | 45 |
| 3.4 Land Confiscation and Post-ceasefire Economy | 47 |
| 3.5 Housing, Land and Property Rights of Refugees and IDPs..... | 48 |
| 3.5.1 2008 Constitution | 49 |
| 3.5.2 Two Laws enacted in 2012 Related to Land | 49 |
| 3.6 Land Confiscation | 51 |
| <i>CASE STUDY 4 Ann Din Coal Power Plant: Local Movement and Action to Preserve and Protect Natural Resources and Land</i> | 52 |
| 3.7 Livelihood and Social Consequences of Losing Land | 58 |
| <i>CASE STUDY 5 Caught in the Middle: Land Confiscation by the Navy and Extortion by Splinter Groups, Yebyu Township</i> | 60 |
| Conclusion: Towards Durable Solutions | 62 |
| Recommendations | 64 |
| Acknowledgements | 66 |

Acronyms

| | |
|--------|---|
| AA | ▪ Arakan Army |
| ABSDF | ▪ All Burma Students' Democratic Front |
| BBC | ▪ Burmese Border Consortium |
| BGF | ▪ Border Guard Force |
| CBO | ▪ Community-Based Organization |
| CEC | ▪ Central Executive Committee |
| CSO | ▪ Civil Society Organization |
| EAO | ▪ Ethnic Armed Organization |
| FGD | ▪ Focus Group Discussion |
| HLP | ▪ Housing, Land and Property |
| HURFOM | ▪ Human Rights Foundation of Monland |
| IDP | ▪ Internally Displaced Person |
| INGO | ▪ International Non-Governmental Organization |
| KIA | ▪ Kachin Independence Army |
| KNU | ▪ Karen National Union |
| KRC | ▪ Karen Refugee Committee |
| LUC | ▪ Land Use Certificate |
| MNDAA | ▪ Myanmar National Democratic Alliance Army |
| MNDO | ▪ Mon National Defense Organization |
| MNHC | ▪ Mon National Health Committee |
| MNLA | ▪ Mon National Liberation Army |
| MNRC | ▪ Mon National Relief Committee |
| MPF | ▪ Mon People's Front |
| MOA | ▪ Memorandum of Agreement |
| MOU | ▪ Memorandum of Understanding |
| MRDC | ▪ Mon Relief and Development Committee |
| NCA | ▪ Nationwide Ceasefire Agreement |
| NLD | ▪ National League for Democracy |
| NMSP | ▪ New Mon State Party |
| SSA-N | ▪ Shan State Army – North |
| TBC | ▪ The Border Consortium |
| TNLA | ▪ Ta'ang National Liberation Army |
| UN | ▪ United Nations |
| UNFC | ▪ United Nationalities Federal Council |
| UNHCR | ▪ United Nations High Commissioner for Refugees |
| UPC | ▪ Union Peace Conference |
| USDP | ▪ Union Solidarity and Development Party |
| VFVL | ▪ Vacant, Fallow, Virgin Lands Management Law |

Executive Summary

Recently, much attention surrounding Burma has focused on the democratic reform, 2015 elections and the future of the National League for Democracy (NLD)-led Government, whilst a profound humanitarian crisis and continuing concerns of the ethnic minority communities in the southeast have been largely ignored. The recent story of political and economic reform has insufficiently addressed the ongoing struggles of internally displaced persons (IDPs), as they become an inconvenient truth rendered invisible by the larger reform narrative.

Nearly 70 years of ethnic conflict has created a displacement crisis with over 644,000 internally displaced and over 479,000 refugees fleeing the country predominantly from ethnic areas.¹ At present, over 100,000 refugees live in camps along the Thailand-Burma border,² and approximately 400,000 IDPs live in protracted displacement in southeast Burma.³ As the continuing political and social transformation in Burma and the triumph of the NLD in the 2015 elections captivates local citizens and foreign observers around the world, optimism and the infectious idea that those displaced will soon begin to move back to Burma has led to further decline in donor funding along the Thailand-Burma border.

This has deeply impacted the refugees and IDPs living along the border whose lives depend on international aid as well as essential services and programs offered by local ethnic service providers, which were traditionally funded by the international donor community. Many refugees are now feeling squeezed out of the camps,⁴ bearing a resemblance to the experience of Mon refugees who were pushed back across the border to Burma and became IDPs over 20 years ago. As expressed by many Mon IDPs interviewed for this report, they have yet to find durable livelihood solutions in IDP sites and continue to suffer from chronic poverty, debt and lack of medical care. Inside Burma, stagnation in amending repressive laws, military dominance in politics, the absence of an inclusive ceasefire and political dialogue, the presence of landmines and land confiscation that has become endemic throughout the country continue to render the definition of a safe and dignified voluntary return of refugees meaningless. As plans to repatriate over 100,000 refugees along the border continue to be discussed, there is an increasing need to reflect on the past and draw lessons that could prevent a future protracted IDP situation in the country. This report aims to shed light on lessons that can be

1. "Country Information 2015." Internal Displacement Monitoring Centre, <http://www.internal-displacement.org/database/country?iso3=MMR>.

2. "Refugee and IDP Camp Populations: April 2016." The Border Consortium, <http://www.theborderconsortium.org/media/69419/2016-04-apr-map-tbc-unhcr.pdf>.

3. The Border Consortium, "Changing Realities, Poverty and Displacement in South East Burma/Myanmar," The Border Consortium (2012): 2, <http://www.theborderconsortium.org/media/10374/report-2012-idp-en-1-.pdf>.

4. Saw Yan Naing, "Unseen Pressures Behind Refugees' Voluntary Return," June 17, 2016, <http://www.irrawaddy.com/burma/unseen-pressures-behind-refugees-voluntary-return.html>.

learned from the past for all stakeholders involved in all stages of planning for the return of refugees and IDPs.

While the IDPs interviewed for this report expressed their desire to stay in their current locations as opposed to relocation or return to their original location, they often cited two major obstacles to their possible return: not having land to return to and continuing considerations about safety including lack of sustainable peace in their place of origin.

The plight of villagers and farmers in Ye and Yebyu Township in their struggle to preserve and protect their land from the Burma Army, the State and private investors indicate that refugees and IDPs are likely to face increasing housing, land and property (HLP) rights violations upon their return. These HLP rights violations must be resolved not only to ensure the durable return of IDPs and refugees, but also to end further displacement that is adding to the already vast number of displaced people inside and out of the country. Steps must also be taken to ensure that a genuine and inclusive peace process remains a priority, as it is only through an inclusive ceasefire and sustainable peace that a durable solution can be found for the disenfranchised and displaced communities in Burma.

Community-based organizations (CBOs), ethnic service providers, and grassroots movements with decades of experience and knowledge that have worked side-by-side with their communities through difficult and challenging times are tackling these very issues and concerns that the IDPs, refugees and villagers are facing. As the new NLD-led Government has begun to take the reins of the political and economic reforms set in motion by the previous government, all parties must ensure that the efforts of those who have consistently worked alongside ethnic communities are supported and advocated, and not sidelined.

HLP rights of refugees and IDPs must be restored, laws that are legacies of the past must be amended, landmines must be cleared from the land and an inclusive ceasefire followed by a political solution is needed to protect them from further abuse and possible secondary displacement before a durable livelihood solution can be achieved. National reconciliation is possible only when victims begin receiving the support they need to ensure that they can rebuild their lives in safety and dignity.

Introduction

In Burma, one of the world's longest running civil wars has inevitably led to a displacement crisis that has predominantly affected the ethnic minority communities. Nearly 70 years of armed conflict have left 644,000 internally displaced and over 479,000 refugees⁵ fleeing the country. More than 100,000 refugees live in camps along the Thailand-Burma border,⁶ and as a result of years of armed conflict, approximately 400,000 IDPs live in protracted displacement in southeast Burma.⁷ In addition, millions of migrants leave their homes and country in search of economic security often under conditions similar to that of IDPs and refugees.

The increase in international attention towards Burma is defined by several prominent events in the past and especially in recent years that are marked by pro-democracy movements often followed by military crackdowns, coup d'états, elections, ceasefires and armed conflict, and natural disasters. However, it is between these defined events that those who have been displaced fought another kind of a battle often unseen by the rest of the country and the world; fear of recurring displacement, killing and other forms of human rights abuses, conflict, chronic poverty, food insecurity, joblessness, and long months and years of overwhelming uncertainty.

As the new NLD-led Burma Government continues to release the State's iron grip on the country's borders that remained shut due to decades of military rule, lack of data among other issues, has left little that is understood about IDPs in southeast Burma and their needs. As glimmers of possibility for voluntary return and resettlement for refugees and IDPs open up, there are many lessons that must not be forgotten from the past, while at the same time, a closer look into current changing social, economic and political developments and their possible impact on IDPs and refugees is urgently needed.

Though displaced and often disenfranchised, the IDPs' and refugees' deep understanding of their struggles and survival mechanisms, as well as the leading roles of CBO's in protecting and serving the needs of the IDPs for decades – at times of crisis and years of instability – remains essential to ensuring a genuine reform process in Burma; yet their voices remain unheard. The integration of these local actors' voices in the current reform processes is no doubt challenging as the lives of the Karen, Karenni, Mon and Tavoyan IDPs and refugees and their pluralistic society interconnect through their experience of conflict and displacement as military offensives and mega development projects affect more than one ethnic community.

5. "Country Information 2015."

6. "Refugee and IDP Camp Populations: April 2016."

7. The Border Consortium, "Changing Realities," 2. <http://www.theborderconsortium.org/media/10374/report-2012-idp-en-1-.pdf>.

Nevertheless, their participation is essential in adequately addressing the concerns of the ethnic people in Burma's transition.

It is beyond the scope of this report to address issues related to displacement in the entire southeast that affect the diverse ethnic communities. However, focusing on the situation of Mon refugees and IDPs leading up to the 1995 ceasefire by the New Mon State Party (NMSP) and the post-ceasefire politics and economy as well as the more recent influx of investment and land related abuses in Mon State can help to highlight lessons for future policy, aid and development agendas along the southeast border region.

Methodology

While Burma Partnership led the preliminary needs assessment and design for this research, Burma Link conducted all the interviews and focus group discussions (FGDs) in partnership with HURFOM, facilitated by Mon Relief and Development Committee (MRDC) and other local CBOs. The interviews and FGDs were conducted in four different IDP sites, Halockhani,⁸ Baleh Done Phaik,⁹ Chedeik, and Jo Haprao, in the NMSP-controlled cease-fire areas, as well as with farmers and villagers in and around Ye Township in government-controlled areas of southeast Burma. Some interviewees in the government-controlled areas came from Yebyu Township in Tenasserim Region. Mon Civil Society Organizations (CSOs) and political parties as well as the NMSP and NMSP-linked service providers were interviewed in Ye and in Moulmein in southeast Burma and in Sangkhlaburi in Thailand. One interview with a Mon CSO and one interview with an international non-governmental organizations (INGOs) were conducted via Skype.

A total of 29 interviews and 5 FGDs were conducted in southeast Burma and along the border. In total 60 interviewees participated. Whilst most of the interviews were conducted in Mon language, many interviews with the NMSP, NMSP-linked service providers, CSO/INGO representatives and political parties were conducted in English. All FGDs were conducted in Mon language except for one, which was conducted partly in Burmese. Mon and Burmese translation was provided when necessary.

Most interviewees were ethnic Mon, however, Tavoyan, Karen, Mon-Chinese, and Burman individuals were also interviewed. All interviewees were Buddhist except for one Christian. This largely reflects the population in Mon areas,¹⁰ which is overwhelmingly Buddhist.

The research was conducted through qualitative interviews with open-ended questions. The objective was to understand the feelings, perspectives and outlook of the interviewees who were encouraged to share any additional concerns and issues that they wanted to voice. All interviewees made an informed decision to take part and utmost care was taken to protect their identity – particularly the IDPs and villagers – who took part in this research, to ensure they are protected from possible direct threats and intimidation as a result of the interviews.

8. Halockhani is both a name of a larger IDP site that includes many smaller sites, including Halockhani and Baleh Done Phaik.

9. Often also spelled “Baleh Done Pain” or “Baleh Done Peid”, however the Mon pronunciation is closer to the spelling “Baleh Done Phaik”.

10. Mon areas refers to parts of Tenasserim Region, Mon State, and Karen State that are populated by Mon people.

Section One: Background

1.1 Democracy, 2015 Elections, NLD-led Government, Refugee Return

After 49 years of brutal military dictatorship that left the country in crippling fear of oppression, poverty and international isolation, in March 2011 President Thein Sein's quasi-civilian government came into power seemingly undertaking a series of reforms that gave people hope that Burma's dire human rights situation would soon improve. While the previous Union Solidarity and Development Party (USDP) Government initially showed a more tolerant approach to human rights as represented by factors such as a larger international presence, opening up of independent domestic media and growing number of national CSOs based inside the country, the prevailing narrative that Burma had set off on a road to democratic reform became increasingly rocky.¹¹

While President Thein Sein's rhetoric of democratic reform had the semblance of a country transforming from decades of civil war and dictatorship, the military-backed USDP Government did not move towards genuine democratization by pursuing deeply rooted structural changes such as amending the military drafted 2008 Constitution.¹² This Constitution gives the military control over three key ministries – Ministry of Defense, Home Affairs, and Border Affairs – by allowing them to appoint the ministers. It also guarantees the military extensive powers to take control of civilian administration all the way to local ward and village level through the General Administration Department, and an upper hand in national politics through the composition of the National Defense and Security Council, thus effectively giving the military control over national affairs such as constitutional amendment and peace processes.¹³ In addition, given that over 75% of Parliament is required to vote in favor of changes to the Constitution and only then a referendum can be held, and that the same Constitution reserves 25% of the seats in Parliament to the military, the military effectively has veto power over any constitutional amendments. Thus, impunity remains deeply entrenched in key institutions and structures of governance, allowing the Burma Army – the main perpetrators of pervasive human rights abuses and forced displacement – to continue to wield far-reaching powers.¹⁴

11. Philip Heijmans, "Are Myanmar's reforms backsliding?," Aljazeera, September 19, 2014, <http://www.aljazeera.com/indepth/features/2014/09/are-myanmar-reforms-backsliding-201491710425712121.html>.

12. The 2008 Constitution was drafted by a "National Convention" led by the military, which was ultimately boycotted by the recently instated National League for Democracy (NLD) Government. It was ratified through a farcical referendum in May 2008, with a 92.48% "yes" vote, just days after Cyclone Nargis devastated the country killing over 140,000 people.

13. Burma Partnership and Asia Forum for Human Rights and Development, "Human Rights Situation in Burma/Myanmar" (Paper prepared for the 31st session of the UN Human Rights, Geneva, Switzerland March 2016).

14. 10 Civil Society Organizations, "UN Review Shows Lack of Progress Made by the Outgoing Government," Press Release, March, 23, 2016 <http://www.burmapartnership.org/2016/03/un-review-shows-lack-of-progress-made-by-the-outgoing-government/>.

The peace talks, which commenced shortly after the Thein Sein Government came into power, entered its fifth year in 2016 as conflict raged on in northern Burma. While the USDP Government signed preliminary ceasefires with powerful ethnic groups along the eastern border such as the Karen National Union (KNU) and the NMSP, militarization by the Burma Army increased in ceasefire areas over the years, which led to heightening tensions between ethnic armed organizations (EAOs) and the Burma Army. While ceasefires were signed with EAOs in the east, rather than engaging in genuine dialogue, the Burma Army escalated its attacks on ethnic communities in northern Burma. With impunity, the Burma Army continues to commit human rights violations that may constitute crimes against humanity and war crimes,¹⁵ including the systematic use of sexual violence, routine use of torture and extra-judicial killings in both ceasefire and non-ceasefire areas.¹⁶ The military remains constitutionally immune from prosecution by civilian court, and the former Thein Sein Government has lacked political will to hold these perpetrators accountable, perpetuating the decades-long practice.

Despite these ongoing obstacles, 2015 will be remembered as a momentous year for Burma as the Daw Aung San Suu Kyi-led NLD party won a landslide victory in the 8 November elections – the first openly competitive national elections in 25 years. The NLD's victory signaled the resounding will of the people to see “genuine change” in the country.

The continuing political and economic reforms in Burma and the triumph of the NLD in the 2015 elections have captivated local citizens and foreign observers around the world. While the international community continues to congratulate and reward Burma for undertaking the reforms, the much touted changes over the last five years have affected people in widely varying degrees.

One of the reactions towards the recent reforms led by the former USDP Government and the decrease in armed conflict in the southeast, particularly since the signing of the ceasefire with the KNU in 2012, has been a shift in international donor priorities to move funds and programs from along the Thailand-Burma border to inside the country. While essential service providers, CBOs, refugees and IDPs along the border that traditionally relied on support from the international donor community have reported the need for continued assistance, optimism that people will soon begin to move back to Burma and domestic services will replace the needs of those displaced has led to a further decline in donor funding along the border.

This has deeply impacted the refugees and IDPs living along the Thailand-Burma border whose lives depend on essential services and programs offered by ethnic service providers, which were traditionally funded by the international donor community. Since March 2011, approximately 36,000 refugees have left the camps, most of them resettling to third countries.¹⁷ Undoubtedly, some refugees have also left the camps to return to Burma or have moved

15. Fortify Rights, “I Thought They Would Kill Me: Ending Wartime Torture in Northern Myanmar,” Fortify Rights (2016): 13, http://www.fortifyrights.org/downloads/Fortify%20Rights_Myanmar_9_June_2014.pdf.

16. Burma Partnership, “Protection of People Must be Priority in Burma’s Protracted Peace Process” (Paper prepared and released to mark Union Day in Burma 2016). <http://www.burmapartnership.org/wp-content/uploads/2016/02/Peace-Process-Paper-20-October-2015-2016-FINAL-6.pdf>.

17. According to TBC, total feeding figure in March 2011 was 137,554 compared to 100,973 in April 2016 see: <http://www.theborderconsortium.org/resources/key-resources/>.

onto other sources of livelihood such as blending into the migrant landscape in Thailand. Yet, the approximately 100,000 refugees¹⁸ who still remain in the nine camps along the Thailand-Burma border, and 400,000 IDPs¹⁹ who live in protracted displacement in southeast Burma, continue to rely on external support for their livelihoods.

Another aspect that has exacerbated the anxiety and concerns of refugees along the border are the continuous rumors and counter rumors that repatriation of refugees will soon begin as the political situation in Burma stabilizes. Concerns that this was taking place without adequate consultation with refugees, CBOs and CSOs working with the refugee community were mounting²⁰ when in July 2014 Thai military leader and Prime Minister General Prayuth Chan-ocha of the Royal Thai Government, after meeting with Burma Army's commander-in-chief, Senior General Min Aung Hlaing, announced that a general agreement had been made to repatriate Burma's refugees.²¹

Following the announcement, the Thai Ministry of Foreign Affairs assured the public that both governments reaffirmed their commitments for "a safe return in the future in accordance with humanitarian and human rights principles."²² However, this announcement, coupled with newly enforced restrictions on movement in the camps, which limited refugees from supplementing their meager assistance and reduced rations by seeking temporary work outside the camp – a practice not uncommon in protracted situations – created a condition that has left refugees feeling squeezed out of the camps.²³

One year after the announcement in July 2015, a document that deals with the general principles of voluntary repatriation such as the "Strategic Roadmap for Voluntary Repatriation" was presented by the United Nations High Commissioner for Refugees (UNHCR) and the subsequent "Operations Plan for Voluntary Repatriation" provided more details to facilitating returns.²⁴ Lack of clear information and timely consultations by authorities, including the UNHCR, further exacerbated the refugees' concerns that repatriation plans were taking place without the inclusion of refugees themselves and the CBOs working with the refugee communities.²⁵

In June 2016, Daw Aung San Suu Kyi made her first visit to Thailand in her new capacity as State Counselor. During her trip, she made a joint pledge with Prime Minister Prayut

18. "Refugee and IDP Camp Populations: April 2016."

19. The Border Consortium, "Changing Realities," 2.

20. Timothy Syrota, Nothing About Us Without Us (Thailand: Burma Partnership, 2012), DVD. <https://www.youtube.com/watch?v=gOW07BsBdrM>.

21. Bill Frelick, "How NCPO can help Myanmar refugees," Bangkok Post, July 22, 2014, <http://www.bangkokpost.com/archive/how-ncpo-can-help-myanmar-refugees/421694>.

22. "Camp occupants fear uncertain fate," Bangkok Post, July 18, 2016, <http://www.bangkokpost.com/print/421128/>.

23. Burma Link and Burma Partnership, "Briefing Paper: Voices of Refugees – Situation of Burma's Refugees Along the Thailand-Burma Border," Burma Link and Burma Partnership (2015): 16 – 24, <http://www.burmalink.org/wp-content/uploads/2015/04/27.04.05-Voices-of-Refugees-Along-Thailand-Burma-Border.pdf>.

24. UN High Commissioner for Refugees "Strategic Roadmap for Voluntary Repatriation: Refugees from Myanmar in Thailand 2015 - 2017" UN High Commissioner for Refugees (2015), <http://data.unhcr.org/thailand/download.php?id=1267>.

25. Dene-Hern Chen, "UNHCR presents first draft of repatriation plan," Democratic Voice of Burma, July 29, 2015, <http://www.dvb.no/news/unhcr-presents-first-draft-of-repatriation-plan-burma-myanmar-refugees/55299>.

Chan-o-cha to work together to ensure that the refugees in Thailand will return in safety to Burma “when the time is right.”²⁶ Both governments also reaffirmed their commitments to the development projects along the border, including the development of special economic zones such as the Dawei Special Economic Zone.²⁷

In Burma, stagnating reform in legal, political and military cultures and land riddled with landmines continue to render the definition of a safe and dignified voluntary return of refugees meaningless. Commenting on the recent rumors regarding repatriation, a Karen Refugee Committee (KRC) spokesperson stated in an interview by the *The Irrawaddy*, “Even internally displaced people [IDPs] in Karen State can’t go home, so it will be difficult for those living in Thailand to return.”²⁸ In addition, despite ceasefires in certain parts of Burma, conditions that refugees and IDPs fled from in the first place – armed conflict, human rights abuses and displacement due to development projects – remain.

1.2 A Fledgling, Uncertain Peace Process

The peace process that was initiated by the Thein Sein Government shortly after coming to power in 2011 culminated in two notable events in late 2015/early 2016 – the signing of the ‘nationwide ceasefire agreement’ (NCA) and the holding of the Union Peace Conference (UPC). Yet despite these well publicized, and in some quarters, much-lauded events, armed conflict and the displacement that this has caused over the past five years under the Thein Sein Government has continued throughout peace talks, and through the coming to power of the NLD-led Government.

The breaking of the ceasefire with the Kachin Independence Army (KIA) in 2011 by the Burma Army provoked the recurring war in Kachin and northern Shan States, which has included the Burma Army’s use of airstrikes²⁹ and has displaced over 100,000 people.³⁰ The Burma Army’s offensives targeting various EAOs such as in northern Shan State with the Ta’ang National Liberation Army (TNLA), and the Shan State Army – North (SSA-N) have continued, while sporadic clashes with groups that have bilateral ceasefire agreements, such as the KNU and the NMSP have also occurred. In fact, 2015 was one of the bloodiest years on record for Burma’s decades-long civil war as an outbreak of conflict with the ethnic Kokang, Myanmar National Democratic Alliance Army (MNDAA) in February 2015,³¹ an intensification of attacks on the SSA-N and the TNLA, and the continued offensives in Kachin saw ethnic communities suffer displacement, human rights abuses and the other daily realities of living in a warzone.

26 “Suu Kyi pledges to bring home refugees,” Bangkok Post, June 25, 2016, <http://www.bangkokpost.com/news/general/1019265/suu-kyi-pledges-to-bring-home-refugees>.

27 Ibid.

28. Saw Yan Naing, “No Quick Return for Border Refugees Despite High Hopes for NLD Era,” Irrawaddy, May 4, 2016, <http://www.irrawaddy.com/burma/no-quick-return-for-border-refugees-despite-high-hopes-for-nld-era.html>.

29. “Myanmar Air Force Launches 3 Rounds of Airstrikes in Southern Kachin State,” Kachinland News, March 25, 2016, <http://kachinlandnews.com/?p=25566>.

30. Kachin Women’s Association – Thailand “Statement by KWAT on the 4th Anniversary of Renewal of war in Kachin Areas,” Press Release, June 9, 2016, <http://www.burmapartnership.org/2015/06/statement-by-kwat-on-the-4th-anniversary-of-renewal-of-war-in-kachin-areas/>.

31. Xue 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/>.

The focal point of the Thein Sein Government's peace process was supposed to be the signing of the NCA on October 15, 2015. Yet despite years of negotiations and an eventual agreement by all sides on the text of the accord, the Government refused to allow certain EAOs to sign. These include the Arakan Army (AA), the MNDAA, and the TNLA, all of whom have been and are still actively engaged in armed conflict with the Burma Army. Many powerful EAOs, including the NMSP, refused to sign the NCA, in solidarity with the excluded EAOs. The NCA was thus partial and exclusionary. The resulting UPC was also boycotted by the same EAOs, as well as civil society, who described the holding of the UPC as "an act of negligence and disregard of the ongoing armed conflicts occurring in Northern Shan State and Kachin State."³² At the time of writing, the NLD-led Government is planning to convene a '21st Century Panglong Conference,' echoing the agreement between General Aung San, and Shan, Kachin, and Chin leaders in 1947 in Panglong, Shan State. Yet uncertainty abounds, as the Burma Army has demanded that the MNDAA, AA and TNLA disarm before being allowed to participate, and EAOs are divided between signatories and non-signatories of the NCA.

There is, however, no uncertainty on the part of the Burma Army in launching offensives. Even as the country geared up for the 2015 elections and the signing of the NCA in October 2015, the Burma Army launched fresh attacks on the headquarters of the SSA-N, which had already signed a bilateral ceasefire with the Government in 2011, displacing up to 10,000 people.³³ Renewed offensives against the TNLA in northern Shan State also began after the NCA signing. In February 2016 clashes displaced up to 7,300 people³⁴ and after a brief lull, more fighting displaced up to 2,500 people by early May 2016.³⁵ By the end of May 2016, over 11,000 people have been displaced in Shan State due to armed conflict.³⁶

In a worrying sign for the peace process, the armed conflict with the TNLA also involves the Shan State Army – South (SSA-S/RCSS), one of the EAOs that signed the NCA. It is alleged by the TNLA that the SSA-S/RCSS and the Burma Army have been cooperating with each other to attack the TNLA,³⁷ given credence to the long-held view that the Burma Army uses divide and rule tactics. Since the signing of the NCA in October 2015 the AA in Arakan State has also been subjected to military offensives by the Burma Army, which displaced hundreds of civilians at the end of 2015, and a further 1,400 at the end of April 2016 as Burma Army attacks intensified over the Buddhist New Year holidays in mid-April.³⁸

32. 126 Civil Society Organizations, "Statement of Civil Society Organizations on the Union Peace Convention to be held on 12th January 2016," Statement, January 5, 2016, <http://www.burmapartnership.org/2016/01/statement-of-civil-society-organizations-on-the-union-peace-convention-to-be-held-on-12th-january-2016-5-january-2016-1-adoption-of-the-framework-for-political-dialogue-on-16th-december-2015-and/>.

33. Lawi Weng, "SSA-N Official: 'We Will Not Let Them Take Our Headquarters'," Irrawaddy, November 26, 2015, <http://www.irrawaddy.com/conflict/ssa-n-official-we-will-not-let-them-take-our-headquarters-2.html>.

34. "Myanmar: Snapshot of Humanitarian Issues (as of 31 March 2016)," last modified April 12, 2016, <http://reliefweb.int/report/myanmar/myanmar-snapshot-humanitarian-issues-31-march-2016>.

35. Thu Thu Aung, "Fighting in two states leads to more IDPs," Myanmar Times, May 9, 2016, <http://www.mmtimes.com/index.php/national-news/20176-fighting-in-two-states-leads-to-more-idps.html>.

36. "Myanmar: New displacement in Northern Shan State (as of 31 May 2016)" last modified June 2, 2016, <http://reliefweb.int/report/myanmar/myanmar-new-displacement-northern-shan-state-31-may-2016>.

37. Lawi Weng, "As Conflict Reignites, TNLA Claims Gains at Shan Army's Expense," Irrawaddy, May 6, 2016, <http://www.irrawaddy.com/burma/as-conflict-reignites-tnla-claims-gains-at-shan-armys-expense.html>.

38. Thu Thu Aung, "Fighting in two states leads to more IDPs," Myanmar Times, May 9, 2016, <http://www.mmtimes.com/index.php/national-news/20176-fighting-in-two-states-leads-to-more-idps.html>.

It is clear that while the NLD-led Government brings hope, Burma is far away from peace. Armed conflict has simply continued unabated throughout peace talks with the previous Government, despite the NCA and UPC, and thus far the NLD-led Government has not been able to prevent fresh Burma Army offensives and the resulting displacement of civilians, nor ongoing abuses and impunity.

Furthermore, there are splits between the EAOs that signed the NCA and those that did not. The NMSP did not sign the NCA and is allied with many of the EAOs that have been facing the worst of the recent armed conflict, including the KIA, the MNDAA, and the TNLA. With armed conflict and displacement occurring on a daily basis, it is difficult for those communities on the ground who experience the effects of the fighting, including existing IDPs and refugees, to have faith in the prospects for peace anytime soon.

1.3 UN Guiding Principles on Internally Displaced Persons in Context of Burma

IDPs are often displaced for the same reasons as refugees and identify similar concerns upon consideration of their return. Unfortunately, the IDPs remain under the government that is often the cause of their displacement and do not benefit from a legal status granted to the refugees who flee across the border or abroad. Consequently, IDPs are some of the most vulnerable people in the world.³⁹ While barely separated by a few meters between borders, the legal statuses of Burma's IDPs and refugees are worlds apart.

Defined by the UN Guiding Principles on Internally Displaced Persons (the Principles), IDPs are persons or groups of persons who are coerced or involuntarily forced to move within the national borders of their home country in response to systematic violations of their human rights, particularly as a result of armed conflict, natural and human made disasters, and situations of generalized violence.⁴⁰ The Principles are not binding; however, they provide an authoritative articulation of international humanitarian, human rights, and refugee law relating to IDPs.

The Principles are considered instructive to the State's obligation under international law during all stages of displacement: protection from displacement; guaranteeing protection and assistance during displacement; and the IDPs' safe and dignified return, resettlement and reintegration after displacement. They are also meant to give valuable and practical guidance to governments, inter-governmental organizations and INGOs in their work with IDPs.

Despite the large number of IDPs, the Burma Government has not adopted any legislation or specific policy towards IDPs.⁴¹ Policies on IDPs by EAOs, who often bear the responsibility of providing protection and assistance during displacement, and their safe return, resettlement and reintegration, are often unclear. Their approach to these responsibilities also varies

39. "Internally Displaced People," accessed June 26, 2016, <http://www.unhcr.org/internally-displaced-people.html>

40. United Nations Commission on Human Rights. 1998. Guiding Principles on Internal Displacement. New York: United Nations Commission on Human Rights.

41. Internal Displacement Monitor "Myanmar: Comprehensive Solutions Needed for Recent and long-term IDPs alike" Internal Displacement Monitor (2014): 1.

depending on external forces such as international aid organizations whose aim is to support the IDPs or those applying pressure including neighboring countries that may be impacted by their policies and approaches.⁴²

For any actors working with IDPs, Principles 28 – 30 emphasize that special effort must be made to ensure full participation of IDPs in the decision making process of their return or resettlement and reintegration. This requires that authorities and other actors involved provide accurate and clear information for the IDPs to be able to partake in the decision making process and ultimately choose whether they wish to return to their place of origin. IDPs are often given inadequate information regarding possible restitution for confiscated or damaged land and their remote locations pose obstacles in gathering sufficient information about their previous land. As political and economic transitions continue, steps must be taken to ensure that IDPs are not being left out of discussions that ultimately affect their future.

Three main reasons are often given for displacement in southeast Burma: conflict-induced displacement; displacement as a result of development projects; and displacement due to human rights violations.⁴³ However, defining IDPs in southeast Burma poses several difficulties. Local organizations operating in southeast Burma have a wide range of definitions that may not fall within the terms defined by the Principles. For example, some organizations still consider those who have found durable solutions in villages as IDPs, if they were once subject to displacement.⁴⁴ IDPs in this region often do not live in designated IDP camps and instead live alongside conflict affected villagers; therefore, issues surrounding IDPs such as chronic poverty and lack of healthcare may also apply to the general population.

In southeast Burma, it is becoming increasingly difficult to tell when displacement has ended or whether conditions which led to their displacement have been resolved. While conflict and human rights abuses have decreased, the peace process is fragile and new challenges since 2011 have emerged. Mega development projects, foreign direct investment and an increase in the price of land has generated a land-grabbing epidemic. In addition, housing, land and property (HLP) rights of those displaced have yet to enter substantial discussions in peace talks and yet the Government as well as most EAOs do not have a clear position or policy on this particular issue.⁴⁵ These emerging issues make it even more difficult to identify when the causes of the IDPs' displacement have been resolved and when their safe and dignified return can be secured.

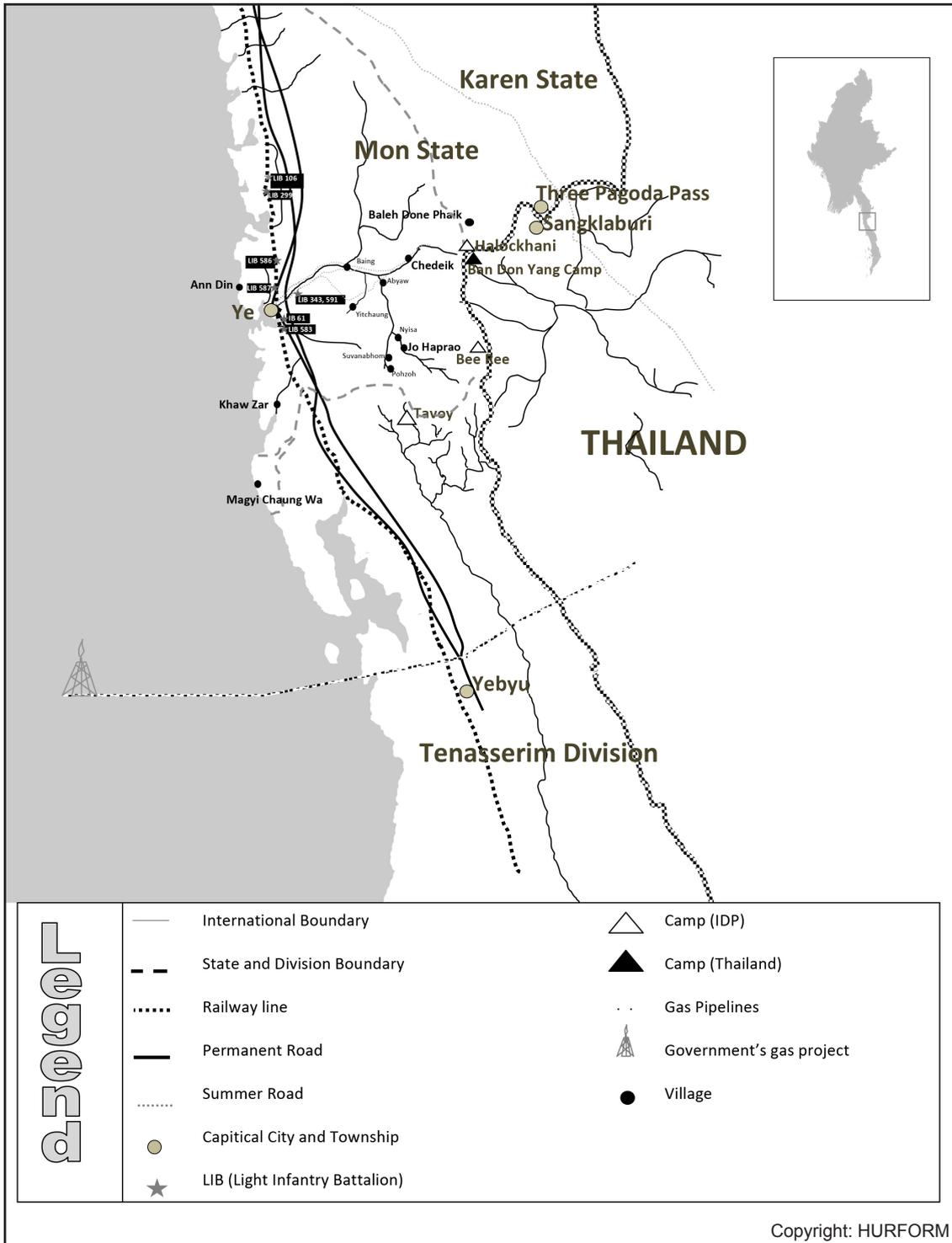
42. Kim Jolliffe, "Ceasefire and Durable Solutions in Myanmar: A Lessons Learned Review," United Nations High Commissioner for Refugees (2014): 2.

43. Ashley South, "Towards a Typology of Forced Migration in Burma," *Forced Migration Review* (2008): 16, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR30/16.pdf>.

44. Internal Displacement Monitor "Myanmar," 10.

45. Displacement Solutions, "Bridging the HLP Gap; the Need to Effectively Address Housing Land and Property Rights during Peace Negotiations and in the Context of Refugee/IDP Return: Preliminary Recommendations to the Government of Myanmar, Ethnic Actors and the International Community," Displacement Solutions (2013): 19 – 30.

Map of Mon State (areas of research)



Section Two:

Protracted Displacement - Mon IDPs in Southeast Burma

Mon State is currently home to approximately 35,000 IDPs,⁴⁶ primarily living along the state's eastern border with Thailand in areas controlled by the NMSP, the main ethnic armed resistance organization in Mon areas since the 1950s. The Mon⁴⁷ IDP settlements were established over 20 years ago when thousands of civilians were fleeing armed conflict and conflict-related abuses as well as widespread land confiscation at the hands of the Burma Army. Thousands of these IDPs were initially refugees in Thailand, before they were forced back to Burma's side of the border where they were shortly afterwards attacked by the Burma Army. After being forcibly repatriated, some for a second time, the IDPs have stayed in the same settlements for over two decades, unable to establish adequate and sustainable livelihoods largely due to their isolated location, difficult terrain, and the threat of war.

Despite extreme hardship, the IDPs interviewed for this report did not express their wish to return to their place of origin, primarily owing to lack of access to land and housing as well as ongoing security concerns in their origin, including the possibility of renewed fighting. Community members also expressed concerns over diminishing aid. Although just a snapshot, these findings are in line with previous reports by the Human Rights Foundation of Monland (HURFOM) highlighting Mon IDPs perspectives on relocation⁴⁸ and illustrating how these populations remain excluded from the country's developing mainstream political community and narrative.⁴⁹

2.1 Forced to Flee

Ethnic minorities from southeast Burma have been fleeing to the border areas for decades, owing to over 68 years of armed conflict as well as grave human rights violations, which have been rampant in conflict-affected communities. Most of the IDPs interviewed for this report had been forced to leave their homes at least once either due to fighting in and around their villages or conflict-related rights abuses including the burning of villages, torture, killings, and forced labor including forced portering primarily committed by the Burma Army:

46. The Border Consortium, "Changing Realities," 17.

47. Although majority of the IDPs who fled Mon areas are ethnic Mon, these communities are also home to various ethnic groups most notably Karen and Tavoyan.

48. Human Rights Foundation of Monland "Destination Unknown Hope and Doubt Regarding IDP Resettlement in Mon State," Human Rights Foundation of Monland (2012): 5 – 55. <http://www.rehmonnya.org/upload/Destination-Unknown.pdf>.

49. Human Rights Foundation of Monland "Ballot Denied: Disenfranchised Voters in Kyar Inn Seik Gyi Township, Karen State," Human Rights Foundation of Monland (2016): 11. <http://www.rehmonnya.org/reports/Ballot-Denied-Full-Report-Eng.pdf>.

*When the [Burma Army] soldiers arrived in the village, they tried to find some men. If there were no men, they tried to find women and they beat and used them as forced labor, like portering. That's why I moved.*⁵⁰ (Female IDP, Baleh Done Phaik)

*19 years ago the Burmese soldiers came to my village and burned the whole village, so we ran away, we fled here [Halockhani IDP site].*⁵¹ (Tavoyan female IDP with 11 siblings, Halockhani)

Many lost not only their homes, but also their families and communities have remained separated. The Tavoyan woman above is one such example, who has not heard any news of her parents or siblings since they fled in different directions all those years ago.

Part of the brutal counter-insurgency tactics against the ethnic armed struggles employed by the Burma Army have been the systematic use of rape against ethnic minority women as a weapon of war.⁵² One community member in Halockhani IDP site described the endemic sexual violence and rape in her village of origin:

“

*Burmese soldiers raped whoever they saw. All of us from Yebyu [Tenasserim Region] had to run away and move here [to the border]. [...] When they [the Burma Army] arrived, they just grabbed a woman no matter whether they were young or old. We must all take our daughters away from that situation.*⁵³ (Middle aged female IDP, Halockhani; also see case study 1)

”

As well as flight owing to threats of sexual violence and other human rights violations, land grabbing and other grievances associated with land and farming were commonly mentioned as a reason for displacement:

*From Moulmein to Ye, the government confiscated the land and they stuck a small flag and wrote, "This land belongs to army, belongs to government." They just took the land.*⁵⁴ (Elderly male IDP who fled to Halockhani from southern Ye Township)

*My parents told me that we couldn't go to the farm and plantation without the Burmese soldiers' permission, so it was not free. When we came here [Chedeik IDP site in NMSP-controlled area], we could work freely. We can go to the plantation whenever.*⁵⁵ (Young Karen female IDP, Chedeik)

50. Mon IDP, interview with author, Baleh Done Phaik, 28 February 2016.

51. Tavoyan IDP, interview with author, Halockhani, 27 February 2016.

52. Women's League of Burma, "Same Impunity, Same Patterns: Sexual Abuses by the Burma Army Will Not Stop Until There is a Genuine Civilian Government" Women's League of Burma (2014): 1 – 2. http://womenofburma.org/wp-content/uploads/2014/01/SameImpunitySamePattern_English-final.pdf.

53. Mon IDP, women-only FGD, Halockhani, 27 February 2016.

54. Mon IDP, interview with author, Halockhani, 27 February 2016. .

55. Karen IDP, interview with author, Chedeik, 26 February 2016.

The historical dynamics of the conflict and displacement in Mon areas are elaborated in more detail in the following sections.



MNLA soldiers at the Mon National Day celebration in Panan Pone on February 24, 2016.

Copyright: Burma Link

2.2 Mon Armed Struggle and Displacement

Mon civilians started fleeing their homes during the armed struggle time of Mon National Defense Organization (MNDO) and Mon People's Front (MPF) between 1948 and 1958, when thousands escaped fighting between the Mon forces and the central government. The NMSP and its Mon National Liberation Army (MNLA) took up the banner of armed resistance after the MPF surrendered in 1958.⁵⁶ For ethnic armed organizations, including the NMSP, they have struggled for years to achieve ethnic equality and self-determination. According to a staff member of a Mon civil society organization, "the civil war began because there were no ethnic rights and self-determination. That's why the ethnic armed organizations began."⁵⁷

Conflict continued throughout General Ne Win's dictatorship until 1988 and after the violent crackdown on pro-democracy demonstrators, the State Law and Order Restoration Council (SLORC) stepped up its efforts to cripple the ethnic armed resistance.⁵⁸ In 1990, the MNLA was unable to fend off Burma Army attacks and the NMSP headquarters near the Three Pagodas Pass fell to the regime.⁵⁹ Between 10,000 and 12,000 civilians fled to Thailand.⁶⁰ These refugees were provided temporary protection and the Burmese Border Consortium (BBC) through the Mon National Relief Committee (MNRC) – the NMSP's newly established relief committee – was able to organize some humanitarian support.⁶¹ Over the years, more civilians kept fleeing to the border and aid organizations were later able to provide assistance for food, education, and medical care to the displaced Mon communities on both sides of the border.⁶²

In Thailand, Mon refugees were forced to move from one temporary location to another, until in 1993, they started coming under significant pressure from the Thai authorities to return to Burma's side of the border.⁶³ In a 1993 October monthly report, the MNRC commented that the "new place in Halockhani on Burma side is, in fact, dangerous place for the Mon refugees to stay as it is just an hour walk's away from the outpost of the Burmese troop."⁶⁴ Despite the MNRC's persistent appeals, a systematic repatriation process began in January 1994 as planned.⁶⁵ Three sites were chosen for their resettlement, and refugees were given the option of whether to move to Halockhani, Bee Ree, or Tavoy.⁶⁶ By the end of April 1994, the move was complete.⁶⁷

56. Hazel J. Lang, *Fear and Sanctuary: Burmese Refugees in Thailand* (Ithaca: Southeast Asia Program Publications, 2002), Human Rights Foundation of Monland, "Destination Unknown," 16.

57. Mon CSO, interview with author, Sangkhlaburi, 1 March 2016.

58. Human Rights Foundation of Monland, "Destination Unknown," 17.

59. Ashley South, "Mon Nationalist Movements: insurgency, ceasefires and political struggle" (Paper presented at Seminar on Discovery of Ramannadesa: Mon history, identity, culture, language and performing arts, Bangkok, Thailand, October 10 – 13, 2007). http://www.ashleysouth.co.uk/files/Chulalongkorn_University_Mon_Seminar_October_2007.pdf

60. Jolliffe, "Ceasefire and Durable Solutions in Myanmar," 22.

61. Human Rights Foundation of Monland, "Destination Unknown," 19.

62. *Ibid.*

63. Jolliffe, "Ceasefire and Durable Solutions in Myanmar," 22.

64. "Monthly Report: October 1993" Mon National Relief Committee (1993): 3, <http://www.burmalibrary.org/docs11/MRDC1993-10.pdf>.

65. *Ibid.*

66. Jolliffe, "Ceasefire and Durable Solutions in Myanmar," 24.

67. South, *Mon Nationalism and Civil War in Burma*, 209.

[...] from 1990 up to 1994, the Thai government allowed us and then they pushed us out again to our country, to the border. That's what we were afraid of. We did not want to return back to our area.⁶⁸ (NMSP CEC member, undisclosed location)

According to the BBC, the international community accepted the situation “on the grounds that access for relief supplies and monitoring was still permitted, and because assurance was given that the refugees could return to Thailand if under attack.”⁶⁹

Only a few months later on July 21, 1994, the refugees' (turned IDPs) worst fears were confirmed when the new settlements in Halockhani came under attack by over 100 troops from the Burma Army Infantry Battalion No. 62.⁷⁰ The Burma Army occupied the site, arrested some IDPs, used others as human shields, and engaged in an armed battle with the MNLA before burning almost the entire settlement to the ground:⁷¹

They collected all the people around that building and they chose 11 villagers⁷² and tied them. They said "these men are Mon soldiers" and they tied the men. [...] And some villagers, for one soldier they had two villagers as human shields, two villagers walked at the front and behind every soldier. They went to Halockhani, and they said they are going to burn the MRDC's office [back then called the Mon National Relief Committee].⁷³ (Male IDP who fled to the jungle and tried to save his burning house after the attack in Baleh Done Phaik)

One IDP from Baleh Done Phaik who was taken as a hostage and used as a human shield by the Burma Army, described the attack with remarkable detail:⁷⁴

When the Mon soldiers shot at them [the Burma Army soldiers], seven villagers including me, ran in front of the [Burma Army] soldiers and some soldiers yelled to their officer, "They are running, they are running!", so the officer shouted, "Shoot them, shoot them! why don't you shoot them!" [...] We just ran and listened to the sound of artilleries and mortars. If we heard "tak" we would get down and then the mortar would explode. And we ran until we arrived at the Mon soldiers' area. [...] After a while when we went back again to that fighting place, the Mon soldiers told us, "Don't stay here, run away, run far away from the fighting!" And at that time I saw the smoke, the smoke of the burning houses. The Burmese soldiers left after they had burned them.⁷⁵ (Middle aged male IDP, Baleh Done Phaik)

68. NMSP CEC member, interview with author, undisclosed location, March 1 2016.

69. "Burmese Border Consortium Refugee Relief Programme 1994" Burmese Border Consortium, (1994): 2 – 3 <http://www.theborderconsortium.org/media/10181/1994-6-mth-rpt-jan-jun-1-.pdf>.

70. "Monthly Report: July 1994" Mon National Relief Committee (1994): 3, <http://www.burmalibrary.org/docs11/MRDC1994-07.pdf> and August 1994.

71. "Monthly Report: August 1994" Mon National Relief Committee (1994): 3, <http://www.burmalibrary.org/docs11/MRDC1994-08.pdf>.

72. According to MNRC, they arrested 16 men see: "Monthly Report: August 1994" Mon National Relief Committee (1994): 3.

73. Mon IDP, interview with author, Baleh Done Phaik, 28 February 2016.

74. For the full testimony of this IDP who was taken as a hostage and used as a human shield see: Burma Link, "Shoot Them [IDPs], Why Don't You Shoot Them!": Mon IDP's Experience as Burma Army's Hostage and Human Shield after Forced Repatriation" Burma Link (2016): <http://www.burmalink.org/mon-idps-experience-burma-army-hostage-human-shield/>.

75. Mon IDP from Baleh Done Phaik, interview with author, Halockhani, 28 February 2016.

CASE STUDY 1

Fleeing Sexual Violence from Yebyu Township to the Thailand-Burma Border¹

Mi Sanda Si Aye's² mother passed away when she was 18 years old. As the eldest sibling, she took on the role of a mother for her younger siblings. Their father was a fisherman who was often away at sea, and Mi Sanda Si Aye struggled to put food on the table while trying to protect herself and the family from the harassment they often received from the Burma Army.

"I remembered what my aunt had told me; to carry my youngest brother, so they would think I'm a mother with a baby," Mi Sanda Si Aye says as she recalls one of the times that the Burma Army soldiers came to her house. Her aunt had always reminded her to



Mi Sanda Si Aye
pictured in
Halockhani.

Copyright: Burma Link

1. Mon IDP, FGD and interview with author, Halockhani, 27 February 2016.
2. Name has been changed to protect the identity of the individual.

The attack sent all the 6,000 IDPs back across the border to Thailand, where they were pressured again to return to Burma within days of their arrival.⁷⁶ Although the MNRC published repeated appeals to allow the refugees temporary refuge on Thai soil,⁷⁷ pressure kept mounting and on August 31, 1994, aid was blocked and the MNRC was told that rice distribution would continue only after all refugees had returned to Burma.⁷⁸ Within less than two weeks, the refugees had been 'starved' back across the border to an environment where they had been attacked only a few weeks prior.⁷⁹

This move was widely characterized as refoulement,⁸⁰ and the "UNHCR has since been criticized for not doing enough, as they did almost nothing to advocate for the protection of the displaced people," as their involvement along the border was limited to sporadic missions.⁸¹ The Halockhani incident jolted the UNHCR to further engage with Thailand as a mediator in

76. "Monthly Report: July 1994" Mon National Relief Committee (1994): 3.

77. "Monthly Report: August 1994" Mon National Relief Committee (1994): 3 – 7 <http://www.burmalibrary.org/docs11/MRDC1994-08.pdf>.

78. "Monthly Report: September 1994" Mon National Relief Committee (1994): 3 <http://www.burmalibrary.org/docs11/MRDC1994-09.pdf>.

79. Lang, *Fear and Sanctuary*, 112.

80. *Ibid.*, 113.

81. Jolliffe, "Ceasefire and Durable Solutions in Myanmar," 29.

carry her youngest brother as the soldiers were less likely to take her away to rape her if she was carrying a baby. The houses were far away from each other, and a cry for help would not have been heard between the living quarters. Any time the Burma Army soldiers arrived to her village, men would run and hide to escape forced portering duties that would sometimes last for months. When the men were away, women stayed in the village, becoming easy prey for the soldiers. To protect themselves, the village women slept under the same roof in groups; “If something happened to one of us, the rest of us could scream for help,” Mi Sanda Si Aye explained. The soldiers often returned for information regarding Mon soldiers, leading to threats and interrogation of the villagers. Mi Sanda Si Aye’s cousin once visited a friend in a neighboring village, and upon his arrival, was interrogated, tortured, and finally beaten to death.

When Mi Sanda Si Aye was 19-years-old, she decided to leave the village and take her younger siblings to a safer place. They followed their aunts and walked across the jungle to the Thailand-Burma border. Mi Sanda Si Aye and her family stayed in a refugee camp in Thailand until they were forced to move back to Burma in 1995. Along with thousands of others, Mi Sanda Si Aye moved to Halockhani IDP site where she has lived for over 20 years. Due to difficulties in making ends meet, her husband is now working in Thailand and sending money to her and their three children. Although she hasn’t faced abuse for decades, Mi Sanda Si Aye says she is still afraid of the Burma Army soldiers because of her experience from the past.

The soldiers tried to take a girl and a mother would pull and grab her daughter tight. By the mother’s scream asking for help, the soldiers didn’t get her daughter. When I saw and heard this kind of story several times, I didn’t dare to live in the village anymore.
(Mi Sanda Si Aye)

affairs related to refugees from Burma.⁸² It is interesting to note that September 9, 1994, just days after aid was blocked, was the same day when a Memorandum of Understanding (MOU) was signed for selling gas from Burma to Thailand.⁸³ The subsequent construction of the gas pipeline from the Andaman Sea to Thailand led to further human rights abuses and displacement.⁸⁴

2.3 Ceasefire and More Forced Returns

Since 1993, the NMSP had been under pressure from all sides to sign a ceasefire deal with the central government. It is likely that the refugees were used as political pawns as pushing the war victims back across the border was yet another tactic to pressure the party to sign the pact.⁸⁵ With increasingly weakening relationships with the Thai Government coupled with intensified Burma Army attacks and advances in EAO areas, the NMSP had little choice

82. Ibid.

83. “Mon Refugee Committee April 1995”, accessed on June 26, 2016, <http://www.burmalibrary.org/reg.burma/archives/199505/msg00176.html>.

84. Karen Human Rights Group, “The Ye-Tavoy Railway,” Karen Human Rights Group (1994): accessed June 26, 2016, <http://khrhg.org/1994/04/940413/ye-tavoy-railway>.

85. Ashley South, “Mon Nationalist Movements.”

but to agree to a ceasefire agreement with the Government.⁸⁶The ceasefire signed on June 29, 1995 had very limited positive effects in Mon areas⁸⁷ and no political solutions were discussed to address the root causes of the conflict. The ceasefire also led to a number of factions and splits from the NMSP, especially in parts of Ye and Yebyu Townships from which the NMSP was forced to withdraw.⁸⁸ These implications are further discussed in section three of this report.

The ceasefire did not bring peace and stability to the people and instead severe human rights abuses continued along with the Burma Army's 'Four Cuts' campaign strategies,⁸⁹ which devastated the ethnic civilian population. In addition, the ceasefires led to an increase in militarization by the Burma Army in ethnic areas and by the year 2000, over 20 Burma Army battalions were newly stationed around NMSP-controlled areas compared to the three stations observed prior to 1995.⁹⁰ Military associated land confiscations increased and internationally funded projects such as the Yadana and Yetagun gas pipeline continued to enslave the local population into widespread forced labor.⁹¹

Despite the ongoing abuses and displacement that continued after the 1995 ceasefire, and a debate focusing "on the degree of 'voluntariness' that might characterize any refugee repatriation" of Mon refugees,⁹² all the remaining 4,000 Mon refugees had been moved across the border to the MNRC resettlement sites by March 1996.⁹³ The UNHCR, meanwhile, had "refused to get involved, either as an advocate or critic of repatriation."⁹⁴ A UNHCR official even considered the proposed repatriation "spontaneous,"⁹⁵ in stark contrast to the agency's guidelines developed the same year.⁹⁶ More recently, according to one international aid worker, some UNHCR staff had been referring back to these cases as recently as 2012 as "a good example of how spontaneous return had taken place following a ceasefire."⁹⁷ By and large, however, both international and local aid workers considered the case as forced repatriation,⁹⁸ in line with the IDPs' testimonies that showed lack of choice:

I moved from Ba Phyu village to here because the Thai authorities forced us to move to the village, so we moved here. The Thai authority didn't allow us to stay in the ter-

86. South, *Mon Nationalism and Civil War in Burma*, 219.

87. *Ibid.*, 233-234.

88. Ashley South, "Mon Nationalist Movements."

89. Four Cuts campaign is a counter-insurgency strategy used by the Burma Army since the 1960's in an attempt to cut civilian support to EAOs (food, funds intelligence, and recruits), and has devastated the ethnic communities throughout Burma.

90. Human Rights Foundation of Monland, "Destination Unknown," 22.

91. Burma Link, 'Land Confiscation Continues under the Name of Development': Mon Human Rights Defender Nai Aue Mon" Burma Link (2016): accessed on June 26, 2016, <http://www.burmalink.org/land-confiscation-continues-in-the-name-of-development-mon-human-rights-defender-nai-aue-mon/>.

92. South, *Mon Nationalism and Civil War in Burma*, 235.

93. Jolliffe, "Ceasefire and Durable Solutions in Myanmar," 30.

94. South, *Mon Nationalism and Civil War in Burma*, 235.

95. *Ibid.*

96. The UNHCR (1996) Handbook for Voluntary Repatriation states that "As a general rule, 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." United Nations Commission on Human Rights. 1996. See, UN High Commissioner for Refugees (UNHCR), Handbook - Voluntary Repatriation: International Protection, January 1996, <http://www.unhcr.org/3bfe68d32.html>.

97. Jolliffe, "Ceasefire and Durable Solutions in Myanmar," 30.

98. South, *Mon Nationalism and Civil War in Burma*, 235.

*ritory.*⁹⁹ (Elderly male IDP, Halockhani)

*Thai government, authorities, forced us to move the village again and again. Then I moved to Ba Phyu village and then the Thai authorities forced us to move again so I moved here.*¹⁰⁰ (Female IDP who was forced to move to Baleh Done Phaik after the 1994 Burma Army attack)

After the return, the MNRC, having changed its name to the MRDC, continued to facilitate assistance for IDPs with other local and international groups. The IDPs were given three years of basic food assistance by aid organizations. In hopes of encouraging self-sufficiency there would be a gradual reduction in food aid by agencies.¹⁰¹ As years passed, it has become clear that IDPs have been unable to establish adequate and sustainable livelihoods, while aid and assistance has dwindled.

According to the BBC, one main reason for the slow progress in these settlements towards self-sufficiency was the lack of a sense of security.¹⁰² Even as the 20 years of ceasefire has been observed, it has been fragile at times and there is no clear sight of a sustainable solution. The fragility of the ceasefire was evident in 2010 when the relationship between the NMSP and the Government became strained as the NMSP refused to transform into a Border Guard Force (BGF) under the Burma Army, according to the 2008 Constitution. The situation did not, however, escalate into outright conflict, and a new ceasefire was signed between the USDP Government led by President Thein Sein and the NMSP in 2012. Nevertheless, the NMSP did not agree to the non-inclusive nature of the 2015 NCA and refused to sign. More recently, the Burma Army, in an aggressive move, seized guns and equipment from an MNLA base. Some view this move as pressure on the NMSP to sign the NCA and others believe it is connected to the MNLA's yearly revenue-acquisition drive.¹⁰³

2.4 20 Years on and No Durable Solutions

More than 20 years since Mon refugees were repatriated to Burma, the vast majority remain displaced and have not found a durable livelihood solution. The IDP sites are far away from towns and very difficult to access, and the mountain terrain provides limited opportunities for farming.¹⁰⁴ Most IDP families earn money by working on rubber plantations, betel nut gardens and paddy fields, collecting bamboo shoots, making floor brooms, or doing daily-wage work. Most work is seasonal and the income inconsistent, and after all these years, IDPs have not been able to establish adequate and sustainable livelihoods:

99. Mon IDP, interview with author, Halockhani, 27 February 2016.

100. Mon IDP, interview with author, Baleh Done Phaik, 28 February 2016.

101. Human Rights Foundation of Monland, "Destination Unknown," 23.

102. "Burmese Border Consortium Refugee Relief Programme 1994" Burmese Border Consortium, (1994): 5 <http://www.the-borderconsortium.org/media/10066/1999-6-mth-rpt-jan-jun-1-.pdf>.

103. Lawi Weng, "Burma Army Raids Mon National Liberation Army Base," Irrawaddy, June 17, 2016, accessed June 26, 2016, <http://www.irrawaddy.com/burma/burma-army-raids-mon-national-liberation-army-base.html>.

104. Although some have questioned whether the displaced communities in NMSP area can be called IDPs after more than two decades of their initial displacement, international standards do not impose an arbitrary cut-off for the duration of displacement. International standards rather recognise a solution as having been found when people no longer have any specific assistance or protection needs linked to previous displacement. See, "IASC Framework on Durable Solutions for Internally Displaced Persons" http://www.brookings.edu/~media/research/files/reports/2010/4/durable-solutions/04_durable_solutions.pdf.

“

*There are very few people who can survive on their own income, most cannot. We are all living from hand to mouth day by day.*¹⁰⁵ (Middle aged female IDP, Jo Haprao)

”

A Central Executive Committee Member (CEC) from the NMSP concurred:

*The whole day they work to feed themselves. There is not enough rice; this is very problematic for them. Even if they can plant rice, maybe there's no ground to plant the rice. No ground means there is only the jungle.*¹⁰⁶ (NMSP CEC member, undisclosed location)

When asked about the main concerns of IDPs at IDP sites, their concerns were overwhelmingly centered around two main themes; food insecurity and lack of access to health services:

*Mostly we are worried about food. There is not enough food. We just work one day and then spend the money one day. There are no proper jobs.*¹⁰⁷ (Middle aged male IDP, Chedeik)

*Medicine and rice are the most important for us. If we have to choose only one, that's medicine; we cannot make medicine. For rice or food, we could find some roots or vegetables in the forest.*¹⁰⁸ (Male IDP and landmine survivor, Jo Haprao; also see case study 2)

This is especially problematic for vulnerable populations, as demonstrated by this elderly woman in Halockhani:

*As my husband is really old and he cannot go up and down [the mountain to find wood] or work, other people helped build our house. We are still hungry in our house.*¹⁰⁹ (Elderly female IDP and grandmother, Halockhani)

The primary concern voiced by interviewees about health was related to lack of medicine. Many also pointed out that there used to be more medicine in the past:

I am worried about health, because they cannot assist us here. Currently, there is no medicine here; but in the past there was a lot of medicine here. The villagers are

105. Mon IDP, FGD, Jo Haprao, 25 February 2016.

106. NMSP CEC member, interview with author, 1 March 2016.

107. Mon IDP, interview with author, Chedeik, 26 February 2016.

108. Mon IDP, FGD, Jo Haprao, 25 February 2016.

109. Mon IDP, women-only FGD, Halockhani, 27 February 2016.

worried about their health.¹¹⁰ (Middle aged male IDP, Jo Haprao)

In Halockhani, a new hospital was built by the Swedish INGO Varma Handen in 2016, but due to a lack of tools and medicine the villagers are unable to use the new facilities and continue to travel to Ban Don Yang refugee camp or Sangkhlaburi – both in Thailand - for treatment:

A new hospital was built [here in Halockhani], but no one goes there yet because there is no medicine or no treatment tools. We just go to Ban Don Yang hospital.¹¹¹ (Middle aged female IDP, Halockhani)

Travel to hospitals in Ye or Sangkhlaburi in order to treat serious illnesses is only possible for those who can cover the costs. This poses difficulties particularly for those residing in more isolated IDP sites such as Jo Haprao:

There are some small clinics around this village, but they only cure patients who can pay money. Less people go to the hospital. Most go to a clinic here. When the clinic cannot take care of the sickness, you have to go to Ye if you have money. If not, you will definitely die.¹¹² (Middle aged female IDP with four children, Jo Haprao)

If we get a serious sickness, we go to this hospital [in Jo Haprao], if we have a very serious sickness we go to Ye and we have to go by ourselves, with our own money. If there is no money, we cannot go. We have no money, so we cannot go anywhere. I was sick one time, but luckily I'm not dead.¹¹³ (Middle aged male IDP, Jo Haprao)

Although the IDPs work long hours, with scant economic growth and limited opportunities for income generation, the money they make is not enough to meet their basic daily needs. Consequently, nearly all interviewees reported being in debt. Many were



Family making floor brooms in Halockhani

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110. Mon IDP, interview with author, Jo Haprao, 25 February 2016.

111. Mon IDP, women-only FGD, Halockhani, 27 February 2016.

112. Mon IDP, FGD, Jo Haprao, 25 February 2016.

113. Mon IDP, interview with author, Jo Haprao, 25 February 2016.

visibly distressed when discussing the topic and unable to identify ways to escape the ill-fated circumstance:

“

*We live our life like ‘we work, we eat.’ During this time if we get sick, we have to borrow money on interest from other people. After feeling better again, we work to repay our debts. That’s the kind of circle of life that we are running.*¹¹⁴
(Female IDP and mother of five, Halockhani)

”

*The interest of debts never stops increasing for us because we cannot pay back all the debt at once, so the compounded interest always remains. Because we could not pay back the debt right away, we have to go to another person to get loan for our health or food. We work and pay back the first loan and go on to pay the second. How can we afford to escape from this life? [...] How can we pay without having any property? We just pluck vegetables and eat the vegetables. We cannot stop eating.*¹¹⁵
(Elderly female IDP and grandmother, Halockhani)

2.5 Excluded from International Aid

*I don’t dare to think what will happen in the future if we don’t get support.*¹¹⁶ (Male IDP and grandfather who has lived in an Baleh Done Phaik IDP site for 28 years)

Before Burma started opening up in 2011, international aid was primarily channeled through EAO-linked aid distribution and other independent ethnic CSOs that were conducting cross-border operations. The narrative of democratic transition signaled to the international community to shift their funds away from border-based civil society groups and towards the central Government, while the EAOs’ decades-old struggle for freedom, equal rights and federalism has yet to take any significant steps forward:

*Most people believe there are some changes inside Burma. And for some organizations like INGOs they are already inside Burma. And along southeast Burma in the ethnic areas, there is no more support because of the Government. They [the Government] didn’t want these people to get support from other donors.*¹¹⁷ (Mon CSO, staff member, Sangkhlaburi)

Whilst The Border Consortium (TBC) (formerly the BBC and the Thailand Burma Border Consortium) continues to support these populations, their longtime policy has been “to gradually reduce supplies to encourage self-sufficiency.”¹¹⁸

114. Mon IDP, women-only FGD, Halockhani, 27 February 2016.

115. Mon IDP, women-only FGD, Halockhani, 27 February 2016.

116. Mon IDP, interview with author, Baleh Done Phaik, 28 February 2016.

117. Mon CSO, interview with author, Sangkhlaburi, 1 March 2016.

118. “Burmese Border Consortium Refugee Relief Programme 1994” Burmese Border Consortium: 5.

Currently IDPs in Halockhani site and vulnerable persons in Bee Ree site receive rice or an equivalent in cash for a three months' supply,¹¹⁹ although in some cases it lasts for a considerably shorter time:

*The last time I received cash from MRDC was around November 2015. The cash was gone for food and medicine. I got 25,000 [kyat] and it lasted for two weeks. The support from the MRDC is decreasing every year.*¹²⁰ (Male IDP and landmine survivor who is on regular medication, Jo Haprao; also see case study 2)

Whilst the TBC continues to support the MRDC on small-scale community-driven infrastructure and income generation opportunities,¹²¹ and the Nippon Foundation has been assisting Mon IDPs for years, most community members raised concerns over diminishing aid.



Clinic in Baleh Done Phaik

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Section Two

119. MRDC, interview with author, Sangkhlaburi, 1 March 2016.

120. Mon IDP, interview with author, Jo Haprao, 25 February 2016.

121. "The Border Consortium Programme Report January – June 2015" The Border Consortium: 50, accessed June 26, 2016, <http://www.theborderconsortium.org/media/62531/2015-6-mth-rpt-Jan-Jun.pdf>.

*Last year, they [the Nippon Foundation] gave a 15-kilogram bag of rice to each person. We could die if they don't give support like this to us in this kind of season [dry season in February], which is hard for us. Every year the support is less.*¹²² (Elderly female IDP and grandmother, Halockhani)

*We think international organizations provided aid for us, but we don't exactly know which organizations. We just know some foreigners came and gave us medicine. They haven't come here for ages. We had met them several times before, but not now. When they were here, the hospital was lively and crowded and also stocked with many kinds of medicine. Everything was fine for us. However, it has been gradually changing in these past two years.*¹²³ (Male IDP, Jo Haprao)

This shift in aid priorities can be attributed to the normalization of aid relations between foreign governments and the Burma Government. Funds are increasingly aligned with government priorities, as required by key international accords.¹²⁴ These accords and declarations, however, can be problematic in Burma's unique context:

Respect for national sovereignty and non-interference in domestic affairs are basic principles of international relations. So in the case of foreign aid for fragile states, donor governments came up with this "New Deal" a few years ago in Busan which is basically about enhancing nation-state capacities to promote stability and human security. This 'New Deal' is generally interpreted as focusing on national government capacities. In countries like Burma/Myanmar, where sub-national conflict is a key cause of poverty and displacement, strengthening national government capacities can be perceived as perpetuating the grievances of ethnic minorities. So, in terms of conflict sensitivity, foreign aid needs to be strengthening sub-national actors and not



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122. Mon IDP, women-only FGD, Halockhani, 27 February 2016.

123. Mon IDP, FGD, Jo Haprao, 25 February 2016.

124. Gisela Grieger, "The "New Deal" for engagement in fragile states," Library of the European Parliament (2013): 1 - 8, <http://www.europarl.europa.eu/eplibrary/New-Deal-for-engagement-in-fragile-states.pdf>; "The Busan Partnership for Effective Development Co-operation" last modified July 1, 2017, <https://www.oecd.org/development/effectiveness/busanpartnership.htm>

*just government authorities during the transition process in Burma/Myanmar. This includes funds and technical support for the social welfare and political arms of ethnic armed groups in the same way that the government's education, health and legislative systems are assisted. Strengthening civil society organizations is also essential to promoting independent monitoring systems which promote and protect human rights. Foreign aid agencies generally prioritize building relations with government line ministries to expand program reach into areas emerging from conflict, but the real challenge is building on existing local capacities who already have the trust of those conflict-affected communities.*¹²⁵ (Duncan McArthur, Myanmar Program Director, The Border Consortium)

Although it has been broadly accepted that aid impacts conflict dynamics and has the potential to be a driver of peace or conflict, and that responsible programming should be conflict sensitive, this fundamental principle seems too often to have been overlooked in Burma.¹²⁶ In recent years, EAO-linked service providers, non-EAO-linked ethnic service providers and CSOs working in ethnic border areas have suffered a heavy blow as funds available to them have been depleted and often shifted to operations inside Burma.¹²⁷

*In the past, we could see a lot of cross border assistance from the international groups [...]. But now, it has become very few, because of the policy of the international aid the cross border assistance has changed a lot in this area.*¹²⁸ (Mon CSO)

“

*It's not like before, now we don't have the medicine, not enough for us. It's not the same like before, we had many, many, donors. And now we don't have donors who give money or medicine. This is not enough for us. Now we have a problem.*¹²⁹ (MNHC staff member, Sangkhlaburi)

”

Funneling funds through the Government for humanitarian aid or peacebuilding activities also poses a number of problems in Burma's context. Under the fragile peace process, this can have disastrous consequences by undermining ethnic civil society as well as the local governance structures and the ethnic communities' continuing struggle for freedom, equality and federalism. Some CSO representatives interviewed for this report also expressed being forced by the donors to move operations to government-controlled areas in order to receive funding:

125. Duncan McArthur, Myanmar Program Director, The Border Consortium, phone interview with author, 6 May 2016.

126. Jolliffe, "Ceasefire and Durable Solutions in Myanmar," 23, <https://asiafoundation.org/resources/pdfs/MMEthnicConflictandSocialServices.pdf>.

127. Jolliffe, "Ceasefire and Durable Solutions in Myanmar," 24, <https://asiafoundation.org/resources/pdfs/MMEthnicConflictandSocialServices.pdf>.

128. Mon CSO, interview with author, Sangkhlaburi, 25 January 2016.

129. MNHC, interview with author, Sangkhlaburi, 29 February 2016.

CASE STUDY 2

Landmine Victim in Jo Haprao, Bee Ree¹

As a result of years of armed conflict, large areas of southeast Burma are now contaminated with landmines. In an extensive survey led by the TBC in 2014, out of the 222 village tracts surveyed in south-east Burma, landmine pollution was documented in 53% of the village tracts.² In 2016, the Special Rapporteur on the situation of human rights in Burma noted, “Landmines and unexploded ordnance are a major factor preventing IDPs’ return, with casualties from landmines estimated at 3,700 over the past 15 years but likely to be far higher.”³ Mine Free Myanmar has identified over 40,000 landmine survivors.⁴ The Special Rapporteur has called on all parties to the conflict to immediately cease the use of landmines.⁵



Nai Hong Chan
in Jo Haprao

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For many of the IDPs and refugees, the presence of landmines is an impediment to their return. Burma has yet to accede to the Mine Ban Treaty and mine clearance by government-accredited humanitarian demining organizations has not been established. As presented in

1. Mon IDP, FGD and interview with author, Jo Haprao, 25 February 2016.
2. The Border Consortium “Protection and Security Concerns in South East Burma/Myanmar,” The Border Consortium (2014): 3, accessed June 26, 2016, <http://www.theborderconsortium.org/media/54376/report-2014-idp-en.pdf>.
3. United Nations, Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, Yang-hee Lee, A/HRC/31/71 (18 March 2016) available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/055/13/PDF/G1605513.pdf?OpenElement>.
4. Landmine & Cluster Munition Monitor Myanmar/Burma, “Landmine Monitor Myanmar/Burma,” International Campaign to Ban Landmines (2015): 16.
5. It should be noted that landmines in Burma are a complex issue as not only armed actors but even villagers have laid landmines in order to protect themselves from the Burma Army attacks.

[The donors] will give money inside Burma. Before 2011 or 2012, we got aid directly, but now they will cut funding. If we don't work inside Burma, they will cut funding. [...] In some areas we don't need the government, the government staff can't go, it's a black area [NMSP-controlled]. We have to keep our area, right?]¹³⁰ (MNHC staff member, Sangkhlaburi)

Furthermore, very few INGOs operating in government-controlled areas implement programs that specifically target IDPs, partly due to the lack of understanding or appreciation of the nature and extent of the displacement crises in Burma,¹³¹ but also lack of geographical as well as bureaucratic access:

130. MNHC, interview with author, Sangkhlaburi, 29 February 2016.

131. Ashley South “Humanitarian aid to IDPs in Burma: activities and debates” Forced Migration Review (2008): 17 – 18, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR30/17-18.pdf>

this case of Nai Hong Chan⁶ treatment and rehabilitation costs for landmine survivors are high and often only provided in major cities. Thus, landmine survivors often cross the border seeking health care in places such as the Mae Tao Clinic in Mae Sot, Thailand, led by well known humanitarian actor from Burma, Dr. Cynthia Maung.

Nai Hong Chan currently lives in Jo Haprao IDP site in Bee Ree with his wife, daughter and three sons. Nai Hong Chan grew up in Kyaing Joar under government oppression, and as a child, was often forced to porter for the Burma Army. When Nai Hong Chan was 28 years old, he went to Sangkhlaburi, Thailand along with 80 other villagers to retrieve tin to be used for a roof in a monastery. During this trip, a mine explosion changed his life; “my hands and two eyes disappeared,” he recalls.

In 1996, with the help of his friends in All Burma Students' Democratic Front (ABSDF), Nai Hong Chan was able to have an artificial eye fitted in Bangkok, an operation he says was supported by the UN. Having no means to work and support himself or his daily medicine, Nai Hong Chan came to Jo Haprao in 1999. “At that time, MRDC gave a lot of support here. Due to my misfortune, I could not work, so I decided to come here,” he stated. Due to the reduction in aid, however, Nai Hong Chan’s wife has had to bear the brunt of the rising costs for his care, which became increasingly difficult after she was diagnosed with cancer in 2004. Although she is now better and one of their sons takes whatever odd jobs he can find to support them, the family has been forced to live on debt. Nai Hong Chan says they currently owe approximately 1,000,000 kyat (US \$840), which his wife and his son struggle to pay off. He stated, “If we cannot pay it back, we will just accept whatever that is going to happen to us.”

Despite the difficult reality, Nai Hong Chan hasn’t lost his ability to dream. He wants to go to Bangkok to check and treat his eyes and open his own shop in Jo Haprao to cover the cost of his food and medicine.

6. Name has been changed to protect the identity of the individual.

“

*Because many INGOs are in Yangon, they cannot directly access the south-east, the refugees or IDPs, because of the limitations from the government.*¹³²
(Mon CSO, staff member, Sangkhlaburi)

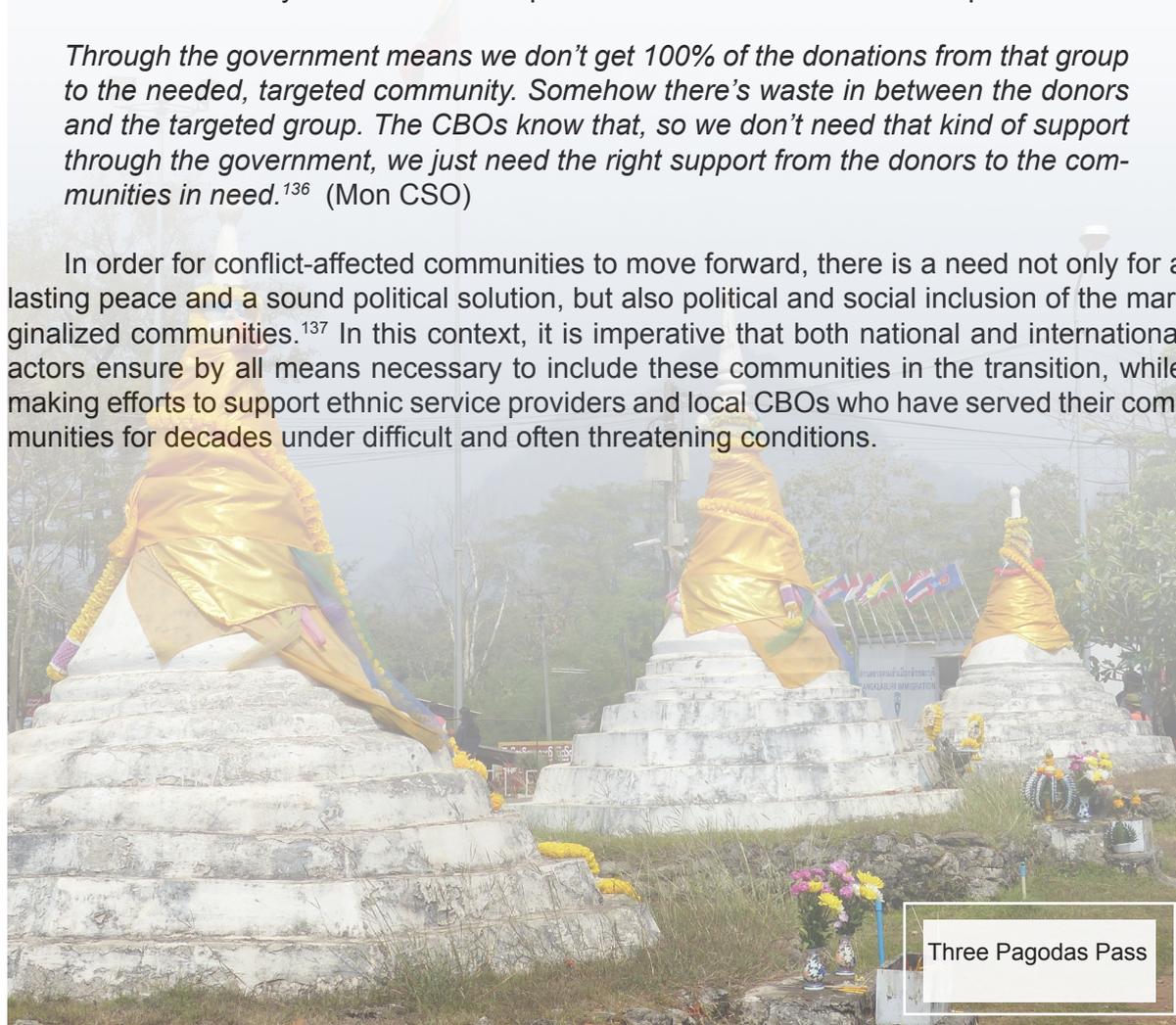
”

132. MRDC, interview with author, Sangkhlaburi, 1 March 2016.

Moreover, as southeast Burma is no longer on the UN humanitarian response plan,¹³³ many aid agencies and donors have shifted their priorities elsewhere. Although there is less fighting now in the southeast, the area has been a conflict zone for decades and still hosts the majority of the country's over 600,000 conflict-affected IDPs.¹³⁴ Many local service providers emphasize that the needs of IDPs and other vulnerable communities can currently only be met through ethnic and community-based service providers and CSOs, and not through the Burma Government system.¹³⁵ A CSO representative interviewed for this report concurred:

*Through the government means we don't get 100% of the donations from that group to the needed, targeted community. Somehow there's waste in between the donors and the targeted group. The CBOs know that, so we don't need that kind of support through the government, we just need the right support from the donors to the communities in need.*¹³⁶ (Mon CSO)

In order for conflict-affected communities to move forward, there is a need not only for a lasting peace and a sound political solution, but also political and social inclusion of the marginalized communities.¹³⁷ In this context, it is imperative that both national and international actors ensure by all means necessary to include these communities in the transition, while making efforts to support ethnic service providers and local CBOs who have served their communities for decades under difficult and often threatening conditions.



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133. Humanitarian Country Team "Humanitarian Response Plan: January – December 2016" UN Office for the Coordination of Humanitarian Affairs (2016): 9, accessed June 26, 2016, https://www.humanitarianresponse.info/en/system/files/documents/files/2016_myanmar_hrp_final_0.pdf.

134. The Border Consortium, "Changing Realities," 2.

135. Back Pack Health Workers Team, "Provision of primary health care among internally displaced persons and vulnerable populations of Burma," Back Pack Health Workers Team (2016) 6, accessed June 26, 2016, http://backpackteam.org/wp-content/uploads/2016/01/BPHWT_-2016_Proposal-22-12-2015.pdf.

136. Mon CSO, interview with author, Sangkhlaburi, 25 January 2016.

137. None of the IDPs interviewed for this report were able to vote in the 2015 elections and many expressed feelings of exclusion and marginalization as a result.

Section Three: Obstacles to Returns - Land and Security

3.1 No Return as Concerns Over Land and Security Remain

Even with extreme hardship and diminishing aid, all of the IDPs interviewed for this report said that they do not want to return to their place of origin. Primary concerns highlighted by the IDPs were lack of access to land and housing as well as concerns over the issue of protection and security. Some also mentioned having no relatives at the place of their origin and feeling more connected to their current community where many of them have lived for over two decades. Although many IDPs expressed their desire to remain in their current place of residence, this is not the result of a durable living condition and a sustainable solution to their livelihood, as illustrated by previous sections. A research paper highlighting lessons learned from previous ceasefire agreements that focused on the case of Mon and Kachin IDPs and refugees found that a “perceived lack of choice” has led to IDPs’ acceptance of the settlements as their new homes.¹³⁸ Those interviewed for this report expressed similar views:

*We’ve been living here for a long time and we all are used to living in this area. We have properties such a house or farm as our own. Anyway if we have to move into another place, everything will be new for us and we might have a lot of difficulties.*¹³⁹
(Young single male IDP, Jo Haprao)

*Where could we live if we leave this place? Nowhere to go and nothing to eat.*¹⁴⁰
(Female IDP and mother of three children, Jo Haprao)

“

*Some people want to go back to their origin, but there are no houses, no place, no properties. So here they have a house. And also here is the NMSP-controlled area, so they live in peace. In their original place, like in Karen State, there are also Mon, Karen [ethnic armed organizations], and some robbers and also government [troops], so they are worried about that. That's why they live here. They still want to go back, but there is no place, there are no houses, no farms.*¹⁴¹ (Middle aged male IDP and father of four children, Jo Haprao)

”

138. Jolliffe, “Ceasefire and Durable Solutions in Myanmar,” 35.

139. Mon IDP, FGD, Jo Haprao, 25 February 2016.

140. Mon IDP, FGD, Jo Haprao, 25 February 2016.

141. Mon IDP, interview with author, Jo Haprao, 25 February 2016.

This viewpoint was echoed by CSO representatives:

*The situation is not stable yet and then also the process of peace or the process of ceasefire is also not successful yet and this is also one problem, one issue for them. Another one is security for them, no one can guarantee their security and no one can guarantee for their needs, like house or place, land and education, everything. No one can guarantee them and then they will not come back. If they [the IDPs] have guarantee they will come back to their own land.*¹⁴² (Staff member from Mon youth group, Moulmein, Mon State)

A number of protection concerns persist as the primary reasons for not returning, particularly the threat of renewed armed conflict. IDPs and CSO representatives also raised concerns over their perceived connection to the NMSP by the Burma Army should war break out again:

*I am still afraid of Burmese soldiers throughout my life because of what I have faced. Because we have stayed here for ages, they would suspect that we all are Mon soldiers if I go back. Even if I go for a visit, they will question me and put me on the list. Then they will create problems for our relatives who live in the village when the ceasefire is broken. I worry for them.*¹⁴³ (Mon female IDP whose cousin was killed due to suspected connection to the MNL, Halockhani; also see case study 1)

As long as there are no sound political solutions to the root causes of the conflict, which rages on in other parts of the country, ceasefires remain fragile, posing concerns for local communities:

“

*They're talking about peace but on the other hand they are still fighting here, fighting there. But unfortunately if it will come back to this southern side we don't know about that, maybe it's coming back or not.*¹⁴⁴ (Mon CSO, Moulmein, Mon State)

”

This was a particular concern for IDPs in Jo Haprao, due to their isolated location far away from the Thai border:

*We worry that the ceasefire will break. If the ceasefire agreement breaks, we are worried that the Burmese troops will come here and cause problems for us. [...] for Chedeik and Halockhani, they are quite close to the [Thai] border, so if something happens there, they can cross the border. In this area, it is very far.*¹⁴⁵ (Middle aged male IDP, Jo Haprao)

142. Mon youth group from Mon State, phone interview with author, 8 May 2016.

143. Mon IDP, women-only FGD, Halockhani, 27 February 2016.

144. Mon CSO, interview with author, Mon State, 4 April 2016.

145. Mon IDP, interview with author, Jo Haprao, 25 February 2016.

Apart from their concerns of renewed fighting, almost all IDPs interviewed for this report reported having little security issues in their current location and relied on the NMSP for protection:

I could say no worry for security; as a woman I dare to go to the mountain or into the forest alone. We don't have to be scared like in other places because this is a NMSP area. (Middle aged female IDP and mother, Halockhani)¹⁴⁶

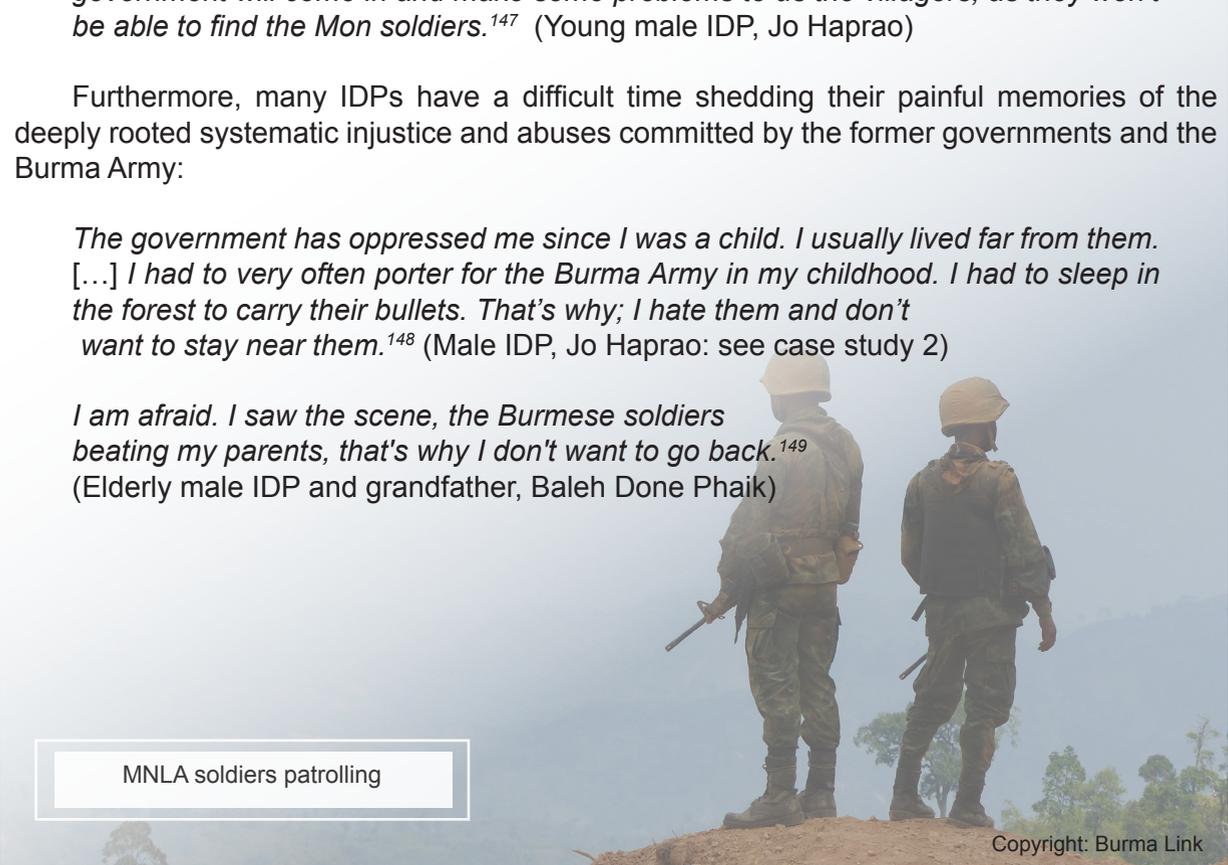
The conflict dynamics are complex, however, and even though the villagers overwhelmingly expressed their support and trust for the NMSP, in case of a ceasefire breakdown, IDPs feared that the NMSP might not be able to protect them:

It's about the politics. We worry about both sides, the NMSP and the government. When it is convenient for peace between the NMSP and the government, it's better for us; if not, we will be an innocent victim between them. Right now we are here with the NMSP. If there is a volatile situation with the government, then the NMSP will run far away with their soldiers, how and where can we go in this situation? Then the government will come in and make some problems to us the villagers, as they won't be able to find the Mon soldiers.¹⁴⁷ (Young male IDP, Jo Haprao)

Furthermore, many IDPs have a difficult time shedding their painful memories of the deeply rooted systematic injustice and abuses committed by the former governments and the Burma Army:

The government has oppressed me since I was a child. I usually lived far from them. [...] I had to very often porter for the Burma Army in my childhood. I had to sleep in the forest to carry their bullets. That's why; I hate them and don't want to stay near them.¹⁴⁸ (Male IDP, Jo Haprao: see case study 2)

I am afraid. I saw the scene, the Burmese soldiers beating my parents, that's why I don't want to go back.¹⁴⁹ (Elderly male IDP and grandfather, Baleh Done Phaik)



MNLA soldiers patrolling

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146. Mon IDP, FGD, Jo Haprao, 25 February 2016.

147. Mon IDP, FGD, Jo Haprao, 25 February 2016.

148. Mon IDP, interview with author, Jo Haprao, 25 February 2016.

149. Mon IDP, interview with author, Baleh Done Phaik, 28 February 2016.

Others had dealt with their trauma by deciding never to return:

“

*I am not afraid of the Burmese soldiers, because I already decided that I will never go back.*¹⁵⁰ (Male IDP and father originally from northern Ye Township, Halockhani)

”

A CEC member of the NMSP described the NMSP’s position towards resettlement as “free and fair” whereby Mon IDPs should be able to stay in the NMSP-controlled ceasefire zones and make their own decisions about relocation.¹⁵¹ While their policy towards refugee and IDPs has not yet been fully drawn, all NMSP CEC members and CSO representatives stated that ceasefire is not enough for repatriating IDPs or refugees, and emphasized that the only way to achieve a durable solution for the IDPs as well as the refugees is to first achieve nationwide peace followed by a political solution:

*There is no transparency yet, so we cannot believe it is a better situation, that's why we shouldn't return the IDPs. Now only some ethnic armed groups have signed the ceasefire, but not every group. And also there is no political dialogue yet for every ethnic armed group. And for the IDPs around the border area, there is no one who takes responsibility for IDPs if they are being sent back.*¹⁵² (Mon CSO, Sangkhlaburi)

“

*Ceasefire is not enough for the refugees to come back. Ceasefire is only for stopping fighting for a few minutes, a few days, a few months, this is not peace. It's not peace yet, it's just ceasefire; just stop fighting and the ceasefire can be broken any time because there is no reconciliation, there is no peace building in the peace process.*¹⁵³ (Staff member at Mon youth group based in Moulmein, Mon State)

”

Many highlighted the importance of a new constitution and the establishment of a genuine Federal Union where ethnic rights are guaranteed and respected:

So it's true, the government has changed now, the NLD has become the government right now but the problem is the 2008 Constitution is the same. So with this, without changing anything, with this constitution, the ethnic people, each and every ethnic group, they don't have their rights. So as long as this happens we're not sure what is

150. Mon IDP, interview with author, Halockhani, 27 February 2016.

151. NMSP CEC member, interview with author, undisclosed Location, 1 March 2016.

152. Mon CSO, interview with author, Sangkhlaburi, 1 March 2016.

153. Mon youth group from Mon State, phone interview with author, 8 May 2016.

going to happen next.¹⁵⁴ (NMSP CEC member, Moulmein, Mon State)

“

[...] *only political dialogue is not enough. The ethnic armies, they wish for a federal system, and only then there will be peace in the nation.*¹⁵⁵ (Mon CSO, Sangkhlaburi)

”

3.2 Ongoing Security Concerns

While a small number of villagers interviewed for this report in non-NMSP-controlled areas indicated that they have been experiencing increased stability in areas where they work, particularly within the past five years, the ongoing militarization by the Burma Army in Ye and Yebyu Townships since the 1995 ceasefire and subsequent land confiscation epidemic has created further displacement. In addition, following the 1995 ceasefire, small splinter armed groups that spawned from the NMSP and the Burma Army continue to extort villagers. Militarization by the Burma Army also compromises the safety and security of many villagers as the Burma Army continues to threaten their lives with impunity.

CASE STUDY 3

Burma Army Continues to Act with Impunity¹

While major armed conflict between the NMSP and the Burma Army has not been observed since the 1995 ceasefire, security concerns expressed by the IDPs in NMSP-controlled areas are very real as the Burma Army continues to act with impunity. The presence of the Burma Army remains a key source of insecurity among villagers in areas where the NMSP relinquished control after the ceasefire in 1995.

On March 8, 2016, Captain Zaw Myo Thet from LIB No. 280 of the Burma Army shot and killed 40-year-old Nai Ah Moem who died immediately at the scene, at 11:30pm and his nephew 23-year-old Nai Chit Soe who later died of blood loss on March 9, 2016 at 2am. The two had worked as fishermen in Magyi Chaung Wa village, which is also located in Khaw Zar sub-township in southern Ye Township off the coast of the Andaman Sea. According to their family members and an eyewitness to the murder, the soldiers shot them without identifying themselves.

Many of the men in the village rely on fishing to make ends meet and Nai Ah Moe had just left the house to repair his net. Nai Ah Moe, who was disabled, was reportedly shot six times²

1. Victim's Family, interview with author, Mon State 8 April 2016.

2. "Two Villagers Shot and Killed by Military Captain." Rehmonya, March 21, 2016, accessed June 26, 2016, <http://rehmonya.org/archives/3851>.

154. NMSP CEC member, interview with author, Mon State, 2 April 2016.

155. Mon CSO, interview with author, Sangkhlaburi, 1 March 2016.



Copyright: HURFORM

by the Burma Army and found with a laceration on his face. Nai Chit Soe was also shot three times, but the injury did not kill him right away.³ An eyewitness stated that after Nai Chit Soe was shot “he fell down on the ground. The soldiers picked him up and kicked him like a ball. They tortured him seriously. Even though Chit Soe yelled that he was a villager, they didn’t stop beating him. I saw everything because it was in front of my house.”⁴

While Nai Chit Soe was found alive when his family found him, Captain Zaw Myo Htet would not allow the relatives to leave the village for urgent medical care at a hospital, shooting their guns into the air to stop the villagers from leaving. Nai Chit Soe died before he could receive care at the hospital.

The family reported the incident to the nearby LIB 31 and the Khaw Zar sub-township police. While they have been offered compensation, the family has refused to accept it, and has chosen to seek justice.

Captain Zaw Myo That is being charged under Burma’s penal code, Article 302, however the Captain fled three days after the incident and the charges are being investigated under court martial.⁵ The family is requesting the case to be transferred to civilian court.

Under the 2008 Constitution, the military remains constitutionally immune from prosecution by civilian courts and authorities often lack the political will to find the perpetrators, allowing decades of impunity enjoyed by the Burma Army to continue. Civil society, human rights organizations and the international community have continuously urged the government to

3. Ibid.

4. “I Don’t Want This Case to Disappear’: Family of Two Mon Fishermen Killed by a Burmese Army Captain” Burma Link (2016): <http://www.burmalink.org/dont-want-case-disappear-interview-eye-witness-family-two-mon-fishermen-killed-burmese-army-captain/>.

5. “Military Threats Reported as Activists Seek Justice for Ye Township Double Murder,” April 6, 2016, accessed June 26, 2016, <http://rehmonnya.org/archives/3878>.

“ensure that members of the military who perpetrate serious crimes against civilians, including murder and rape are prosecuted, and that such cases are transferred to civilian courts.”⁶

The Captain told the family that he had mistaken the victims for “their enemy,” the Mon splinter groups operating in the area, and shot the wrong person. The family was outraged by this explanation stating “Ah Moe, the one he shot first, didn’t have a leg, so I want to ask – have you ever seen the enemy [splinter group] who has one leg? They should know that.”

Because the victims are both related to the village head administrator Nai Kai, it is alleged that the victims may have been mistakenly targeted in a bid by the Captain to murder the village administrator, Nai Kai. Villagers in Magyi Chaung Wa were ordered to provide a regular contribution, a bag of rice and 100,000 kyat (84 USD) a month, to the LIB no. 280. Unable to fulfill this request, witnesses have stated that the village headman, Nai Kai, had angered LIB no. 280.⁷

In pursuing justice for the victims, LIB no. 280 Major Aung Ko Win has used intimidation to silence the village head administrator Nai Kai, threatening to send him to prison for continuing to speak out about the case.⁸ In May 2016, the Myanmar National Human Rights Commission opened an investigation into the case.⁹

6. United Nations, Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, Yang-hee Lee, A/HRC/31/71 (18 March 2016) available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/055/13/PDF/G1605513.pdf?OpenElement>.

7. “Two Villagers Shot and Killed by Military Captain.”

8. “Military Threats Reported as Activists Seek Justice for Ye Township Double Murder.”

9. “Human Rights Commission investigating murder of Mon villagers,” Mon News Agency, May 28, 2016, accessed June 26, 2016, <http://bnionline.net/news/mon-state/item/1741-human-rights-commission-investigating-murder-of-mon-villagers.html>.

3.3 Splinter Groups

The 1995 ceasefire led to the emergence of several Mon splinter groups. Several factions of the MNLA, namely the Hongsawatoi Restoration Party (re-formed as the Mon Restoration Party in 2007) and Mon Army Mergui District, split from the NMSP and continued to clash with the Burma Army.¹⁵⁶ Smaller anti-ceasefire ethnic militias also continued to operate in southern Ye and Yebyu Townships where the NMSP had wielded influence since 1987 but was forced to withdraw after the ceasefire in 1995. While there are less clashes recently due to the ceasefire between the NMSP and Burma Army, villagers continued to be caught in the middle of armed clashes throughout the 1990s and early 2000s and all sides continue to collect taxes and extort villagers who have already suffered years of conflict:

The biggest security concern in this area is the splinter groups. Because they go to this village, that village, and they ask for money. Before the NMSP had a ceasefire

156. Ashley South, *Ethnic Politics in Burma: States of Conflict* (New York: RoutledgeCurzon, 2008), 162

*with the government, the situation was peaceful because it was a Mon [controlled] area. And no things like splinter groups or [...] But after the ceasefire in 1995 the NMSP had to move.*¹⁵⁷ (Mon CSO based in Ye Township, Mon State)

“

*We are unable to get assistance from anyone for our security. We need to protect ourselves. We cannot ask for help from the Burmese soldiers when the splinter groups kidnap us, as well as the splinter groups are unable to help us when the Burmese army oppresses and tortures the villagers.*¹⁵⁸ (Villager and father of three children, Khaw Zar, Ye Township, Mon State)

”

Furthermore, the Burma Army often accuses the villagers of assisting the splinter groups and because the NMSP are denied access to these areas, the victims are often left helpless:

*No one had to leave because of the movement of splinter groups, but the villagers have to move and run from the village because the Burma Army accuse the villagers with the crime of supporting the splinter groups.*¹⁵⁹ (Villager and father of three children, Khaw Zar, Ye Township, Mon State)

*Our village is not controlled by the NMSP and the NMSP does not have power to protect us. The problem is that we are unable to report anything to the NMSP when it happens to us because of the distance and lack of communication system.*¹⁶⁰ (Villager, Khaw Zar)

*The government doesn't allow for our NMSP's own operation to defeat them [the splinter groups], they don't allow us. If they allowed us then I think that in one month we could clear these groups.*¹⁶¹ (NMSP CEC member based in Moulmein, Mon State)

Most often, villagers felt more threatened by the presence of the Burma Army, and in some cases they are forced to pay tax to both sides:

“

*The splinter groups are much better than the Burmese Army; the splinter groups do not do bad things after we pay them money.*¹⁶² (Villager, Khaw Zar)

”

157. Mon CSO, interview with author, Mon State, 8 April 2016.

158. Mon villager, FGD, Ye, 7 April 2016.

159. Mon villager, FGD, Ye, 7 April 2016.

160. Mon villager, FGD, Ye, 7 April 2016.

161. NMSP, interview with author, Mon State, 2 April 2016.

162. Mon villager, FGD, Ye, 7 April 2016.

They [the Burma Army] still take illegal taxation from the people and then the splinter groups also take from the villagers. When the government knows, the government takes from us again. Like 10,000 Kyat per household, the splinter group takes, and when the government knows the government will also take from the villagers, 'why did you pay this splinter group?' But the villagers say 'if I don't pay they will kill me,' because they have the guns. And then the government says 'if you pay them, you have to pay us also. So if you don't pay we will arrest you.' So people pay both sides. This is what's happening in the area.¹⁶³ (Mon CSO based in Moulmein, Mon State)

3.4 Land Confiscation and Post-ceasefire Economy

For those displaced and villagers currently living in southern Ye and Yebyu Townships, access to land and security is essential in living a life in safety and dignity. Villagers currently experiencing land rights violations echo IDPs' concerns regarding lack of access to land and right to landownership.

The history of land confiscation and land rights related abuses is deeply rooted in the history of the post-ceasefire economy in Mon State. The ceasefire with the NMSP in 1995 provided space for several large-scale development projects, which led to further human rights violations, land confiscation and displacement. Prior to the ceasefire and until 1998, thousands of Mon, Karen and Tavoyan civilians were forced by the SLORC military regime to construct the 110 kilometers railway link from Ye to Tavoy, many escaping the beatings and the brutal labor conditions by fleeing to NMSP-controlled areas.¹⁶⁴ In the same year as the ceasefire – when subsequently Mon refugees were sent back to Burma – PTT Exploration & Production (PTTEP), a subsidiary of Thailand's state-owned oil and gas company and Myanmar Oil & Gas Enterprise (MOGE) joined French company, Total and American company, Unocal (now Chevron) to develop offshore natural gas fields in the Andaman Sea and pipe the gas to Thailand.¹⁶⁵ Pipeline areas from the Yadana gas project – and its sister Yetagun gas project – experienced increased militarization and human rights abuses such as forced labor, torture, rape and murder committed by the Burma Army who were deployed as pipeline security forces.¹⁶⁶ Hundreds of acres of land were confiscated to build military bases, and hundreds of more acres were confiscated to build houses and agricultural projects to sustain the livelihood of the pipeline battalions. By 2009, over 2,440 acres of land had been confiscated as a result of the project.¹⁶⁷

Despite the quasi-civilian government's takeover in 2011, unjust land acquisition by the Burma Army has continued. The increased foreign investment has further exacerbated the

163. Mon CSO, interview with author, Mon State, 3 April 2016.

164. Karen Human Rights Group, "The Ye-Tavoy Railway."

165. "Background of the Yadana Pipeline," last modified June 27, 2016, <https://www.earthrights.org/campaigns/background-yadana-pipeline>.

166. EarthRights International and Southeast Asian Information Network, "Total Denial: A Report on the Yadana Pipeline Project in Burma," EarthRights International and Southeast Asian Information Network (1996): 13, <https://www.earthrights.org/sites/default/files/publications/total-denial-1996.pdf>.

167. Human Rights Foundation of Monland, "Laid Waste: Human Rights Along the Kanbawk to Myaing Kalay Gas Pipeline, Human Rights Foundation of Monland (2009): 36, accessed June 26, 2016, <http://rehmonnya.org/data/Laid-Waste.pdf>.

land-grabbing epidemic and the price of land has climbed due in part to land speculation.¹⁶⁸ This has encouraged the military and the government to grab more land while it is cheap, and resell the land to domestic and foreign investors at a higher price. In addition, laws enacted under the Thein Sein Government in 2012 have helped legitimize past injustices by aiding the military and state and private companies in “legal” land confiscations.¹⁶⁹ Under these laws, it is difficult for farmers and villagers in Burma Army-controlled areas to legally obtain the right to ownership of land and continue their traditional farming practices. It will be even more difficult for IDPs and refugees to repossess their land or receive compensation for their loss, though these rights are increasingly recognized in international best practices of IDP and refugee return.¹⁷⁰ Relevant laws are outlined in more details below.

3.5 Housing, Land and Property Rights of Refugees and IDPs

The United Nations Principles on Housing Land and Property Restitution for Refugees and Displaced Persons, also known as the “Pinheiro Principles”, establish the rights of refugees and displaced persons to have their HLP rights restored or receive compensation if their original land, house or property cannot be restored:

“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.”¹⁷¹

Despite the 1995 and 2012 ceasefires, serious concerns remain regarding HLP rights of Burma’s displaced ethnic minority population, which have yet to be adequately addressed in the peace process. The experience of villagers interviewed for this report signify that restoring HLP rights of IDPs and refugees will be difficult, in which case, they are entitled to receive compensation. However, as the cases of villagers in the following sections illustrate, there will also be obstacles in addressing restitution for confiscated land. The previous government largely ignored the HLP rights of the IDPs and refugees; however the current NLD-led Government and those involved in the ongoing peace process must comprehensively address the HLP rights of those displaced in their policies and peace agreements in line with international human rights law and standards.

Land is more than commodity and territory to the ethnic people who have been displaced. For IDPs and refugees, loss of land means losing connections with their ancestors, heritage, identity and political and social legitimacy as well as their livelihood. Thus, restoring their HLP rights is inextricably linked to guaranteeing and respecting their right to equality and self-determination.

168. “USAID Country Profile Property Rights and Resource Governance: Burma” United States Agency for International Development (2013): 16, accessed June 26, 2016,

http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Burma_Profile.pdf.

169. “Destroying People’s Lives,” Land in our Hands (2015): 4, accessed June 26, 2016,

http://partnersasia.org/wp-content/uploads/2016/01/LIOH-land-research-report_Eng.pdf.

170. United Nations Commission on Human Rights. 2005. UN ‘Pinheiro’ Principles on Housing and Property restitution for refugees and displaced persons.

171. Ibid.

3.5.1 2008 Constitution

Under Article 37(a) of the 2008 Constitution,¹⁷² the State maintains as the ultimate owner of all land and natural resources in Burma, and only allows citizens the right to use land. This creates the basis for weak land tenure security and facilitates the State the right to arbitrary confiscation of land without transparency, accountability or redress.¹⁷³

3.5.2 Two Laws Enacted in 2012 Related to Land

The Burma Government, recognizing that the previous laws regarding land – or lack thereof – were insufficient, enacted two laws, the Farmland Law and the Vacant, Fallow, Virgin Lands Management Law (VFVL) Law in 2012. However, the two laws have proved insufficient to prevent or end land confiscations and address justice for the communities who suffer from land confiscations. Rather, the laws have further aided land confiscation.

▪ *Farmland Law*

The Farmland Law replaced previous laws that governed the management of land categorized as farmland by the government and through the introduction of formal land registration system, allows private individuals to sell, exchange, inherit or lease land.¹⁷⁴ While the law was intended to strengthen rural landholders' tenancy and land security for farmers, it has largely benefited large-scale industrial farming rather than the 65% of the rural population,¹⁷⁵ a majority of whom subsists off small-scale farming.

In order to obtain formally recognized rights as a landholder, the Farmland Law stipulates that the Farmland Management Committee must approve a Land Use Certificate (LUC) and legally register the land with the State Land Records Department. However, the fees involved can be excessively high and the process in which to apply for a LUC and register the land lacks clarity, limiting the landholders' access to legal acquisition of land. Experiences from throughout Burma indicate that security concerns, local disputes over land and politics as well as military confiscation of previously occupied land also poses barriers to registration.¹⁷⁶ Once obtaining the LUC, the landholder's agency is restricted as farmers must grow crops that are considered "regular" crops by the government who have the right to confiscate the farm land if other crops are grown on the farm land.

Villagers from Yebyu Township, whose land has been confiscated by the The Navy, faced similar barriers when applying for a LUC, commonly known as "Form 7":

There are seven village tracts in the township. In 2001, the government [The Navy] marked them as their [The Navy] land. They didn't allow us to work on our land. We

172. Constitution of the Republic of the Union of Myanmar (2008), Article 37.

173. "Endemic Land Confiscation in Burma: A Major Challenge to the Reform Process," Burma Partnership (2013): 3, accessed June 26, 2016, <http://www.burmapartnership.org/wp-content/uploads/2013/11/Brifer-on-Land-Confiscation-11-Nov-2013.pdf>.

174. "Yearning to be Heard," Human Rights Foundation of Monland (2015) : 56, accessed June 26, 2016.

175. "Rural population (% of total population)," last modified June 27, 2016, <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS>.

176. "Form 7' Seven Case Studies of Farmland Registration in Kachin State," Spectrum (2015): 1 – 3, <http://spectrumSDKn.org/en/library/spectrum-bookshop/our-briefing-papers/182-form-7-seven-case-studies-of-farmland-registration-in-kachin-state/file>.

*are still trying to get it back. We measured and marked the land into the plots. Then we tried to register the land in Yebyu. They told us that the navy owns these lands. There are actually around 30 villages in the township. We could not get the land registration and Form 7 [...] We still work on the land even though they didn't allow us to. Some lands were taken over. I am concerned that one day they will take it over for free.*¹⁷⁷ (Middle aged male villager from a village in Yebyu Township)

It is promising that the NLD has publicly committed to ramping up efforts to address the issue of land confiscation.¹⁷⁸ The NLD-led government has taken its first firm steps by forming a new Central Review Committee on Confiscated Farmlands and Other Lands, led by Vice President U Henry Van Thio. The NLD-led Government through the President's Office has also urged a freeze on the sale of new land until disputes are settled.¹⁷⁹

In announcing these steps, the NLD-led Government mentioned the role of its ministries, state-owned and private companies in land confiscations; however, there was a worrying absence of the role of the military – which has been largely complicit in land confiscations in the past and is linked to land confiscations of the interviewees in this report.¹⁸⁰ The effectiveness and the role of the new Committee remain to be seen as the NLD continues to push their boundaries towards democratization under the political and economic landscape where the military still dominates.

▪ *Vacant, Fallow, Virgin Lands Management Law (VFVL)*

The VFVL allows the management of land that is deemed vacant, fallow or virgin to be allocated by the Central Committee for the Management of Vacant and Fallow Lands. By categorizing land as vacant, fallow or virgin, the Central Committee can legally seize and reallocate land to private investors and the government. Under Article 10 and Article 11 of the VFVL, at any one time, up to 5,000 acres of land may be granted by the Central Committee. This can be granted repeatedly up to a maximum of 50,000 acres in total, with lease periods of up to 30 years as long as it is deemed to be in the “interest of the State”.

There is a major gap in the law to recognize traditional or customary land use, such as rotational agriculture. Therefore, lands that are deemed “vacant”, which have been used by communities who may not possess a LUC or formal land documentation, are at risk of losing their land.¹⁸¹ The VFVL also risks the confiscation of communal land and resources that are managed by the community such as forests, waterways, and grazing lands which are central

177. Mon villager, FGD and interview with author, Ye, 5 April 2016.

178. Htet Naing Zaw, “Return of Seized Land a Top NLD Priority: Deputy Agriculture Minister,” The Irrawaddy, May 12, 2016, accessed June 26, 2016,

<http://www.irrawaddy.com/burma/return-of-seized-land-a-top-nld-priority-deputy-agriculture-minister.html>.

179. Ibid.

180. Global Witness, “Myanmar’s Efforts to Tackle Land Grabbing Crisis Must Address the Role of the Military In Perpetuating Theft and Violence,” Press Release, May 11, 2016,

<https://globalwitness.org/en/press-releases/myanmars-efforts-tackle-land-grabbing-crisis-must-address-role-military-perpetuating-theft-and-violence/>.

181. “Access Denied: Land Rights and Ethnic Conflict in Burma,” Transnational Institute (2016): 9, accessed June 26, 2016, https://www.tni.org/files/publication-downloads/tni_primer-burma-digital.pdf.

to villagers' food security and livelihood. Without LUCs, investors and the State can acquire land, overriding claims based on customary land tenancy practices and deny compensation. In addition, because the Central Committee bears the sole responsibility in handling disputes, similar barriers as the Farmland Law arise in the absence of an independent judiciary or alternative dispute resolution mechanisms:

For decades, families who have lived and worked on these lands are now at risk of losing land because they are unable to provide formal land registrations:

*These were my grandfather's lands. They were working on them before I was born.*¹⁸²
(Middle aged male villager from a village in Yebyu Township)

*The land had been with my wife's family for 60 years. We bought it from them.*¹⁸³
(Elderly man whose wife suffered a stroke on the day they were told to leave their land, Ye Township)

▪ *Foreign Investment Law*

Also passed during the same year as the Farmland Law and VFVL, the Foreign Investment law allows foreign investors to work with a Burmese counterpart to lease land from the State and private landowners. The law allows the State and private investors a fifty-year maximum lease for projects, and with the permission of central government, can be extended for another twenty years under Article 31. This means that farmers whose land has been confiscated and lease to foreign investors could face up to 70 years of eviction and displacement. The possible benefits and profits from such projects have enticed the State, the military and cronies – often with ties to the military – to engage in the seizure of land and enter into deals with foreign investors.

These laws pose an extreme threat to the ethnic minority communities who continue their struggle to fulfil their aspirations of freedom, equality and peace in the absence of nationwide peace and a political solution, which would guarantee the devolvement of power between the central and state governments under a federal system of governance.

3.6 Land Confiscation

Under the VFVL, Farmland Law and Foreign Investment Law as well as the constraints of the 2008 Constitution, farmers and villagers in non-NMSP-controlled areas have had to continue to give up their houses, lands and properties. This does not bode well for refugees and IDPs as the experiences of farmers and villagers indicate that these laws are likely to make it increasingly difficult for them to acquire land or receive compensation for their land, which they fled years ago. The current struggle of the farmers and villagers also speak volumes of the obstacles IDPs and refugees may face should they choose to return to their original land.

182. Mon villager, FGD and interview with author, Ye, 5 April 2016.

183. Mon villagers and Monks, FGD and interview with author, Ye, 5 April 2016.

CASE STUDY 4

Ann Din Coal Power Plant: Local Movement and Action to Preserve and Protect Natural Resources and Land¹



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In response to the influx of foreign investments aided by laws such as the Foreign Investment Law and top-down development projects that have displaced communities and sparked conflicts, local communities throughout Burma are engaging in bottom-up grassroots movements to conserve their environment and culture for future generations.² Communities are showing their strength and unity by raising their voices and expanding their networks to preserve their livelihood and protect the customary use of their land.

One such local community-led movement has been successful in halting a development project planned by Thailand-based, Toyo-Thai Corporation Public Company Limited (TTCL) to construct a 1,280 MW (megawatt) coal-fired power plant consisting of two units, each with 640

1 Monk, interview with author, Ann Din, 6 April 2016; Youth, interview with author, Ann Din, 6 April 2016; Dr. Aung Naing Oo, interview with author, April 4, 2016.

2. "We will Manage our Own Natural Resources," Rays of Kamoethway Indigenous People and Nature and Tenasserim River and Indigenous People Network (2016): accessed June 26, 2016, <http://www.burmapartnership.org/2016/03/we-will-manage-our-own-natural-resources-karen-indigenous-people-in-kamoethway-demonstrate-the-importance-of-local-solutions-and-community-driven-conservation/>.

In addition, the farmers' and villagers' experiences highlight the need to preserve and protect land that refugees and IDPs might return to when the time is right.

The right to own land is embedded in many other basic human rights such as the right to adequate standard of living, adequate livelihood solutions, dignified work opportunities and the right to self-determination. More specifically, Article 17 of the Universal Declaration of Human Rights states:

*Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.*¹⁸⁴

Yet these basic human rights and HLP rights continue to be violated due to decades old practices of arbitrary confiscation.

In particular, military expansion has led to many forms of human rights violations includ-

184. The United Nations. 1948. Universal Declaration of Human Rights.

MW capacity, in AnnDin Village, Parlain Region, Ye Township in Mon State. The project was proposed to begin in 2016 and to continue over a span of 30 years, with a total investment of 2.8 billion USD.³ The company planned to purchase 500 acres of farmland just 500 meters away from the village of Ann Din as the project site covers 1,500,000 square meters (approximately 370.66 acres).

The proposed project can be split into three components: the site of the coal-fired power plant, the extended port and jetty to unload the coal to be delivered to the power plant and the transmission line that would connect the power plant to a grid. The power plant is expected to use approximately 3.5-4.5 million tons (at least 7.7-9.9 billion pounds) of coal a year, which will be imported from abroad. A jetty would be used to unload the imported coal from 75,000 DWT coal vessels, which is to be built 3-5 kilometers away from the shoreline after the seafront is dredged. The cooling circulation would need 200,000 cubic meters (43,993,850 UK gallons) of seawater per hour and the coal yard will use 960 cubic meters (211,170.5 UK gallons) of spray water per hour. This water will come from deep well water (retention water and/or rainwater).

This project plan has grave implications on the livelihood of the communities in Parlain. Local communities in Parlain Region rely on agriculture and the varied and diverse ecosystem. The undisturbed nature in the region and its fertile land allows villagers to cultivate betel nut and rice with relative ease. The aquatic ecosystems along the southern end of Mon State nourish local fisheries and these natural resources are the most important sources of the local economy. Nature feeds local customs and provides local villagers with income so that the community can live without the need to struggle for survival. The proposed project would alter their traditional livelihoods and replace the natural landscape with unfertile soil and an unclean water source. The chemical waste and the construction of the jetty would disrupt and change the sea floor and marine habitat, which will disrupt the local fishing industry. Other concerns included the influx of

3. "Abundance of Pharlain Natural Resources and Communities," Pharlain Community (2016): 48.

ing land confiscation. Since 2010, the Navy confiscated land from residents of Kywe Thone Nyi Ma Island and villages lying east of the Island in Yebyu Township. Red flags were placed to indicate future land seizure:

In 2011 they made a sign that stated the Navy occupied the lands. We knew by seeing this sign that they wanted to announce the land is reserved for the Navy. We want them to think and let us register 30 or 20 acres or any amount that they could allow us to work on our own land.¹⁸⁵ (Middle aged male villager from a village in Yebyu Township)

They set up the signs to let everyone know the land is owned by the Navy. That's our area but they didn't allow us to register our land.¹⁸⁶ (Young male villager from Yebyu Township who went to work abroad to support his parents)

185. Mon villager, FGD and interview with author, Ye, 5 April 2016.

186. Mon villager, FGD, Ye, 5 April 2016.

migrant workers to the area during the construction of the power plant – as they would need at least 3,850 workers and Ann Din’s population is only 2,768 – and the presence of workers from outside the village could erode local cultures and traditions.

The TTCL signed a Memorandum of Understanding (MOU) with the Ministry of Electric Power to build the coal-fired power plant on March 21, 2013 without the free, prior and informed consent of the local communities. Information regarding their plans was distributed only in English and while the local community requested the company to provide further information in their native language, TTCL failed to meet this demand. TTCL held only one consultation with the community on April 25, 2014, where they explained only the possible benefits of the coal-fired power plant.

The grassroots movement that eventually led to the successful halt of the project implemented several key initiatives to counter the constant push by TTCL to move forward with the project despite villagers' protests. Monks, youth and other local CBOs in the area concerned with this new project reached out to national and regional human rights and environmental CSOs and held workshops and field trips – even going as far as Japan and Thailand on fieldtrips – to better understand the process of consultation, the environmental impact and social-economic implications the project may have on the community. The villagers built a strong network from grassroots to national level, working to lobby the Mon State Parliament and the Union Parliament. They called on all parties to support their calls, including the NMSP, who issued a statement in support of the local villagers’ actions against the coal-fired power plant, citing political instability and inadequate environmental risk assessment as reasons to halt the project.

Periodic press conferences were held to raise the general public’s attention on the situation and in one instance 30 villagers came together to explain how they were enticed into signing a letter along with over 6,000 other signatories, which was sent to the Presidents office as a proof of local villagers' support of the project. The environmental impact the project would have on their communities was never mentioned to the villagers and instead they were promised that

For our village, before the navy arrived, we all were working there. In 2011, they set the signs and said these lands became their lands.¹⁸⁷ (Middle aged Christian male and father from Yebyu Township)

Land confiscation does not follow a single pattern and is practiced in various ways.¹⁸⁸ Some are completely cut-off from the prospect of cultivating their land in the future and others face taxation on confiscated land that they previously owned. In other cases, these two situations are combined.

In Khaw Zar sub-township, south of Ye Township, villagers have no prospect of returning to their land:

We would like to get our remaining plantations which are not used for the army bas-

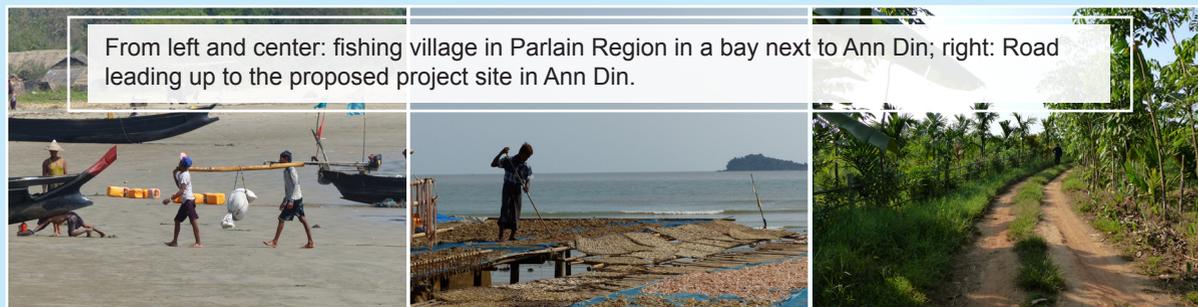
187. Mon villager, FGD, Ye, 5 April 2016.

188. “Destroying People’s Lives,” 14.

they would be provided with electricity at affordable costs and employment opportunities. The villagers have reached out to civil society organizations in an attempt to sue the company.

Those deeply involved in the movement volunteered their time – some giving up their jobs – to strengthen their organized calls against the project and ensure that visitor records were kept as documentation. Fliers and posters were created and monthly newsletters were distributed throughout the region to increase villagers' awareness of the project, reminding them of the company's plans and continuing to update the community with any new information of the project, which will ultimately affect their lives and livelihood.

Youth and the monks from the Ann Din Monastery emphasized the crucial role that data collection of the regions natural resources have had in their efforts to protect their land. In addition, they also stressed the value of producing a report about the region's livelihood solutions, which continues to aid them in their advocacy efforts. Academics and researchers from regional and local CSOs helped train the local people to collect extensive data and conduct research on the local ecosystems and natural resources, which is being used to combat the project plans. The research has helped the locals understand the true monetary and environmental value of the land, which in-turn led to the knowledge that the company had offered grossly low compensation for the actual value of their land:



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*es. We proposed them that we would like to buy our remaining plantations for a fair price. The Burmese army rejected our proposal.*¹⁸⁹ (Villager and father, Khaw Zar)

*They [the military] just used half, they destroyed my trees such as rubber plants, jackfruit, but my land is still left. Because they cut, used or sold the wood to make charcoal, the area has become a forest with a lot of bushes. This is all that is left now.*¹⁹⁰ (Elderly villager, Ye Township; also see case study 5)

Many have been threatened to give up their land:

*They threatened us not to tell anyone about the land confiscation. If we did, they told us they will take us to the LIB [military battalion base]. We are really scared of going to the LIB.*¹⁹¹ (Villager and father, Khaw Zar)

189. Mon villager, FGD, Ye, 7 April 2016.

190. Mon Villager, FGD and interview with author, Ye, 5 April 2016

191. Mon villager, FGD, Ye, 7 April 2016.

After we had done collecting the data, we knew that we are producing around 60,000,000 betel nut [which equals approximately 1,258,000,000 kyat or 1,056,300.00 USD]. If we compare the amount of money that we got from the company and the money that we get from betel nut, the money that we get from the betel nut is a lot more than from the company.⁴ (Monk in Ann Din Monastery)

Local CBOs were instrumental in gathering protestors and petitions against the power plant. Mon Youth Forum, Ye Social Service and representatives from other CBOs and human rights organizations submitted 3,581 signatures that opposed the power plant to Mon State Parliament in February 2015.

Despite a clear call for a halt to the plans by local people and Mon State's prohibition on the TTCL's feasibility study, on April 9, 2015, the TTCL signed a Memorandum of Agreement (MOA), entering into a conditional agreement to move forward with the project with the previous USDP Government and the Department of Hydropower Planning, Ministry of Electric Power. The community-led movement had gathered momentum and responded to this decision by the TTCL and the government. On May 5, 2015, over 6,000 people joined together at Ann Din Village in a mass protest against the TTCL's plans.

In January 2016, the TTCL halted project plans following a year of vocal opposition from the local community. All those who worked to oppose the project agreed that this was the single most powerful tool they had against the company – the unified spirit of the community:

“

Unity is a very powerful weapon to fight against such a dangerous project.⁵ (Monk in Ann Din Monastery)

”

Having one voice and unity is one of our victory.⁶ (Monk in Ann Din Monastery, initially supported the power project plans by TTCL)

These bottom-up approaches including land protection, consultation, campaigning and decision-making can empower communities to take effective action and find solutions to natural resources and land protection that are most conducive to their own community. The decision of what happens to these lands in ethnic areas should be in the hands of the local ethnic people and communities, who have to live with the consequences from such top-down development projects and foreign investments. Supporting and advocating for these locally led movements will preserve the land, natural resources and culture that refugees and IDPs may return to one day, increasing the possibility of a durable livelihood solution upon their return.

We all need to be organized to be united and do something towards political change. We should not attack each other; we should connect with each other. (Dr. Aung Naing Oo, Deputy Speaker of Mon State Parliament)

4. Monk, interview with author, Ann Din, 6 April 2016.

5. Monk, interview with author, Ann Din, 6 April 2016.

6. Monk, interview with author, Ann Din, 6 April 2016.

“

*The military told us to collect our belongings on that day. If not [done] by that night, they would shoot us. Threatened, we were so afraid and tried to pick up fruit quickly, durian and so on as much as we could.*¹⁹² (Elderly villager, Ye)

”

Some have been forced to sign over their land to the Burma Army:

*We did not get any warning about land confiscation. The Burmese army brought us to the Buddha temple and told us that they were going to build a military camp on our plantation. They forced us to sign an agreement at the time. First they told us, they were going to pay money to the landowners. Later, they changed their mind and gave us small pieces of land which were confiscated from other villagers.*¹⁹³ (Villager and father, Khaw Zar)

Farmers are rarely adequately compensated for their losses:

*We got three acres of wild land as compensation, which is very small. Some people are farming the plants on the new land, and some are not because it is not easy to create farm land on the wild land. We need a lot of money to begin farming on the wild land. So most of us do not farm anything on the wild land. One of my younger sisters did it. Now she has a loan because of farming on the new land.*¹⁹⁴ (Above villager and father, Khaw Zar)

*They gave 100 kyat (.08 USD) for one acre. Other people went to Ye and signed it [the contract to handover their land], but I didn't sign it as I heard about the compensation being 100 kyat (.08 USD) for one acre. It was not even enough for the travel cost to Ye. Then they threatened me that I would be arrested and put in jail.*¹⁹⁵ (Above elderly villager, Ye)

Some have been taxed on their own land or have to pay the Burma Army by giving up their source of income such as fruit and betel nut:

*After the Burmese Army confiscated our lands, we were allowed to use plantations for five years, but we had to pay taxation to them every year such as 10,000 betel nuts per year. Some landowners did not want to enter after their lands were confiscated.*¹⁹⁶ (Above villager and father, Khaw Zar)

192. Mon villager, FGD and interview with author, Ye, 5 April 2016.

193. Mon villager, FGD and interview with author, Ye, 5 April 2016.

194. Mon villager, FGD, Ye, 7 April 2016.

195. Mon villager, FGD and interview with author, Ye, 5 April 2016.

196. Mon villager, FGD, Ye, 7 April 2016.

Once land is confiscated, they cannot use the land freely and must follow the instructions of the Burma Army:

*We are not allowed to enter into our land freely because the Burmese army threatens us. When we are not in the plantation, the army and their family take anything from the plantation and sell it.*¹⁹⁷ (Above villager and father, Khaw Zar)

For those who continue to farm on confiscated land, they must live with the constant anxiety of knowing that someday they will be displaced and will face livelihood concerns:

*They [the Navy] didn't do anything on the land. They put signs around the villages. There are some villages in the field. Where could we move? I am worried about one thing; one day they will occupy everything that we grew when it's ready to harvest.*¹⁹⁸ (Middle aged male villager from Yebyu Township)

*Because they [the Navy] own the land, what could we do when one day they take it over?*¹⁹⁹ (Middle aged father of 7 children from Yebyu Township)

*Now we are still working the lands, but one day they [the Navy] will take it all. I am worried for my new generation.*²⁰⁰ (Young male villager from Yebyu Township)

3.7 Livelihood and Social Consequences of Losing Land

Land confiscation is directly connected with other forms of human rights violations. More specifically, Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR) to which Burma signed in 2015 states:

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

By signing the treaty, Burma has committed to respect the object and the spirit of the treaty. The land confiscation epidemic, predominately driven by the Burma Army, violates the ICESCR.

Many farmers and their families rely on their plantations for income and their livelihoods depend on the land. The loss of land often leads to debt, lack of food and income, and inadequate standard of living for entire families.

197. Mon villager, FGD, Ye, 7 April 2016.

198. Mon villager, FGD, Ye, 5 April 2016.

199. Mon villager, FGD, Ye, 5 April 2016.

200. Mon villager, FGD, Ye, 5 April 2016.

*Our life just depends on the plantation. I plant a lot of seasonal fruits in my garden [...] I became jobless after eight acres of my land was confiscated. Currently soldiers take the fruits and rubber from my land and they sell it. The army has not built any building in my plantation but they cut down my plantations.*²⁰¹ (Middle aged mother in Khaw Zar)

*I am not able to do anything if I see what they have done with my land because my life and family livelihood depend on that land.*²⁰² (Villager and father, Khaw Zar)

Many have to survive on other family member's income. For a man from Ye Township, his land was confiscated in 2004 and the family must now depend on his daughter's income:

*I have to try to live with her [his daughter's] salary of 150,000 kyat (125 USD) for a month, but how can it be enough for five to six family members to live on her salary?*²⁰³ (Elderly grandfather from Ye Township)

Many have been in debt since their land has been confiscated and unable to earn enough for a living:

*I have a lot of debt now. I am heart-broken [...] my husband works to support the family. He can only earn around 2,000 to 3,000 kyat (1.68 USD) a day. It is not enough for our family. I want to get back my property so that I can pay off my debt before I die. I cannot sleep and eat well almost every day. My debt is around 40 million kyat (3,400 USD). So if I get back my land, I can live and die peacefully [...] the land price is now around 50 million kyat (4,200 USD).*²⁰⁴ (Middle aged female villager)

*I have debt and can't make enough money to live. Therefore, it is even more difficult to pay back my debt. I don't know what to do.*²⁰⁵ (Middle aged father of seven children from Yebyu Township)

Many have been forced to leave the country in search of a new job due to the loss of land, which is confiscated by the Burma Army:

*Finally I decided to find jobs in foreign countries. I was arrested in Malaysia while attempting to enter illegally into Singapore. I was sent back to my home [Burma] by the Malaysian police. When I went to Singapore to seek for employment again, only after that I was able to send my daughter to university.*²⁰⁶ (Villager and father, Khaw Zar)

Loss of land has led to other social consequences such as depression, substance abuse and addiction.

201. Mon villager, FGD, Ye, 7 April 2016.

202. Mon villager, FGD, Ye, 7 April 2016.

203. Mon villager, FGD and interview with author, Ye, 5 April 2016.

204. Mon villager, FGD, Ye, 7 April 2016.

205. Mon villager, FGD, Ye, 7 April 2016.

206. Mon villager, FGD, Ye, 7 April 2016.

CASE STUDY 5

Caught in the Middle: Land Confiscation by the Navy and Extortion by Splinter Groups, Yebyu Township¹

“I have my properties there, so I have to die there. If I leave the village, what could I eat? I have a farm and plantation in the village. I have to live there till I die.”
(Nai Win)

For 30 years, Nai Win² a 55-year-old farmer who lives in a village north of Yebyu Township has been growing rubber plants and betel nut trees on a plantation. The land “was my grandfather’s land. They worked on the land before I was even born. In the plantation, I grew 6,000 rubber trees and 5,000 betel nut trees,” as he recalls that the land has been in his family for almost 100 years. In 2011, a group of Burma Army soldiers, security guards and clerks from the land survey office (who measure land) came to him and took him to show him red signs that read “cantonment” on his land.

He has been told that the Navy will seize the land in the future. While him and his fellow villagers continue to live and cultivate on the land, they do not own a Land Use Certificate. He is at risk of losing his land and being evicted as the land ultimately belongs to the State under the 2008 Constitution. “If I didn’t do farming and plantation, I could do nothing [...] I want to support my children to be educated with what I got from my plantation. Now only the youngest

1. Mon villager, FGD and interview with author, Ye, 5 April 2016.

2. Name has been changed to protect the identity of the individual.



The lives of landowners are totally destroyed after our lands have been confiscated. The landowners are very depressed. For example, my husband became an alcoholic and does not work. So he became a helpless person. Some become gamblers.²⁰⁷ (Elderly women, Khaw Zaw)



For many farmers and those who depend on their land for their survival, loss of land has led to dire consequences on their health. For one farmer from Ye Township, loss of land led to his wife’s stroke who has been partly paralyzed as a result of the stroke that was brought on by the stress of losing her family’s land:

There are six people in my house. My wife is with me too, but she suffered from a paralytic stroke after the land issue, so she has to walk with crutches [...] the land had been [with my wife’s family] for 60 years. It was the land of my wife’s parents owned and we bought it from her parents. [...] It [the stroke] happened to her after

207. Mon villager, FGD, Ye, 7 April 2016.

one is left to finish the school,” he stated.

Exacerbating his concerns are the continuing harassment by the splinter groups that operate in the area. In full uniforms and armed, various groups come to his village every year and extort the villagers by kidnapping family members, physically beating or threatening their lives to collect food, money and gold from the villagers. In August 2015, a splinter group, Mon Chan group, extorted seven million kyat (5,800 USD) from Nai Win’s village while taking 20 villagers hostage for an entire day. In these cases, the whole village typically has to cover the cost of the extortion. This has also devastated Nai Win’s village, putting him and other villagers in severe debt and poverty.

Nai Win has been kidnapped three times and taken to the jungle while his wife and villagers had to pay large sums to have him returned in safety. Several different splinter groups such as the Mon Chan, Chan Dain and Nai Loon groups, extort the villagers throughout the year, which means Nai Win has to take loans from others to pay for the high rate of extortion. He has not been able to pay back his debt. Other villagers “couldn’t afford to pay anymore, they left the village,” he said. Approximately 10 households have left the village because they were unable to pay the high price of extortion.

Although LIBs 273 and 282 from Yebyu Township have been contacted every time the splinter groups arrive as the NMSP are not allowed in the area, the Burma Army have continuously failed to respond or address these security concerns by the villagers.

*they evicted us from the land. It [the stroke] was because she suffered from the thought of it.*²⁰⁸ (Elderly grandfather from Ye Township)

If unaddressed or addressed without deep understanding and empathy, these past and ongoing injustices related to land, coupled with a lack of genuine peace, are obstacles to durable solutions for IDPs and refugees, while those ethnic minority communities who have already suffered years of conflict and human rights abuses will continue to be at risk of further displacement.

208. Mon villager, FGD and interview with author, Ye, 5 April 2016.

Conclusion

Towards Durable Solutions

The case of Mon refugees and IDPs presented herein since 1995 shows the barriers for finding durable solutions for conflict-affected displaced communities while the root causes of the conflict and displacement remain unaddressed. More than 20 years since their displacement, as the plans for repatriating around 100,000 refugees from the Thai border refugee camps carry on in the absence of political solutions and laws that protect them from further HLP rights violations, there is indeed a significant concern that the Mon experience of refugees returning to become IDPs could be repeated.

Resolving the situation of these large displaced ethnic minority communities of Burma is inextricably linked with achieving lasting peace that guarantees ethnic equality and self-determination in a genuine federal system in Burma. The ongoing peace process and the international community who have supported the process must begin to address HLP issues for IDPs and refugees in the context of a federal system if durable solutions are to be achieved. As stated by one member of the NMSP:

“

Because you have taken the name of peace, make it for the sake of peace; so study hard about peace, why does it happen, why did the conflict arise? So they [peace donors] need to study hard, if you take the name of peace do it genuinely.²⁰⁹ (NMSP CEC member based in Moulmein, Mon State)

”

The history of conflict and human rights abuses in Mon State, and in particular the plight of Mon IDPs, sends a clear message that business and international investment interests have time and again trumped the human rights of local people. Despite this, and the years of conflict and human rights violations experienced by communities throughout Mon State and other ethnic areas, local communities and farmers in the time of the current political transition are taking action by reaching out to outside agencies to assist their movements to protect their ancestors' land and secure the livelihood of future generations. Ethnic service providers and CBOs continue to provide assistance to refugees and IDPs in the face of declining support and funding.

209. NMSP CEC member, interview with author, Mon State, 2 April 2016.

Their decades of knowledge and experience, as well as their strong connection and commitment to their communities should be supported for better understanding and meeting the needs of the IDPs and refugees in the changing political and economic landscape in Burma. If these local efforts are steadily supported and advocated by domestic and international actors, and laws are amended to protect those who depend on the land to secure their livelihood before business, refugees and IDPs may one day in the near future have land to return to and thus given the choice of a truly voluntary return.

The concerns and lives of IDPs and refugees should not be seen as separate from the rest of Burma's larger reform narrative, or forgotten in the deep hills and jungles along the border, despite their distance from Rangoon and other central cities. When Burma's IDPs and refugees are ensured the restoration of their HLP rights, laws are put in place and/or amended so that they may receive redress for past rights violations, landmines are cleared from their paths and the peace process achieves a political solution that protects them from further abuse and displacement, that is when they are given the choice to return voluntarily in dignity and in safety. There is a need for a holistic approach to support, so that victims of abuses may begin to heal. Only then, genuine national reconciliation and sustainable peace that benefits the people of Burma, especially the decades-long conflict affected and traditionally marginalized ethnic minorities, will be possible.



Sunset in Mon State

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Recommendations

President U Htin Kyaw, State Counsellor Daw Aung San Suu Kyi and the Burma Government to:

- ◆ Ensure that the voluntary return of refugees and IDPs complies with international law including the UN Principles on Housing, Land and Property Rights for Refugees and Displaced Persons ('Pinheiro Principles') and international best practices with respect to voluntary return;
- ◆ Acknowledge ethnic concerns regarding land and land policy and initiate reforms to provide more HLP security for small-scale farmers and villagers from eastern Burma's ethnic regions as well as to secure the durable return of IDPs and refugees by:
 - Ceasing all land confiscations by the Burma Army and private investors and ensure that, in compliance with international law and as part of the peace process, land is restored to victims or fair compensation is paid in accordance with the 'Pinheiro Principles';
 - Recognizing and respecting the tenancy rights of all legitimate landholders;
 - Recognizing by law the rights of farmers and villagers' legitimate landownership in accordance with customary law to allow traditional land use;
 - Ensuring that newly established mechanisms are independent and effective in undertaking comprehensive investigation and action to resolve HLP disputes;
- ◆ Amend the 2008 Constitution; in particular:
 - Abolish the constitutional act that creates a separate Courts-Martial structure to adjudicate military infractions, allowing military violations to be within the jurisdiction of civilian courts;
 - Amend article 37(a) that allows the States to maintain as ultimate owner of all land and natural resources and return the original lands of IDPs and refugees acquired after their displacement;
- ◆ Promote durable solutions for IDPs by eliminating obstacles to return and tackling root causes of conflict and displacement, in particular by ensuring the establishment of an inclusive NCA followed by political dialogue, ensuring HLP rights, and removing anti-personnel mines in cooperation with independent demining organizations in addition to signing the Mine Ban Treaty;
- ◆ Prioritize the peace process and establish a federal union where the rights of ethnic people are guaranteed and respected; and
- ◆ Halt mega projects and natural resource extraction projects in ethnic areas until a political solution that guarantees ethnic equality is achieved.

The Burma Army to:

- ◆ Immediately halt all military offensives in all ethnic areas and end human rights abuses;
- ◆ Withdraw all military battalions and associated local army camps from resettlement areas and reduce military battalions in Mon and all ethnic territories;
- ◆ Immediately halt all land confiscations and return the land to the people or adequately compensate them for the confiscated land; and
- ◆ Immediately end all use and production of landmines.

The Ethnic Armed Organizations to:

- ◆ Develop a comprehensive, clear and shared position on IDPs' and refugees' return and rehabilitation in consultation with the IDPs and refugees, local communities and CBOs;
- ◆ Develop a comprehensive, clear and shared position on HLP rights in consultation with the local communities, CBOs, IDPs and refugees;
- ◆ Immediately end all use and production of landmines; and
- ◆ Halt mega projects and natural resource extraction projects in ethnic areas until a political solution that guarantees ethnic equality is achieved.

International Community and Donor Community to:

- ◆ Support Burma's ethnic communities to achieve their aspirations for equality, self-determination and establishment of a genuine federal union;
- ◆ Commit to supporting and advocating for community-led, rights-based movements;
- ◆ Ensure local ownership and participation of ethnic communities in decision making of all aspects of planning and management of aid and protection projects targeting refugees and IDPs; this can be done by:
 - Working more closely and strategically with local groups and respecting ethnic diversity;
 - Holding consultations with ethnic CSOs/CBOs and ethnic political parties and incorporating local participation not only at the start of a project, but also the planning, preparation, execution and monitoring of a project including holding a comprehensive needs assessment to understand effective measures to address problems;
- ◆ Continue funding EAOs peace building activities, EAO-linked service providers as well as local ethnic CSOs/CBOs along the Thailand-Burma border;
- ◆ Ensure that projects are transparent, accountable, sustainable, people-participatory and rights-based by encouraging the government to define state and region level administrations and institutions, and strengthen rule of law;
- ◆ Conduct thorough stakeholder and context analysis prior to project planning and work in close cooperation with local CSOs/CBOs that have the trust of local communities;
- ◆ Conduct environmental and social impact assessments for mega development projects in meaningful consultation with potentially affected communities as well as all stakeholders including EAOs, CSOs and CBOs; and
- ◆ Ensure that mega development projects are implemented with the full, prior and informed consent of the potentially affected communities including holding meaningful consultations, being transparent, and making the information accessible in local languages for the potentially affected communities prior to the initiation of the projects.

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