

**Submission to the United Nations Universal Periodic Review  
on Refugees and Displaced Persons  
Burma/Myanmar**

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## 1.0 EXECUTIVE SUMMARY:

1. This submission focuses on Burma's compliance with international human rights obligations in relation to Burma's refugees and displaced persons safe, dignified and voluntary return. It draws on interviews conducted with a mixture of semi-structured individual interviews and focus groups with refugees from Mae La, Umpiem Mai, Ban Nai Soi, and Mae Ra Ma Luang refugee camps including women, youth and religious minority groups, Mon, Karenni, and Karen civil society groups, ethnic armed groups (EAGs), refugee committees, and international non-governmental organizations. Sections below offer sets of recommendations to the Burma Government pertaining to the sustainable return of Burma's refugees.
2. In spite of the Burma Government's change to a nominally civilian government in 2011, Burma has not observed the rhetoric of democracy and transition as promised by President Thein Sein's government. Since 2012, there have been rumors and counter rumors regarding the repatriation of 110,092 refugees<sup>1</sup> living in nine refugee camps along the Thailand-Burma border. These concerns heightened as individual preliminary ceasefire agreements were signed. In particular, fears of repatriation grew as the Karen National Union (KNU) signed the initial ceasefire in 2012. Despite committing to building a federal union by signing the Deed of Commitment to Peace and National Reconciliation, the Burma Government continues to wage war against their own people in ethnic minority areas.<sup>2</sup>
3. Furthermore, restrictions on freedom of expression and assembly have tightened while journalists, activists and protesters opposed to government-backed investment projects calling for accountability continue to face harassment, intimidation and prosecution. These issues have lead to the Special Rapporteur on the situation of human rights in Burma, Yanghee Lee, to observe that there are continuing signs of worrying "backtracking" in democracy.<sup>3</sup> This is disconcerting to refugees and internally displaced persons (IDPs) who see this as a sign that the timing for return is not right.
4. Recommendations agreed upon by the Burma Government in the first cycle of the Universal Periodic Review's (UPR) have seen a backsliding in some areas and very minimal progress in many other areas. Directly related to refugees, the Burma Government has not acceded to their agreement from the last cycle to *"Rehabilitate Burma returnees in cooperation with the relevant United Nations agencies,"*<sup>4</sup> as it has continued to wage war in areas where refugees call their "home." There have been few signs of improvement in regards to human rights violations since the first cycle, particularly in areas where conflict and human rights violations continue to threaten human security.

## 2.0 LEGAL FRAMEWORK

5. Burma has acceded to three of the UN treaties: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). Despite doing so, the Burma Government is in breach of these conventions as a result of various human rights violations relating to a number of the issues discussed below. Yet, victims of such violations in theory have legal recourse at the United Nations level because of Burma being a State party to these conventions.
6. The Burma Government has thus far refused to accede to any of the key core treaties, including the International Covenant on Civil and Political Rights (ICCPR), which it agreed to consider signing during the 2011 UPR cycle.<sup>15</sup> Although it cannot be held legally in breach of the obligations under these treaties, they are the internationally recognized standards on human rights that are violated as discussed in this submission.

## 3.0 ONGOING CONFLICT, THREATS TO HUMAN SECURITY, HUMAN RIGHTS ABUSES, SERVICE PROVISION AND DISPLACEMENT

7. Since 2011, one of the major events in Burma that has fuelled the discussion of refugee return has been the ongoing peace process. Yet as one male Karen refugee who has not returned to Burma since he came to Mae Ra Ma Luang camp seven years ago poignantly points out, *“I thought I would go back this year (2015), but I just heard that fighting is breaking out again in our homeland between Karen soldiers and Burmese soldiers. So my plan has to be canceled since it would be unfortunate for us if we were there.”*<sup>6</sup>
8. In the UPR’s first cycle, the Burma Government accepted the recommendation to *“solve long-standing conflicts between the Government and ethnic groups in a peaceful manner,”*<sup>7</sup> but these conflicts have yet to be resolved. Initial ceasefires signed in late 2011 and 2012 with many of the major EAGs has seen an optimism for peace dominate the discourse on relations between the state and Burma’s ethnic minorities, between which armed conflict has been ongoing for over 60 years.

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<sup>1</sup> The other treaties are: (1) the International Covenant on Economic, Social and Cultural Rights (ICESCR), (2) the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), (3) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), (4) the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), and (5) the International Convention for the Protection of All Persons from Enforced Disappearance (CED).

9. This discussion on refugee return is understandable given that the majority of people displaced in Thailand, or those in IDP camps in Burma, fled either direct conflict such as incidences of armed conflict in their village or indirect consequences, such as human rights violations related to militarization. Yet the peace process has stalled. The initial ceasefires signed have proved to be fragile and regularly breached, militarization has increased, and outright civil war still rages in the northern part of the country, in Kachin and Shan States.
10. Regardless of the geographical distance from many of the IDP and refugee camps in eastern Burma and Thailand, this war gives yet another indication to the refugees that the time is not right for return, as trust in the peace process remains low.
11. In 2011, the Burma Army attacked a Kachin Independence Army (KIA) outpost, breaking a 17 year old ceasefire. The KIA is one of the strongest EAGs in Burma and fighting has persisted throughout this UPR period, including the use of airstrikes and helicopter gunships around KIA headquarters in late 2012 and early 2013. Over 100,000 people have been internally displaced by this war, as China, which shares a border with Kachin State, refuses to grant protection to those who have fled.<sup>8</sup> Directly related to this conflict are a litany of human rights abuses which have been recorded in the area committed by the Burma Army, that would likely constitute war crimes under international humanitarian law, including forced labor, forced relocation, arbitrary arrest, illegal detention, torture, and extrajudicial killing.<sup>9</sup>
12. The Women's League of Burma has also documented 118 cases of gang-rape, rape and sexual assault since 2010, committed by the Burma Army mainly in Kachin and northern Shan States with complete impunity.<sup>10</sup> The real figures, however, are thought to be much higher given the atmosphere of fear and cultural impediments to testifying to being a victim. The track record of the Burma Army of committing such acts is widespread and systematic and indicates a structural pattern of behavior that still exists.
13. It is not just the KIA that the Burma Army is at war with. In February 2015, conflict erupted in northern Shan State with the ethnic Kokang armed group, the Myanmar National Democratic Alliance Army (MNDAA).<sup>11</sup> Airstrikes used on civilian populations as well as reports of torture and extrajudicial killing by the Burma Army have left tens of thousands displaced and the main Kokang township of Laukkai, a deserted wasteland. Most refugees from Shan State who flee to Thailand have no access to refugee camps, but a small number reside in Koung Jor, an unofficial refugee camp in Thailand unregistered by UNHCR. If they are ever forced to return, they will be walking into conflict areas.<sup>12</sup>

14. While the above relates to non-ceasefire areas, in areas where initial ceasefires have been signed, clashes still occur as the Burma Army has taken advantage of the general lull of fighting in these areas to move in, to restock, to resupply with soldiers and weapons, to rebuild bases out of concrete rather than bamboo, and to establish themselves in previously inaccessible territory.<sup>13</sup> Furthermore, as there have not been codes of conduct agreed upon by the armed actors, clashes continue to occur in Karen and especially in Shan areas.
15. Much of the fighting and increased militarization can be directly attributed to large-scale development projects such as mining or dams. It was, among other factors, tension around the Chinese-backed Taping Dam in Kachin State that sparked the ongoing war with the KIA. Other conflict hotspots are around the planned dam sites on the Salween River, such as clashes with the MNDAA, Ta'ang National Liberation Army and KIA around the Kunlong Dam, and with the Shan State Army-North in areas adjoining the Nong Pha Dam, and the Democratic Karen Benevolent Army around the Hatgyi Dam.<sup>14</sup> Such large-scale development projects and the resulting militarization and conflict only increase displacement and lack of trust in the sincerity of the peace process.
16. The peace process itself has centered around the signing of a nationwide ceasefire agreement (NCA), a document which the government's peace negotiation team is keen on signing. Despite various promises that it will be signed "soon" the process has been repeatedly postponed for two years now. The EAGs most important point of principle is that peace talks and the signing of the NCA must include a guarantee of political dialogue in order to progress with the development of a federal union. As of yet, neither the government nor the military have been able to guarantee that this will happen.
17. Furthermore the Burma Army has stipulated that a code of conduct and an independent monitoring mechanism should come after the NCA. This would render the NCA pointless. If the Burma Army continues to attack ethnic armed groups in ceasefire areas, a code of conduct that can be observed is key to preventing clashes. There has to be a mechanism that holds the Burma Army accountable. If this starting point for trust-building is vetoed by the military, it reflects the Burma Army's lack of political will to genuinely engage in peace building.
18. More people are being displaced by armed conflict every day in Burma. To start implementing return programs while the Burma Army still remains completely unaccountable as it commits human rights abuses in ethnic areas, while continuing offensives in various parts of the country is counterproductive to achieving peace in the country. In order to improve accountability and tackle impunity, rule of law needs to be established. The

military must be accountable to the law and the people for their crimes and abuses. Burma needs to prove that it is sincere about not just stopping the gunfire, but ensuring that ethnic aspirations and rights are met through a political settlement, thus establishing the very first step for discussions on refugees and IDPs return or resettlement to take place.

**Recommendations:**

- Establish a code of conduct in the nationwide ceasefire agreement with an independent monitoring and enforcement mechanisms that holds those who break initial ceasefire arrangements accountable
- Establish an independent, competent and non-corrupt judiciary to provide victims with access to justice
- Honestly and willingly participate in the peace process, by honoring original ceasefire agreements, end offensives in Shan and Kachin States, withdrawing the military from ethnic areas and beginning political dialogue prior to discussion of repatriation or resettlement

**3.1 LANDMINES**

19. During 2012 to 2013, Burma was one of the only two countries left in the world where the military and non-state actors laid mines.<sup>15</sup> The Karen Refugee Committee has in the past, clearly outlined the conditions under which refugees can return stating, *“Relocated areas should be freed from land mines and security should be given a priority”*<sup>16</sup> and the Karenni Refugee Committee has stated a similar position adding, *“Landmine risk education must be delivered to the refugee returnees in collaboration with local civil society”* prior to their return.<sup>17</sup>
20. While EAGs and organizations have made efforts to demine areas to open space for villagers’ livelihoods activities,<sup>18</sup> local and international organizations have reported the Burma Government and EAGs have continued to deploy landmines to protect their territory since 2011.<sup>19</sup> Though exact locations are hard to define, mines tend to be placed near areas frequented by civilians such as roads, borders, in and around villages, around camps for IDPs, near hydropower dams and other infrastructure.<sup>20</sup> These are all areas likely to affect refugees and IDPs upon their return. Since 2011, numerous people have died or were injured in Karen State alone as a result of landmine incidents.<sup>21</sup> In Hlaingbwe Township, government troops planted landmines that contaminated 37 plantations, driving the owners off their land.<sup>22</sup> There is a need to end all armed conflict, which promotes the use of landmines, followed by an agreement between the armed groups and the Burma Government to end the use of landmines.
21. The government has also hindered almost all forms of mine action with the

exception of prosthetic assistance through general health programs as well as some efforts to support mine-risk education programs. Mines do not discriminate combatants from civilians. Clear strategy for demining with the cooperation of international organizations and civil society organizations is needed in order to guarantee the safety and security of the return of refugees and IDPs living in mine affected areas.

**Recommendations:**

- Present a clear timeline to accede to the Anti-Personnel Mine Ban Convention
- Ensure that the refugees return is conducted safely and with dignity by implementing demining activities and strengthening mine-risk education programs
- Immediately halt the use of antipersonnel mines

**3.2 RIGHT TO LAND, NATURAL RESOURCES AND LIVELIHOOD OPPORTUNITIES**

22. The individual ceasefire agreements have allowed wider access to land, and the influx of new mega projects and Special Economic Zones (SEZs) has exacerbated land rights violations, inequality and displacement. As one Karen from Mae Ra Ma Luang camp stated, *“Some people have opportunity to deal with their own business effectively, but in my understanding, the current developments inside Burma is just for those who have power, strength and those who are rich with large properties. The rich become richer and poor become poorer.”*<sup>23</sup> These projects are facilitated by various private actors, military owned entities and EAGs under a legislative framework that favors profit over people. In addition, the difficulty in accessing justice in contested areas leave villagers vulnerable to a wide range of human rights abuses. As Burma seeks to liberalize economically, the original “homes” of refugees and IDPs are being sold, confiscated or developed without consultation or adequate compensation.

23. During the last cycle, the UPR recommended Burma Government to *“take appropriate measures and develop an action plan while continuing the cooperation with the international community to implement the MDGs, in particular poverty reduction, the right to food and food security.”*<sup>24</sup> They accepted this recommendation. However, livelihood, right to food and security for rural communities are severely compromised by a range of investments that are driving large-scale infrastructure development projects and mono-crop plantations accompanied by militarization, creating poverty rather than sustainable livelihood opportunities that reflect the social, economic, and cultural needs of the farmers and communities living in rural areas.

24. The confiscation of land, forced evictions and other associated actions are in direct violation of the International Covenant on Economic, Social and Cultural Rights (ICESC), to which Burma Government agreed to “*consider the possibility of signing or ratifying*”<sup>25</sup> in the last cycle of the UPR. However, there have been no such indications during the duration of the second cycle.
25. Below are summaries and key concerns of the developments since 2011 that have breached human rights leading to repeated displacement. While many refugees and IDPs want to reclaim previously owned land, the concerns below pose many obstacles for their dignified return.

*State Institutionalized Land Confiscation and Tenancy Rights*

26. In 2012, two land laws the Vacant, Fallow and Virgin Lands Management Law (VLV law) and the Farmland Law, were enacted with the aim of combatting land rights abuses. Both laws have proved insufficient and have serious flaws that are now aiding and abetting the confiscations. The much anticipated National Land Use Policy (NLUP), aimed at preventing land rights abuses, has been criticized for its centralized approach, which undermines the rights of the ethnic minorities and empowers foreign and domestic investors over small-scale farmers.<sup>26</sup>
27. Many refugees and IDPs do not possess government issued land titles to their original lands. According to the Mae Fah Luang Foundation survey that was carried out between June 2013 and June 2014 in the refugee camps in Thailand, only three percent of the refugee population possesses landownership certificates.<sup>27</sup> Most refugees and IDPs were forced to abandon their land and belongings as they quickly fled conflict. The VLV law stipulates that land not formally registered with the government that has been deemed “vacant,” or “uncultivated” can be allocated by the government to investors. Those who had customary rights to their land have been denied access, considered illegal tenants and subjected to forced displacement.<sup>28</sup> The NLUP includes the classification of “Vacant, Fallow, and Virgin Land,” which does not recognize customary tenancy, and poses the threat of institutionalizing land confiscation.
28. In addition, while the Farmland Law stipulates that the military must compensate farmers for seized lands or return the land that has been confiscated, the absence of independent mechanisms for justice allows the Ministry of Agriculture and Irrigation (MoAI) to dictate the management, administration, and allocation of land. Ultimately it cannot pressure the military to comply with the laws due to conflicts of interest. An example where land confiscation in relation to militarization was particularly significant is in Loikaw, Karenni/Kayah State, where tensions grew when the Burma Army seized and fenced over 2,000 acres of agricultural land from local villagers in 2014.<sup>29</sup> The land is to be used for the Myanmar Military



Advanced Training School.<sup>30</sup> Letters of appeal from villagers have gone unresponsive and they have been warned not to cultivate their lands.<sup>31</sup>

29. Burma Government does not recognize the laws and policy in ethnic areas, where EAGs, such as the Karen National Union (KNU) have adequate land use policy that recognizes all customary and communal tenure systems in land, water, fisheries and forests.<sup>32</sup> Unlike the government's title, which allows only the use of land, KNU issued titles allow ownership of the land.

### Mega Projects and Displacement

30. Foreign investment driven mega projects often involve hydropower dams, mono-plantation projects, extraction of natural resources, and infrastructure development. These often take place in resource rich ethnic areas and are implemented without assessments of the environmental and social impacts. This lack of investigation exasperates tensions between EAGs and the Burma Army in the project areas.<sup>33</sup> Examples include the six dam projects planned on the Salween River in Shan State, Karenni/Kayah State and Karen State in eastern Burma, which are joint ventures between the government, Chinese and Thai investors. Despite ongoing conflict and strong objections from civil society groups,<sup>34</sup> they have pushed forward with the projects, forcibly confiscating lands from the ethnic people and fueling militarization in these areas. This resulted in military offensives in 2014 near the Hat Gyi Dam site in Karen State; the conflict displaced over 2,000 villagers<sup>35</sup> who attempted to cross the border to Thailand. Other rivers are under review for similar hydropower projects. Protest and opposition against these government sanctioned projects have been met by arrests and detainment.
31. The three SEZ projects—Thilawa, Dawei and Kyaukpyu—backed by international investments have experienced critical human rights violations in the process of land confiscation.<sup>36</sup> Sexual harassment by workers has increased in the project areas, putting women and children at risk of sexual violence.<sup>37</sup> Women are continuously excluded from the decision making process over land sale and compensation, and their level of education will decrease the likelihood for employment when they are resettled in Dawei SEZ.<sup>38</sup> Many refugees in Ban Don Yang and Tham Hin refugee camps as well as IDPs who consider the project-affected areas their place of origin will be subject to these human rights violations upon their return.

### Industrial Development

32. In 2013, the Japanese International Cooperation Agency (JICA) issued a blueprint proposing industrial development in southeast Burma. The blueprint assumes development will bring back the refugees. Yet as pointed out by a network of over 30 Karen organizations, *“the refugees fled attacks by the Burmese military and the burning of over 3,000 villages; they did not flee*

*'poverty.'*"<sup>39</sup> Their right to own land is the foundation of many basic human rights such as security, adequate food, water and livelihood. For refugees who want to own land and work with dignity, this blueprint is demeaning, while it reinforces centralized government structures as well as unfettered and unregulated access to private businesses who can exploit communities and degrade natural resources in ethnic areas.

### **Recommendations**

- Put a moratorium on mega development projects and set up interim protection mechanism to further protect land confiscations in conflict affected areas
- Recognize, respect and promote the tenancy rights of all landholders and abolish the classification of "Vacant, Fallow, and Virgin Land" from NLUP
- Immediately cease all land confiscation and undertake comprehensive investigation and action regarding land disputes; more specifically confiscated land should directly be returned or adequately compensated and a mechanism for land distribution and restitution must be set up with a priority for vulnerable groups including refugees and IDPs
- Ensure that independent and transparent Environmental Impact Assessments, Social Impact Assessments, Conflict Impact Assessment and Health Impact Assessments are conducted before implementation of a project
- Community grievances must be fully addressed in existing and proposed investments
- Ensure the protection of rural women's rights by reviewing existing laws related to rural development in compliance with CEDAW in cooperation with rural women
- Under the UN Guiding Principles on Business and Human Rights, Burma Government should uphold their obligation to *"protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises"*

### **3.3 ACCESS TO AND ADMINISTRATION OF SOCIAL SERVICE PROVISION**

33. The steady decrease in cross-border aid by donors, directed instead toward a centralized government system that does not formally recognize the "ethnic health service providers"<sup>40</sup> and "ethnic education service providers" has deeply impacted the provision of service and support for refugees and IDPs along the Thailand-Burma border. Supplies such as rice, oil and coal have reduced in the refugee camps, as food rations fall substantially below minimum amount stipulated by World Health Organization in certain households.<sup>41</sup> Funding cuts in organizations providing education and health services have resulted in the lack of adequate care and human resources to support existing programs.

34. This has fueled anxiety among refugees. Many feel they are being squeezed out of the camp, leading to potential cases of constructive refoulement.<sup>42</sup> Across the border in Burma, primary healthcare remains unaffordable for the lowest income bracket and government education and health facilities remain largely inaccessible, especially to the rural ethnic communities. Patients still pay the high cost of health care in most government facilities, leaving them out of pocket. Echoing the voices of many refugees, one female refugee from Ban Nai Soi asked that donors “*maintain funding for fundamental needs until we see real change inside Burma.*”<sup>43</sup>
35. In contrast to the highly centralized health system of the Burma Government – a system also ranked by the World Health Organization as the worst system in the world<sup>44</sup> – the indigenous health systems in the ethnic areas are decentralized, allowing ethnic health service providers in Karen, Karenni, Mon and Shan States a degree of administrative autonomy to serve local needs. These service providers have a long history and trust with their local constituencies and have supported the health care systems during the decades-long conflict and continue to provide in conflict-affected areas. Unfortunately, rather than continuing support for these existing structures during the period of fragile peace process, hefty overseas development aid is being pumped into development strategies proposed by the government.<sup>45</sup> Through this aid, the government has furthered their foothold in ethnic areas without consultation with ethnic service providers, ultimately undermining their systems.
36. The sudden increases in government facilities are creating tension in villages, fueling tension among EAGs, village leaders and local communities. In contested areas, where government clinics are built by International Non-governmental Organizations (INGOs), long standing distrust of the Burma Government results in little use of these clinics by locals people. In some cases these clinics have become “ghost clinics;” they lack staff and medical supplies, and equipment that had been promised never arrived to treat the people.<sup>46</sup> Similar instances of unused Burma Government educational facilities have been documented.<sup>47</sup>
37. In addition, in Mon State, at least six offers by the government to repair Mon national schools were used as a means to convert them into government schools. Some attempts were made to build them in initial ceasefire areas with INGO backing. However, without adequate consultation with communities, the project heightened tensions and created confusion among villagers.<sup>48</sup> While the government gains further administrative control over these ethnic areas, those who should be benefiting from the development aid are left to live as ghosts under the central government’s development strategies.
38. Health and education workers, including those who received training or

recognition in refugee camps, work under conditions that put them at risk of arrest by authorities as the Burma Government views them as unrecognized health professionals or educators. In November 2011, two mobile health workers were arrested for assisting a patient in Karen State. They were accused of being KNU spies and tortured. The male victim was severely disturbed by the incident as he testified to a researcher at the Karen Human Rights Group stating *“the solders met us, arrested us and tied us up [...] they beat my head and slapped my face. Then they tied us up [...] the wound did not remain, but it hurt internally.”*<sup>49</sup>

39. The Government development plans must not undermine the work of the ethnic care providers, as they are key to building peace, stability and will support the return and integration of refugees and displaced person and communities in the country.

### **Recommendations:**

- Allow for decentralization of service provisions and develop national health policy and system that is in accordance with the framework of a federal union
- Formally recognize the existing structures, policies and community-based services provided in the ethnic areas and allow direct support to civil society organizations and relief organization operating within the respective administrative systems of the EAGs
- Formally recognize the certificates issued by credible institutions working inside the camp and in ethnic areas

### **3.4 RIGHTS OF THE CHILD AND CITIZENSHIP OF REFUGEES**

40. While the government agreed to *“Ensure the effective implementation of the Convention on the Rights of the Child (CRC), especially the rights to education and health,”*<sup>50</sup> birth registrations continue to pose issues for ethnic children who were born in refugee camps and IDP communities.

41. While many efforts by civil society groups have shown progress in documenting displaced children in Thailand,<sup>51</sup> to date there has been no direct cooperation between the Burma Government and ethnic community organizations to address issues of statelessness. The Citizenship Law of 1982 states that *“The Council of State may decide whether any ethnic group is national or not.”*<sup>52</sup> Those who fled conflict in ethnic areas often left all documentation behind, and face the possibility of having their citizenship revoked.

42. Refugee children born in the camps are typically issued delivery certificates, but this system falls short of official birth registration. With the amendments to the Civil Registration Act in 2008 and assistance by civil society

organizations such as Mae Tao Clinic, Thailand currently grants citizenship to children born in Thailand. While this helps prevent statelessness, children must hold birth certificates certified by the Burma Government to gain citizenship. For refugees, travel to the consulate in Bangkok is not possible, leaving them with little option for other possibilities. There is a large possibility that these children will become undocumented inside of Burma upon their return without the Burma Government issued documentation.

43. This will leave children born in Thailand at risk of not having a recognized identity in law. While born in refugee camps, these children should be granted the same citizenship rights as those born inside the country, granting them equal opportunities and access to rights.

**Recommendations:**

- Ensure that all refugees and displaced children have access to birth registration by setting up a nationwide birth registration system in cooperation with EAG and civil society organizations

**3.5 FREEDOM OF RELIGION AND WOMEN'S RIGHTS**

44. President Thein Sein has submitted a package of four bills to Parliament on December 2014<sup>53</sup> which comprise measures to “*protect race and religion.*” The proposed bills have been met by heavy criticisms from local and international organizations<sup>54</sup> who view the proposed bills as largely discriminatory on religious and gender grounds.<sup>55</sup>
45. The Religious Conversion Bill will impose onerous restrictions on citizens wishing to change their religion by requiring them to apply to a state-governed body who will decide whether to issue a certificate of conversion. Freedom of religion or belief is a human right under Article 18 of the Universal Declaration of Human Rights (UDHR) and should not be subject to State approval. Such bill restricts religious minorities to exercise their rights and “could be interpreted as signalling government acquiescence, or even assent, to discriminatory actions and violence.”<sup>56</sup>
46. While the Burma Government agreed to “*Promote interreligious dialogue and cooperation at the key local and national levels,*”<sup>57</sup> the enactment of this law further threatens religious minorities, especially Muslims, exacerbating the already worrying levels of religious and communal discrimination and violence in the country that have lead to displacement. In a statement produced in October 2014, the Myanmar Muslim Social Network, comprised of Muslim groups in Mae La refugee camp, have raised discrimination against Muslims on a local, state and national level as an ongoing concern and reason as to why repatriation is not an viable option at this time. <sup>58</sup>

47. The Buddhist Women's Special Marriage Bill regulates the marriage of Buddhist women with men from another religion, which is an illegal intrusion on the part of the Burma Government on the private domain. The bill undermines women's ability to "*think rationally and make decisions, and instead restricts and obstructs their freedom of choice to make decisions on issues directly concerned with their lives.*"<sup>59</sup> Furthermore, it perpetuates the stereotype that women are vulnerable and in need of protection.<sup>60</sup>

48. The Population Control Healthcare Bill contains no safeguards to ensure that the sexual and reproductive rights of women, men and children will be protected. The rights guaranteed by CEDAW allow the people of Burma to "*freely choose whether or not to have children and the number of spacing births.*"<sup>61</sup> As the bill may enforce people to practice birth spacing, which would mean at least a 36-month interval between births, under CEDAW this practice should not be imposed. As long as women in Burma still face threats to their security, the women living in refugee camps will not feel safe to return.

#### **Recommendations:**

- Abolish the Law on Religious Conversions
- Amend all other legislation to ensure that it incorporates the principles set out in Article 18 of the UDHR

#### **4.0 ONGOING DISPLACEMENT AND PROSPECTS OF RETURN**

49. Over thirty years ago, the first camp was set up to house those affected by conflict. The same conflict that robbed refugees and IDPs of their land, houses, families and communities continue today as the Burma Army, under President Thein Sein's Government, commits human right violations, particularly in ethnic areas. In addition, the religious tensions and infectious outbursts of violence against Burma's religious minorities have lead to mass displacement of approximately over 100,000 people<sup>62</sup> who now live as IDPs

50. Refugees and IDPs who are hoping to return to their "homes" are still at risk from the ongoing human rights violations that lead to their displacement. This is particularly true for women, children, religious minorities and other vulnerable communities. Unless the Burma Government is committed to ending human rights violations and gains the trust of their people by acceding to core human rights treaties, the refugees and IDPs will not be able to return voluntarily in safety and in dignity.

51. What happens in Burma, particularly in ethnic areas affects the decision making of refugees and directly impacts the IDPs. While INGOs, UN High Commissioner for Refugees (UNHCR) and international donors had

anticipated that spontaneous return of refugees would increase due to individual ceasefire agreements and promises of a transition by the Burma Government, this has not been the case. In 2014, while the population figures in the camps fluctuated, it largely remained the same as in previous years.<sup>63</sup> A concerned voice of a male refugee in Ban Nai Soi refugee camp who stated, *"I need to make sure I do not become a refugee again. To flee again,"*<sup>64</sup> encapsulates the need for the Burma Government to show their political will to resolve the root causes that have pushed people off of their land and out of Burma in the first place.

52. The Burma Government must rectify their wrong doings of the past by pursuing justice and accountability and guarantee security to the people of Burma before discussing the possibility of repatriation or resettlement of refugees and IDPs with respective stakeholders. Refugee and IDPs' return must be truly voluntary, based on durable solutions and conducted in safety and dignity and in line with international human rights standards and humanitarian laws. Meaningful consultations<sup>65</sup> and participation of refugees and IDPs in the planning and preparedness of their return is key to their sustainable return.

### **Recommendations:**

- Allow meaningful and full participation of refugees and displaced person and CBOs in all stages of preparedness planning and repatriation
- Consult with refugees and IDPs regarding the timing and condition of their possible return or resettlement; refugee and IDP's return or resettlement must be truly voluntary
- Implement the agreement made in the first cycle of the UPR to *"rehabilitate Myanmar returnees in cooperation with the relevant United Nations agencies,"*<sup>66</sup> and also include ethnic service providers, refugees and IDPs
- Provide access to opportunities that allow refugees to be a part of the decision making level of the preparedness and preparations for refugee return

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1 "Refugee and IDP Camp Populations: January 2015." The Border Consortium. Accessed March 18, 2015.

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