

MYANMAR UPR

2020

FACTSHEET

Refugees and Internally Displaced Persons



Brief Assessment of the Implementation of 1st and 2nd Cycle UPR Recommendations

During the reporting period, displacement due to armed conflict has increased exponentially, and related human rights issues such as physical security, land and livelihood persecution and denial of ethnic identity, health and education, return process and humanitarian aid remain unresolved. Civil war remains the main driver of displacement in Myanmar, with hundreds of thousands of people displaced on multiple fronts, mainly in ethnic areas as internally displaced persons or as refugees in camps in neighbouring countries, lack of access to basic humanitarian needs.

Despite lengthy negotiations, the current peace process has faltered due to significant flaws in its framework and due to the exclusion of some Ethnic Armed Organizations (EAOs) from negotiating the Nationwide Ceasefire Agreement (NCA). Some other EAOs refused to sign in solidarity or suspended their participation in the process, citing violations and lack of implementation of the NCA and the Myanmar military and government insisting on new conditions, including acceptance of non-secession and a single army. Since late 2016/early 2017, a serious outbreak of armed conflict between the Arakan Army (AA) and the Myanmar military in Rakhine State and southern Chin State has displaced 160,000 people as of January 2020.

The below sections outline key challenges, as well as cases, facts, comments and corresponding recommendations for the 3rd Cycle UPR.

Physical Security



Challenges: IDP's physical security is challenged whether in their IDP camps, places of origin or in other return sites. Physical security concerns that caused people to flee stem not only from risks associated directly with active conflict, but from human rights violations and other oppression by mainly the Myanmar military, and from militarization and development-related displacement.



Cases, Facts, Comments: Active armed conflict can include frequent or infrequent clashes between two or more armed groups. Reports of the Myanmar military indiscriminately firing artillery and hitting civilian structures such as churches, schools and IDP camps are common. In areas where clashes are frequent or tensions are high, civilians also face increased risks of being detained, tortured and/or killed by the Myanmar military on allegations of association with EAOs. These abuses continued through out 2018, particularly in Kachin and northern Shan States, and in 2019 in Rakhine State. As of January 2020, there are over 160,000 displaced due to conflict in Rakhine State, with many human right abuses committed without investigations or repercussions.¹

Yet, Myanmar supported the recommendation by Lithuania to “*ensure that police and military officers alleged to have committed acts of torture and ill-treatment are held accountable through the criminal justice system.*”²



Recommendation

- Make sincere efforts to end all armed conflict, war crimes, crimes against humanity, genocide and all human rights violations against civilians, including the use of rape and sexual violence as a weapon of war.

Sexual and Gender-based Violence



Challenges: Sexual and gender-based violence has continued unabated and has been well documented by human rights organizations, both local and international during the reporting period. A culture of impunity continues for perpetrators of sexual and gender-based violence during conflict, which has escalated within the last five years.



Cases, Facts, Comments: Domestic aims at protecting women, such as the National Prevention and Protection of Violence Against Women bill, has

1 Min Aung Khine, ‘Rakhine IDPs Top 160,000; More Aid Needed,’ The Irrawaddy, 29 January, 2020. Available at: <https://www.irrawaddy.com/news/burma/rakhine-idps-top-160000-aid-needed.html>

2 Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13, 23 December, 2015. Para. 143.81 Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement->



remained stuck in parliament.³ Despite numerous international legal obligations and assurances by the government to investigate and punish gender-based and sexual violence, such as Convention on the Elimination of Discrimination Against Women and United Nations Security Council resolution 1325, Myanmar has failed to take measure to protect women and girls from these abuses. Additionally, there has been a failure to ensure consultation with women from conflict areas during the legislative process, and incorporate their views in the draft bill.

Myanmar supported the recommendation by Finland to “*Ensure impartial and effective investigation of violence perpetrated against women and violence perpetrated against children, and ensure reparations for victims and the right to a fair trial, including legal aid, for both the victim and the accused.*”⁴ Yet, the Myanmar military has used sexual violence against women during conflict in Rakhine State, continuing decades of impunity for violations against ethnic women. It forms part of a systematic, deliberate and recurrent feature of their warfare, and very little has been done to mitigate these grave crimes. The Independent International Fact-Finding Mission on Myanmar, found credible evidence of these crimes in its investigation into conflict in Rakhine, Kachin and Shan States since 2011.⁵



Recommendation

- Enact laws and legal amendments that enshrines protection of women, with inclusive and diverse input from grassroots organizations, including in passing the Prevention and Protection of Violence Against Women bill.

Landmines



Challenges: Myanmar is one of the most affected countries in the world for landmines, where countless civilians and IDPs have suffered due to detonated landmines.



Cases, Facts, Comments: Between 2018-2019, Myanmar was the only country to have laid new landmines.⁶ While humanitarian demining organizations operate in Myanmar, there has been no systematic mapping or mine clearance

3 Thu Thu Aung, ‘Until her bones are broken’: Myanmar activists flight to outlaw domestic violence,’ Reuters, 16 August, 2019. Available at: <https://uk.reuters.com/article/uk-myanmar-politics-women/until-her-bones-are-broken-myanmar-activists-flight-to-outlaw-domestic-violence-idUKKCN1V52LY>.

4 Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13, 23 December, 2015. Para. 143.77 Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

5 Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. No. A/HRC/39/CRP.2, 18 September, 2018. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/Burma/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>.

6 Irwin Loy, ‘Myanmar still using landmines, global casualties ‘exceptionally high’: report,’ The New Humanitarian, 25 November, 2019. Available at: <https://www.thenewhumanitarian.org/maps-and-graphics/2019/11/25/Myanmar-landmines-casualties-report>.

operations, and this poses an ever-present threat to IDPs, around IDP camps and upon return to their homes and farms.



Recommendation

- Enforce a comprehensive ban on the new use of landmines and to provide humanitarian support to survivors of landmine explosions.

Land and Livelihood



Challenges: One of the major challenges to a safe, dignified and durable return is that of land, not just for its inextricable links to culture and identity, but also livelihoods. Many refugees and IDPs previously owned land that has been confiscated by the military or government, or occupied by secondary occupants since they were displaced.



Cases, Facts, Comments: Land confiscation by the Myanmar military has been ongoing for decades, and due to economic liberalization, land grabbing has increased by the military and other actors. In conflict-affected areas, many follow customary land governance systems that are not recognized by the Myanmar government, which often leaves them unable to defend their land rights including to reclaim confiscated land. For example, 41 farmers from Demoso and Loikaw Townships in Karenni State are facing charges from the military for criminal trespass. Yet the land they were allegedly trespassing on was land that they had been tilling for generations, and which the military had occupied since it forcibly displaced the residents of the original villages several years ago.⁷ This example is illustrative of a wider pattern that is seen across Myanmar.

During the 2nd Cycle of the UPR, Myanmar supported a recommendation from the Czech Republic to “*Effectively address the issue of land grabbing, including through providing redress to farmers and others whose land was illegally or arbitrarily seized.*”⁸ Yet since the previous UPR cycle, legislative amendments have accelerated land confiscation, particularly in ethnic areas. The 2012 Vacant, Fallow and Virgin (VFV) Lands Management Law contributed to land and livelihood insecurity in rural communities, including by allowing the government to take control of “vacant” or “fallow” land that had previously been used by communities as grazing land or to sustainably harvest and sell

7 Lawi Weng, “Karenni Farmers Jailed in Land Dispute With Army Leave Prison,” *The Irrawaddy*, 13 March, 2019. Available at: <https://www.irrawaddy.com/news/burma/karenni-farmers-jailed-land-dispute-army-leave-prison.html>.

8 Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13, 23 December, 2015. Para. 143.124 Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>

forest products.⁹ For current IDPs, many have come to rely on harvesting forest products and working on vacant land for their livelihoods.



Recommendations

- Undertake comprehensive reform of land policy, including by repealing the VFV Lands Management Law, and introduce legislation that recognizes ancestral land ownership of ethnic nationalities and customary land use and ownership, ensures women's equal rights to land ownership and is based on the principles of federalism.
- Develop a policy and implement a system to provide restitution of housing, land and property for displaced persons with an appropriate timeline that complies with the Pinheiro Principles.

Identity and Language and Cultural Oppression



Challenges: Identity and cultural and linguistic discrimination is manifest in the Myanmar government's continued policies that do not allow ethnic people to freely express their identity.



Cases, Facts, Comments: The concerns of the suppression of ethnic identity directly impact refugees and IDPs. They were displaced because of their ethnic identity and to then deny them the right to express this identity, whether through language, symbols, political commemorations or cultural expressions is a continuation of the violent Burmanization process which has underpinned decades of armed conflict and displacement.



Recommendations

- Recognize ethnic health and education service provisions, including education in refugee camps.
- Decentralize Government service provisions to Region and State Governments and EAOs and to ethnic community-based service providers with the long-term aim of establishing a federal structure.

Legal and Administrative Obstacles to Fundamental Freedoms of Movement, Expression and Association



Challenges: There are many potential obstacles or risks to return that relate to legal and/or administrative documentation, as well as the legal status of refugees and IDPs.

⁹ Republic of the Union of Myanmar, 'Law Amending the Vacant, Fallow and Virgin Lands Management Law (2018),' Pyidaungsu Hluttaw Law No. (24), 11 September, 2018. Available in unofficial translation at <http://www.burmalibrary.org/docs25/2018-09-11-VFV-amendment-en.pdf?fbclid=IwAR28pI4bA1HRdAVr02RMzOf2ineF1cO86IpfJjhbZxk4hPNVwt10feNEmvE>.



Cases, Facts, Comments: Many refugees and IDPs, who have fled their homes trying to escape conflict and violence, have had their documents and identification destroyed or were unable to obtain documentation due to discriminatory citizenship laws. This prevents displaced people from being able to prove citizenship, land ownership and other entitlements that would enable them to return. Archaic laws, such as the Unlawful Association Act, criminalize ‘unlawful associations’ – which has been applied to civilians who associate with NCA non-signatory EAOs.¹⁰



Recommendation

- Repeal and/or amend the Immigration Act and Unlawful Associations Act, and provide guarantees through a publicly declared official policy that displaced persons returning will not face legal consequences under these legislations.

Humanitarian Aid and Closure of IDP Camps



Challenges: Dwindling aid continues to be a challenge to realizing the economic and social rights of IDPs and refugees. It is hugely important that donors continue to provide essential assistance to refugee and IDP camps and assist those who are returned or resettled.



Cases, Facts, Comments: As there is continuing conflict and a faltering peace process, prospects for a safe, voluntary and dignified return for IDPs and refugees is very slim. During the reporting period, reductions in humanitarian assistance for refugee camps in Thailand and IDP camps within the country has put pressure on IDPs and refugees to return, in spite of the appreciable risk resumption of secondary displacement and lack of livelihood opportunities.¹¹ For many the government has decided to close their IDP camps, without consultation or input with IDPs or civil society. Alarming, rations have been

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

11 Karen News, ‘Karen Groups Concerned Cross-Border Humanitarian Aid Decreasing,’ 3 June, 2013. Available at: <http://karennews.org/2013/06/karen-groups-concerned-decreased-cross-border-humanitarian-aid/>. Joint Strategy Team, ‘World Humanitarian Day Key Message from Joint Strategy Team for Solidarity with IDPs in Kachin and northern Shan States, Myanmar,’ 19 August, 2017. Available at: <https://progressivevoicemyanmar.org/2017/08/19/world-humanitarian-day-keys-message-from-joint-strategy-team-jst-for-solidarity-with-idps-in-kachin-and-northern-shan-states-myanmar/>. Ei Htu Hta IDPs Supporting Committee, ‘Letter of Appeal for Continued Cross-Border Humanitarian Aid,’ 4 September,



eliminated entirely in some camps, including Ei Tu Hta IDP camp in Karen State, IDP camps in Shan State and Koung Jor Shan refugee camp, in most other cases, rations have been reduced. In KIA-controlled areas aid has been blocked and disrupted to IDP camps.¹²

Recommendations



- Ensure unrestricted humanitarian access to all sites of displacement, including allowing humanitarian actors to reach EAO-controlled areas without legal consequence or other types of harassment, intimidation or threat.
- Continue providing access to international and local actors, such as the UN Office for the Coordination of Humanitarian Affairs and local community-based humanitarian and human rights organizations, to IDP camps in order to ensure the process of a voluntary, safe, dignified and durable return of displaced population.

2017. Available at: <https://karenwomen.org/2017/09/05/ei-htu-ha-idps-supporting-committee-letter-of-appeal-for-continued-cross-border-humanitarian-aid/>. Shan State Refugee Committee (Thai Border), 'As

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Since late 2016/early 2017, a serious outbreak of armed conflict between the Arakan Army (AA) and the Myanmar military in Rakhine State and southern Chin State has displaced 160,000 people as of January 2020.



Conflict Escalates in Shan State, Aid Must Not Be Cut Off to Shan-Thai Border Refugees,' 30 August, 2017. Available at: <https://www.shanhumanrights.org/eng/index.php/333-as-conflict-escalates-in-shan-state-aid-must-not-be-cut-off-to-shan-thai-border-refugees>.

12 Ye Mon, 'Military Orders Kachin IDPs to Leave Camps Despite Ongoing Hostilities,' Democratic Voice of Burma, 10 May, 2018. Available at: <http://www.dvb.no/news/military-orders-kachin-idps-leave-camps-despite-ongoing-hostilities/80788>. Lawi Weng, 'Military Frees Last of Baptist Group Members in Kachin, NGO Says,' The Irrawaddy, 5 November, 2018. Available at: <https://www.irrawaddy.com/news/burma/military-frees-last-baptist-group-members-kachin-ngo-says.html>.

This factsheet is based on a joint submission made to the UN Universal Periodic Review, 37th Session of the Working Group entitled “Refugees and Internally Displaced Persons” by the following ethnic community-based organizations (CBOs) and civil society organizations (CSOs) that work closely with displaced ethnic communities, including refugee committees along the Thailand-Burma/Myanmar border, youth and women’s organizations, as well as local development and humanitarian organizations.

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

For further evidence and data, please access the joint stakeholder submission at the following links: <https://bit.ly/33raMpL>

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