



Where Do We Go from Here?

A Snapshot of Recent Developments
for Refugees Along the
Thailand-Myanmar Border

INTRODUCTION

Over 100,000 refugees from Myanmar¹ remain in nine camps on the Thailand-Myanmar border, and yet despite the escalation of armed conflict, militarization, and investment-driven tensions on the ground in ethnic areas, the narrative of repatriation is becoming more prominent. Reduced rations and access to basic services in refugee camps, in addition to widespread armed conflict inside the country – including in Karen State just a few kilometres away from some of the refugee camps – are fuelling anxiety and worry in refugee communities about return to their homeland. A high-profile pilot program, which organized the return of 71 refugees in November 2016, backed by the Myanmar and Thailand Governments as well as the UN High Commissioner for Refugees (UNHCR), is furthering this narrative of return.² Yet the relatively small numbers of returnees overall reflects the concerns that refugees have over repatriation, including security, livelihood, land, health, and education. The lack of clear and accessible information being provided on their rights as refugees, and the lack of consultation in the repatriation planning and preparation process is further fuelling anxiety among refugee communities.³

It is imperative that all stakeholders listen to the needs of the refugees on any return, or non-return, in order to ensure that repatriation is indeed voluntary, dignified, and sustainable. Thus, this briefing paper is a summary of some of the main concerns surrounding the prospects of repatriation.

A Faltering Peace Process

Over 100,000 refugees remain in nine camps on the Thailand-Myanmar border. Reduced rations and access to basic services in refugee camps, in addition to widespread armed conflict inside the country – including in Karen State just a few kilometres away from some of the refugee camps – are fuelling anxiety and worry in refugee communities about return to their homeland.

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REFUGEE RETURN

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CEASEFIRES BROKEN

In Kachin State, in a war that has entered its sixth year since the Myanmar Army broke a 17-year ceasefire agreement with the Kachin Independence Army (KIA), a cease fire remains elusive as airstrikes and use of heavy artillery are regularly occurring throughout northern Myanmar.

ONGOING DISPLACEMENT

According to UN figures, 98,000 people live in internally displaced persons (IDP) camps in Kachin and Northern Shan State as of November 2016. Over 5,000 villagers were displaced due to fighting in Karen State in 2016. Despite the optimistic storyline of the peace process, the number of IDPs continues to grow.

RENEWED ARMED CONFLICT

Control over revenue-generating projects, border-trade, land disputes and natural resource extraction as well as mega projects have the potential for renewing outbreaks of armed conflict in southeast Myanmar. Command over checkpoints on the Asia Highway in Karen State was a driving factor of the fighting in July 2015 that led to the displacement of over 1,000 people, while Hatgyi Dam site as the main cause of armed conflict in 2016 between the Border Guard Force and the Democratic Karen Buddhist Army -splinter.



INTERNATIONAL INVESTMENT

Both the Asian Highway and the Hatgyi Dam have international financial and political support yet in the new context of ceasefires, investment and control over resources are fuelling armed conflict and human rights violations, including pushing people off their land and displacing thousands of people.

Nationwide, armed conflict continues unabated. In Kachin State, in a war that has entered its sixth consecutive year since the Myanmar Army broke a 17-year ceasefire agreement with the Kachin Independence Army (KIA), a ceasefire remains elusive as airstrikes and the use of heavy artillery are a regular occurrence.⁴ In northern Shan State, military offensives by the Myanmar Army are launched on a regular basis against Ta'ang and Shan ethnic armed organizations (EAOs), the Ta'ang National Liberation Army (TNLA),⁵ the Shan State Army - North, and the Shan State Army - South. In response to continued military pressure, a coalition of EAOs, dubbed 'the Northern Alliance,' consisting of the TNLA, the KIA, the Arakan Army and the ethnic Kokang, Myanmar National Democratic Alliance Army, have launched retaliatory attacks⁶ on important strategic economic towns in northern Shan State with 3,000 people seeking refuge in China.⁷

According to UN figures, nearly 98,000 people live in internally displaced persons (IDP) camps in Kachin and northern Shan State.⁸ Human rights violations committed by the Myanmar Army such as arbitrary detention, torture, sexual violence, and extrajudicial killings are regularly documented by local human rights organizations.⁹

In northern Rakhine State, in a new development in armed conflict in Myanmar, the Myanmar Army is scouring the area looking for armed militants after an attack on a police station on 9 October, 2016.¹⁰ A media blackout is in place as Rohingya residents suffer the horrific retaliatory actions of the Myanmar Army.¹¹ Furthermore, increasing tension with the largest EAO, the United Wa State Army in the north, is another worrying development for the peace process.¹²

Yet the narrative on the peace process for Myanmar is dominated by optimism. The nationwide ceasefire agreement (NCA), signed in October 2015, is a much referenced document that is often used to forward this account despite the fact that many EAOs did not sign due to the insistence on the side of the Government and military to exclude certain groups. Two peace conferences, one held by the previous government in February 2016 and one by the National League for Democracy (NLD)-led Government in August 2016, although much heralded, were of little note. The realities on the ground, of the ongoing widespread armed conflict and continuing displacement of civilians in the North, East, and West of the country undermine the optimistic storyline.

Conflict in Karen State

Despite rampant armed conflict, refugee repatriation discourse is gaining ground. One of the contextual factors forming the *raison d'être* of the UNHCR's 'strategic roadmap for voluntary repatriation' was stated as the "dramatic reduction of armed conflict in the South-East of the country."¹³ Conflict between the Democratic Karen Benevolent Army (DKBA) and combined forces of the Myanmar Army and its proxy Border Guard Force (BGF) had already occurred in July 2015 on the site of the newly constructed Asian Highway in eastern Karen State between Kawkareik and Myawaddy as both actors sought control of sections of the highway.¹⁴ Over 1,000 people were displaced and two villagers died as a result of the fighting.¹⁵ In September 2016, after accusations that the Myanmar Army and the BGF had plotted to kill their leader, a splinter group of the DKBA, the Democratic Karen Buddhist Army (DKBA-splinter) attacked BGF bases in Hlaingbwe Township, Karen State. The response to this attack were large joint military operations by the BGF and the Myanmar Army including artillery strikes in order to gain control of the DKBA-splinter's base in Myaing Gyi Ngu and Mae Thawaw, in Hlaingbwe Township.¹⁶ Fighting also spread to Kawkareik Township and 5,000 local villagers were displaced.¹⁷ Nearly 4,000 of these stayed at a monastery compound in Myaing Gyi Ngu, and even while armed conflict continued, the Myanmar Army visited the IDP site to encourage the displaced persons to return home, stating that the area was now stable.¹⁸

Linking these two outbreaks of fighting in Karen State is the struggle to control revenue-generating projects. Command over checkpoints on the Asia Highway was a driving factor of the fighting in July 2015¹⁹ while a coalition of ethnic Karen CSOs, Karen Rivers Watch, points to control of the Hatgyi Dam site as the main cause of armed conflict in 2016 between the BGF and the DKBA-splinter;

"The Burma Army is taking advantage of the BGF-Democratic Karen Buddhist Army (DKBA) splinter group conflict to take new territory and reinforce its forward positions in Karen State, in order to ensure that the Hatgyi Dam project can move ahead without opposition."²⁰

Both the Asian Highway and the Hatgyi Dam have international financial and political support yet in the new context of ceasefires, investment and control over resources are fuelling armed conflict and human rights violations, including pushing people off their land and displacing thousands of people. It is this new driver of



First Organized Return

conflict – new investment and development projects, infrastructure construction and the accompanying militarization and human rights violations in order to protect and secure such interests by the Myanmar Army – that pose some of the biggest threats to achieving sustainable peace in southeast Myanmar, and thus, a secure repatriation of refugees.

The new political, economic and security context is also exacerbating widespread land confiscation throughout southeast Myanmar and is well-documented by local human rights groups such as the Karen Human Rights Group and the Human Rights Foundation of Monland, as well as international organizations such as Transnational Institute and Human Rights Watch.²¹ Two laws enacted under the U Thein Sein Government – the Farmland Law and the Vacant, Fallow, Virgin Lands Management Law – do little to protect smallholder farmers and those who engage in customary or traditional land use.²² This directly impacts ethnic communities, many of whom are becoming victim to private enterprise taking control of their ancestral lands, subjugating them under powerful economic interests and severely curtailing their ability to pursue their livelihoods.

This has a direct impact on the sustainability of a return of refugees. The UN Principles on Housing, Land and Property Restitution for Refugees and Displaced Persons, commonly known as the Pinheiro Principles,²³ establish the right for refugees and displaced persons to return to their land and homes or receive appropriate compensation and restitution if it is not feasible to do so.

If land confiscation is rampant in their homeland, and the NLD-led Government is yet to outline a clear policy for refugees' housing, land and property (HLP) rights, it is inconceivable that such international guidelines will be able to be met. A salient example is of IDPs returning to their homes after a cessation of conflict in Tanintharyi Region, only to find that their property had already been confiscated by investors and had established a palm oil plantation.²⁴ To make matters worse, these returnees have been charged with trespassing by the two companies involved – Asia World and Shwe Padonmar.²⁵

The most important stakeholder in any narrative of repatriation, are the refugees.

In October 2016, the UNHCR, with the Thailand and Myanmar Governments, facilitated an organized return of 71 refugees to Karen and Mon States and Yangon and Tanintharyi Regions.²⁶ The organized return came just a matter of weeks after the dramatic increase of armed conflict in Karen State outlined above. Although heralded as a “milestone” by the UNHCR, problems with the return were reported almost immediately. According to *The Myanmar Times*, 17 of those who returned to Yangon were told by the regional government they need to purchase low-cost housing, something they were not aware of or have the means to do so.²⁷ Evidently, readiness on the part of the Myanmar Government is not yet adequate. Furthermore, the Karen Refugee Committee (KRC), a camp-based refugee management body that oversees and organizes the camps, including representation of refugees, was not consulted or part of the decision-making processes on the recent pilot organized return. Naw Blooming Night Zan, spokesperson of the KRC stated, “We were neither informed nor

“We were neither informed nor contacted. They [the Thai authorities and the UNHCR] didn’t discuss it with us. They carried out [the repatriation] by themselves.”

Naw Blooming Night Zan, Karen Refugee Committee (Irrawaddy interview)

contacted. They [the Thai authorities and the UNHCR] didn’t discuss it with us. They carried out [the repatriation] by themselves.”²⁸ Refugees and CBOs that work in the refugee communities have unique and unparalleled knowledge of the situation and needs of their communities. Therefore it will be most beneficial for all parties concerned, particularly the refugees themselves as primary stakeholders, that refugees and CBOs are consulted and are able to participate in all levels of the repatriation process, including in preparation and implementation. Yet many of such previous calls for inclusion of refugees and CBOs in the process of return have fallen on deaf ears and this ongoing lack of consultation is a poor precedent to set for the first organized return.²⁹

Conclusion

It is clear that despite the narrative of a successful peace process, armed conflict, which is the root of the existence of refugee camps on the Thailand-Myanmar border, is ongoing and escalating, including in Karen State. This is important, as nearly 80% of the refugee population in Thailand is ethnic Karen³⁰ (a further 10% are ethnic Karenni and the remaining 10% are from other ethnic and religious minorities as well as Burman political dissidents). Furthermore, new locus of contestation, particularly around investment and infrastructure and accompanying militarization, are causing tension between EAOs and the Myanmar Army and its proxy militia groups. It is also clear that the current legal framework is not adequate to give restitution for refugees' HLP rights.

Given this context, it is hard to see how any mass organized return of refugees would be safe and dignified, particularly if they were fully informed of both the context that they would return to, as well as their own rights as refugees. Added to this is the push factor of declining service and ration provision from donors, placing pressure on them regarding a decision to return to Myanmar. This is not to deny any refugees' individual choice, and some do return of their own accord, without logistical assistance from the UN agencies and the Thailand and Myanmar Governments. However, given the current conditions in Myanmar, return should not be promoted or pushed, as this would negate the chances for a safe and dignified return, and conversely, serve as an example of 'constructive refoulement.'³¹ There is precedent for a rushed return when conditions are not ready as in the case of Mon refugees who were repatriated in 1994 from Thailand to Myanmar, only to live for the next twenty years in IDP sites due to ongoing conflict and a lack of durable livelihood solutions.³²

Furthermore, the Myanmar Government does not have a clear policy or plan for returning refugees, as evidenced by the problems faced by those who participated in the pilot return of October 2016. Most importantly of all, it should always be remembered that the most important stakeholder in any narrative of repatriation, are the refugees. If a safe, voluntary, dignified and sustainable return is to happen they must have full access to information on the conditions inside any potential places of return, their own rights as refugees, and their participation, perspectives, concerns and needs must be respected and included as a major part of any decision-making and implementation process of any return.

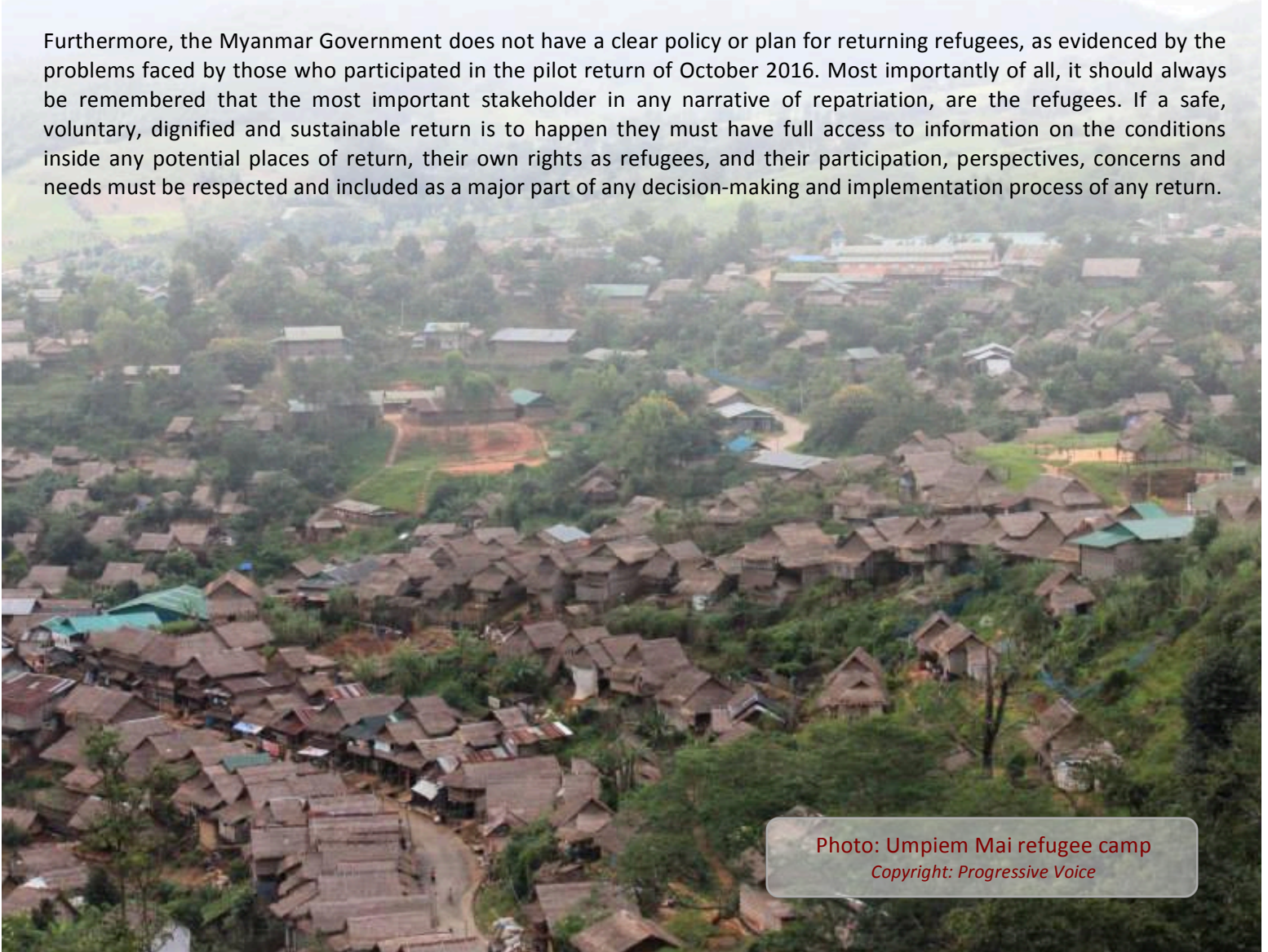


Photo: Umpiem Mai refugee camp
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Key Recommendations

To international stakeholders including donors, private investors, governments and the UNHCR:

- Ensure that the Myanmar Government complies with international human rights law and standards, especially the Pinheiro Principles, when engaging in any process of the return of refugees and IDPs;
- Continue to provide support for essential services and provisions for the refugees in Thailand and IDPs inside Myanmar;
- Conduct proper social and environmental impact assessments in meaningful consultation with potentially affected communities and local stakeholders including EAOs, and ethnic CSOs and CBOs;
- Ensure that all relevant information is freely available, accessible and clearly provided in local languages to refugees and local host communities prior to any return; and
- Include refugees and CBOs working with the refugee community in all phases of the preparation and implementation of return, including decision-making.

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

- Ensure that any return of refugees and IDPs complies with international human rights law and standards, especially the Pinheiro Principles;
- Prioritize an inclusive and sustainable peace agreement to establish a federal union where the rights and equality of ethnic nationalities are guaranteed and respected;
- Order the Myanmar military to halt all military offensives and end militarization in ethnic areas;
- Issue a moratorium on all natural resource extraction and major infrastructure projects in ethnic areas until a sustainable peace agreement has been reached;
- Amend land legislation to protect customary and traditional land use methods and prioritize smallholder farmers over agribusiness; and
- Sign the Mine Ban Treaty and initiate the removal of anti-personnel mines in cooperation with independent demining organizations.

To the Myanmar Army:

- Unilaterally and immediately declare a nationwide ceasefire, halt all military offensives and militarization in ethnic areas and engage in *inclusive* peace talks;
- Immediately halt all land confiscations and return the land to the people or adequately compensate them where restoration is not possible; and
- Immediately end all use and production of landmines and initiate a demining process with independent demining organizations.

To the Ethnic Armed Organizations:

- Consult with refugees and CBOs to develop a clear policy on IDP and refugee return and rehabilitation;
- Ensure that HLP rights are protected with a clear policy, in consultation with local communities and prioritize in peace talks; and
- Immediately end all use and production of landmines and initiate a demining process with independent demining organizations.

End Notes

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