



DISPLACEMENT AND DISPOSSESSION:  
FORCED MIGRATION AND LAND RIGHTS

# BURMA



R E P O R T

C O U N T R Y

COHRE Country Report  
November 2007

**DISPLACEMENT AND DISPOSSESSION:  
FORCED MIGRATION AND  
LAND RIGHTS IN BURMA**



# BURMA

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*Displacement and Dispossession: Forced Migration and Land Rights in Burma*

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Front Cover photo: IDPs Crossing the car road [a dangerous passage, due to Burma Army patrols] (Free Burma Rangers)

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# Executive Summary

Burma today is experiencing a crisis in security of land tenure, which includes the widespread abuse of human, economic, social, cultural, and political rights. This report, *Displacement and Dispossession: Forced Migration and Land Rights in Burma* focuses on land confiscation by Government forces, responsible for Burma's most acute Housing, Land and Property (HLP) rights abuses. Among the most vulnerable populations are more than one million internally displaced people in Burma, most from ethnic nationality communities. These include at least 500 000 people in the armed conflict-affected border regions of eastern Burma.

This report focuses on the ongoing abuses of HLP rights occurring under military rule today, particularly in areas populated by non-Burman peoples. In recent years, the peoples living in these areas have been the most severely affected by large-scale displacement. These abuses occur during military counter-insurgency operations; for the construction and support of new army battalions; to make way for infrastructure development projects; in the context of natural resource extraction; and to provide vested interests with business opportunities.

When addressing land rights issues, it is important to recognise that indigenous peoples such as Burma's ethnic nationalities enjoy a special relationship with the land. In Burma, the struggle for HLP rights is linked to the struggles for justice, democracy, and for sustainable livelihoods. For ethnic nationality communities in particular, the struggles include the right to reside in, and participate in decisions regarding, their ancestral homelands.

The HLP violations found in Burma today are embedded in short-sighted and predatory policies that date back to the early years of Independence, and to the period of colonial rule. These problems can only be resolved in the context of substantial and sustained change in Burma. Political transition should include improved access to a range of fundamental rights, as enshrined in international law and conventions — including respect for HLP rights.

Protection from (and during) forced migration, and solutions to the widespread HLP crises in Burma, depend ultimately on settlements of the conflicts that have wracked the country for more than half a century. Unfortunately, efforts at conflict resolution have thus far met with only very limited success.

The events of August-October 2007 – when Government forces brutally suppressed protesting monks and civilians (see Section 4.5) – reminded the world of the Burmese peoples' struggle for freedom. The events also demonstrated civil society's potential as an engine for political change, the entrenched nature of the military regime, and the marginalisation of most opposition organisations.

This report describes some interesting and useful projects that civil society groups have implemented in Burma. These examples show that, notwithstanding the need for fundamental political change in Burma, steps can and should be taken now to address HLP issues. Opportunities exist to assist the rehabilitation of displaced people, in ways that link political action with humanitarian relief and development.



## Displacement – statistics and typology

The Thai Burma Border Consortium (TBBC) and its partners estimated that in 2007, approximately 76 000 people had been newly displaced by armed conflict and associated human rights abuses. The majority of new incidents of forced migration and village destruction were concentrated in northeast Karen State and adjacent areas of Pegu Division – areas that were still subject to armed conflict. Across much of southern and central Karen State, the situation for most villagers was relatively stable. The total number of IDPs in eastern Burma recorded by TBBC and its partners in October 2007 was 503 000. These included 295 000 people in ceasefire zones, 99 000 IDPs ‘in-hiding’ in the jungle and 109 000 IDPs in relocation sites.

The above estimates do not include IDPs who choose not to make themselves available to armed opposition groups, nor the large numbers of people who have achieved (at least semi-) durable solutions to their plight, especially those living in peri-urban areas. The estimates also exclude hundreds of thousands of IDPs in other parts of Burma (especially Kachin and Shan States, and the west of the country, as well as in some parts of Karen State). Including these figures would bring the total to over a million internally displaced people.

As at September 2007, there were 152 228 registered refugees in Thailand<sup>1</sup> living in 10 camps (1 Shan, 4 Karenni and 5 Karen), including 11 663 living in Mon resettlement sites. Since December 2005, at least 4 000 Karen new arrivals had entered Thailand. Furthermore, large numbers of people continued to cross the border, without entering official camps, including most Shan new arrivals, who for several years have been estimated to number approximately 1 000 per month. The actual number of camp residents also included several thousand (mostly newly arrived) people whom the Thai authorities excluded from camp lists.

In this report, the statistical information provided by the TBBC is contextualised by a specific typology of displacement:<sup>2</sup>

Forced Migrants		
Internally Displaced Persons		Other Forced Migrants
<b>Type 1</b> Armed conflict-induced	<b>Type 2</b> Military occupation - and ‘development’-induced (post armed conflict)	<b>Type 3</b> Livelihoods vulnerability-induced

The first two displacement types are products of conflict, and as such constitute forced migration, and cause internal displacement. Type 3 is the primary form of internal and external migration in and from Burma (and many other developing countries). The main causes are inappropriate government policies and practices; limited availability of productive land and poor access to markets, resulting in food insecurity; lack of education and health services; and stresses associated with the transition to a cash economy.

<sup>1</sup> TBBC (2007) <http://www.tbtc.org/camps/map-2007-09-sep-ccsdpt-tbbc.pdf>

<sup>2</sup> The following analysis is based on Ashley South (Independent Study, Commissioned by the Office of the UN Resident Coordinator in Myanmar), *Forced Migration in Myanmar: Patterns, Impacts and Responses* (June 2006), and Ashley South, Burma: The Changing Nature of Displacement Crises (Refugee Studies Centre, Oxford University, Working Paper No.39 February 2007).

## RECOMMENDATIONS

### **To the Government and quasi-governmental entities:**

[The SPDC, Ceasefire and Insurgent Groups, and future regimes]

1. Immediately cease violations of housing, land and property (HLP) rights, including the illegal and abusive appropriation of land and property, and the forcible eviction and displacement of civilians.
2. Ratify the international human rights treaties relating to housing, land and property rights, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Embed these standards into national legislation, and implement them through policy.
3. Enshrine the United Nations Principles on Housing and Property Restitution ('the Pinheiro Principles') in national legislation and create legal and other mechanisms aimed at guaranteeing the rights of displaced persons to voluntarily return to their place of origin in conditions of safety and dignity.
4. Ensure that housing, land and property rights (including customary law) are addressed in any future Constitution in a manner consistent with international human rights law. Include measures to protect the equal HLP rights of vulnerable and/or marginalised groups, including ethnic minorities, women and the landless.
5. Develop a comprehensive land-use policy, in consultation with ethnic nationality communities and develop capacity within government to implement it.
6. Create an environment conducive to the growth of civil society.

### **To Burmese civil society and political actors:**

7. Ensure that HLP rights, including secure access to land and respect for customary law, are addressed in any future political settlement and in future constitutions.
8. Raise awareness of international human rights standards in relation to housing and land, and of HLP issues.
9. Prioritise surveys of land-holding and customary law in vulnerable areas, liable to HLP rights abuses.

### **To foreign governments, and national and international development and investment agencies:**

10. Implement a moratorium on development projects, investments, or other activities in Burma which contravene HLP rights, or other international human rights standards
11. Provide support to Burmese civil society groups and political actors willing to support HLP rights.

### **To companies and other commercial enterprises operating in Burma:**

12. Ensure that all future commercial and development projects undertaken in Burma fully comply with HLP rights under international law.
13. Develop genuine partnerships with local communities, and respect community-based farming systems and HLP rights.

### **To international aid and United Nations agencies:**

14. Support and help to build the capacities of civil society organisations in Burma, which are working on HLP issues.
15. Ensure that all projects protect and promote HLP rights. Conduct stakeholder and peace and conflict impact analyses, prior to and during project implementation, and as part of evaluation.



Crossing the Car road  
in Muthraw District



# Introduction

Since Independence in 1948, human security in Burma<sup>3</sup> has been undermined by a series of interrelated political and military conflicts, which have intensified since the introduction of military rule in 1962. Control over land and natural resources has been central to the political economy of conflict in the country. In many ethnic minority-populated areas in particular, repeated incidents of forced displacement - interspersed with occasional periods of relative stability - have been facts of life for generations.

This report outlines the situation of land rights in Burma in their historical context, and describes the ongoing abuses of Housing Land and Property (HLP) rights occurring under military rule today. It focuses on areas populated by non-Burman peoples, as in recent years these have been the most severely affected by large-scale displacement. The report also describes the customary practices of Burma's diverse ethnic minority communities, and some of the ways in which civil society and opposition groups are attempting to address HLP issues.

Control over land is a key strategy for the military regime, and a means of underwriting the on-going expansion of the Burma Army (*Tatmadaw*). Some 75 percent<sup>4</sup> of the population is engaged in the agriculture sector (including fisheries, forestry and livestock), which accounts for 40 percent of GDP. Land rights issues are therefore at the heart of livelihoods - and politics - in Burma.

- 3 In June 1989, the State Law and Order Restoration Council (SLORC) junta re-named the country *Myanmar Naing-ngan*. Opposition politicians and activists dispute the legitimacy of the military regime, and reject the new name, which derives from the majority *Bama* (Burman) historical tradition. (See Appendix 1 for Burmese place names and Appendix 2 for abbreviations and acronyms.)
- 4 John Copland, in Trevor Wilson (ed), *Myanmar's Long Road to National Reconciliation* (ISEAS 2006), p. 127. According to the International Monetary Fund (IMF) *Myanmar Statistical Appendix* (2001), the figure is 66% (based on 1998 figures).

For Burmese citizens today (and especially ethnic nationality<sup>5</sup> people), the most acute HLP rights protection vulnerabilities relate to land confiscation by the *Tatmadaw*:

- during military counter-insurgency operations
- for the construction or support of new army battalions
- to make way for infrastructure development projects
- in the context of natural resource extraction
- to provide vested (including military) and foreign interest groups with business opportunities.

According to academic and economist Sean Turnell, “Burma lacks the fundamental institutions that history tells us are necessary for a functioning market economy. Principal amongst these institutional absentees is a regime of enforceable property rights.”<sup>6</sup>

The military dictatorship has (since 1990) adopted its own version of a market economy, while maintaining ownership of all land. The State has privileged the rights of ownership of land and resources for some private entrepreneurs, but denied similar rights for peasants and small farmers.<sup>7</sup> A future, democratic Burma will need to find ways to resolve the many conflicting claims on land, property and housing, including the rehabilitation of large numbers of people displaced from their lands, and whose houses and property have been destroyed or confiscated.

It will also need to find ways of resolving disputes arising over different ways of relating to the land. There are inherent conflicts between the manner in which ‘traditional’ communities think of and act on their ancestral lands, and the customary practices which are expressions of this special attachment to place, and the market-oriented valuation of land characteristic of the capitalist system. In the case of Burma, such conflicts are complicated and exacerbated by half a century of misgovernance by the military-dominated State.

These serious, structural problems notwithstanding, this report demonstrates that intrepid communities and individuals have been able to address some of the serious rights violations described. Some groups within the diverse Burmese opposition movement have worked on HLP and related issues, as part of the political struggle for rights and democracy in Burma. Others have adopted more low-profile strategies, working within the corrupt and oppressive Government system, in ways which build capacities for change, and exploit limited spaces for community participation at the grass-roots level ‘inside’ the country.

5 In most cases, elites within these communities prefer the term ‘ethnic nationality’, as it is considered to confer more political status and legitimacy to the groups in question.

6 Sean Turnell, ‘Burma’s Economy 2004: Crisis Masking Stagnation’, in Trevor Wilson (ed), *Myanmar’s Long Road to National Reconciliation* (ISEAS 2006), p. 77.

7 Nancy Hudson-Rodd & Myo Nyunt, *Control of Land and Life in Burma*, Tenure Brief, No. 3, Land Tenure Centre, University of Wisconsin (2001).



MAP 1 - Burma

## 1.1 Methodology

The material and findings in this report are based on the following:

1. More than 200 semi-structured interviews conducted by Ashley South between 2002 and 2006, with a variety of stakeholders in Kachin, Karen, Mon and northern and southern Shan States, in Tenasserim and Rangoon (Yangon) Divisions, as well as along the Thailand and China borders. Informants included:
  - different categories of migrants (including displaced people) from various ethnic, social and gender groups
  - host communities
  - previously displaced communities which have found durable solutions to their plight
  - political organisations
  - armed ethnic groups (with and without ceasefires)
  - local NGOs and CBOs
  - UN agencies, the ICRC, and INGOs in Burma and Thailand
  - academics and journalists.

This primary material includes interviews conducted during 2003-2004, with a group of 36 Karen IDPs living in the Papun hills (research originally published by Human Rights Watch in 2005<sup>8</sup>).

2. Material (including 311 interviews) developed for COHRE by Kat Diaz and Tang Lay Lee, between 2003 and 2005<sup>9</sup>, in collaboration with a number of Thailand-based NGOs and opposition groups (particularly CIDKP and MRDC/HURFOM- see Appendix 2). An historical review of HLP rights and law in Burma, conducted for COHRE by Dr Nancy Hudson-Rodd in 2005, supplements this research.
3. Other secondary material is derived from a survey of published (including www) and limited circulation ('grey') literature. Where appropriate, sources are indicated in the footnotes.

The report's focus on ethnic nationality-populated areas reflects the fact that more is known about HLP issues in these regions, as investigators have better access. However, many of the rights violations described in this report also affect majority Burman-populated parts of the country.

## 1.2 Appreciative enquiry

The research informing this report was undertaken in a spirit of 'appreciative enquiry'. This approach is borrowed from organisational development and capacity-building methods, first developed in the business world, and more recently adapted to development studies and programming.<sup>10</sup>

8 Human Rights Watch, *They Came and Destroyed Our Village Again: The Plight of Internally Displaced Persons in Karen State* (Vol.17, No.4-C June 2005).

9 In 2002-03, COHRE Asia Pacific conducted a pilot project on HLP rights in Burma, with support from the Swedish NGO Foundation.

10 See Charles Elliott, *Locating the Energy for Change: An Introduction to Appreciative Inquiry* (International Institute for Sustainable Development 1999).

The ‘appreciative enquiry’ approach seeks to move beyond the ‘problem-solving’ mode, with its exclusive focus on the negative aspects of a given situation. Appreciative enquiry seeks to embrace ‘best practice’, and the creative initiatives adopted by individuals, communities and organisations. The method seeks to identify what works, and why – and to reinforce positive ideas and solutions, with the aim of implementing these examples of ‘positive deviance’ in other areas.

As documented in this report and elsewhere, people in Burma face a range of systematic and very serious violations of their rights, and are subject to a range of vulnerabilities to abuse. In the face of often very serious rights violations, communities have nevertheless developed a range of coping strategies, which in many cases build on local knowledge and capacities, to create at least semi-durable solutions to their plight.

Although details must remain confidential, discrete lobbying with authorities by local or international actors can sometimes improve conditions for displaced and other vulnerable people in Burma. Other examples of ‘positive adaptation’ (or ‘best practice’) include the:

- food-sharing mechanisms and other expressions of solidarity among Karen IDPs (see Section 7).
- initiatives undertaken by community groups and local NGOs to secure access to and protect community forests, by exploiting existing Government legislation (see Sections 5 and 8).
- local development projects implemented by civil society groups in conflict-affected areas, which build models of participation and provide services and assistance to needy populations.
- Farmer Field Schools (FFS) and other local initiatives that explore and demonstrate (to the authorities) the value of indigenous agricultural knowledge (see Section 7).

### **1.3 Thanks and acknowledgements**

The main report author is Ashley South. Many thanks are due to Deborah January for comprehensively editing and writing parts of the first draft. Thanks also to Ken MacLean and Susanne Kempel for their comments on the draft report, and to Natalie Bugalski from COHRE for input on international law.

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850 villagers forced to  
porter for the Burma Army  
[May 2006]



## Burma: demographics, underdevelopment and geography

Burma is one of the most ethnically diverse countries in Southeast Asia. The remote, mountainous areas along the borders with Thailand, Laos, China, India and Bangladesh, largely populated by ethnic nationalities (minorities), have long suffered from war and neglect. Although these border areas contain more than a third of the country's population and most of its natural resources, many communities remain desperately poor, and experience a broad range of problems that undermine the potential for sustainable development.

### 2.1 Demographics

Burma covers a land area of 678 000 sq km, making it the largest country in mainland Southeast Asia. With a population of between 52 and 55 million people, it is one of the least densely populated countries in the region. However, no one really knows how many people live in Burma; the need for better data is among the more pressing. (The Government is preparing to conduct the first census since 1982.)

Burma's ethnic minorities constitute at least 35 percent of the population. The 1983 census records 70 percent of the population as belonging to the majority Burman (Bama) group, 8.5



percent as Shan, 6.2 percent as Karen, 4.5 percent as Rakhine, 2 percent each as Chin and Mon, and 1 percent as Kachin and Wa. However, since Independence, successive governments have underestimated the size of ethnic minority populations, and the breakdown of population by ethnicity remains highly contested.<sup>11</sup> Official demographic figures and indicators are particularly flawed in relation to border areas, many of which are still inaccessible to the Government and international agencies.<sup>12</sup>

Burma remains an agrarian society, with access to agricultural land the single most important resource for rural households. There is a positive correlation between landlessness and household size. Large households are more likely to be landless, especially those headed by women. Surplus labourers in large households face a range of livelihoods problems.

### 2.1.1 Migrant populations

Within this demographic confusion, migrant populations remain only partially visible to most research and sampling methodologies. Little documentation is available - especially quantitative data - on what is probably the most common type of population movement within Burma and many other developing countries. That is, the form of 'economic migration' in which transient communities and individuals spend part of their time as migrant workers (including in neighbouring countries<sup>13</sup>), and sometimes return to areas of origin during key periods in the agricultural cycle, such as harvest time. These communities are especially vulnerable to natural disasters, building their temporary houses on riverbanks or beaches.

Relief and development agencies in Burma have very little primary quantitative data on migration, as access to affected communities is restricted, and international organisations are generally only given the 'results' of surveys, processed by their government partners. The reliability of such data is therefore often questionable. Section 3 of this report examines the data available on displaced populations, and analyses the plight of 'forced migrants' in and from Burma.

## 2.2 Development indicators

As well as being water-rich and part of one of the world's 'biodiversity hotspots,'<sup>14</sup> Burma has extensive and important natural resources. These include substantial deposits of natural gas and oil, as well as various minerals, gemstones and timber. This wealth of natural and human resources should be able to sustain the present and future generations of people while maintaining ecological diversity. However, despite once holding the title of 'the rice bowl of Asia', decades of internal strife and government mismanagement have crippled the country. Burma's industrial production, which had outpaced both Thailand and Malaysia during the 1950s, has steadily declined since 1964.

11 The military regime has also sometimes exaggerated the number of ethnic groups in Burma, in order to emphasise the *Tatmadaw's* supposed role as the only institution capable of maintaining the country's territorial integrity.

12 See Ashley South, *States of Conflict: Ethnic Politics in Burma Since 1988* (Routledge 2008 - forthcoming).

13 There are as many as three million migrant workers and their dependents in Thailand, most of them from Burma (plus hundreds of thousand in Malaysia, Singapore and beyond). These people often endure very poor social and working conditions: Amnesty International, *Thailand - The Plight of Burmese Migrant Workers* (June 2005).

14 [http://www.biodiversityhotspots.org/xp/hotspots/indo\\_burma/Pages/default.aspx](http://www.biodiversityhotspots.org/xp/hotspots/indo_burma/Pages/default.aspx).

In 1987, the United Nations declared Burma a 'Least Developed Country.' In 2005, Burma's ranking in the UNDP Human Development Index was 129 (out of 159 countries).<sup>15</sup> The following are among the most striking vulnerabilities in Burma today, based on a mixture of unofficial and official data (the latter under-represents the seriousness of problems, especially in minority-populated, conflict-affected areas):

#### Children:

- Every year, as many children under five die in Burma (105 000) as do in Sudan (106 000).<sup>16</sup> A child is more likely to be moderately or severely underweight in Burma (32 percent) than in many Sub-Saharan African countries.
- The figures are roughly similar for Chad (28 percent), Nigeria (29 percent), Rwanda (29 percent), Democratic Republic of Congo (31 percent) and Mali (33 percent).<sup>17</sup>
- According to a recent report by Save the Children, 968 000 children of primary age in Burma are absent from school. Presumably, this includes large numbers of displaced children. Government statistics claim that 97.58 percent of primary age children are enrolled in school.

#### Health:

- According to an epidemiological survey by the Back Pack Health Workers Team (BPHWT), mortality rates among IDPs in eastern Burma are the highest in Asia. The infant mortality rate among Karen, Karenni, Shan and Mon IDPs was found to be 9.1 percent, compared with the national average of 7.6 percent. The child mortality rate for under-fives was reported as a shocking 22.1 percent, compared with Burma's average of 10.6 percent. According to the BPHWT, "one out of every twelve women in this area may lose her life around the time of childbirth, deaths that are largely preventable."<sup>18</sup> The biggest killer is malaria, which infects 12 percent of the population accessed by the BPHWT. This data demonstrates the correlation between human rights abuses and declining health in eastern Burma. Of the 2 000 households surveyed by the BPHWT, one third had at some time been subjected to forced labour; 10 percent had suffered forced displacement and a quarter of respondents had had food confiscated or destroyed by the Burma Army. Families forced to flee their homelands were reportedly 2.4 times more likely to have a child die, while those who had had their food destroyed were 50 percent more likely to suffer a death in the household.<sup>19</sup>
- Estimates of the number of people living with HIV/AIDS vary from 200 000 to over 570 000.<sup>20</sup>
- More than seven out of ten people live in areas where they are at risk from malaria.<sup>21</sup>
- Each year, 97 000 new TB cases are detected. Multi-drug resistant TB is found in 4 percent of new patients and 15.5 percent of previously treated patients.<sup>22</sup>

15 UNDP, *Human Development Report* (2005).

16 UNICEF, *State of World's Children* (2006).

17 Ibid.

18 BPHWT, *Chronic Emergency: Health and Human Rights in Eastern Burma* (Sept. 2006).

19 Ibid.

20 UNAIDS, *Global Report* (2006), Annex 1.

21 UNRC, *Handout on the Three Diseases* (Rangoon 2006).

22 Ibid.

Poverty:

- Burma is estimated to have a similar GNI per capita (US\$ 220) to Sierra Leone (US\$ 200), Rwanda (US\$ 220), Mozambique (US\$ 250) and Uganda (US\$ 270).<sup>23</sup>
- In 1997, one in four people in Burma were living below the minimum subsistence level, with the poorest of the poor living mostly in rural areas. A decade later, one third of the population lives below the poverty line, with 10 percent living in extreme poverty (defined as being unable to meet basic food needs).

Analysis of the limited available data indicates that IDPs and other conflict-affected communities face the most acute vulnerabilities — especially regarding basic physical security, access to health and education. Conditions are particularly bad in the remaining armed-conflict affected areas of eastern Burma, and in pockets of deprivation along the India (Chin State and Sagaing Division) and Bangladesh (Arakan State) borders.

## 2.3 Access to land

About 75 percent of Burma's population (some 37 million people) live in rural areas, where over 60 percent of farmers own less than the 5 acres (2ha) of land considered a minimum for subsistence levels.<sup>24</sup> Landless people in rural Burma include those dispossessed by Type 2 (state-society conflict-induced) displacement — those whose land has been confiscated to build *Tatmadaw* bases, and for infrastructure and other 'development' purposes. (This Typology is further discussed in Subsection 3.4.)

As Debbie Aung Din Taylor notes,

*Population growth continues to add over 1 million people each year to the country, while the yields on most farms have been stagnant, if not falling over the past decade.*

*[...]*

*In addition to these households who depend on agriculture as their primary source of income, there are an estimated 2.5 million households who are landless but who work as laborers on farms.*

*The vast majority of smallholder farms in Myanmar are dependent on rain-fed agriculture. This means they are vulnerable to crop failure and uncertain incomes from year to year. During years of bad rainfall, the incomes of these households can drop substantially, which can lead to food insecurity and the need to borrow at punitive interest rates of 10-15 percent, PER MONTH, from informal moneylenders. With such indebtedness, low productivity and few off-farm job opportunities to supplement incomes, many farm families are cash-strapped and struggling to feed themselves.<sup>25</sup>*

The rural poor are engaged in a variety of off-farm economic activities, which depend on the local environment, climate, and socio-economic conditions.

23 UNICEF, *State of World's Children* (2006).

24 *Strategic Framework for UN Agencies in Myanmar* (April 2005), p.13.

25 "What a farmer decides to grow, and the yields and prices he or she gets, are in turn influenced by the farmers' access to four critical things: access to technology, to credit, markets and infrastructure.": Debbie Aung Din Taylor, *Reducing Poverty through Smallholder Agriculture in Burma/Myanmar: What can be done?* Talk delivered 5 April 2005, EU Burma Day Conference, Brussels, Belgium: Challenges and Opportunities: Providing Assistance to People in Burma/Myanmar.

## 2.4 Physical geography

Burma is characterised by a horseshoe of hilly terrain - mostly populated by ethnic minority communities - surrounding an elongated central lowland river and valley system, mostly settled by Burman and related ethno-linguistic groups (see Map 1). The complex and contested issues of ethnicity and identity - and the formation of national group consciousness and its mapping onto 'homeland' territories - are beyond the scope of this report.<sup>26</sup> Elites within most of the larger ethnic groups have at some time or another laid claim to self-rule for areas populated by 'their' communities. Indeed, for many years, the unofficial mini-states created and controlled by the county's myriad ethnic (and communist) insurgents<sup>27</sup> constituted *de facto* autonomous regions, loosely controlled by hierarchical armed organisations in the name of a particular ethnic group (see Section 5). In general however, the Government's official demarcation (under the 1974 Constitution) is widely used, including by most opposition groups. Under this arrangement, the Union territory is divided into seven, predominantly Burman-populated lowland Divisions (which some opposition politicians would like to see recognised as a Burman State) and seven States, representing the largest ethnic groups in the country: Arakan (officially re-named Rakhine in 1989), Chin, Kachin, Shan (the largest and most ethnically diverse State), Karenni (Kayah), Karen (Kayin) and Mon.

### 2.4.1 The Uplands

Ranging in altitude from 1 000 to 2 000 metres, this horseshoe of hilly terrain stretches along the eastern, northern, and western states of Kachin, Karenni, Karen, Chin, and parts of Shan, Mon and Arakan States. Ethnic minorities, who traditionally live in small and remote hamlets, inhabit the area. Villagers are very poor and suffer from food deficits. Most farms practice some form of shifting cultivation, where a few acres of hilly, forested areas are slashed and burned every year and then planted with various crops. As traditionally practised, 'swidden' agriculture is environmentally sustainable; however, in many areas, declining soil fertility and crop yields have become serious problems, as the appropriate fallow periods, *etc.* cannot be followed. With land increasingly scarce (due to population influx), sub-division and soil erosion, poor farmers are clearing steeper, more rugged hills, but water run-off and severe erosion make sustained cultivation virtually impossible.

For decades, many upland villagers in Shan State and neighbouring areas have cultivated opium as a cash crop, leading to financial and in some cases physical, dependency on the poppy. One of the few certainties of the complex armed conflicts in the region has been that rice and other easily appropriated goods are likely to be taxed/looted by one or more of the various, overlapping sets of combatants. Villagers have therefore often preferred to grow a cash crop that has a short harvest period (September to March), is difficult to steal while out in the fields, and once harvested is easily hidden and simple to transport on the very poor tracks and roads which the conflict has bequeathed to Shan State. Opium is also one of the few crops for which the market comes to the farmers, who can get substantial credit from traders in advance of the harvest.<sup>28</sup>

26 For discussion of these issues, see South (2008 - forthcoming).

27 Thomas Marks defines 'insurgency' as guerrilla warfare, in support of a political goal: '*Ideology of Insurgency: New Ethnic Focus or Old Cold War Distortions?*' in *Small Wars and Insurgencies* (Vol.15, No.1 Spring 2004).

28 Ibid.

Some farmers who live along small, flat valley floors grow rain-fed paddy rice; where possible they grow a second crop of legumes or garlic. Non-farming villagers engage in casual labour including land clearing, digging embankments, and paddy transplanting or harvesting. In the upland areas, the poor gather leaves, barks and roots used in traditional medicine or cut wood for sale. Others become traders and sell produce in other towns; men also find work in gem mines in Shan State. Informants from Chin, Kachin and Karenni States report that migrants from remote, rural areas often settle at sites on the outskirts of provincial towns, or in peri-urban satellite communities.

## **2.4.2 Central Burma**

### **2.4.2.1 The Dry Zone**

This Burman heartland spans a large, semi-arid area of central Burma and includes the populous divisions of Mandalay, Sagaing and Magwe. The majority of the Dry Zone farmers are commercial rather than subsistence farmers. As well as irrigated paddy (rice), they grow cash crops such as sesame and pulses and beans for exports. Cotton is commonly grown in the northern area and seasonal vegetables such as onions, potatoes, and tomatoes are often grown on alluvial soils.

In areas where water is available all year round, small farms with five acres (2 ha) or less may be able to support a decent standard of living. However, analysis conducted in 1995 estimated that at least 7 to 10 acres (3-4 ha) were required to sustain a minimum standard of living, or 15 to 20 acres (6-8 ha) for farms with poor-quality land.<sup>29</sup> Many small farmers and the landless supplement their incomes by cutting fuel wood. During the slack-farming season, household members may migrate to find work in Rangoon, Mandalay or the border areas. Migrant workers also move to the bigger cities (Yangon and Mandalay), where many settle in slum areas, and work in the construction and service industries.

In the Dry Zone, the landless are commonly engaged in raising goats and sheep and jaggery (sugar product) production. Other common off-farm jobs in the Dry Zone are gypsum mining and dam or road construction.

Seasonal migrant workers in Burma move to the larger towns and cities, seeking work in the construction, transport and service industries, to the 'boom towns' of the Dry Zone oil fields, and the jade mines of Phakant. (It is also worth noting that traditional Nat Pwe are usually migrating festivals, which follow the agricultural cycle.)

In 2005, at least 70 000 people from all over the country were working as day labourers in three mining areas in Mandalay Division: at the gem mines of Mogok (55 000-65 000 people), the gold mines around Singu (5 000-6 000 people), and at the Thabe Chin gold mines (5 000-6 000 people). In most cases, these are relatively small operations, worked under license (including by some ceasefire groups) from large sub-contractors. Workers often spend part of the year (perhaps six months) in the mines, and the rest of the year in their areas of origin, engaged in agricultural day labour.<sup>30</sup>

29 Analysis conducted by Dr Nancy Hudson-Rodd, in her capacity as consultant on this report.

30 Field Notes (19 August 2005).



IDPs flee to Salween River [March 2006]

#### 2.4.2.2 The Irrawaddy Delta

Since the British colonial period, the rich lands of the delta area have been at the centre of Burma's rice economy. However, today the natural environment in this large area of southeast Burma is rapidly deteriorating. Sources of fresh water are becoming scarce and there is an increasing scarcity of crabs, fish, firewood, and even vegetables – especially for the landless and land-poor households. To cope with income shortfalls, households often migrate in search of new sources of fuel wood, crabs, and fish. It is estimated that in the Delta townships of Laputta, Bogalay and Mawlamyaingyun, more than half of the population is landless. One 1998 study estimated that agricultural labourers, with no land to cultivate and no prospects of inheriting land, constituted 33 percent of employed – this represents a doubling of the number of people working as labourers since 1974-75. Many marginal farmers engage in fishing or crabbing. Usually, those who fish do not own their fishing gear or boats, depending instead on fish traders for such resources. Some households raise pigs, chickens or ducks. During the slack farming season, other households/farmers cope by borrowing from better-off farmers: loans are paid back in-kind through labour, or through a portion of the paddy crop. The effective interest rate charged by fish traders, rice traders and others in these loan arrangements typically amounts to 10 percent a month. Poverty and land failure are exacerbated by the Government's agricultural policies – in particular the requirement to grow a second crop of 'summer paddy' (see Section 6).



Karen IDPs from Toungoo  
flee to Salween River



## Forced migration, and Housing, Land and Property (HLP) rights

The most acute Housing, Land and Property (HLP) rights abuses in Burma relate to land confiscation by the Government and allied forces (*see* Section 6). Among the most vulnerable populations are the more than one million people displaced in (and from) Burma, most of whom come from ethnic nationality communities.

### 3.1 HLP rights violations, forced migration and international law

The forced evictions and displacement of the kind experienced in Burma constitute blatant violations of a number of international human rights laws and principles.

The preliminary statement of these rights is found in the Universal Declaration of Human Rights (1948) (UDHR), which affirms the right to an adequate standard of living for the health and well being of all people, including the right to adequate housing. It states that everyone has the right to be free from arbitrary deprivation of their property, and has the right to freedom of movement and residence within the borders of each State. Moreover everyone has the right to leave any country, including his or her own, and to return to their country.<sup>31</sup> The UDHR is widely recognised as having the status of customary international law and as such is binding on all States.

<sup>31</sup> UDHR, UN Doc. G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), Articles 25, 17 and 13 respectively.

Flowing from the UDHR are several international treaties, declarations and other documents that contain a more detailed explanation of the relevant rights and corresponding obligations. The *International Covenant of Economic Social and Cultural Rights* (ICESCR) contains the most significant obligation on states to respect, protect and fulfil the right to adequate housing. Article 11(1) affirms:

*...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.*<sup>32</sup>

State parties to ICESCR are thus obliged to ensure the progressive realisation of adequate housing within the maximum of available resources in order to satisfy their duties under the Covenant. Burma is not a party to the ICESCR; as Article 11 arguably has the status of customary international law it is therefore nonetheless binding.<sup>33</sup> Furthermore, adopting the natural law perspective, the rights contained in the ICESCR attach to the people of Burma simply by virtue of their humanity, and regardless of the ruling junta's failure to submit to the treaty.<sup>34</sup>

The right to adequate housing has been clarified through General Comments of the Committee on Economic Social and Cultural Rights (CESCR).<sup>35</sup> These General Comments have strong persuasive value in international law. The Committee's General Comment 4 is the single most authoritative interpretation of the right to adequate housing. The General Comment stipulates that the right to adequate housing consists of seven components, namely: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. State parties to the Covenant must take steps toward the full realisation of each component progressively and in a non-discriminatory manner. The first component, security of tenure, is the most significant for the Burmese context, although the ruling State Peace and Development Council (SPDC) and the *Tatmadaw* violate most, if not all, aspects of it. Central to security of tenure is the guaranteed protection against forced evictions.

32 *International Covenant on Economic Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3, art 11(1) (entered into force 3 January 1976).

33 Other international instruments which address the right to adequate housing include the *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195, art 5(e)(iii) (entered into force 4 January 1969); the *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13, art 14(2) (entered into force 3 September 1981); the *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1557 UNTS 3, art 27(3) (entered into force 2 September 1990); the *Declaration on Social Progress and Development*, art 10, the *Vancouver Declaration on Human Settlements* (1976), sec III(8), the *Declaration on the Right to Development*, GA Res 2542 (XXIV), 24 UN GAOR Supp. (No. 30) at 49, art 8(1), UN Doc A/7630 (1969); and the *ILO Recommendation Concerning Workers' Housing* (1961) (No. 115). The articulation of the right in so many international treaties and the high rate of ratification or accession to many of them provide credence to the argument that the right to adequate housing is customary international law.

34 The ICESCR states in its preamble that "rights derive from the inherent dignity of the human person." Like all the articles that embody rights in the ICESCR, article 11 is phrased as a recognition by state parties of the right of everyone to an adequate standard of living, including, inter alia, adequate housing. Thus as embraced by the UN, the natural law concept of rights perceives rights as being attach to all humans by virtue of their humanity, regardless of the corresponding obligations of the state government under treaty law.

35 The United Nations Committee on Economic Social and Cultural Rights, was created by the Economic and Social Council (ECOSOC) and convenes twice a year, holding two three-week sessions at the United Nations office at Geneva. The Committee is comprised of 18 members who are experts with recognised competence in the field of human rights. Members of the Committee are independent and serve in their personal capacity, not as representatives of governments.



The importance of this aspect of the right to adequate housing is reflected in the Committee's drafting of a General Comment that is exclusively devoted to the clarification of State parties' obligations to refrain from and to counter forced evictions. General Comment 7 defines forced evictions as:

*the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.*<sup>36</sup>

Forced evictions can lawfully be carried out only in exceptional circumstances, in accordance with domestic laws and in conformity with international human rights law. All possible alternatives to eviction must firstly be explored in consultation with the affected persons. Where, in exceptional circumstances, an eviction is to take place, adequate notice and information must be provided prior to the eviction, and avenues for legal redress must be made available to affected parties. Furthermore, resettlement sites on alternative land and housing that is as close as possible to the original place of residence and source of livelihood, of equal or better quality as the original habitation, and adequate in terms of all seven components of the right to adequate housing, must be provided.

The Committee states that any limitations imposed on the protection against forced evictions must be compatible with the nature of economic, social and cultural rights and "solely for the purpose of promoting the general welfare in a democratic society."<sup>37</sup> Where forced eviction and the demolition of houses occur as a punitive measure it is inconsistent with "the norms of the Covenant."<sup>38</sup> The displacement of the civilian population and the destruction of private property are expressly prohibited.<sup>39</sup> 'Development' *per se*, does not fall under the category of permissible reasons for carrying out evictions.

The patterns of forced evictions and displacement also constitute a violation of the *International Covenant on Civil and Political Rights* (ICCPR), to which Burma is also not a party. In particular, the ICCPR affirms the right of everyone who is lawfully within the territory of a State to liberty of movement and freedom to choose his or her residence.<sup>40</sup> Furthermore, the Covenant stipulates that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family or home.<sup>41</sup>

As a result of the interdependent and interrelated nature of all human rights, many other rights contained in both the ICESCR and the ICCPR are violated when HLP rights are infringed during the forced evictions and displacements that occur in Burma. Most pertinently, the rights to adequate food, the highest attainable standard of health, cultural rights, the right to life, and the right to self-determination, especially for minority ethnic groups, are contravened.

36 CESCR, *General Comment 7: Forced evictions, and the right to adequate housing*, [3], UN Doc E/1998/22 (1997).

37 Paragraph 5.

38 Paragraph 12 which continues "Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction."

39 *The Realization of Economic, Social and Cultural Rights, Expert Seminar on the practice of forced evictions, Report of the Secretary-General: Annex - The practice of forced evictions: comprehensive human rights guidelines on development-based displacement*, [17], UN Doc E/CN.4/Sub.2/1997/7 (1997).

40 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, art 12(1), (entered into force 23 March 1976).

41 Article 17.

A number of international law documents and provisions deal specifically with indigenous and tribal rights to land. In Burma, many of the ethnic nationality groups living in rural areas are indigenous to the land and continue to utilise customary land practices, including shifting cultivation, with tenure systems based on communal inalienable ownership, as discussed in Section 5 of this report. As such, the ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples (1989)<sup>42</sup> is applicable to these ethnic groups. The Convention asserts the rights of ownership and possession of traditional occupiers of land, and places a duty on governments to respect the cultural and spiritual relationship of these people with their land. The Convention also places an obligation on governments to safeguard the rights of indigenous and tribal peoples to, *inter alia*, use, manage and conserve the natural resources of their lands.<sup>43</sup> Where, in exceptional circumstances, it is necessary to relocate these communities, they have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.<sup>44</sup> Furthermore, the communities must be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.<sup>45</sup>

Many similar rights and obligations are recognised in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council in June 2006. The Declaration reiterates the right of indigenous peoples' not to be forcibly removed from their lands or territories and not to be relocated without their free, prior and informed consent, and with the payment of just and fair compensation. Where possible, the option of return must be allowed.<sup>46</sup> Furthermore, the Declaration affirms the right to redress, through restitution, just, fair and equitable compensation, or other means, for lands and resources that have been confiscated, used or damaged without the free consent of traditional owners or occupiers.<sup>47</sup>

Pertinent to the Burmese context, the Declaration places direct obligations on the State to, amongst other things, consult indigenous groups prior to using their lands for military activities, which in any case should only occur if there is a significant threat to the public interest.<sup>48</sup> The State also has an obligation to consult and cooperate in good faith with indigenous peoples in order to obtain their free and informed consent prior to the approval of any project affecting their lands and other resources, particularly in connection with the development, utilisation or exploitation of their natural resources.<sup>49</sup>

While the Declaration is not legally binding it adds to the corpus of international human rights law documents that recognise indigenous and other groups' HLP rights, and especially the right not to be forcibly evicted. In doing so, it supports the proposition that such rights are elevated to the status of customary international law.

42 Entered into force 5 September 1991. Burma, however, is not a party to this Convention.

43 Articles 13, 14 and 15.

44 Article 16. Subsection 4 states that: "[w]hen such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees."

45 Article 17.

46 United Nations Declaration on the Rights of Indigenous Peoples adopted by Human Rights Council June 2006, Res. 2006/2, article 10.

47 Article 28.

48 Article 30.

49 Article 32.

## 3.2 Refugees and IDPs

The most serious and systematic HLP rights violations in Burma today are perpetrated in the context of forced migration. Unlike other forms of migration, ‘forced migration’ is characterised by its non-voluntary nature (although in practice, the distinction between ‘economic’ migration and forced migration is not always clear).

The primary distinction within the category of forced migrants is between refugees and internally displaced persons (IDPs). Under international law, refugees are people who have sought asylum across an international border. As such, under the 1951 Refugee Convention and its 1967 Additional Protocol, refugees are granted a degree of protection. Although Thai governments have ratified these treaties, they are also considered to have gained the status of international customary law. The most important element of the international refugee regime is the principle that refugees should be protected against forced repatriation (or *refoulement*).

The Office of the United Nations High Commissioner for Refugees (UNHCR) has also affirmed the right of refugees to return voluntarily to their country of origin. The repatriation of refugees should only take place at their freely expressed wish and under conditions of absolute safety, preferably to the original place of residence.<sup>50</sup>

For many years, forced migrants who remained within their own country’s borders, and therefore still under the ‘care’ of their own government, were ignored by the international community, or at best presented a problem which was uncomfortable to address. However, in 1992 the UN Secretary-General appointed Dr Francis Deng as his Representative on Internally Displaced Persons, and asked him to consider the extent to which IDPs were covered in existing international law, and make recommendations on how to improve their protection. A team led by Dr Deng concluded that, despite gaps in coverage, existing legislation was relevant to many of the problems faced by IDPs.

Dr Deng and his team set about drafting the Guiding Principles on Internal Displacement, which are based on - but do not in themselves constitute - binding international law. The UN Commission on Human Rights and General Assembly adopted the Guiding Principles in 1998 (see Appendix 3). The Guiding Principles define internally displaced persons (IDPs) as:

*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.*<sup>51</sup>

The IDP category is especially valuable when considering protection needs. Here, the classification identifies special vulnerabilities, structured by the causes of displacement.

50 The UNHCR Executive Committee Conclusion No. 40 (XXXVI)-1985, ‘Voluntary Repatriation’ UN Doc. A/AC.96/673, para. 115(5) (1985).

51 Many elements of international human rights law (e.g. the 1947 Universal Declaration of Human Rights) and Humanitarian Law (the 1949 Geneva Conventions and their 1977 Optional Protocols) are applicable to situations of internal displacement.

According to Dr Deng:

*The assumption is that, because they are within their own country, [IDPs] should be protected by their own government. But here is the problem. Internal conflicts are symptomatic of national identity crises. They show the way a country defines itself and the how benefits accruing from that definition benefit only certain groups.*

[...]

*Displacement is a symptom of its causes - internal conflicts, communal violence, violations of human rights and human-made disasters. These causes themselves are the result of deeper structural problems, often rooted in acute racial, ethnic religious and cultural divides. Not only must we address the needs of displaced people for protection and assistance and find durable solutions ... we must also address the deep structural problems behind the conflicts and human rights violations.<sup>52</sup>*

The Guiding Principles address the specific rights and rules relating to IDPs. Principle 6 expressly prohibits arbitrary displacement for reasons of, *inter alia*, ‘ethnic cleansing,’ the existence of armed conflict or natural or other disaster unless it is for the protection of civilians, development projects unless there is an overriding public interest, or collective punishment. In exceptional circumstances, where displacement is necessary and there are no other feasible options, proper alternative accommodation and a number of procedural and legal protections must be provided.<sup>53</sup>

The civil, political, economic, social and cultural rights of IDPs are to be respected and protected, including *inter alia*, the right to life, liberty and security of person, and the right to an adequate standard of living. Particularly pertinent to the situation of IDPs, the Guiding Principles affirm the right to seek asylum in other countries, and the right of IDPs to know the fate and whereabouts of missing relatives.<sup>54</sup> Furthermore, under no circumstances can displaced children be recruited or be required or permitted to take part in hostilities.<sup>55</sup> The Guiding Principles place a duty on national authorities to provide humanitarian assistance to IDPs, and not to arbitrarily withhold consent for the provision of such assistance by international humanitarian organisations.<sup>56</sup>

Finally, a duty is placed on relevant competent authorities to establish conditions, as well as provide the means, which allow IDPs to return voluntarily, in safety and with dignity, to their homes, or to resettle voluntarily in another part of the country.<sup>57</sup> The authorities must also assist returned and/or resettled IDPs to recover, to the extent possible, their property and possessions which they left behind; where this is not possible, compensation or another form of just reparation must be provided.<sup>58</sup>

52 Francis Deng, Opening Remarks to Conference on *Researching Internal Displacement: State of the Art*: 7-8 February 2003, Trondheim, Norway (Conference Report, *Forced Migration Review*). Dr Deng goes on to note that “the status of IDPs residing under the control of non-state actors” is an area requiring more research. That is one aim of this report.

53 Principle 7. See also, Principles 12 and 14, which prohibit the confinement of IDPs to a camp, unless there are exceptional circumstances, and affirm the right of IDPs to liberty of movement.

54 Principle 15 and 16.

55 Principle 13.

56 Principle 25.

57 Principle 28.

58 Principle 29.

### **Pinheiro Principles**

In 2005, the United Nations Sub-Commission on the Promotion and Protection of Human Rights adopted the Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as the ‘Pinheiro Principles.’<sup>59</sup> The adoption of the Principles reflected the emergence of the recognition of the right to housing, land and property restitution at international law. As such, Principle 2 declares the right of all refugees and displaced persons to have restored to them any housing, land and/ or property of which they were arbitrarily or unlawfully deprived, or to be compensated where such restoration is factually impossible.

The Pinheiro Principles articulate standards to be universally adopted surrounding protection from displacement and the strengthening of non-discriminatory restitution procedures, institutions, mechanisms and legislation. Importantly, the Principles contain standards for a restitution claims process, including access to an independent and impartial body to determine such claims.<sup>60</sup> They affirm that repatriation and restitution programmes should be carried out with adequate consultation and participation of affected persons, groups and communities, including women, indigenous peoples and racial and ethnic minorities.<sup>61</sup>

### **3.3 Migration beyond borders**

For many Burmese citizens, patterns of migration often involve extended periods spent as migrant workers in other countries. There are at least two million migrant workers and their dependents in Thailand, most of whom come from Burma.<sup>62</sup> Hundreds of thousands more Burmese migrants live in Bangladesh, Malaysia and Singapore. These people often endure very poor social and working conditions.<sup>63</sup>

The causes and other aspects of population movements *within* Burma (internal migration) and *beyond* its borders (external migration) are closely linked – and related to serious and systematic abuses of HLP and other basic rights. People who migrate in order to seek livelihoods security are usually categorised as ‘economic migrants’, although their reasons for moving are often similar to those of IDPs, as defined in the Guiding Principles - or in the case of cross-border migrants, refugees. Aspects of livelihoods vulnerability-induced ‘economic migration’ (i.e. population movement which is primarily due to people’s inability to sustain livelihoods in their original location) - within and from - Burma should therefore be considered forms of

59 UNCHR, Sub-Commission on the Promotion and Protection of Human Rights (Economic, Social and Cultural Rights), *Housing and property restitution in the context of the return of refugees and internally displaced persons: Final report of the Special Rapporteur, Paulo Sérgio Pinheiro - Principles on housing and property restitution for refugees and displaced persons* (E/CN.4/Sub.2/2005/17; 28-6-05): <http://www.cohre.org/hprframe.htm>. The Principles were devised by the UN Special Rapporteur on Housing and Property Restitution, Professor Paulo Sergio Pinheiro, who since 2000 is also the UN Special Rapporteur on the Situation of Human Rights in Myanmar (Burma). The Principles are included in full in appendix 4.

60 Pinheiro Principle 13.

61 Pinheiro Principle 14.

62 Thailand-Burma Border Consortium, *Program Report: July to December 2006* (Bangkok 2007).

63 Amnesty International, *Thailand - The Plight of Burmese Migrant Workers* (ASA 39/01/2005 June 2005).

‘forced migration’ – usually with the State as the primary agent of displacement, due to its failure to provide good governance and services in rural areas.<sup>64</sup>

### 3.4 Typology of displacement

Three broad, ‘ideal types’ can be identified within the spectrum of forced migration in Burma.<sup>65</sup> These ‘types’ are defined according to the root causes of population movement: armed conflict; State-society conflict (man-made disasters, including military occupation and ‘development’); and livelihoods vulnerability (including natural disasters).

- **Type 1: Armed conflict-induced displacement** either as a direct consequence of fighting and counter-insurgency operations (e.g. forced relocation), or because armed conflict has directly undermined human and food security. Type 1 displacement is linked to severe human rights abuses across Karen State, in eastern Tenasserim Division, southern Mon State, southern and eastern Karenni (Kayah) State, southern Shan State, and parts of Chin State and Sagaing Division. A certain amount of quantitative data is available for Type 1 IDPs in eastern Burma.
- **Type 2: Military occupation - and ‘development’- induced (state-society conflict-induced) displacement:** generally caused, post-armed conflict, by land confiscation by the *Tatmadaw* or other armed groups, including in the context of natural resource extraction (e.g. logging and mining); displacement due to infrastructure construction (e.g. roads, bridges, airports); also forced migration as a product of predatory taxation, forced labour and other abuses. While this form of displacement is characterised by the use of force, it is not the result of outright armed conflict. All of the border states and divisions are affected by militarisation and/or ‘development’-induced displacement. This includes Arakan (Rakhine) and Kachin States, as well as a number of urban areas, (including displacement in the context of tourism development and ‘urban renewal’).

Both displacement types are products of conflict: Type 1 is directly caused by armed conflict; Type 2 is caused by latent conflict, or the threat of the use of force. As such, they constitute forced migration, and cause internal displacement (as defined in the Guiding Principles).

- **Type 3: Livelihoods vulnerability-induced displacement** is the primary form of internal and external migration in and from Burma (and many other developing countries). The main causes are inappropriate government policies and practices, limited availability of productive land, and poor access to markets, resulting in food insecurity; lack of education and health services; plus stresses associated with transition to a cash economy.

64 As a recent report on displacement in Shan State notes: “When displaced persons from Shan State in Thailand were asked why they crossed the border, the first answer many typically gave was something along the lines of “I could not earn a living at home,” or “I could not take care of my family.” These answers are telling. Though ... the displaced were clearly subjected to persecution, the ultimate cause of their move to Thailand was related to livelihood, especially the inability to find sustainable and sufficient income. When interviews are carried a step further than that initial question, however, it quickly becomes apparent that the reasons why these people are unable to make a living are integrally related to forced relocation and other SPDC policies”: Humanitarian Research Project, Chulalongkorn University (2003), p. 87.

65 The following analysis is based on Ashley South (Independent Study, Commissioned by the Office of the UN Resident Coordinator in Myanmar), *Forced Migration in Myanmar: Patterns, Impacts and Responses* (June 2006), and Ashley South, *Burma: The Changing Nature of Displacement Crises* (Refugee Studies Centre, Oxford University, Working Paper No.39 February 2007).

Type 3 population movements describe a particularly vulnerable sub-group of economic migrants, and are the product of the very limited choices available to marginal populations in rural and urban areas. As such, they constitute a form of forced migration (or ‘distress migration’). Migration due to opium eradication policies is included under Type 3, because the approximate causes of movement are related to livelihoods issues – i.e. (with the important exception of some Wa areas), people are not ordered to move. However, opium eradication-induced migration could also be considered under Type 2 forced migration, due to the forcible nature of the opium bans, the severe shock to livelihoods involved, and the links to development activities.

Forced Migrants		
Internally Displaced Persons		Other Forced Migrants
<b>Type 1</b> Armed conflict-induced	<b>Type 2</b> Military occupation- and ‘development’-induced (post armed conflict)	<b>Type 3</b> Livelihoods vulnerability-induced

Table 1 - Typology of Forced Migration

The three types of displacement have important linkages, each of which undermines traditional livelihoods options, and depletes people’s resource base:

- Type 1 characterises zones of on-going armed conflict, and some adjacent areas.
- Type 2 is typical of areas where ceasefires have been agreed between the Government and armed groups (also affects urban relocatees).
- Type 3 is common in remote and under-developed areas in general.

This progression in causes of population movement is not strictly linear. Many people transit cyclically between different phases of displacement, and may be categorised in different ways at different times.

It should be noted that, in many situations, migration itself constitutes a coping mechanism (or response) - as illustrated by the variety of perspectives on ‘economic migration’. This study adopts an actor-oriented perspective, focusing on the agency of displaced people, rather than viewing them as passive victims of abuse.

Migration due to natural disasters is included under Type 3, because people are not ordered to move. However, it is possible to consider natural disaster-induced migration as Type 2 forced migration, due to the lack of choice involved, and the severity of the shock.

### 3.5 Internally Displaced Persons (IDPs)

The most reliable source on IDP population numbers in eastern Burma is the annual (since 2002) Thailand-Burma Border Consortium (TBBC) and partner groups' publication. The TBBC reports focus mainly on those armed conflict-induced (Type 1) forced migrants accessible to armed opposition groups, together with some aspects of development-induced displacement (Type 2) in eastern Burma.

The following synthesis includes data on (mostly Type 1) IDP numbers derived from sources working cross-border from Thailand, as well as from local groups active in government- and ceasefire group-controlled parts of the country. However, the data available is still very patchy.

Counting only people forcibly displaced between 2005 and 2007, the number of IDPs in eastern Burma is probably no more than 100 000 people. However, the number of previously displaced people for whom no durable solution has been found must be calculated in the millions, including the vulnerable communities that have been living in displacement for decades.

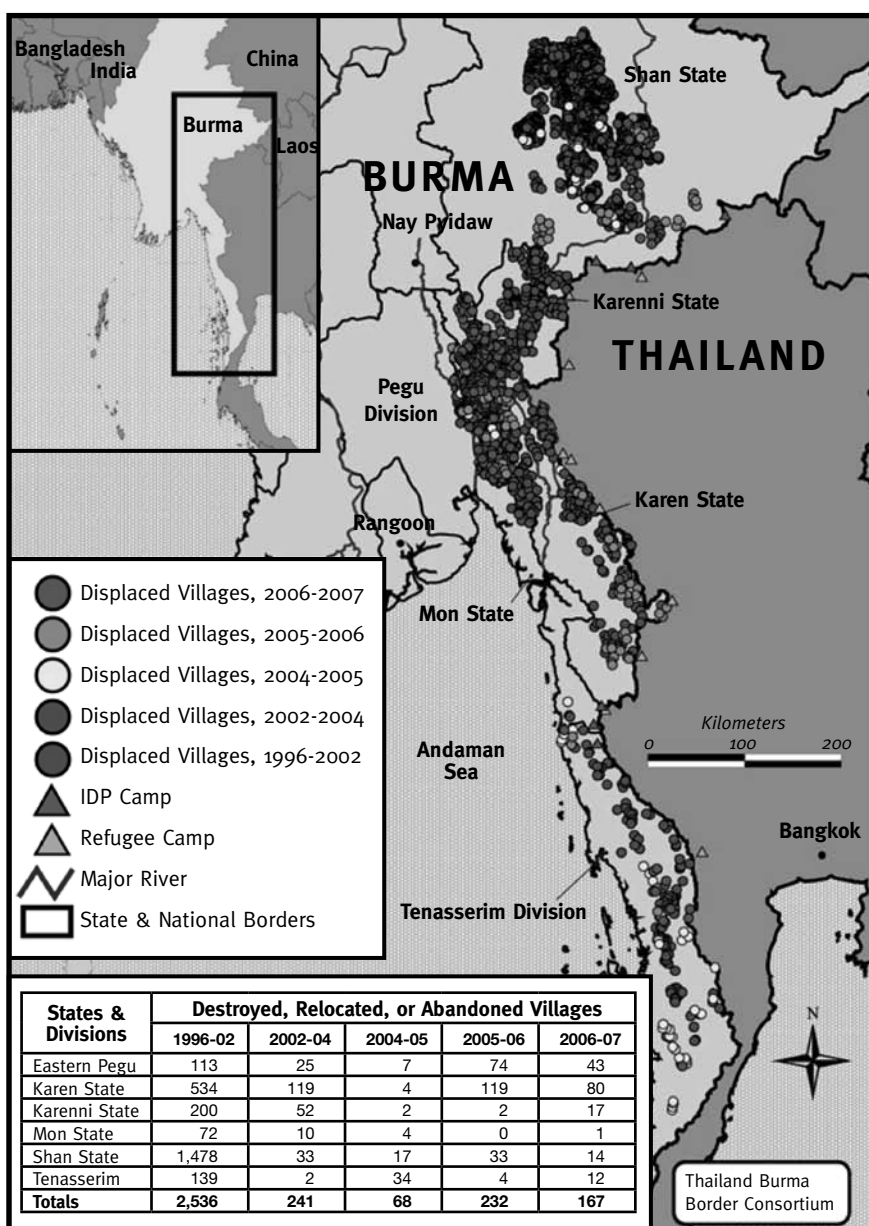
In 1998, the Burma Ethnic Research Group (BERG) estimated that 30 percent of the rural Karen population in eastern Burma (some 480 000 people) were either internally displaced, or were stranded in refugee camps in Thailand.<sup>66</sup> In 2002 the (then) BBC and its five main partner groups - the Committee for Internally Displaced Karen People (CIDKP), Karen Office for Relief and Development (KORD), Karenni Social Welfare Centre (KSWC), Mon Relief and Development Committee (MRDC) and Shan Relief and Development Committee (SRDC) - conducted the most systematic and widespread survey thus far of internal displacement in Burma. They estimated that approximately 633 000 people were either living 'in hiding' (about 268 000 people), or in more than 176 forced relocation sites (about 365 000 people) in central and southern Shan State, and in Karenni, Karen and Mon States and Tenasserim Division.<sup>67</sup>

#### 3.5.1 Figures for 2007

Based on almost 1000 household interviews, the October 2007 report by TBBC and its partners found that, between 1996 and 2007, some 3 167 villages in eastern Burma had been destroyed and/or relocated en masse, or otherwise abandoned. In total, the TBBC estimated that 76 000 people were newly displaced by armed conflict and associated human rights abuses in 2007 — somewhat less than during the previous year.

66 Burma Ethnic Research Group, *Forgotten Victims of a Hidden War: Internally Displaced Karen in Burma* (Chiang Mai 1998), p. 31.  
67 Burmese Border Consortium (BBC), *Internally Displaced People and Relocation Sites in Eastern Burma* (Sept. 2002).





MAP 2 - TBBC: Displaced Villages in Eastern Burma (1996-2007)<sup>68</sup>

In total, the TBBC estimates that 82 000 people became newly displaced in the period 2005-2006; making a total of 500 000 IDPs in eastern Burma (mostly Type 1, plus some Type 2). These include 287 000 people in ceasefire zones, 95 000 ‘IDPs in hiding’ and 118 000 IDPs in relocation sites.<sup>69</sup>

The majority of new incidents of forced migration (and village destruction) were concentrated in northeast Karen State and adjacent areas of Pegu Division - areas which were still subject to armed conflict; across much of southern and central Karen State, the situation for most

68 TBBC, Internal Displacement in Eastern Burma: 2007 survey (Bangkok October 2007), p. 23.

69 Ibid. p. 8.

villagers was relatively stable (a finding confirmed by Karen sources inside Burma).<sup>70</sup> The total number of IDPs in eastern Burma recorded by TBBC and its partners in October 2007 was 503 000. These included 295 000 people in ceasefire zones, 99 000 IDPs ‘in-hiding’ in the jungle and 109 000 IDPs in relocation sites.<sup>71</sup>

States and Divisions	IDPs in Hiding		IDPs in Relocated Sites		IDPs in Ceasefire Areas		Total IDPs	
	2006	2007	2006	2007	2006	2007	2006	2007
South Shan	13 300	13 700	31 300	24 100	131 000	126 000	175 000	163 800
Karenni	9 300	10 000	6 400	4 800	63 600	66 200	79 300	81 000
East Pegu	17 400	18 700	6 400	12 200	0	0	23 800	30 900
Karen	49 100	51 600	4 300	9 700	45 900	55 600	99 300	116 900
Mon	300	600	500	7 200	41 000	41 600	41 800	49 400
Tenasserim	5 600	4 400	69 100	51 000	5 500	5 600	80 200	61 000
<b>Overall</b>	<b>95 000</b>	<b>99 000</b>	<b>118 000</b>	<b>109 000</b>	<b>287 000</b>	<b>295 000</b>	<b>500 000</b>	<b>503 000</b>

TABLE 2 - Distribution of Internally Displaced Persons (TBBC October 2007)<sup>72</sup>

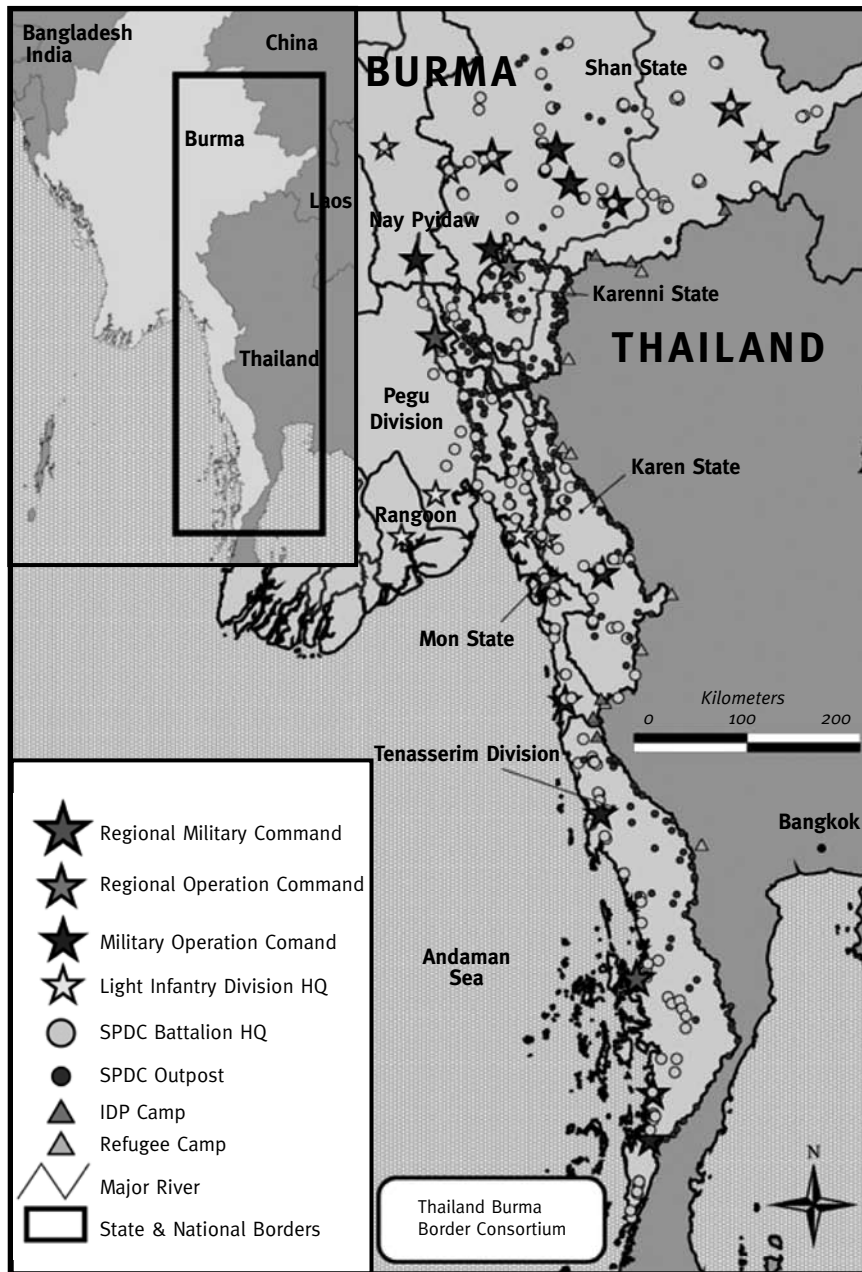
Meanwhile, since 2003, a number of local NGOs and community-based organisations (CBOs) had begun working with IDPs in government-controlled Burma, in Karen and other areas. Although these groups had only limited access to zones of on-going armed conflict, they often had excellent information regarding IDPs living in ceasefire zones and government-controlled areas, including relocation sites. In the case of the Karen, groups working in areas under government control were the counterparts of those working cross-border from Thailand: neither sector had complete access to all displaced populations, but combining their data gave a clearer idea of the total numbers and situation of Karen IDPs.

Data collected since 2005 by a coalition of local Karen (and some Karenni and Mon) NGOs working inside Burma (confidential documents) indicated that the total number of IDPs estimated by TBBC in 2007 was fairly accurate — but did not include Type 1 IDPs who chose not to make themselves available to armed opposition groups. Nor did it include large numbers of people who had achieved (at least semi-) durable solutions to their plight — especially those living areas not directly affected by armed conflict (the great majority of the country).

70 Field Notes (28 Oct.2007).

71 TBBC (2007), p.3 & 25.

72 TBBC (2007), p.25.



MAP 3 - TBBC: Militarisation in Eastern Burma, 2007<sup>73</sup>

The figures discussed in the preceding pages also exclude victims of the Asian Tsunami of 26 December 2004, which killed more than 300 000 people, and displaced approximately 1.6 million more - mostly in Indonesia, Sri Lanka, India, the Maldives and Thailand, and to a lesser extent in Bangladesh, Malaysia, and Burma. Across Asia, the Tsunami has illustrated a number of important HLP rights issues.

73 TBBC (October 2007), p. 19.

Karen IDPs family, sleeping 'in-hiding' in the jungle



In Burma the death toll from the Tsunami was about 80 people. Between 10 000 and 15 000 people suffered longer-term effects<sup>74</sup>, with many enduring (mostly temporary) displacement.<sup>75</sup>

## 3.6 Refugees

### 3.6.1 Western border

The *Rohingya* Muslim minority, which have long been discriminated against, are denied Burmese citizenship under the 1982 Citizenship Law. Such discriminatory laws and practices prevent Rohingyas and other non-Burmans from obtaining the papers necessary to secure accesses to land (ID cards and title deeds).

Following a brutal *Tatmadaw* campaign from 1991-1992, which included massive forced labour and other human rights abuses, some 250 000 *Rohingya* fled to Bangladesh as refugees. Most were repatriated by the UNHCR in mid-late 1990s (although the voluntariness of this process has been questionable); about 25 000 remain in refugee camps around Cox's Bazaar. The UN and other international agencies have struggled to protect *Rohingya* returnees from further rounds of abuse.<sup>76</sup>

<sup>74</sup> Myanmar Tsunami Assistance Coordination Group, Press Release (6 January 2005).

<sup>75</sup> TBBC (2007).

<sup>76</sup> The *Rohingya* "continue to suffer from multiple restrictions and human rights violations ... [including] forced eviction and house destruction; land confiscation and various forms of extortion and arbitrary taxation including financial restrictions on marriage. *Rohingyas* continue to be used as forced labourers on roads and at military camps... In addition, the vast majority of are effectively denied Myanmar citizenship, rendering them stateless": Amnesty International, *Myanmar - The Rohingya Minority: Fundamental Rights Denied* (May 2004).

### 3.6.2 Eastern border

In the early 1980s, the first semi-permanent Karen refugee camps in Thailand were established in the area north of Mae Sot, half-way up the Thailand-Burma border. Since 1984, the (TBBC), has been supplying these camps with food (and more recently shelter and a range of other necessities). A handful of medical agencies address the refugees' health needs and, since the late 1990s, a number of INGOs have been active in the border camps in the field of education.

By the end of 2006, the number of registered refugees in Thailand had grown to 153 882<sup>77</sup>, living in 10 camps (1 Shan, 4 Karenni and 5 Karen). At least 4 000 Karen new arrivals had entered the kingdom since December 2005. Furthermore, large numbers of people continued to cross the border, without entering official camps (including most Shan new arrivals, who for several years have been estimated to number approximately 1 000 per month).

The actual number of camp residents also included several thousand (mostly newly arrived) people whom the Thai authorities excluded from camp lists. To a degree, this omission was compensated for by the absence of some registered refugees, who worked for extended periods outside the camps in the informal Thai economy. An additional 20 000 people were located in nine camps controlled by armed ethnic groups, just across the border inside Burma.

77 TBBC (2007).

A woman at the funeral of her mother [aged 80 years] and brother, killed by the Burma Army [Mon Township, Karen State, April 2006]



## Burmese political history: an overview

Burma is a study in failed state-building. The country is a complex amalgam of fourteen different States and Divisions, containing dozens of major ethnic nationalities, each with their own social and customary practices, speaking over 100 different languages.

The prevalence of conflict in Burma is partly explained by the country's colonial past with its use of violence to settle conflict between different communities and with the State (before, during and after the Second World War). The following section very briefly sketches Burma's political history, from the pre-colonial and colonial eras, through the troubled post-independence period of parliamentary politics, the military take-over of 1962, the 1988 democracy uprising and subsequent elections (in 1990), and the consolidation of military rule which followed. It also introduces the main conflict actors in Burma today – including the military Government and its agents and proxies, and political and armed opposition groups (both those with and without ceasefires).

### 4.1 Pre-colonial and colonial history: a very, very brief overview

The lands today known as Burma have been populated by successive waves of migration, mostly from the north. By the end of the first millennium CE (Common Era), a loosely organised mercantile and rice-growing civilization, dominated by Mon-Khmer speakers, had arisen across

much of mainland Southeast Asia, with centres in modern-day Cambodia, Thailand (Dvaravati) and lower Burma. During this period, a people now remembered as the Pyu settled Upper Burma.<sup>78</sup> Also during the first millennium, the ancestors of various ‘tribal’ groups - such as the Karen peoples (who between them speak a dozen dialects<sup>79</sup>) - settled in the land, especially along the fertile river valleys.

The following several centuries saw the arrival of Tibeto-Burman speaking peoples, who mixed with the Pyu and others, and established wet-rice cultivation in the central lowlands. It is perhaps from this era that the ‘hill-tribes’ began to experience conflict over land with the proto-Burman peoples, and were pushed up into remote and more marginal areas – a process of alienation reflected in traditional myths of the disinherited Karen.

The beginning of the second millennium CE saw the rise of Pagan (Bagan), the first unified kingdom in Burma. The remains of Pagan constitute one of the great archaeological marvels of Asia, and are testimony to a high degree of cultural and religious sophistication.

The fall of Pagan in the fourteenth century was followed by a period of confusion, which saw the rise of several Shan principalities in the northeast, which enjoyed strong cultural links with the Tai kingdoms of modern-day Laos and Thailand. The fifteenth and sixteenth centuries were also the hey-day of the Mon kingdom of Hongsawatoi, centred at Pegu, which the founders of the Toungoo dynasty eventually conquered in the mid-sixteenth century. Mon Pegu briefly re-emerged as an important power in the eighteenth century, but was defeated by the warrior-king Alaungphaya, who re-unified Burma under the Konbaung dynasty.

#### 4.1.1 Traditional concepts of territory and identity

The whirlwind tour of early Burmese history presented in Subsection 4.1 is subject to (at least) two important caveats, regarding pre-modern conceptions of territory and ethnic identity. Polities in pre-colonial Southeast Asia were quite unlike the modern, spatially bounded state, with its clearly demarcated territory. Rather, these dynastic kingdoms were characterised by the central importance of the capital city (be it Pegu or Pagan), from which power and control spread out to the periphery, in a complex system of tributary relations. Borders were porous and indistinct, and the influence of a particular state would rise and fall, affecting its prince’s relations with neighbouring powers. Scholars have designated such polities, where various centres of power are arranged in shifting, hierarchical relationships, as *mandala*. The relative strength of a particular *mandala* would influence the degree to which populations in outlying regions identified with the culture - and implicit ethnicity - of its ruling elite.<sup>80</sup>

Thus, pre-colonial notions of ethnic identity were not as well established as is the case today. Identity categories based on language and cultural inheritance were only one of a number of themes in social and economic life. Rather than being oriented towards a single axis of (ethnic) identity, communities and individuals in pre-colonial Southeast Asia participated in multiple networks of obligation and privilege, often paying tribute to more than one centre

78 For an engaging and readable account of Burmese history, from pre-colonial times to the present, see Thant Myint-U, *The River of Lost Footsteps: Histories of Burma* (Farrar, Straus and Giroux 2006); on Mon history, see South (2005).

79 See Ashley South, ‘Karen Nationalist Communities: The ‘Problem’ of Diversity’, in *Contemporary Southeast Asia* (Vol.29, No.1 April 2007).

80 See South (2008 - forthcoming).

of political-economic power – i.e. being subject to multiple *mandala*. However, the categories used by the British during the Colonial period, created more clearly fixed ethnic, political and social identities.

#### 4.1.2 The Colonial period

Burma was colonised by the British over the course of three wars, between 1826 and 1885. However, it was not until the 1930s that a form of colonial administration was imposed on the more remote parts of the far north (e.g. the Kachin hills). By this time, large segments of many non-Burman communities (e.g. a quarter of the Karen, and nearly all Kachin clans) had been converted from traditional animist beliefs to Christianity.<sup>81</sup>

As Mary Callahan<sup>82</sup> has noted, the imposition of colonial rule set a precedent for dealing with conflict that has lasted to the present day. The use of force to impose the will and further the interests of power-holders (especially the state) was modelled during the British (and Japanese) colonial periods, and during the Second World War (which devastated much of the country), and adopted as a method of control by post-war military and political elites.

#### 4.2 From Independence to military rule

Burma gained independence on 4 January 1948, six months after the assassination of the great independence leader, General Aung San. The colonial administration had employed large numbers of people of Indian origin, who had migrated to Burma under British colonial patronage. Pushed out of their jobs and denied citizenship, between 1948 and 1949 many of these people moved to India as refugees.

The first decade of independence was marked by a chaotic period of parliamentary politics, and widespread insurgency. The late 1940s and 1950s saw large numbers of often loosely-organised communist and ethnic nationalist militias take up arms against the ‘Rangoon Government’ (which at times controlled only the capital and its immediate environs). The remnants of civil war in Burma today constitute the longest running armed conflict in the world.

By the mid-1950s, the *Tatmadaw* had managed to push the insurgents back to the mountains and borderlands. The civilian administration had been secured, but at the cost of empowering the army, and convincing key *Tatmadaw* leaders that only they could save the country from insurgency.

The first period of military rule in Burma lasted from 1958-60, under a ‘caretaker government’. Military rule has been continuous since 1962, when General Ne Win’s *Tatmadaw* again seized power. From 1962 to 1974, Ne Win ruled Burma through a Revolutionary Council. Following the promulgation of a new Constitution in 1974, he continued to dominate the country, via the Burma Socialist Programme Party (BSPP), which continued the trend of the 1960s towards international political isolation. Ne Win’s disastrous ‘Burmese Way to Socialism’ transformed the once-vibrant economy into one of the least developed countries in the world.<sup>83</sup>

81 For an account of the impacts of colonial rule in Burma (especially on the traditional Burman-Buddhist polity), see Thant Myint-U, *The Making of Modern Burma* (Cambridge UP 2001); see also South (2008 - forthcoming).

82 Mary Callahan, *Making Enemies: War and State Building in Burma* (Cornell UP 2003).

83 On Ne Win’s Burma, see Robert Taylor, *The State in Burma* (Hurst 1987).



Under the Ne Win regime, most medium and large-scale economic enterprises were nationalised — depriving many people of Indian origin in particular of their livelihoods. As their human security became tenuous, many tens of thousands of people left for South Asia.

Meanwhile, ethnic and communist insurgents still controlled much of the countryside. Their ‘liberated zones’ constituted unofficial *de facto* mini-states, with in some cases quite substantial administrations - including for example, departments of health and education, which attempted to provide minimal services to the populations under their control.<sup>84</sup>

In Government-controlled areas, ethnic nationality elites continued to be excluded from meaningful participation in politics. Instead, a state-sponsored nationalism saw diverse (and according to the military, divisive) minority cultures, histories and political aspirations suppressed, in favour of a homogenising national identity, derived from the Burman historical tradition.

### 4.3 The rise of the SLORC: 1988 and since

The nationwide protests that gripped the country between March-June 1988 resulted in Ne Win stepping down from power. For a while in August 1988, it seemed as though ‘People Power’ might prevail, and usher in a new era of democracy in Burma. However, in mid-September the *Tatmadaw* massacred thousands of unarmed citizens, while re-imposing its control over the country, in the name of the State Law and Order Restoration Council (SLORC).

In May 1990, the SLORC held elections, a surprise move that owed much to international condemnation of its brutal suppression of the democracy movement. The National League for Democracy (NLD), led by Aung San Suu Kyi - the daughter of independence hero Aung San - won the elections with 82 percent of the seats. However, the generals refused to allow the NLD and its allies to form a government — and instead imprisoned several hundred more civilians. (Aung San Suu Kyi herself was placed under house arrest in 1989. In 1991, ‘the lady’ won the Nobel Peace Prize for her non-violent resistance to the military regime.)

Since 1992, Senior General Than Shwe, Commander-in-Chief of the *Tatmadaw* has dominated the regime. In November 1997, the junta re-configured as the State Peace and Development Council (SPDC). By the turn of the new millennium, the military Government had greater control over Burma than any previous regime — including the colonial administration.

### 4.4 The Ceasefire Movement

The series of ceasefire arrangements brokered between the Military Intelligence (MI) apparatus and some twenty-five insurgent organisations helped, in part, to consolidate the *Tatmadaw* power. The first armed groups to agree truces with the SLORC in 1989 were heavily-armed militias which broke away from the Communist Party of Burma (CPB) in northern Shan State - causing the country’s largest insurgent organisation to collapse. Within a few years, the majority of armed ethnic groups had also agreed ceasefires with Yangon (often under pressure

84 On the complex history of ethnic politics in Burma, see Martin Smith, *Burma: Insurgency and the Politics of Ethnicity* (Zed Books; second edition 1999); see also Bertil Lintner, *Burma in Revolt: Opium and Insurgency Since 1948* (Westview 1994).

from the Thai and Chinese authorities), including the Kachin Independence Organisation (KIO) in 1994, and the New Mon State Party (NMSP) the following year. (See list of conflict actors in Glossary.)

The situation in most ceasefire and adjacent areas remains problematic, with civilian populations subject to a range of on-going abuses, including forced labour and various HLP rights violations (see Section 6). Nevertheless, the ceasefires did provide a partial ‘peace dividend’, inasmuch as they created the space in which civil society networks re-emerged among conflict-affected communities, and begin the much-needed task of building human capital, though local community development and rehabilitation projects (see Section 8).

Armed groups that have agreed to truces with the *Tatmadaw* include a number of small local militias, among the most prominent of which is the Democratic Karen Buddhist Army (DKBA). In late 1994, the newly established DKBA was persuaded by *Tatmadaw* commanders to break away from the Christian-dominated Karen National Union (KNU – the main Karen insurgent group), citing religious discrimination within the Karen nationalist ranks.

By the late 1990s, only three politically significant - although militarily much weakened - armed groups were still at war with the Government: the KNU, Karenni National Progressive Party (KNPP) and Shan State Army (SSA-South). Having lost control over their once-extensive ‘liberated zones’ in the 1980s and 1990s, the remaining insurgent groups were no longer able to offer even minimal protection to the ethnic communities in whose name the conflict was being fought. Conditions for these displaced people became increasingly desperate.

In December 2003, the late KNU strongman, General Bo Mya, announced a ‘gentleman’s agreement’ to cease hostilities between the KNU and SPDC forces. Although this agreement has led to an improvement in conditions for civilians in some parts of central and southern Karen State, in 2005 the *Tatmadaw* launched a major offensive against the remaining KNU strongholds - and the Karen civilian population - in northern Karen State. As of mid-2007, this offensive had displaced well over 20 000 people (see Section 6).

#### **4.5 ‘Hard-line’ regime consolidation**

Meanwhile, since 1989, Aung San Suu Kyi and other NLD leaders have been twice released from house arrest, only to be detained again later. Another effort by Aung San Suu Kyi to mobilise her supporters, and test the limits of the generals’ tolerance, came to a bloody end on 30 May 2003, when a Government-organised mob ambushed her motorcade. At least four of her bodyguards were killed, as well as many - perhaps dozens - in the crowd. Following the ‘Depayin incident’, Aung San Suu Kyi and other senior NLD leaders were again placed in detention.

The resulting international outcry led the SPDC to announce a seven point ‘roadmap to democracy’, under the guidance of the MI chief and newly-installed prime minister, General Khin Nyunt. The first stage of this Government-controlled process involved re-starting a National Constitutional Convention, initiated in 1993, but suspended in 1995, after the NLD withdrew from the process.

### 4.5.1 The National Convention

Since 1994, the UN General Assembly has called for a tri-partite solution to Burma's problems, involving the military Government, the NLD and other parties elected in 1990, and ethnic nationality leaders. However, since its refusal to recognise the results of the 1990 election, the military Government has been unwilling to engage in substantial discussions regarding the political situation and future of the country.

From its position of strength, the SPDC has been able to present the 'roadmap' and National Convention as the only political game in town. However, three days before the National Convention re-opened, on 14 May 2004, Burma's two main opposition parties announced that they would not join the Convention. The Government had failed to reassure the NLD and the United Nationalities Alliance (the UNA, a coalition of ethnic nationality parties elected in 1990<sup>85</sup>), that it would permit genuine debate over key issues. The Convention has therefore been widely perceived as illegitimate - both inside Burma and abroad. This perception is unlikely to change unless the constitution-drafting process is broadened to include meaningful participation on the part of the NLD and its allies. Despite this legitimacy deficit however, the Convention emerged as the most important political arena since the 1990 election, and provided a forum for the emergence of ceasefire groups as significant actors on the national stage.

Although the Government handpicked most of the one thousand-plus convention delegates, they included over one hundred representatives from twenty-eight ceasefire groups. These were a mixed bunch, which enjoyed varying degrees of legitimacy, and represented only one sector of the ethnic nationalist constituency. Nevertheless, the ceasefire groups developed coherent positions on several key issues.

In June 2004, representatives from thirteen ceasefire groups made a joint submission to the Convention outlining their main demands. These included a call for state governments to be granted significant legislative and administrative powers, a proposal that all residual powers lie at the state level (rather than with central government), and demands for the formation of local ethnic security forces (a new role for the ceasefire armies). Crucially, the document called for a federal union of Burma, under the rubric of 'ethnic or national democracy'.

The ceasefire groups were informed that their proposals would not be included in the draft Constitution (which some participants suspect has already been written by the SPDC). Nevertheless, in articulating their demands, the groups demonstrated the coherence and determination of the ethno-nationalist constituency, which has for so long been side-lined in discussions of Burma's political and constitutional future.<sup>86</sup>

The Government was always unlikely to accept the demands of the more politically engaged ceasefire groups, such as the KIO and NMSP.<sup>87</sup> Nevertheless, it seems likely that at least some of the ex-CPB ceasefire groups (such as the 20 000 strong United Wa State Army) will

85 Representing sixty-five ethnic nationality candidates elected in 1990, the UNA is allied with the NLD. Member parties include the Shan Nationalities League for Democracy (SNLD), with 22 MPs-elect, and the Mon National Democratic Front (MNDF), with 5 MPs-elect.

86 The ceasefire groups' most recent contribution to the National Convention was a nineteen-point proposal, presented by the KIO in August 2007. This document outlined a series of amendments to the draft charter, and called for changes to the proposed state structure and legislative powers, to allow greater autonomy for ethnic nationality areas.

87 In order to express its disapproval of the process, since 2006 the NMSP has sent only observers to the Convention, rather than delegates.

be granted at least partial autonomy under the new Constitution. Furthermore, although it will create a deeply flawed political environment, some actors (including for example, some KIO leaders) consider that any constitution for Burma is better than continued rule by military decree, and that pro-democracy and civil society forces will inevitably have to work within a constrained constitutional setting for some time to come.<sup>88</sup>

It is widely expected that the military Government would move against non-compliant ceasefire groups, once the constitution-drafting process is completed. If asked to disarm before competing in any future election, or if forced to re-form as Government-controlled militias, elements within the more politically engaged groups may feel forced to resume armed conflict. Already, over the past three years, relations between the SPDC and some ceasefire group have undergone a serious decline. This development is in part explained by the October 2004 purge of General Khin Nyunt (architect of the truces), and his MI establishment, as the result of power struggles within the SPDC.

The National Convention concluded on 3 September 2007. During the final session, delegates discussed the role of political parties, conditions for declaration of a state of emergency, and creation of the national flag and anthem. The next phase in the 'road-map' would see the deliberations of the National Convention incorporated into a constitutional document, to be presented to the Burmese people. However, the events of September-October 2007 made it unlikely that any proposals presented by the SPDC, even in the form of a tightly-controlled referendum, would be accepted by the populace (see Section 4.5.3).

#### **4.5.2 The move to Nay Pyi Daw**

In late 2005, the official seat of Government in 'Myanmar' was moved to the newly constructed 'Nay Pyi Daw' ('royal city'), in the hills above the remote logging town of Pinyinana, 400km north of Yangon (see Section 6). Speculation regarding the move to Nay Pyi Daw has tended to focus on the astrological-numerological aspects of Senior General Than Shwe's decision to move his capital. The relocation recalls the tradition of Burma's pre-colonial kings, who generally established a new citadel, with the assumption of a new reign. If nothing else, the move to Nay Pyi Daw was a vivid demonstration of the power of the Senior General to make things happen (however, seemingly absurd the results).

In many ways, the relocation of the capital symbolised a return to the isolationist 'bunker mentality' of the Ne Win years. However, it also demonstrated the confidence of the SPDC — and in particular of Senior General Than Shwe.

88 For a discussion of 'incrementalist' approaches to democratisation in Burma, see Ashley South, 'Political Transition in Burma: a New Model for Democratization', in *Contemporary Southeast Asia* (No.26 August 2004); see also South (2008 – forthcoming).

### 4.5.3 The 2007 'Saffron Revolution'

In 2007, life for most ordinary citizens was going from bad to worse - as a result of the continued depredations and abuses of the militarised state (see Section 6), and the feeble nature of the economy, which undermined the livelihoods of large sections of the civilian population. However, the State itself - and the elites and other hangers-on associated with military rule - was probably stronger than at any time since independence. This was in large part due to the discovery in the late 1990s of major offshore natural gas deposits (see Section 6), which allowed the SPDC to play-off the energy-hungry regional powers, China and India (and also Thailand: see Section 8) against each other, while at the same time guaranteeing the regime a supply of hard currency. Indeed, in May 2007 the (generally pro-Government) *Myanmar Times* reported that Burma's foreign trade would exceed US\$ 8 billion in 2007-08: a 40 percent increase on the previous year, despite the ongoing US and EU economic sanctions.<sup>89</sup>

Nevertheless, life for many Burmese citizens remained a desperate struggle for survival, and the military Government remained deeply unpopular. This fact was illustrated in August and September 2007, when members of the '88 Generation' of student activists led a series of small demonstrations in Yangon and some other urban centres, in protest against a huge increase in fuel prices, caused when the government removed state subsidies on 15 August. Subsequently, authorities arrested some 180 protesters.

Although many people had quietly supported the protestors, most were too fearful of the well-entrenched military regime to participate directly in the demonstrations. However, the situation changed in mid-September, when groups of young monks began taking to streets of Yangon and Mandalay, demanding an apology from the authorities for the mistreatment of some of their brethren earlier in the month. For several days, increasingly large columns of up to 2000 protesting monks went unchallenged by state security forces. In a deeply symbolic moment, on 22 September, they were even allowed to meet briefly with Aung San Suu Kyi — exchanging words across the locked gates of her compound (where 'the lady' remained under house arrest).

From the third week of September, large numbers of civilians began to join the protesting monks, and accompany them on the daily marches. While the *Tatmadaw* might be reluctant to open fire on the *sangha*, the soldiers had no such compunction when tens of thousands of other civilians joined the monks. On 25 September a crowd of 100 000 people took to the streets of Sittwe, in Rakhine State. On the same day, the Government issued a directive banning gatherings of more than five people, and imposed curfews in Yangon and Mandalay.<sup>90</sup>

Starting on 26 September, security forces conducted a series of night raids against the most active monasteries in and around Yangon, arresting hundreds of monks (many of whom were subsequently released - although others were abused and killed in detention).<sup>91</sup> During this period, the authorities also cracked-down hard on lay protestors, who were no longer protected by the presence of large numbers of monks among them. Soldiers and riot police attacked the crowds with rubber bullets, and with live ammunition. Estimates of the number of people killed, after the violence escalated

89 Quoted in *The Irrawaddy* (21 May 2007)

90 Associated Press 25 Sept.2007

91 *The Irrawaddy* 27 Oct. 2007



Karen IDP children

on 27 September, vary from ten (according to government sources) to some two hundred people (including a Japanese photo-journalist); thousands more were arrested. Throughout October, the authorities continued to harass and detain monks and others associated with the protests.<sup>92</sup>

With the killing of over one (perhaps several) hundred monks and other protestors, the military Government had crossed a line, making the supposedly Buddhist *Tatmadaw* deeply reviled by most citizens of Burma. The brutal suppression of the 'saffron revolution' ensured the perpetuation of hard-line, polarised positions regarding the political situation in the country — both on the part of the entrenched military Government, and within opposition camps.<sup>93</sup>

On 18 October 2007, the SPDC announced the formation of a 54 person Committee to Draft a State Constitution, following the principles laid down by the National Convention. However, following the bloody events of the previous month, it seemed unlikely that the government could ensure its victory in anything approaching a free and fair referendum or elections.

92 In the case of Mon State, see *Kao Wao* (19 Oct. 2007).

93 See South (2008 - forthcoming).



Despite living in displacement, Karen villagers retain their community spirit

5

## History of land use and laws

The land tenure crisis in Burma today, including widespread violations of Housing, Land and Property (HLP) rights, occurs in a historical context in which the rule of law has been weak, or non-existent. The arbitrary and personalised rule of the pre-colonial monarchy, followed by the externally imposed and fundamentally exploitative ‘order’ of the (British and Japanese) colonial period, failed to establish traditions of respect for individual or collective property rights, other than those which could be imposed by force. During the turbulent period of the 1950s, and especially after the military coup of 1962, powerful actors - including the militarised state (and, in ‘the liberated zones’, the *de facto* insurgent mini-states) - continued to dominate legal processes.

In examining the history and status of land use and laws in Burma, it is important to recognise the degree that western patterns of thinking shape ideas of land ownership. Fundamentally, these traditions conceive of land as discrete and bounded territory, owned by either the state or individuals. This understanding of land as (state or private) property contrasts with the concepts and practices of many indigenous peoples, who view the land as a common resource, over which families and communities have multiple claims and locally defined rights, mediated by evolving customary laws.

### 5.1 Historical development of land and property law<sup>94</sup>

Inadequate land tenure laws, and the lack of a practicable land use policy, have resulted in landlessness and land degradation across rural Burma. The roots of this crisis lie in the colonial era, and the first decades of independence.

<sup>94</sup> Subsection based on research undertaken for COHRE by Nancy Hudson-Rodd and Myo Nyunt.

### 5.1.1 Colonial period

Between 1931 and 1941, the British colonial Government initiated a combined British and Burmese land committee that was primarily concerned with alleviating rural poverty through land reform measures. Its stated goals were to slow down the rate of land alienation to absentee landlords, readjust tenancy laws, and redistribute family-sized plots to farming households. The 1941 *Land Purchase Act* was passed to help implement the colonial government's purchase of large, non-agricultural blocks of land at market prices, for redistribution as family-sized plots to rural farming households. However, the acquisition of land and implementation of the act was limited in scope, due to poor fund accumulation and civil administrative capacity.

### 5.1.2 Independence and since

Under the 1947 Constitution, citizens enjoyed rights to private property. However, while Article 23 protected private property, it also allowed for nationalisation "if the public interest so requires".

Since Independence in 1948, various governments have reinforced state ownership of land. The single most important piece of legislation has been the *Land Nationalisation Act* of 26 October 1953, which re-affirmed state ownership of all land.

The 1974 Constitution reinforced state ownership of and rights over land. Section 18 (a) of the 1974 *Constitutional Law of the Union of Socialist Republic of Myanmar*, declares the State "ultimate owner of all natural resources above and below the ground, above and beneath the waters and in the atmosphere, and also all lands".

The 1974 BSPP Constitution was annulled after the 1988 SLORC coup, since when the Government has ruled by decree. Legal practice in Burma today generally reverts to the 1953 *Land Nationalisation Act*, which recognises some private ownership of agricultural land (section 38), although it restricts sale or transfer (sections 9-12). However, in sections 9-12, the same Act provides for the State to confiscate fallow land.

## 5.2 Status of land and property law<sup>95</sup>

According to the opposition Burma Lawyers Council, in Burma today, "the only law ... is what the generals from day to day decide it to be."<sup>96</sup> Notwithstanding the on-going military-dominated constitution drafting process, the country continues to be subject to direct military rule, as defined in SLORC Declaration No. 1/90, to prevent "the disintegration of the Union, the disintegration of national unity and the perpetuation of sovereignty".

Private property rights are fragile, and poor land ownership records facilitate involuntary relocation of people and their families by the regime. The law does not permit outright private ownership of land. It does recognise different categories of land use rights, many of which are not freely transferable. These post-colonial laws have revisited colonial traditions making private rights to land contingent on the land being used 'productively', as defined by the State.

95 Subsection based on research undertaken for COHRE by Nancy Hudson-Rodd and Myo Nyunt.

96 P. Gutter & B. K. Sen, *Burma's State Protection Law: An Analysis of the Broadest Law in the World* (Burma's Lawyer Council 2001).



According to BERG, “the land laws offer little protection to the rural farmer who in any case often fears taking legal action against the military in case of reprisals. Without the rule of law, or an independent judiciary free from interference by political or military personnel, displacement ... is likely to continue both in rural and urban areas.”<sup>97</sup>

Under the *Land Acquisition Act*, the state has the right to take over land, but should provide compensation to its original owners. The 1953 *Agriculture Land Nationalisation Law* and the 1963 *Tenancy Law* empower the state to stipulate what crops villagers grow. Non-compliance with this and other conditions set by Village/Ward and Township Peace and Development Councils (the local counterparts of the SPDC) can result in the authorities confiscating land.

As noted by the BBC, other laws (e.g. 1963 *Protection of the Right to Cultivation Act*) allow the state to confiscate land *in lieu* of debts, “or if ‘state security’ is threatened; if the state decides to ‘lease’ the land to someone else; or if the farmer does not fulfil the Government’s stipulated crop quota.”<sup>98</sup>

In most of the uplands areas, land tenure systems operate according to traditional and customary rights. However, few households in remote areas have had the opportunity to register their lands. Furthermore, government departments lack incentives, and are not equipped to deal with the complexity of implementing appropriate land tenure and secure access systems.

Land disputes can be taken to several different levels of court. However, the demarcation between land for purposes of cultivation and land for non-agricultural purposes is taken seriously, and lawsuits submitted mistakenly can be summarily dismissed. Under the SPDC regime, the court system extends to the township, district, state and national levels, and the Government appoints justices to the Supreme Court, who appoint the lower court judges. However, there is no independent judiciary, and therefore no meaningful rule of law in Burma.

Nevertheless, the Government has been careful to provide a legal basis for the granting of large-scale agricultural concessions to commercial enterprises (see Section 6). Leases (of up to 30 years) can be granted for a maximum of 5 000 acres, and are often income tax-free (including to foreigners, under the Foreign Investment Commission).

### 5.2.1 Land transfers<sup>99</sup>

In the 1990s private land transfers of traditionally ethnic nationality-populated areas occurred with increasing frequency. As described in this report, government policies and military deployments have induced ethnic villagers to flee – often abandoning their land and property, or at least abandoning their traditional customary land practices. Concomitantly, there have been increasing reports of (Burman) military families moving onto confiscated land in Mon State and eastern border regions, as well as in northern Burma. The newcomers often build permanent housing, and later sell this on to third parties.<sup>100</sup> This practice establishes a direct link between central government policies, military confiscation, and the transfer and sale of confiscated land for private profit.

97 Burma Ethnic Research Group (BERG), ‘Internal Displacement in Burma’, in *Disasters* 24 (Sept. 2002), p 237.

98 Burma Border Consortium (BBC), *Reclaiming the Right to Rice* (2003), pp. 60-61.

99 Subsection based on research undertaken for COHRE by Kat Diaz (2003).

100 Multiple interviews and sources (2003-05).

In urban areas and satellite towns outside of Yangon, military officers and government officials have used confiscated land from resettlement areas to build modern luxury homes on high-value sites near roads, equipped with electricity, piped water and other amenities. Government officials are able to acquire plots of land easily because the Government subsidises land ownership for its employees.

Sometimes, powerful officers and other officials forcibly purchase land and other property. In such cases, payment may occur (at below market prices), but the threat of force means that such sales are coerced (not unlike the 'wages' sometimes given to those who perform forced labour: see Section 6).

These practices are paralleled by the practice of corrupt land and housing officials on Township and Village/Ward Councils changing ownership documents, in exchange for bribes. Although legally all land is owned by the state, and leased to farmers, leases can be passed-on (inherited), with agreement of the local state authorities. In theory, land cannot be sold, but in practice, Land Records officials are usually willing to transfer ownership titles, in exchange for a bribe.<sup>101</sup>

Village/ward and township administrations often collude with land record officials to change the designation of land from grazing to agricultural use. While existing laws specify the traditional communal right of grazing grounds near villages as pastureland for cattle, officials either sell the cultivation rights or work the land themselves. Because of this illegal activity, there is often no communal pastureland available for local farmers' cattle. This has created great difficulties for cultivators.

Every year about 3 000 to 5 000 acres (1 200-2 000 ha) of land are formed in river areas. There are rules and regulations regarding how such land should be allocated. However, it is understood that the village/ward and township administrators ignore these, and allocate such land to relatives, people who offer bribes, *Tatmadaw* veterans, or among the members of the administrative bodies.

In the border areas and ethnic nationality-occupied regions, which have experienced expanding military deployments in the 1990s, land and housing documents are altered through the Township and Village/Ward Councils, or by military intimidation.

The combined issues of human rights violations, land confiscation and falsified documents hold profound implications for future political transition in Burma. The military regime has used forced relocation and land confiscation as part of its 'Burmanisation' policy (of ethnic cleansing and social engineering). The result is a state monopoly that transfers property, income and assets, from rural, non-Burman ethnic nationalities to an elite, military Government, and that resembles a neo-patrimonial tributary (or feudal) system. In the event of political transition, some of those who fled (or were forcibly removed) will return to confront a new landscape, with new documented property 'owners' now occupying their former land.

101 Field Notes (25 May 2006).

## 5.2.2 Land tax and registration

In many ways, the colonial era system of land records and taxation remains in operation. The Land Records and Settlement Department in Burma adopted a modified Torrens System<sup>102</sup> of land registration, for all areas settled by the colonial state.

Detailed surveys of land use are conducted for purposes of land revenue and for the designation of specific crops. Land tax rates date largely from the same pre-independence era, accounting for no more than K 22 per acre, and sometimes as low as K 0.25 per acre. Moreover, taxes are collected in unconventional ways in Burma, as evidenced by the procurement system in agriculture, which mimics a land tax. As a result, the ratio of tax to GDP understates the actual extent of taxation. At the same time, since 1993, generous tax exemptions have been offered to investors in large-scale agricultural projects (see Section 6).

Changes in land laws were made in 1991 with the establishment of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land. This committee was granted the power to allocate control over much larger holdings of land for the purpose of state-owned enterprises.<sup>103</sup> For perennial crops such as rubber, palm oil and coffee, the Committee can assign blocks of 5 000 acres (2 000 ha). If this land is developed, more land can be granted, up to a possible 50 000 acres (20 000 ha). For orchard crops, smaller limits of 1 000 to 3 000 acres (400-1 200 ha) were established. Large landholdings for livestock and aquaculture operations were made possible. Non-citizens, as approved by the Myanmar investment Commission, were able to apply for land allocations. By 2001, more than one million acres (405 000 ha) had been allocated, involving about 100 enterprises and associations.<sup>104</sup>

In urban, municipal areas, land parcels are registered under various Town and Country Acts. The Yangon Municipal Development Trust, Laws and Acts established a Register of Titles and Deeds in 1995. This local municipal power was replicated throughout Burma under Municipal Laws and Acts in larger urban towns such as Mandalay, Moulmein, Bhathe, and Sittwe.

## 5.2.3 State registration of houses

Homes are considered as fixtures to land and estates. Households on land parcels, delineated as individual private property, are registered by local authorities (often Village/Ward Development Council leaders), at the local level of jurisdictional authority delegated by the State for administration. This registration of house and household is a form of population census, which enumerates the head of household, location and type of house, and family demographic characteristics. It is the duty of the local authorities at various community levels to know the whereabouts and movements of the local population. Local authorities use this constant monitoring of the population as a means of surveillance and control. The Civil Court of Procedures and the various criminal laws dictate the principal authority. The courts at different

102 The Torrens System is a land titling system used in much of the common law world, which is based on a central, state-controlled register of land holdings. Under the Torrens system, title to land is granted to those included on the register by virtue of that registration. It replaced the common law system, which required landowners to prove their ownership of a particular piece of land back to the earliest grant of land by the State to its first owner.

103 Hudson-Rodd, Myo Nyunt, Saw Thama Tun & Sein Htay, *The Impact of the Confiscation of Land, Labour, Capital Assets and Forced Relocation in Burma by The Military Regime* (Federation of Trade Unions of Burma 2003).

104 FAO & World Bank, *Myanmar: Agricultural Sector Review and Investment Strategy*, 'Volume 1, Sector Review' (Yangon 2004).

jurisdictional levels are mandated by Acts, Decrees and Orders of the State and the Courts. The principal authority and the executive agency responsible for population registration and alien/citizenship status is the Department of National Registration, Population and Immigration, Ministry of Home Affairs.

#### 5.2.4 Landlessness

According to Government statistics, the number of households without land varies considerably. In Kachin State, the proportion of landless households ranges between 95 percent (in Kawnglanghpu Township) and 5.34 percent (Injangyang Township). More than half of households are landless in 12 of the 19 Townships in Kachin State; more than half of households in four out of seven townships in Karen State are landless (76.6 percent in Thandaung Township). In Mon State the proportion is six out of ten townships (both Moulmein and Kyaikto Townships record at least 95 percent landlessness). In five townships in Mandalay Division, at least 99 percent of households are officially landless (Aungmyaythazan, Chanayethazan, Mahaangmyay, Chanmyathazi, Pyi Gyi Ta Gun Townships).<sup>105</sup>

### 5.3 The National Convention and Draft Constitution

Burma is currently ruled by decree, under the SPDC military regime. However, under strict Government control, a new Constitution has been drafted – the legitimacy of which process is deeply compromised.

Paragraph 25(a) of the *Basic Principles of the National Convention*, which will presumably form part of the new Constitution, recalls the 1974 charter. This passage states “the State is the ultimate owner of all the land, and natural resources above and below the ground, above and beneath the waters and in the atmosphere within its territorial boundary.”

#### 5.3.1 Draft Constitution for Future Federal Union of Burma

Following a series of consultations with opposition political and civil society groups, in April 2006 the National Council of the Union of Burma (NCUB), the peak body of the opposition-in-exile, released a *Draft Constitution for Future Federal Union of Burma*. This fourteen-chapter document draws inspiration from the February 1947 Panglong Conference, where ethnic minority and Burman leaders met to discuss the constitutional makeup of soon-to-be-independent Burma.

Among those articles relevant to HLP issues are the following:

#### **Articles from the *Draft Constitution* relevant to HLP issues**

##### **Article 26. Property Rights**

*(A) Every citizen shall have the right to own, transfer, dispose of, and inherit lawfully acquired property.*

105 Rates of landlessness drawn from Survey and Land Records Department data (date unknown).

### **Articles from the *Draft Constitution* relevant to HLP issues (continued)**

*(B) The rights in paragraph (A) shall be revoked or restricted only for the benefit of the public at large, in accordance with law. The revocation of these rights shall be made only after awarding proper and adequate compensation, and establishing an equitable balance between the public interest and the interest of the person affected.*

#### **Article 30. Rights to Own Traditional Heritage**

*A community concerned shall have the right to maintain for posterity, own, use, manage and hand down the heritages relating to tradition, culture, skills and knowledge belonging specifically to it through customary and traditional practices.*

#### **Article 197. Transitional Justice**

*(A) During the transition period, a Truth and Reconciliation Commission shall be formed to investigate and identify losses suffered by citizens due to certain actions by particular authorities in the former regime, before this Constitution has come into force.*

## **5.4 Customary practices**

*[E]ach society has its own clear demarcations and laws regarding the division of land into living areas; common land; farming areas; sacred religious land/community forest; and prohibited forest [where trees may not be felled]. Each type of land and resource has specific usage patterns and allowances. There is a strong sense of interconnectedness between peoples and nature... Customary laws about the proper use of land and resources [including water], with adequate punishment for offences, have been passed down, through generations.<sup>106</sup>*

Customary law is very important, in a context where the central state has never administered many upland areas (although over the past half-century, many remote areas have been subject to forms of military occupation, including by insurgent groups). The customary land use of the ethnic nationalities has for many centuries functioned according to its own rules and practices, which vary from district-to-district, and over time — and even within particular ethnic communities.

Traditionally, Karen and other ‘hill tribe’ communities periodically shift their location, for cultural reasons, and for access to better agricultural land. These are aspects of a shifting cultivation society, where forests are cleared for swidden farming, and then allowed to regenerate, before being returned to every 10-12 years or so — by which time the location (if not the name) of the associated village may well have changed too.

106 NYF (2005), p. 5 [parenthesis added]; see also pp. 14-20.

In the case of hill peoples in Laos, a recent UNDP study states “it is not so much the permanency of a village site that matters, but attachment to a territory.”<sup>107</sup> Many hills-dwellers in colonial Laos experienced organised (often forcible) population movement, as a major part of the colonial experience. In (then) Burma too, subsistence economies were exposed to capitalist markets and large-scale plantation agriculture in the nineteenth and early twentieth centuries, with major consequences for the demographics of previously isolated areas. However, the scale of forcible displacement in Karen (and other areas) in Burma since independence - which has driven countless thousands of families from their traditional territories - has been out of all proportion to any traditional or market-driven patterns of migration.

A Karen community worker and activist stated that:

*One important aspect of customary land practices is ‘spirituality’ or animistic belief. I have learnt from the Karen elders that because of this thing they can’t decide the price of - or place a monetary value on - their lands so they don’t sell them.*<sup>108</sup>

According to Karen customary land practices, all land ultimately belongs to the village. Many households traditionally dwell on the same land as their ancestors. Generally, the Karen do not sell or transfer inherited land, except for those who sell part of their land from larger plantations. When someone wants to move to another village, they seek permission to occupy and cultivate unused land from a village headman. Those who are considered landless receive small parcels of land from the traditional village administration.

Traditionally, some Karen villages classify different areas of the forest as rotational farms, irrigated farms, orchard farms, communal forest, grazing land, and sacred forest.<sup>109</sup> Usually, upland households use rotational agricultural techniques in order to maximise the output of small and sloping plots of land. Those who derive an income or surplus from their land do so by selling fruit products, such as coconuts, durian, jackfruit, mangos, limes and betel nuts. Because Karen villagers do not customarily sell or transfer their land - and such legal processes would be essentially impossible, in the contexts of armed and state-society conflict described in this report - households are prone to abandon their homes entirely when they flee.

However, Karen and other ‘tribal’ practices do allow land to be inherited by - and divided among - children, and be privately owned (usually by men). ‘Traditional authorities’, however, rarely issue ownership documents.<sup>110</sup>

In some areas, the KNU and other armed opposition groups and militias issue land title deeds to villagers. These unofficial documents can help to secure ownership rights for people in armed conflict-affected areas. Often however, the primary motivation is to extract tax (in cash or kind) for hard-pressed rural populations.

107 Yves Goudineau, *Resettlement and Social Characteristics of New Villages: Basic Needs for Resettled Communities in Lao PDR: An Ostrom Survey* (1997), p. 9.

108 Field Notes (18 March 2006).

109 BBC (2003), p. 32.

110 Nationalities Youth Forum (NYF), *Our Land and Natural Resources in Burma: Ethnic Youth Perspectives* (2005), p.15

The Mon system of land regulation is somewhat more codified. Mon villagers, living mostly in lowland areas, inherit 'legacy land' from their family. Parents divide their land, and distribute it among their children. Mon households also cultivate many of the same crops as do the Karen, in addition to cultivating rubber and irrigated low-lying paddy fields. As population pressures increase, land scarcity also increases. As a result, many Mon villagers abandon traditional agricultural work, to toil as day labourers. Some sell their legacy land to neighbours and outsiders, to flee increasing military and economic pressures.

A Mon source adds that:

*The Mon people extend their farming by taking wild lands or forest lands along with the population growth in dual administrative areas (jointly controlled by central government and New Mon State Party), and they always registered with the NMSP local authorities (Forest and Agriculture Department). In wholly NMSP controlled areas, they all register their lands to NMSP authorities.*

*During SPDC's land confiscation during 2000-2004 in Ye Township, the SPDC authorities said that most lands that confiscated by them had no 'land registration' in the government office. But these lands are 'legacy lands' for 50-100 years belonged to Mon people.<sup>111</sup>*

#### **5.4.1 Official status of customary land ownership**

The lack of adequate land tenure laws, and of a practicable land use policy, has resulted in landlessness and land degradation across rural Burma. According to the TBBC and partner groups, "legal insecurity is highlighted by findings that less than a quarter of the conflict-affected population own legal title deeds for land tenure while just 12 percent of civilians hiding from Burma Army patrols possess an identity card" (without which it is impossible to gain legal title).

According to Aung Than Tun:

*Under the Burma Laws Act 1898, any questions regarding succession, inheritance, marriage are decided by Myanmar Customary Law where the parties involved are Myanmar Buddhists, according to Muhammadan Law in the case of Mohammedans, and by the Hindu Law in case of Hindus.<sup>112</sup>*

There is no right for a Myanmar Buddhist to transfer his/her property by means of a will: "the right to make a will can only be conferred on a person by the legislature."<sup>113</sup> The status of women in Myanmar society is reflected in the *Myanmar Customary Law* and *Dhammasats* relating to marriage, divorce and inheritance. On the death of her husband, the wife inherits a 'major share' of the family estate. However, in the case of a polygamous marriage, the major inheritance of property goes to the first wife and her children then smaller amounts are successively apportioned to the other wives and children.<sup>114</sup>

111 Field Notes (14 March 2006)

112 Aung Than Tun, (2001), p.125

113 Ibid. p.126

114 Myint Zan, 'Of consummation, matrimonial promises, fault, and parallel wives: The role of original texts, interpretation, ideology and policy in pre- and post- 1962 Burmese case law', *Columbia Journal of Asian Law*, (Vol. 14, No. 1, 2000): pp. 53-212.

For the peripheral areas, where land settlement and recording of land has not been undertaken, customary land ownership is permitted under the supervision and oversight of the local administrative authority - with the consent of the traditional leaders of the ethnic, indigenous community - but mandated by the central government and administration. Practice varies depending on the individuals and group social norms and customs involved.

## 5.5 The *Community Forestry Instructions* (CFI)

The 1992 *SLORC Forest Law* provided opportunities for increased private participation in the timber trade. It also highlighted conservation approaches, and prepared the way for the Ministry of Forestry to implement the 1995 *Community Forestry Instructions* (CFI). These are among the most significant pieces of HLP legislation the military Government has promulgated since 1988.

The CFIs provide community forest users with an official mechanism for representing their local interests through official channels. Over the past decade, tens of thousand of acres of community forest have been registered with the Government, in many cases protecting these resources from otherwise unsustainable exploitation. However, there is some danger that the CFI process may be ‘hijacked’ by powerful vested interests (for example, through the granting of leases to ‘crony’ business groups); also, the CFIs may allow state institutions to gain control over local resources. Only a few such cases have been reported. The CFIs therefore present an interesting dilemma to opposition and pro-democracy forces: whether to reject these regulations, because they emanate from the military Government, or whether to engage with official community forestry initiatives, and leverage these in order to empower local communities and CBOs, and protect Burma’s dwindling natural resource base.

The procedure for registering community forest under the CFI involves the formation of a community Forest User Group (FUG). The FUG must prepare a thorough Forest Management Plan, and then apply for registration to the Land Records Department, and the Forestry Department (or Forest Estate, for reserve forest areas), at the Township, District and National levels. If the application is successful, the FUG receives 30-year tenure (renewable for 15 years at a time).

Since 1995, at least 100 000 acres of community forest have been registered (including *circa* 6 000 acres in the Dry Zone and 30 000 in Shan State). In several cases, national NGOs and international organisations (including UNDP) and Burmese NGOs have assisted CBOs in the process (see Section 8). Well-informed sources claim that, in a number of instances, the registration of strategic plots of community forest has protected large swathes of woodland from being targeted for logging by powerful (military-aligned) interests.<sup>115</sup>





Villagers flee across swidden [slash and burn] rice fields

# 6

## Causes and types of HLP Violations

This section examines the causes and types of Housing, Land and Property (HLP) rights violations in Burma today, with a particular focus on the situation in ethnic nationality populated areas. Individual and communities' responses vary according to their situation. Section 7 addresses these different coping strategies.

The most pressing HLP issues relate to the militarisation of the State, and the Burma Army's and its proxies' forcible relocation of civilian populations and confiscation of their land, often in the context of brutal counter-insurgency campaigns. Further HLP violations occur as a result of:

- forced labour
- inappropriate infrastructure development and taxation policies
- widespread and unsustainable natural resource extraction
- 'environmental protection' policies, and
- in the context of opium eradication.

Chronic poverty and widespread misgovernance are also drivers of forced migration, especially from remote areas.

The following overview is organised according to the typology of forced migration introduced in Section 3.<sup>116</sup>

<sup>116</sup> Some of the material in Section 6 is derived from Ashley South (Independent Study, Commissioned by the Office of the UN Resident Coordinator in Myanmar, June 2006).

- Type 1: Armed Conflict-Induced Displacement
- Type 2: Military Occupation, and ‘Development’- induced (State-Society Conflict-induced) Displacement
- Type 3: Livelihoods Vulnerability-induced Displacement.

## 6.1 ‘Type 1’ Forced Migration: HLP violations as a result of armed conflict

### 6.1.1 The ‘Four Cuts’ *Pya Ley Pya*

The most acute vulnerabilities, and subsequent needs for assistance and protection, are prevalent among Type 1 IDPs, and other victims of armed conflict in Burma. Displacement as a direct result of armed conflict occurs in the context of the *Tatmadaw*’s ‘Four Cuts’ counter-insurgency policy (*Pya Ley Pya* in Burmese). This strategy, initiated by General Ne Win in the mid-1960s, had by the end of the decade, proved successful in military campaigns against the powerful Communist Party of Burma (CPB) in the north, and the Karen insurgents in the Irrawaddy Delta. The ‘Four Cuts’ was introduced to Karen State in a systematic manner in 1974, and was further stepped-up in the mid-1980s.

The ‘Four Cuts’ are designed to undermine the rebels’ supply of recruits, and to cut off their access to intelligence, food and finances (the undeclared fifth cut is said to be the insurgents’ decapitation). The strategy borrows elements from the US military ‘strategic hamlets’ programme in Vietnam, from British practice in the Boer War and in 1960s Malaya, and from the pacification of upper Burma following the Third Anglo-Burmese War of 1885. It aims to turn ‘black’ (rebel-held) into ‘brown’ (contested, ‘free-fire’ zones of on-going armed conflict) into ‘white’ (securely Government-controlled) areas. The idea is - as a Burmese proverb puts it - ‘to drain the sea, in order to kill the fish’.

### 6.1.2 Mechanics of ‘The Four Cuts’

The relocation process usually begins with a *Tatmadaw* column issuing a relocation order. In the past, this was likely to have been a written document, constituting evidence of state-sanctioned abuse. However, relocations orders are today more likely to be issued verbally, often at a meeting of village headmen. Villagers are usually given between zero and seven days warning to leave their homes. Sometimes they are told to move to a designated relocation site, but sometimes villagers are not told where to go – just to vacate their homes.

In such cases, people are ejected from their homes and land, but are not necessarily obliged to relocate in a specific area. It can be argued that these are the more profound violations, because the State and its agencies refuse to acknowledge any kind of duty towards its citizens even the – minimal one of creating relocation sites. To the Government and to most humanitarian actors, people who are simply ordered to leave become invisible.

Once an area is declared a ‘free-fire zone’, houses, animals and crops are looted and destroyed, and villagers may be raped, shot *etc*. It is claimed that in some cases, the *Tatmadaw* purposefully launches offensives just prior to the harvest, in order to steal villagers’ crops.<sup>117</sup> This is an

117 Field Notes (28 March 2005): examples from Loikaw Township in Karenni (Sept. 2004) and Shwe Gyin Township in Karen State (late 2004).

effective military strategy: it depopulates ethnic-nationality populated homelands, and denies insurgents a civilian support base.

*Tatmadaw* columns often return repeatedly to cleared areas, to ensure that they are not re-settled: many villages are ‘serially displaced’. *Tatmadaw* columns often search for and destroy IDPs’ temporary settlements, rice fields and storage barns in the jungle. Displaced villagers ‘in hiding’ are targeted and subjected to human rights abuses (including extra-judicial killing) on suspicion of being rebel supporters.

### 6.1.3 Western Burma

In general, the situation in western Burma is much less well-reported, and levels of aid and advocacy are lower, compared to Thailand border areas.

#### Arakan State

In addition to several hundred thousand repatriated and/or displaced *Rohingya*, local sources estimate that there are approximately 80 000 IDPs in hiding or living in temporary settlements in the jungles and mountainous areas of Arakan (Rakhine) State.<sup>118</sup> Low-level armed conflict continues between the Arakan Liberation Army (ALA) and *Tatmadaw*, with associated human rights abuses (including rape and murder).<sup>119</sup> IDPs in Arakan have insufficient food and clothing, no schooling, and almost no international contact or support. A particularly worrying aspect of the situation in Rakhine is the construction of dozens of new villages in border areas that have been populated with migrants from elsewhere in Burma.

#### Chin State

The Chin National Front (CNF) armed ethnic group estimates that, since 1988, 40 000-50 000 people have been displaced by armed conflict in Chin State, many of whom have since fled to Mizoram State, India. There are small numbers of Type 1 IDPs in thinly populated Paletwa Township in Southern Chin State, near the borders with India and Bangladesh, where Rakhaing and Chin armed groups are active.<sup>120</sup>

#### Sagaing Division

Naga ethnic insurgents continue to operate on both sides of the Burma-India border. Since 2003 (and despite the 1997 and 2001 ceasefire agreements between the Indian government and the main Naga factions) increased counter-insurgent co-operation between the Burma and India armies has displaced unknown numbers of combatants and civilians.

### 6.1.4 Eastern Burma

Data on the number and situation of IDPs in eastern Burma is drawn from the 2007 TBBC report on Internal Displacement in Eastern Burma, and from confidential information provided by community groups working ‘inside’ Burma (see Section 7).

118 *Narinjara News* (7 Nov. 2002).

119 Free Burma Rangers, *Arakan State IDP Summary* (March 2005).

120 Field Notes (18 Sept. 2006).

#### 6.1.4.1 Karen State

In late 2007 there were about 116 900 IDPs in Karen State. Of these, 51 600 were 'in hiding' in the jungle, 9 700 were in government and DKBA-controlled relocation sites, and 55 600 in ceasefire areas. Another 30 900 mostly Karen IDPs were located in neighbouring Pegu Division, with 61 000 in Tenasserim Division (of whom 51 000 were living in Government-controlled relocation sites).

In 2007, the provisional KNU-SPDC was still holding in parts of southern and central Karen State, and in Tenasserim Division. However, since late 2005, the *Tatmadaw* has launched attacks against KNU positions and civilian villages in northern Karen State (where insurgent commanders have always opposed the ceasefire). Between January 2006 and August 2007, some 30 000 people were displaced in a sustained *Tatmadaw* campaign against villages in Toungoo and northern Nyaunglebin Districts, and parts of Papun District (KNLA Second, Third and Fifth Brigades). In addition, several dozen villages received orders from the *Tatmadaw* to relocate to new settlements in Government-controlled areas.<sup>121</sup>

Of 36 Karen informants interviewed for Human Rights Watch in 2003-04<sup>122</sup>, the great majority had fled their homes as a direct result of the *Tatmadaw's* 'Four Cuts' strategy - because of fighting, or severe human rights abuses directly related to armed conflict. Five of these IDPs had been forcibly displaced more than 100 times, sometimes dating back to the 1940s (one old woman first fled to the jungle during WWII, when Japanese soldiers came to her village). The great majority of migration episodes were undertaken as a direct result of fighting, because of severe human rights abuse (including forced labour), or because armed conflict had directly undermined sustainable forms of agriculture. These people were displaced by actions carried out by soldiers from the *Tatmadaw* or DKBA, including exposure to direct fighting, rape, torture and murder. Many people had their houses burnt down; often they were afraid to return because of landmines planted near villages and fields.

All the informants reported that there was often fighting in or near the villages they fled - mostly between the KNLA and *Tatmadaw*; sometimes between the KNLA and DKBA. Villagers fled when they heard that the *Tatmadaw* ("the enemy") had arrived near their villages. Such evacuations were usually organised by KNLA troops. As most informants had good reason to fear the *Tatmadaw*, they considered this a protection service, allowing them to escape in advance of army patrols.

#### 6.1.4.2 Mon State

In mid/late 2007 there were some 49 400 IDPs in Mon State. The great majority of these people were living in the relative security of the NMSP-controlled ceasefire zones.

Before the NMSP-SLORC ceasefire, under the *Tatmadaw's* 'Four Cuts' policy, forced relocation was common in many areas. Since 1996, brutal counter-insurgency campaigns have been re-introduced by the *Tatmadaw*, in areas where fighting has broken out again - most severely and recently (since late 2001), in Ye and northern Yebyu Townships.

121 Free Burma Rangers (9 August 2007): *Burma Army Kills 5 Villagers and Forces 223 More Into Hiding*.

122 See Human Rights Watch (2005).

In 1994, there were three *Tatmadaw* battalions based or operational in Ye Township; ten years later there were between 11 and 14. In 1999, the *Tatmadaw* forcibly relocated nine villages (seven Karen and two Mon) in eastern Ye Township.<sup>123</sup>

Such continuing rebel and counter-insurgency activity in southern Mon State has caused thousands of villagers to move to the Mon ceasefire zones and refugee resettlement sites, seeking the limited protection offered by the NMSP, and access to humanitarian aid provided by Thailand-based INGOs.

In mid-2004, Mon sources estimated that there were 31 100 IDPs in Mon State, of whom 16 500 (mainly in Ye Township) had been displaced over the past two years. There are reportedly 2 300 IDPs in 'free-fire zones' in Mon State, 25 000 in the NMSP-controlled ceasefire area, and 3 800 in 16 relocation sites (eleven in Bilin Township - where there are significant Karen populations - and five in Ye Township).<sup>124</sup> These figures do not include the repatriated Mon refugees.

Although, since 1995, only a few Mon villages have been destroyed, or relocated en masse, many are reportedly only semi-occupied, with up to half the population having fled to the jungle, or beyond, to Thailand.<sup>125</sup> 'Ironically', even those parts of Mon State where the ceasefire has held have experienced an increase in militarisation since the truce. (Similar patterns have characterised post-ceasefire in Kachin State: see Subsection 6.2.1.3).

## 6.1.5 Northern Burma

### 6.1.5.1 Kachin State

Before the 1994 KIO-SLORC ceasefire, forced relocation was common in many areas. 'Four Cuts' campaigns were initiated by the *Tatmadaw* in Kachin State soon after the KIO went underground in 1962.

According to a senior KIO source, only urban dwellers in Kachin State have not experienced forced displacement at some time since the 1960s.<sup>126</sup> Another KIO source estimated that, at the time of the ceasefire, one third of the Kachin civilian population was internally displaced.<sup>127</sup> Based on various sources, the number of Kachin IDPs at the time of the ceasefire has been estimated by BERG at 67 000 people (with about 100 000 having been displaced since the 1960s).<sup>128</sup>

One elderly informant interviewed in Myitkyina stated that Kakao, his village (in the Habein area), had been forcibly relocated by the *Tatmadaw* in the early 1960s. In 1965, outlying villages and hamlets were forced to move into the centre of 'new Kakao', and a few months later (in November 1965) he moved his family to the Kachin State capital (similar patterns

123 Field Notes (24 Nov. 2002).

124 TBBC, *Reclaiming the Right to Rice* (2004), p. 2, p. 35 & p. 64.

125 Ibid. p. 16, and Field Notes (24 Nov. 2002).

126 Field Notes (11 Nov. 2003).

127 Field Notes (24 August 2003).

128 BERG (Sept. 2002).

of forced relocation are still reported in armed conflict-affected parts of eastern Burma: see Sections 6 and 7). This man had two main reasons for moving: because of the worsening security situation in the countryside (including fall-out from armed conflict between different Kachin factions), and because rats had eaten his crops, and Myitkyina offered more prospects for securing a livelihood.<sup>129</sup> Over the past 40 years, such patterns of relocation have been repeated countless times.

The ‘Four Cuts’ counter-insurgency policy in Kachin State was especially harsh in the late 1980s and early 1990s. However, only limited data is available on pre-ceasefire civilian displacement - in part, because of the very low levels of international advocacy or assistance to Kachin IDPs or refugees (in China or India). Exceptions include a couple of Burmese activist and local NGO and church networks.

According to data published by the KIO on the eve of the ceasefire, between 1961 and 1993, the *Tatmadaw* destroyed 658 villages in five districts of Kachin State because:

*It is part of the Burma Army policy to destroy and relocate villages into their controlled areas...*

*Because the villagers would not voluntarily relocate to different specified areas...*

*Many of the villagers had already left on their own initiative due to the arrest and torture of the local leadership ...*

*These villages contain human and natural resources desired by the Burma Army...*

*In order to prevent local resources and live-stocks from being utilized by the villagers [and presumably the KIO] themselves.<sup>130</sup>*

During April 1991 alone, the *Tatmadaw*’s operations ‘Scupper’ and ‘One Hundred Outposts’ saw at least 28 villages reportedly forcibly relocated to 11 relocation sites in Kachin State (mostly existing town and villages, including several in and around Myitkyina). Another KIO document lists 324 villages in Kuktai District (a Kachin-populated area of northern Shan State) destroyed and/ or forcibly relocated in 1991.<sup>131</sup>

### 6.1.6 Landmine pollution

According to the International Campaign to Ban Landmines and to Non-violence International, landmines contaminate nine of the fourteen states and divisions in Burma, among which Karen and Karenni States are most severely affected.

The past two years have seen:

*a substantial increase in landmine use ... during which both government forces and the KNLA laid mines extensively... in eastern Pegu Division, along the Downa Range, close to the Moei*

129 Field Notes (25 May 2005)

130 KIO (Representative Office of Kachin Affairs), *Report on Villages in Kachin State Destroyed by the Burma Army* (Bangkok, August 1993) [parenthesis added].

131 KIO/ KIA News and Information, *Burma Update, Sino-Burma Border Situation* (20 March 1991), and *Civilian Situation Report* (25 May 1991). There were reportedly 46 *Tatmadaw* battalions in Kachin State in mid-1991.

*river, southwest and north of Myawaddy, in Duplya District, on the hillside around the Lapida Hydroelectric site in Karenni State, as well as ... in central Karenni State... Mines have been laid along the entire land border with Bangladesh...*

*Although most of the casualties of landmines are combatants (up to 95 percent), civilians have been involved in human mine sweeping ('atrocities de-mining'). One community leader [from Papun] detailed how civilians were forced to drag tree trunks ahead of the Burmese soldiers to detonate landmines."<sup>132</sup>*

*[Furthermore,] "no systematic marking of mined areas is done within Burma. In some cases, mine victims witnessed some indicators, such as a dead body, cross-cut in a tree, parts of mines and wires, or vague warnings... Mines are laid close to areas of civilian activity by the Burmese Army, allegedly to prevent people from returning to their native villages after a forced eviction during counterinsurgency campaigns. Interview records with mine survivors show more than 14 percent are injured within half a kilometer from the center of a village. The same records reveal 63 percent of civilian survivors had been to the area often before they stepped on mines. An NGO worker who visited villages in Hpa-an district with public health officials stated that there were mined areas pointed out to him within a 5 minute walk of all villages visited."<sup>133</sup>*

Informants claim that armed groups (including the KNU) often lay landmines "to protect IDPs from the *Tatmadaw*." There is some evidence of insurgent troops warning villagers of the existence of landmines, and even removing these from the ground, when the immediate danger has passed.<sup>134</sup> However, in many areas, civilians are unaware of the location of landmines. The TBBC and partner groups report that 86 percent of villagers surveyed in 2005 "were not aware of any signs on location warning about minefields, indicating that there is no systematic demarcation of minefields in eastern Burma."<sup>135</sup>

The KNLA reportedly uses landmines for military purposes only. These generally decay and become inactive after one rainy season. In contrast, the *Tatmadaw* is accused of targeting its landmines (which are factory made, and last for years) at the civilian population.<sup>136</sup> Burma is not one of the 149 signatories to the 1997 Mine Ban Treaty. The International Committee of the Red Cross (ICRC) reports that as civilians have returned to their previous settlements, (or established new ones), more land has been opened for agricultural use, leading "to an increase in the number of injuries caused by mines and other explosive remnants of war."<sup>137</sup> This worrying development has important implications for future refugee/IDP repatriation and rehabilitation activities.

132 Landmine Monitor, *Landmine Monitor Report 2003: Toward a Mine-Free World* (9 Sept. 2003).

133 Non-Violence International (NVI), Committee to Coordinate Services to Displaced People in Thailand (CCSDPT) 'Food For Thought' series, *Landmines and Returnees* (Paper 13, Oct. 2004).

134 Field Notes (26 July 2005).

135 TBBC (2005), Executive Summary.

136 *CIDKP News* (July-August 2005).

137 ICRC *Annual Report* (2004), p. 154.

## 6.2 'Type 2' Forced migration- militarisation and land confiscation

In post-armed and state-society conflict scenarios, the main causes of displacement and other HLP rights violations relate to the expansion of armed forces, patterns of militarisation and associated misgovernance. Of particular concern is the widespread confiscation of land and other property by armed groups.

### 6.2.1 Central Burma

According to local people quoted by *The Irrawaddy*, since the 1970s senior government and military officials have illegally appropriated about 6 000 acres of farmland in Pegu (Bago) Division and have often sold on the land.<sup>138</sup> *Mizzima News* reports that in early 2007, the police authorities confiscated over 4 000 acres of farmland in Pegu Division, for 're-distribution' to villagers.<sup>139</sup>

Meanwhile, the *Tatmadaw*, to make way for the Pyntha dam project, has reportedly forcibly relocated several villages in Gangaw Township, Magwe Division. In the process, it has confiscated more than 3 500 acres of private land.<sup>140</sup>

In March 2007, the noted human rights activist and lawyer, Aye Myint told *The Irrawaddy* that:

*I have more than 600 cases on my hands - most of which are land confiscations by authorities... Farmers face takeover of their lands and paddy fields - in some cases cattle and buffaloes were confiscated" (especially in Rangoon, Pegu and Irrawaddy divisions). The military, and businessmen with links to the authorities, were mainly responsible for the land confiscations.*<sup>141</sup>

Housing is also confiscated on an individual basis, as punishment for those opposing military rule in Burma. For example, in August 2007 the Chin politician (and MP-elect) Cin Sian Thang received an order to demolish his house, by Kale Township Municipal Corporation in Sagaing Division, who supposedly wanted to widen the road outside his property (but not outside any one else's house in the street).

#### 6.2.1.1 Karen State

According to the Karen Human Rights Group, since the December 2003 'gentleman's agreement':

*The SPDC has ... used the ceasefire as an opportunity to resupply its troops and to improve its road network without having to fear ambushes from the KNLA. Local villagers have been conscripted to provide much of the labour needed to do this. SPDC military units have also*

<sup>138</sup> *The Irrawaddy* (27 March 2007).

<sup>139</sup> *Mizzima News* (13 June 2007).

<sup>140</sup> Democratic Voice of Burma (20 Feb. 2007).

<sup>141</sup> "Aye Myint was sentenced to death on a charge of treason for communicating with the International Labour Organisation. He received a 7-year sentence for allegedly 'spreading false information' by representing farmers whose land had been confiscated. Following the ILO's appeal for his release, he was freed in July last year after serving one year in Pegu Prison" *The Irrawaddy* (16 March 2007).



*continued to demand building materials, food and money from the villagers. Villages have been ordered relocated and villagers have been summarily executed by SPDC columns.<sup>142</sup>*

Information from the Committee for Internally Displaced Karen People (CIDKP) confirms these patterns:

*On 20/6/05 SPDC troop from LIB 351 ordered to the villagers in Tet Tu village to relocated to Kler Kho. The villagers would not like to go to relocation site. They were requested to the SPDC troop for continue to stay in their own village. As they were requested the SPDC troop from LIB 351 fined 10 000 Kyat per houses above (94) household in Tet Tu village.*

*After that, on 5/7/05 the military operation commander Khin Soe instruct all the villagers need to moved to the relocation site. No body could not stay in their village. So the villagers in the Tet Tu village were suffered two steps.*

*On 11/7/ 05 SPDC military operation commander Khin Soe instruct all the villagers in Pa Ta Lar village tract need to relocated on the car road between Kyaukyi-Shwekyin. The villagers would not like to moved and they were propose to the military operation commander Khin Soe to free from forced relocation. As they were propose, military operation commander Khin Soe fined 150 000 Kyat from the villagers and then the villagers can stay in their own village.<sup>143</sup>*

Among the largest of the new relocation sites in northern Karen State is that at Taik Htoo, located six miles southwest of Kyauk Gyi town, in Pegu Division. Since April 2006, Karen villagers have been forcibly relocated to Taik Htoo from 12 villages in KNU-influenced areas to the west. This major relocation site is reportedly being linked to the nationwide road system, and being supplied with school and Government buildings - perhaps indicating that Taik Htoo is intended to be a 'model town' for the area.<sup>144</sup>

In 1997, two ex-KNU ceasefire militias - the Thandaung Special Region Group (ex-KNLA Second Brigade<sup>145</sup>) and the Karen Peace Force (ex-KNLA Sixth Brigade, 16 Battalion<sup>146</sup>) - were presented with local villagers' land upon completion of their agreements with the military Government.<sup>147</sup> KPF commanders also received confiscated land in their home villages in Irrawaddy Delta and near Moulmein.<sup>148</sup> Reportedly, these ceasefire groups have not been interested in cultivating the land in a sustainable manner, but have sold-off (the villagers') crops, and let many fields go to waste. These examples illustrate a common pattern: that ex-combatants (insurgents or state) are mostly familiar with predatory relationships with the land and population, which they continue to practice following the end of open hostilities.

142 KHRG, *Papun and Nyaunglebin Districts: Continued Oppression During the Ceasefire* (9 Sept. 2004).

143 *Information for Kyaukyi*, CIDKP Update (27 August 2005).

144 Field Notes (9 Feb. & 15 June 2006).

145 The Thandaung Special Region Group, under the command of Saw Farrey Moe, controls about 20 villages in the far north of Karen State (northeast of Toungoo).

146 The KPF, under Saw Tha Mu Hei, controls territory in the Three Pagodas Pass and Kyaik Done areas of southern Karen State, and near Moulmein, in Mon State.

147 Field Notes (28 March 2005).

148 Field Notes (6 May 2005).

The DKBA has also been involved in land confiscation. For example, in 2006 the DKBA confiscated as much as 1 000 acres of farmland in eastern Mon State and southern Karen State.<sup>149</sup> In July 2007, the DKBA forcibly relocated about 100 families in Kawkareik Township, accused of supporting the KNU. According to *The Irrawaddy*:

*The DKBA reportedly said villagers have three days to relocate before their homes will be burned down. Villagers who stay in the area could be shot, sources said... According to a KNLA official, the relocation of villages is related to the construction of a new road by the Burmese regime from Thingannyinaung to Kawkareik.*<sup>150</sup>

Another Karen splinter group, Htein Maung's KNU/KNLA Peace Council (KNU/KNLA PC) - which split from the KNLA Seventh Brigade in January 2007 - has also benefited from land confiscation. According to Mon sources, the Government confiscated land, and extorted K 5 000 from villagers in Kawkareik Township, in order to launch local development projects and build houses, to reward Htein Maung and colleagues for 'returning to the legal fold'.<sup>151</sup>

#### 6.2.1.2 Mon State

In Mon State, similar conditions exist. The *Tatmadaw* confiscate land to build new bases, especially in Ye and Yebyu Townships (where armed conflict continues), and also in areas previously contested with the NMSP. Land is also confiscated to grow rice *etc.* for new and existing *Tatmadaw* garrisons, and some stolen land is subsequently sold-on by individual *Tatmadaw* officers to investor-speculators.

In October 2003 the Human Rights Foundation of Monland (HURFOM) published *No Land to Farm*<sup>152</sup>, a report which documents the confiscation of at least 7780 acres of farmland (paddy field, and rubber and other plantations) from Mon farmers, between 1998 and 2002. Some affected households retain limited access to their lands, and have been able to harvest crops for up to a further three years – usually on payment of a 'fee' to local *Tatmadaw* officers. In many cases, farmers have subsequently been forced to work on the confiscated lands, building barracks *etc.* for the *Tatmadaw* (c.f. the situation in Bhamo and other parts of Kachin State, see Subsection 6.2.1.3). The problem is felt particularly acutely in areas previously contested between the NMSP and *Tatmadaw*, from which the MNLA pulled out following the 1995 ceasefire agreement, and which also meant the withdrawal of a minimal level of protection to villagers. This allowed the *Tatmadaw* to access areas it could previously only enter at risk of attack, such as the Yadana Gas Pipeline corridor in Tenasserim Division (see Subsection 6.6.1); areas west of the Ye-Tavoy car road and northern Ye Township in Mon State; and parts of neighbouring Karen State.<sup>153</sup>

In 2001, land misappropriation escalated in scale after the *Tatmadaw* Military Operation Management Command No. 19 was established in Ye Township, to coordinate operations against the HRP/MNDA. The main offending units are reported to be the nine Light Infantry Battalions (LIB) numbers 583-591.

149 IMNA (17 August 2006).

150 *The Irrawaddy* (10 July 2007).

151 IMNA (24 May 2007).

152 Human Rights Foundation of Monland (HURFOM), *No Land to Farm: A Comprehensive Report on Land, Real Estate and Properties Confiscation in Mon's Area, Burma (1998-2003)* (Oct. 2003); source for Map 4.

153 Each Battalion reportedly confiscated 200-300 acres of land. *The Mon Forum* (Nov. 2004).

Land confiscation has resulted in increased unemployment among day-labourers in affected areas. *No Land to Farm* estimates that, between 1998 and 2002, over 1 000 farmer families lost their land, and over 2 500 labourers lost their main source of income.<sup>154</sup>

The HURFOM has identified five main reasons for the land confiscation:

1. To provide bases for newly deployed *Tatmadaw* units.
2. To provide rice for soldiers, and livelihoods for troops' families (and thereby reduce desertion rates).
3. To implement the state's assimilation policies: "the Burmese Army bases in the areas will use their influences to use the Burmese language as the main language in all schools... According to [previous] experience in Mon State and other ethnic regions, after the Burmese Army deployed their troops, within 10-15 years the proportion of the population speaking the Burmese language has increased."<sup>155</sup>
4. [Related point:] to lay the basis for a Burman-oriented, pro-military electorate in traditionally autonomy-seeking, minority-populated areas.
5. [Related point:] Population transfer: the state-organised in-migration of Burman families from lower Burma.

According to the HURFOM:

*The SPDC, like the previous racist military regimes, has ... [relocated] Burman people from their native [lands] to the areas crowded with non- Burman ethnic people, in order to convert these ethnic nationalities to Burman ...Furthermore, the regime also resettled their retired and disabled soldiers' families, by providing them land that was confiscated from the local civilians... Most of those soldiers came from various poor areas of central Burma... Burman ethnic soldiers who settle in ethnic areas could also bring their relatives and help them seek jobs and plots of agricultural lands.*

[...]

*Usually the ex-servicemen ... are provided with important positions in every township, town ward, village tract and village level administrative body.*<sup>156</sup>

*No Land to Farm* quotes Col. Cho Htun Sung (Tactical Command No.3) as telling villagers that "the army took the land under the national security act, which means that the army has the right to confiscate the land for national security purpose without any compensation."<sup>157</sup> Anger at the confiscation of Mon farmlands (especially in the Ye-Yebyu area) - and the NMSP's inability to prevent these abuses - was the single most important factor behind the creation of Col. Nai Pan Nyunt's Hongsawatoi Restoration Party (HRP) in September 2001, and also motivated the Mon National Defence Army (MNDA) insurgency.

In June 2004, the Independent Mon News Agency (IMNA) reported that *Tatmadaw* units and the local Village Peace and Development Council were preparing to confiscate a further 800 acres of farmland in southern Mudon and Thanbyuzayat Townships:

154 HURFOM (2003), p. 30.

155 Ibid. p. 23 [parenthesis added]. As in other parts of Burma (e.g. Shan State), *Tatmadaw* commanders reportedly encourage their men to marry local women.

156 Ibid. p. 24 [parenthesis added].

157 Ibid. pp. 26-27.

*The army officers told [villagers] that [they] do not have to fight ethnic rebels because KNU agrees to stop fighting. When there is no fighting, there is no job for the soldiers and that would be the main reason they need the lands.*<sup>158</sup>

In some cases, the NMSP and monks associated with the Mon Farmer's Associations have been able to intervene with the state authorities, and achieve some limited compensation for victims. On 22 August 2003, senior NMSP leaders met with General Khin Nyunt, and demanded compensation for lands. However, the limited amounts of compensation distributed have been paid at well below the value of the stolen land. For example, farmers in southern Ye Township received between K 2 000-3 000 from Light Infantry Battalions 61 and 299, for plantations worth an estimated K 200 000-500 000.<sup>159</sup>

Meanwhile, the confiscation of Mon lands continues. According to the IMNA, in July 2004:

*Ye Township Peace and Development Council forcibly moved 300 houses in Du-yar village in northern Ye township, in order to a build police station and hospital... They also confiscated eight acres of orchid plantation and ten acres of paddy-farms land.... [The] Maternal and Child Welfare Association (MCWA) is collecting money in the village 1000 Kyat per household, to [pay for] the police station and hospital.*<sup>160</sup>

Mon field workers have documented similar cases in Thanbyuzayat Township, where in mid-2004, 490 acres of rubber plantation were confiscated and distributed it to *Tatmadaw* officers and their families.<sup>161</sup> Likewise, in October 2004 plantation land was confiscated in the Three Pagodas Pass area, to build a new *Tatmadaw* base.<sup>162</sup>

The amount of new land confiscated by the *Tatmadaw* in Mon State in 2004 was reportedly over 3 300 acres: in Mudon, Thanbyuzayat (2 000 acres) and Ye Townships. This makes a at least 11 000 acres (4 450 ha) of farmland confiscated by the *Tatmadaw* since 1998, mostly in order to build new garrisons in previously contested areas. Compounding their anguish, farmers have sometimes been forced to work on their own confiscated land, building barracks and farming on behalf of the army.<sup>163</sup> Of particular concern has been land confiscation in the context of the upgrading of Khaw Za village in Ye Township, to become a new government sub-township, and thus extend state control over an armed conflict-affected area. In the course of building a new police station, government offices, a hospital and roads - as well as a base for the newly deployed *Tatmadaw* battalion – the State has reportedly confiscated villagers' farm and plantation land, without paying any compensation.<sup>164</sup>

Land confiscations in Mon State continued through 2005-07. The situation has been especially bad around Thanbyuzayat, and in Ye Township, where in early 2005, the authorities confiscated about six hundred gardens and plantations belonging to Day Halaé villagers.<sup>165</sup> Later in the year, authorities seized and cut down plantations to make way for housing for *Tatmadaw* families,

158 Independent Mon News Agency (IMNA) (4 June 2004).

159 HURFOM (Oct. 2003), pp. 26-27, IMNA (2 Nov. 2003), and Field Notes (29 Sept. 2003 & 27 August 2004).

160 IMNA (27 July 2004).

161 IMNA (14 Sept. 2004) and Kao Wao (2 Nov. 2004).

162 IMNA (7 Oct. 2004).

163 *The Mon Forum* (Nov. 2004) and IMNA (5 Jan. 2005), corroborated by interviews with affected villagers: Field Notes (23/27 Feb. 2005).

164 *The Mon Forum* (Dec. 2004).

165 Kao Wao (11 March 2005); see also *The Mon Forum* (June 2005).

at the new sub-township of Khaw-Za, in southern Mon State.<sup>166</sup> In October, some 200 acres of plantation land was confiscated, for the construction of new barracks, in eastern Ye Township – on which villagers were forced to work, unless they paid the authorities K 1 000 daily.<sup>167</sup>

In 2007, more land confiscation was reported in Thanbyuzayat Township and elsewhere. This included both farmland<sup>168</sup> and land to construct houses near *Tatmadaw* bases.<sup>169</sup>

Often, farmers are forced to pay *Tatmadaw* units cash - or produce in-kind - in order to continue farming their land, after it has been confiscated. Kao Wao reports such cases from Ye Township in late 2006, where Light Infantry Battalion No. 586 demanded money from farmers who wanted to harvest rubber in what were previously their own farms.<sup>170</sup>

There are also credible reports from Mon State of confiscated farmland being sold back to its original owners. For example, in October 2005, 36 plantations taken over by *Tatmadaw* IB 206 in 2001 were auctioned-off. In such cases, the purpose of land confiscation is criminal extortion.<sup>171</sup> In early 2006, in Wekali village, Thanbyuzayat Township, the authorities reportedly seized rubber plantations, before selling them off to the highest bidder.<sup>172</sup> Similar reports have emerged from Mudon Township.<sup>173</sup>

Official registration documents are important for landowners, as noted by the HURFOM:

*During SPDC's land confiscation during 2000-2004 in Ye Township, the SPDC authorities said that most lands that confiscated by them had no 'land registration' in the government office. But these lands are 'legacy lands' for 50-100 years belonged to Mon people.*<sup>174</sup>

Research and independent informants in both Mon and Kachin States indicate that, on average, newly established *Tatmadaw* battalions confiscate 300 acres of farmland, displacing 30-40 families. Villagers are generally paid a very small amount (averaging K400 per acre), and forced to sign a document, stating that the transaction was voluntary.<sup>175</sup> The NMSP and KIO have both attempted to advocate with the Government and *Tatmadaw* for greater levels of compensation, but to no avail.<sup>176</sup>

Since 2005, wealthy Mon villagers have been buying-up farmland around Kya-in Seik-Kyi and Waw Rar, in southern Mon State, near the NMSP's Moulmein District ceasefire area. They have mostly purchased fields from marginalised Karen villagers – or their relatives, as many Karen from these areas are IDPs, or refugees in Thailand. Mon businesspeople are more able to gain access to land than the local Karen, because of their relatively more secure status, as a result of the NMSP ceasefire, which allows them to register the land with the Government authorities – something which most Karen villagers are unable or unwilling to do. Therefore, Karen lands are vulnerable to misappropriation - or sale below market rates - as they have no documentation.

166 *The Mon Forum* (December 2005).

167 Ibid.

168 IMNA (28 May 2007).

169 IMNA (5 June 2007).

170 Kao Wao News Group (25 December 2006).

171 IMNA (8 Nov. 2005).

172 IMNA (19 June 2006).

173 IMNA (12 July 2006).

174 Field Notes (14 March 2006).

175 NB - Such documents cannot be considered as binding, legal agreements.

176 Field Notes (9 June 2006).

Such developments are creating problems for any future return of IDPs or refugees, especially in the context of longstanding Mon-Karen tensions in the Duplaya District.<sup>177</sup>

On 2 July 2007, about 100 families from Bayoun-ngae, in Khaw-zar Sub Township were relocated in classic 'Four Cuts' style, in order to undermine support for Mon armed groups operating in the area. These civilians were not compensated, nor were they provided with any place to resettle.<sup>178</sup>

### 6.2.1.3 Kachin State

After the 1994 KIO-SLORC ceasefire, even though the area had not recently been contested between the KIO and government forces, the *Tatmadaw* reportedly confiscated land for several new garrisons near Putao (northern Kachin State). By late 2003, there were reportedly fifty-plus *Tatmadaw* battalions in northern Kachin State alone – three times as many as before the ceasefire.<sup>179</sup> When troops first arrived in these new areas, they were billeted in villagers' houses, without paying for food or accommodation.<sup>180</sup>

Similarly, before the ceasefire, there were four *Tatmadaw* battalions in the four townships around Bhamo (southern Kachin State). By 2004, there were eleven, each of which reportedly confiscated 300-400 acres (120-160 ha) of land. The former landowners have sometimes been forced to farm for the army, or work as day labourers (c.f. similar patterns in Mon State, Subsection 6.2.1.2).<sup>181</sup> Another example of land misappropriation occurred on 15 September 2003, when Tatmadaw LIB 247 occupied the Daw-Phu-Yan Jubilee Hill 'prayer mountain' in Bhamo District, a focal point of worship and identity for the local Kachin Baptist community.

According to the Kachin New Group,<sup>182</sup> in 2007 Tatmadaw Light Infantry Battalion No. 438 confiscated 20 acres of paddy fields in Bhamo District (between Daw Hpum Yang Town and Myothit Village), because local farmers were unable to meet the battalion's demand of 15 sacks of rice per acre. Villagers were later forced to work in these stolen fields.

In 2006-07, authorities confiscated large tracts of villagers' land along the route of the Second World War 'Ledo Road' in western Kachin State, which links India and China and is being up-graded. The lands were granted to the notorious Yuzuna Company, to the Kachin-owned Myanmar Jadeland, and to the sons of two high-level *Tatmadaw* commanders (Lt-Gen Ye Myint and Lt-Gen Maung Bo). Much of this area has been developed for sugar cane plantations, and is close to the protected Hukawng Valley Tiger Reserve (see Subsection 6.9.7).<sup>183</sup>

### 6.2.1.4 Shan State

The number of *Tatmadaw* battalions in Shan State has increased from 30-40 before 1988, to over one hundred in 2006.<sup>184</sup> Many parts of this vast state are suffering crises in human and land tenure security: as a result of the *Tatmadaw's* counter-insurgency activities, due to

177 Field Notes (16 August 2006).

178 IMNA (4 & 10 July 2007).

179 *Kachin Post* Opposition e-newspaper (20 Nov. 2003).

180 Field Notes (3 May 2003 & 10 Oct. 2003).

181 Field Notes (20 May 2003).

182 KNG (23 August 2007).

183 *The Irrawaddy* (17 & 27 July 2007).

184 Shan Human Rights Foundation (SHRF), *Forced Relocation and Land and Property Confiscation by the Burmese Military in Shan State* (August 2006).

inappropriate Government agriculture policies, and because of widespread land confiscation. In one township alone (Mong Nai in central-southern Shan State), nearly 10 000 acres of farmland have reportedly been confiscated in recent years. In many cases, villagers are then required to pay a rice tax to the local *Tatmadaw* battalion, in order to continue farming the land.<sup>185</sup> Similar reports have emerged in recent years from other parts of Shan State.

For example, in late 2005, Tatmadaw Infantry Battalion 9 confiscated several acres of rice farms near Loilem.<sup>186</sup> Between January and June 2006, several hundred acres of farmland were confiscated in Kengtung (for rubber plantations, by LIB 314, and to build a road and police station); in Khunhing (to grow physic nut, by IB 246), Larnghur (to grow physic nut, by IB 99); Muse Township (for rubber plantations), and in Nam Zarng (by the SNPLO ceasefire group).<sup>187</sup>

In the north of Shan State, at the busy Chinese town of Muse, the authorities ordered local residents to relocate, as their houses apparently overlapped with a special trading zone. “They called for a meeting and simply ordered residents to move their homes,” a Muse resident told *The Irrawaddy*. “They offered no compensation or no alternative site to live.”<sup>188</sup>

## 6.2.2 Population transfer

As the Nationalities Youth Forum notes in *Our Land and Natural Resources in Burma*:

*[L]arge-scale development projects, carried out without consultation of local communities, has resulted in rapid deployment of troops and ... in-migration of ethnic Burman families. The migrants lack awareness of and respect for traditional indigenous lifestyles and cultures, and have often forced local people from their homes and villages.*<sup>189</sup>

Anecdotal reports exist of state-organised in-migration, to Kachin and Mon States, by ethnic Burman families from lower Burma. This ‘transmigration policy’ seems to have been in progress since BSPP times. For example, Mayan village (on the Myitkyina-Mogaung road) was established by the army in the 1970s, and later settled by *Tatmadaw* family members. Another village (‘La Ta Pa’) was established in 1970, seven miles (11 km) north of Myitkyina, by retired *Tatmadaw* soldiers, most of whom are ethnic Burmans.<sup>190</sup>

## 6.2.3 Model villages in Arakan

Most of the *Rohingya* population of northern Arakan State is landless, with less than 10 percent of returnees from Bangladesh having access to agricultural land (although some have informal agreements with ‘landowners’).<sup>191</sup> *Rohingya* land has been confiscated to settle military personnel, and for the establishment of *Tatmadaw* farms and businesses. Additionally,

185 Shan Relief and Development Committee (SRDC), *Deserted Fields: The Destruction of Agriculture in Mong Nai Township, Shan State* (2006).

186 SHRF *Monthly Report* (May 2006).

187 SHRF *Monthly Report* (August 2006). Land has also been confiscated to grow physic nut in Arakan State and elsewhere (see Section 6.12): *Narinjara News* (30 March 2006).

188 *The Irrawaddy* (27 July 2007).

189 NYF (2005), p. 23.

190 The KIO has also been involved in population transfers, including moving villagers down from the hills to settle them elsewhere in the Eastern and Northern Divisions (see Section 8).

191 Field Notes (26 May 2006).

confiscated land has served to accommodate the creation of ‘model villages’, constructed by the Ministry for the Progress of Border Areas and National Races (*Na Ta La*: see *Box 1*).

Relocated communities live in 49 ‘new villages’, 26 of which are located in Maungdaw Township. These are mostly Burman and Arakan people (and a few Kachin), who were forcibly relocated by the Government, apparently as part of a scheme to re-model the demographics of northern Arakan. Relocated families were promised ‘start-up kits’, including small parcels of land (usually two acres, most of which has been lost due to indebtedness), shelter and farming tools, and some means of livelihood support (e.g. trishaws or tractors). In many instances, the initial capital investments never materialised, or were insufficient to allow families to engage in productive activities.<sup>192</sup>

### Box 1: ‘Loe Hin’ Model Village



The bleak grid of housing, visible in the photos, tells the story: this community was settled by the *Na Ta La*, on farmland confiscated from the local Rohingya village. The 84 households at ‘Loe Hin’ were forced to ‘volunteer’ for resettlement, from Bama and Karen areas in Yangon Division.

The *Na Ta La* reportedly plans to build 60 such ‘model villages’ in northern Arakan State – more than half of them in Maungdaw Township. New arrivals are generally provided with house-plots, and a supply of rice. Residents of the ‘model villages’ used to be given about two acres of (usually confiscated) farmland per family, but this is often quickly lost, due to quickly accumulating debt among the new arrivals (and sometimes lack of appropriate farming skills). More recently, instead of land, residents have been provided with some livelihoods support (such as trishaws, to earn an income).

## 6.3 Natural resource exploitation

Since the late 1980s, the SLORC-SPDC has overseen an expansion of private investment in Burma, with the objective of developing agriculture and natural resources as the basis of a state-controlled market economy. In 1988, the Government passed a *Foreign Investment Law*, to facilitate the extraction of natural resources by private (especially foreign) companies. The State’s

<sup>192</sup> Field Notes (25 May 2006).



attitude to natural resources seems to be ‘use it or lose it.’ Virgin (or ‘waste’) land, which is not formally occupied, is liable to be taken over by the State, and leased to agri-companies with connections to the military, and often backed by outside (often Chinese) money.

Over the past decade, environmental degradation has been particularly rampant in Kachin State – an area to which researchers have had relatively good access, due to the work of Kachin environmental groups (see Section 8). Although most of the material in the following Subsection is drawn from Kachin State, the patterns and consequences of natural resource extraction described are common to many other parts of Burma – and especially to remote and mountainous border areas.

According to BERG, in 2000 the Government opened 27 000 acres (10 926 ha) of ‘fallow’ land in Kachin State for paddy and sugar cane production.<sup>193</sup> Similar patterns are reported in Northern Rakhine State, and represent a real danger for refugee and IDPs resettlement and ‘re-development’ along the Thailand border.

Under land reclamation initiatives, large tracts of forested and ‘fallow or uncultivated land’ were leased to developers. Approximately 1.1 million acres (445 170 ha) have been allocated to some 80 business groups. In effect, the regime has transferred all economic output and surplus from a subsistence rural population to a state-subsidised entrepreneurial class of private and public investors. Such patterns have been particularly prevalent in Kachin State in 2006-07.

As well as numerous businesses owned or controlled (or tax-farmed) by the *Tatmadaw* and the State, Chinese money and firms are also hugely influential in Kachin and Shan States, as are semi-legitimate firms associated with the Wa and other ceasefire groups. Many of these enterprises are involved in logging, and the jade and precious stones trades.<sup>194</sup>

The State is partly funding the Mali Hka hydropower project, as well as the construction of a number of strategic roads in KIO areas). Furthermore, the Education Department has assisted KIO high school graduates in sitting government matriculation exams, the Health Department has made places on training courses available to nurses and medics from KIO areas, and the Department of Agriculture has provided some training to farmers from the ceasefire zone.<sup>195</sup>

However, the SPDC’s attitude towards the Kachin ceasefire zones has generally been one of neglect – or even active obstruction of rehabilitation and development initiatives. Kachin sources provide two examples:

1. In the KIO Eastern Division several proposals to build bridges and other infrastructure projects along the border were agreed to by the local Chinese authorities, only for the proposals to be rejected by the Kachin State Peace and Development Council and Myanmar Army regional commanders.<sup>196</sup>

193 BERG (Sept. 2002).

194 For more details and extensive analysis, see Global Witness, *A Conflict of Interests: The Uncertain Future of Burma’s Forests* (Oct. 2003).

195 Field Notes (13 Nov. 2003) & May 2005).

196 According to an anonymous KIO officer, “the SPDC has prohibited the KIO from building infrastructure, for example, roads, bridges, and schools around Loiye, Keiteik, and also in Manwing and Shwegu districts. They also prohibited the building of Moe Shwe River Bridge after the beams and other materials had arrived.” The same source states that the KIO built a bridge in Num Wan Hka in 1993-94, so that villagers could trade and transport goods. However, in 1998 the Myanmar Army blew up the bridge from the China side of the border, stating that the bridge had been used for black market trade: Field Notes (6 Nov. 2003)

2. In 2001 the Eastern Division organised poppy growing villagers to plant 10 000 acres of sugar cane, to sell to Chinese companies. The deal reportedly came unstuck when the SPDC refused an export license<sup>197</sup> and the KIO had to compensate the Chinese company.

Local Kachin leaders claim that the Government wants to keep their area under-developed, and thus undermine the KIO's standing within Kachin communities. They worry that, without a major change in government attitude, locally-led development in the KIO Eastern and other divisions will remain stagnant.

Furthermore, many of the plans to develop resettlement sites and existing villages further 'inside' the Eastern Division have been frustrated by a lack of funds and expertise, at community, local leadership and administration levels.<sup>198</sup> Fortunately, Kachin NGOs are themselves able to undertake some of the necessary capacity building: the Metta and Shalom Foundations in particular, have a number of innovative projects in the KIO (and other) ceasefire areas (see Section 8).

### 6.3.1 The political economy of conflict and natural resource extraction

Especially since the end of the Cold War, access to revenues from natural resources has been a key factor in motivating armed conflict worldwide.<sup>199</sup> In Burma, conflict and natural resource extraction have been inter-linked for decades.<sup>200</sup>

Until the mid/late-1980s, the KNU and other insurgent groups along the Thailand border derived the bulk of their income from the taxation of villages and the cross-border black market trade. However, in the late 1980s, insurgent finances underwent a transformation. As Government forces secured a string of bases along the border, the KNU and allies' control of the black market trade decreased. As a result, the Thai military-political establishment began to reassess their covert support for the insurgents, and to seek improved relations with Yangon, under the ASEAN policy of 'constructive engagement' (see Subsection 6.6). During this period, the Chinese authorities likewise withdrew support for non-state (ethnic and communist) armed groups along the border, and focused instead on developing political and business contacts with the military Government and its cronies.

### 6.3.2 Logging

There are thirty-one protected areas in Burma. The Wildlife Conservation Society (WCS) assisted the Government Forestry Department in the creation of two major National Parks in Kachin State: the 3 812 km sq. Khakarborazi National Park (2002) and the Hukawng Valley Tiger Reserve.<sup>201</sup>

197 In Mai Ja Yang and other village, sugarcane is still grow privately, for export to China, which is taxed by the Government (*Na Sa Ka* border/excise units).

198 Field Notes (12 Oct. 2003).

199 However, according to an authoritative recent report on the political economy of conflict worldwide, "natural resources are not systematically fuelling war. Many countries with abundant reserves are not affected by conflict, and not all belligerents rely on them to fund their struggles. Natural-resource control and exploitation, though, can create or exacerbate conflict, as well as extend and intensify it. Where it is a factor, however, a generalised interpretation of war as 'greed-driven' can dangerously depoliticise the fighting and thus prolong it. Initiatives to prevent and resolve conflict, therefore, need to understand better the role of resource (mis)governance in shaping greed and grievance – and their inter-action. This applies not only to very portable, internationally traded primary commodities, but to land and other local economy resources": Philippe Le Billon, in *The Conflict, Security & Development Group Bulletin* No. 11 (May-June 2001)

200 For analysis of the political economy of conflict in Burma, see South (2008 - forthcoming).

201 Madhu Rao, Alan Rabinowitz & Saw Tun Khaing, 'A Status Review of the Protected System in Myanmar' (*Conservation Biology*, Vol. 6, No. 2, April 2002)

The percentage of forest cover in Burma, and the rate of its deforestation are both contentious issues, as access to accurate information is restricted. According to Global Witness:

*Burma is made up of temperate (25 percent) and tropical landscapes (75 percent) that range from the Himalayas in the north and east, to the lowland forest, mangroves and coral reefs in the south. Burma also forms a land bridge between Asia and the Malay Peninsular. Falling within the Indo-Burma biodiversity hotspot, and bordering the South Central China hotspot to the north in Kachin State, Burma is one of the most biologically diverse countries in mainland Southeast Asia and has a large number of endemic species.*

[...]

*The FAO defines 'forest' as being 'land with tree crown cover of more than 10 percent and an area of more than 0.5 hectares.' ... The most recent FAO assessment estimated that 37.2 percent of Burma was covered in 'closed forest' (more than 40 percent forest cover), while some staff of the Forest Department in Rangoon, and conservation workers, believe that figure is closer to 30 percent. Whatever the exact figure it is clear that Burma is still one of the more heavily forested nations in Southeast Asia.*

[...]

*The FAO estimates that Burma is losing forest cover at a rate of 1.4 percent per year. This is the highest rate of deforestation, together with the Philippines, in Southeast Asia, a region that itself has the highest rate of deforestation in the world.*

[...]

*It is difficult to assess forest cover and deforestation rates accurately, especially without the use of ground-truthing, which has rarely been carried out in Burma. In addition, areas where the rate of deforestation is high, such as in Kachin State, the dry dipterocarp forests of the dry zone, or the mangroves of the Irrawaddy Delta, do not show up in countrywide deforestation figures.<sup>202</sup>*

Control over timber resources has been a major factor in the politics of insurgency and ceasefires. Following a series of disastrous floods caused by deforestation, in January 1989 the Thai Government announced a complete ban on logging in Thailand. This new ruling put Burmese timber at a premium, at a time when the new military Government was in desperate need of foreign currency, and had just sold logging rights to one of the most powerful men in Thailand.

A number of the new timber concessions were located in rebel-held areas. Under pressure from logging companies and their powerful allies (including shareholders in the Thai security establishment), the insurgents had little choice but to comply with demands for access to the rich teak and other hardwood stands under their control. In compensation the NMSP, KNU and other groups were able to extract a cut in the business from their Thai 'partners'. In desperate need of cash, and seeing the profits to be made from logging, the rebels soon began to offer their own concessions and negotiate local side-deals with well-connected timber merchants.<sup>203</sup>

202 Global Witness (Oct. 2003), pp. 36-39.

203 According to Ken MacLean, "property regimes form one important means for organizing social identities and relations among them via things. Natural resource concessions, for example, typically grant special and exclusive rights to private companies in exchange for fees, services, and other benefits ... logging and mining concessions ... have expanded [the] military, administrative, and economic reach of the regime into areas where it previously had little or none [and created] ... networks, which now compete with one another to monopolize access to goods, services, and rents through and around existing state institutions": *Concessions, State Effects, and Regulated Violence in Burma* (paper presented to the 2006 Burma/Myanmar Update Conference, ISEAS, National University of Singapore, 17-18 July 2006).

In general terms, the agreement of ceasefires between the *Tatmadaw* and insurgents in resource-rich areas on the periphery of Burma opened-up previously inaccessible frontier areas to large-scale, non-sustainable extractive industry. This has certainly been one of the most serious negative consequences of the ‘ceasefire movement’.

According to the HURFOM, the non-sustainable felling of trees in Mon State has occurred in areas of new *Tatmadaw* base construction. Troops have also forced villagers to collect firewood and to cut trees from community forests for army use.

Companies (including the notorious Htoo Company, of Burmese tycoon Te Za) involved in logging in Mon State and Tenasserim Division often pay kick-backs to armed ethnic groups (the KNU, DKBA and NMSP), as well as to local state officials. Since the late 1990s, the area around Three Pagodas Pass has been particularly heavily logged, and has reportedly produced as much as 100 tons of logs per day, the “highest log production in southern Burma”.<sup>204</sup> Again, both the DKBA and *Tatmadaw* have been heavily involved in this business, as well as local businessmen (and reportedly some KNLA commanders).<sup>205</sup>

In March 1997, the *Tatmadaw* and DKBA forced villagers to move to Mae Wei relocation site, in southwest Papun District, prior to intensive logging activities. Their homes were burnt to the ground, creating a public health crisis in the village. Some relocatees were later involved in ‘scavenger logging’.<sup>206</sup>

Particularly following the negotiation of ceasefire agreements between the three main Kachin armed groups in the early/mid-1990s, incomes derived from logging and mining have been important in determining policies, and individual actions. According to Global Witness, “management of the forests by ceasefire groups ... has been poor to non-existent and much of the resource base has already disappeared”.<sup>207</sup>

Often, local leaders are reluctant to agree to logging deals with shady enterprises, but reason that if they do not cooperate with the loggers, the forests will be cut down anyway, while they and their organisation would receive no benefit. As noted by Global Witness, “a mixture of uncertainty and greed has sometimes led to a situation of ‘natural resource fatalism’, whereby the justification to control and liquidate natural resources is founded on the conviction that the natural resource will in any case be lost”.<sup>208</sup>

The impacts of deforestation include undermining indigenous and sustainable agro-forestry practices, which can among other things, result in increased flooding.<sup>209</sup> As a recent study of displacement in Shan State notes, “the implications of logging for the opposition and the IDPs are interrelated: deforestation removes the cover under which both can hide.”<sup>210</sup>

Equally, as a recent report on logging in Nyaunglebin and Papun Districts notes: “extreme poverty ... drives [local] people to engage in logging”.<sup>211</sup>

204 *The Mon Forum* (January 2006).

205 Field Notes (16 Sept. 2005).

206 EarthRights International (ERI) and Karen Environment and Social Action Network (KESAN), *Capitalizing on Conflict: How Logging and Mining Contribute to Environmental Destruction in Burma* (Oct. 2003), p.34.

207 Global Witness (2003), p.8.

208 Ibid. p.99.

209 See KESAN, in BBC (2003), pp.31-34.

210 HARP (Dec. 2003), p.30.

211 See also ERI & KESAN, *Capitalizing on Conflict: How Logging and Mining Contribute to Environmental Destruction in Burma* (Oct. 2003), p.32.

Extensive and largely uncontrolled logging has been a huge problem in post-ceasefire Kachin State – especially since a logging ban was enacted in neighbouring Yunnan Province in 1998. According to a Kachin politician, logging is “on the one hand the most important source of post-ceasefire revenue for KIO / KIA, but also a major realm of corruption and disenchantment between Kachin People and the KIO.”<sup>212</sup> The KIO derives income from logging concession fees, and the taxation of timber and other goods passing through various checkpoints (mostly along the China border; some in the west, adjacent to India). However, a significant portion of these revenues reportedly never reaches the KIO treasury, but is diverted by corrupt officials.<sup>213</sup>

Logging activities in Kachin State have increased dramatically since the ceasefires. According to Global Witness, “most of the timber cut in Kachin State ... has fuelled development in China, not in Burma. Such unsustainable exploitation has already led to environmental destruction and undermines prospects for future sustainable development.”<sup>214</sup>

Global Witness has estimated that more than one million cubic meters of timber are exported every year from Kachin forests to China:

*Logging in Kachin State is chaotic, in part because it is controlled by many groups including the NDA-K, KIA, Tatmadaw and Military Intelligence.... The local population has benefited little in economic terms but the powerful have enriched themselves.... In addition, the presence of many migrant workers has led to an increase in prostitution, HIV/AIDS, drug abuse, and gambling.*<sup>215</sup>

Especially since 2001, the most widespread deforestation has occurred in the National Democratic Army - Kachin (NDA-K ceasefire group) -controlled ceasefire zone in northeast Kachin State, “where forests are clear-cut.”<sup>216</sup> The NDA-K has reportedly relocated villages in remote, mountainous areas, moving communities down to larger settlements near roads, in order to ‘protect the forest’ (an example of ‘conservation-induced’ displacement).<sup>217</sup> Many of these people apparently received resettlement assistance compensation from the NDA-K.<sup>218</sup> Reportedly, the NDAK has also relocated villagers in northern Kachin State, in order to ‘protect’ forests (a practice that conveniently removes the forests’ guardians, thus facilitating logging activities).

Deforestation probably contributed to the unusually severe flooding in Myitkyina in the 2004 rainy season, during which about 50 people died.<sup>219</sup> Reports from the Myitkyina and Putao areas indicate that, at least since 2001, people have had to leave their land and move to urban areas because of drought and wells drying up in areas where extensive logging has taken place. In 2006, further major flooding occurred across Burma (especially in Shan State and around Mandalay) - and in Thailand - much of it probably linked to large-scale deforestation. In early June 2006, a major landslide and floods occurred between 9-21 miles north of Myitkyina. Some

212 Field Notes (17 Nov. 2003)).

213 Global Witness (Oct. 2003), p.100.

214 Ibid. p.9.

215 Global Witness, *A Choice for China: ending the destruction of Burma's northern frontier forests* (Oct. 2005). The same comments may be made of the impacts of logging along the Thailand border.

216 Global Witness (Oct. 2003), p.98, & see also p.101

217 Ibid. p. 102.

218 Field Notes (June 2005).

219 Field Notes (9 August 2004).

40 people were reportedly drowned, in a ‘natural’ disaster, which seems to have owed much to recent logging in watershed areas of central Kachin State.<sup>220</sup>

In northern Burma, as the forests along the Chinese border become logged-out, the timber companies are expanding further inside Kachin State. Of particular concern is the huge logging and mining operation begun in 2001-02 in the pristine N’Mai Hku forest, north of the NDA-K ceasefire zone – part of one of the hottest ‘bio-diversity hotspots’ in the world. Under a deal negotiated between a small group of KIO leaders, and Chinese and Malaysian companies, proceeds from the N’Mai Hku Project are being used to finance the Dabak hydro-power dam (see Subsection 6.6.4.3).<sup>221</sup>

A glimmer of hope for the beleaguered forests of Kachin State emerged in March 2006, when the Chinese authorities began a clampdown on the illegal cross-border timber trade. However, critics pointed out that these restrictions had a disproportionate impact on KIO finances, while timber originating from Burmese government sources was deemed ‘legal’, and not subject to the Chinese ban.<sup>222</sup>

### 6.3.3 Mining

In 2004, the Ministry of Mines reported the existence of 43 large-scale and 165 smaller-scale mines in the country.<sup>223</sup> It is important to distinguish between household-level ‘artisanal’ and larger-scale industrial mining activities. While the former may have minimal impact on the environment, the latter can have devastating results for the well-being of local communities.

Before the advent of the post-ceasefire ‘natural resource rush’ in Kachin State, many villagers had maintained livelihoods through labour-intensive (non-mechanised) gold panning and timber felling. Since the mid-1990s however, the arrival of outside business interests employing large scale, non-sustainable businesses, has curtailed many of these activities. In the process, land has been expropriated, and livelihoods ruined. The main culprits are jade mining and - particularly along the Irrawaddy River and its tributaries - gold mining, which pollutes rivers with the mercury used in the extraction process.

The usual pattern sees government departments in Yangon sell licenses or mining concessions to large companies (often Chinese-owned, and sometimes with *Tatmadaw* - and/or ceasefire group - business partners). The local state authorities (and also sometimes the KIO and other ceasefire groups) then assist the new landowners to take possession - often displacing long-established communities in the process. As most villagers have no registration papers, their land is easily expropriated.

In some cases, entire communities are relocated *en masse*, but often the process is more gradual. Sometimes families lose everything, sometimes just some of their farmland or gardens. No compensation is paid; the best that local people can hope for is to be provided

220 Field Notes (9 June 2006).

221 Global Witness (Oct. 2003), p.11 & pp.104-08.

222 Meanwhile in Shan State, according to the Lahu National Development Organization (LNDO July 2006: p. 11.), “after almost two decades of unregulated logging, only one area of teak forest remains in eastern Shan State. Since early 2006, these last stands of mainly red teak have been fast disappearing, thanks to ... Burmese tycoon, Tay Za, owner of Htoo Trading Company and de facto son-in-law of SPDC Chairman, Senior General Than Shwe.”

223 *Enhancing ASEAN Minerals Trade and Investment: Country Reports* (December 2005), p. 87.

with some land elsewhere, which is more likely with state-implemented infrastructure projects than private projects.<sup>224</sup> The usual message from soldiers sent to facilitate displacement is “get out, and take your houses and trees with you - if you can!”<sup>225</sup> When the mining companies move in, they often render the land unusable for other purposes.

It should also be noted that mining and other extractive industries attract large numbers of migrant workers, who are vulnerable to a range of health and other problems. These workers often spend part of the year in the mines/ forests, returning to their areas of origin during peak periods in the agricultural cycle, to undertake day labour.

### 6.3.4 Jade mining

At least five villages to the north of the jade mining town of Phakant were reportedly relocated in 1998-99, to make way for expanded post-ceasefire jade mining activities. Most of the relocated families were swidden rice farmers, who supplemented their incomes with vegetable production, and some small-scale mining. In some cases, families lost their entire plots; others had just part of their land taken.

Affected villages contained approximately 200 houses each before 1998. In Mawwan Kale (fifteen minute’s walk from Phakant) an estimated 600 people (120 families) were reportedly displaced; in Gwi Hka (20-25 miles south of Phakant) about 1 000 people were reportedly displaced; in Sharaw Hta (thirty minute’s walk from Phakant) about 700 Kachin people were displaced (leaving behind only ethnic Burmans and Chinese, many of whom could afford to buy mining sub-concessions); in Maw Mau Bum (thirty minute’s walk from Phakant) more than 1 000 people were displaced. People were also displaced in Seng Tawng (about 12 miles (18 km) south of Phakant).

Generally, the local authorities would call a meeting, to tell villagers about “instructions from Yangon” that their land had been “transferred to new owners.” Most big concessions were granted to companies connected to the *Tatmadaw* northern command (such as the infamous Northern Star Company), or to Chinese business interests. The main concessionaire would often sell-off blocks of land to smaller outfits, including several associated with (Kachin, Wa and PaO) ceasefire groups. These ‘outsiders’ would dig prospecting holes on the edge of cultivated areas, and - if these indicated that jade was likely to be found in the area - return with mechanical diggers, and soldiers.

For example, in 2007 the Max Myanmar Company occupied about 500 acres of jade mining blocks in the Lonkin area of Phakant. According to Kachin sources, “the occupied land includes paddy fields, agricultural fields and jade mining areas which were owned by local Kachin residents and business blocks, according to Lonkin residents.”<sup>226</sup> Other concessions in the area, which have also led to displacement of local people, are owned by the Yuzana Company,<sup>227</sup> and by Te Za’s Htoo Trading Company, in partnership with *Tatmadaw* Northern Commander Maj-Gen Ohn Myint, and the UWSA-owned Hong Pang Group.<sup>228</sup>

224 Field Notes (25 Sept. 2003).

225 Field Notes (25 Sept. 2003).

226 Kachin News Group (19 July 2007).

227 The Yuzana Company has reportedly also planted sugar cane and cassava on confiscated land in lower Burma.

228 Ibid.

According to various sources, neither the Government nor the companies ever paid compensation. Communities thus affected and impoverished are both angry and sad, but essentially powerless. To complain is to invite a beating – or worse. Most displaced people ended-up gravitating to Phakant and other towns, where they sometimes find work as day labourers (often in the mines).<sup>229</sup>

Unfortunately for the KIO, it has not been able to keep up with the increasingly mechanised and more capital-intensive nature of the post-ceasefire jade business. From the late 1960s until 1994, the KIO controlled - or at least taxed - much of the action, and used the jade trade to finance the insurgency (a few Kachin fortunes were made too). Following major *Tatmadaw* offensives in the Phakant and Bhamo areas in the early 1990s, the State gained secure access to much of mineral-rich southwest Kachin State after the ceasefire. Since the mid-1990s, the KIO and its favoured business partners have had to compete for concessions with well connected Hong Kong/ Chinese and other outside businessmen (including some Wa and other ceasefire group leaders). Logging has now replaced mining as the KIO's main source of income – with disastrous consequences for the environment and many local communities.<sup>230</sup>

Rebels, and particularly the KNU, have long derived some income from mining. As in the logging business, privately owned companies undertake mining operations and pay the rebel administrations a license fee. The children or spouses of senior insurgent offices often control these small outfits. They sell their lead, tin or wolfram to big Thai and Korean mining companies, which process and market the minerals, and make the big profits. The miners themselves remain poor, their small shantytowns lacking even rudimentary health or education facilities.

### 6.3.5 Shan State

The Mong La area, under the control of the National Democratic Alliance Army (NDAA) ceasefire group (Special Region 4) is famous for its casinos. However, over the past year, Chinese authorities have forced many to close, due to the large amounts of money lost over the border by PRC citizens – including state officials.

The NDAA has recently diversified into coal (three mines) and other mining operations. Chinese owned and operated Manganese mines around Mong La have caused environmental damage, and eroded the traditional way of life of the indigenous En people (related to the Wa). These mines are due to expand their operations in the near future.<sup>231</sup>

229 Field Notes (10 Oct. 2003)

230 During the ceasefire talks, the KIO reportedly mishandled negotiations over the future of Phakant and other resource-rich areas, due to poor knowledge of geology, geography and negotiation strategy: Field Notes (10 Nov. 2003).

231 Lahu National Development Organisation (LNDO), *Undercurrents: Monitoring Development on Burma's Mekong* (Issue 2, July 2006), pp. 2-6.



Local sources report extensive Thai and Chinese coal mining operations along nine miles of Kengtung, the (traditional, Shan) capital of eastern Shan State. Since April, local Government authorities have reportedly ordered nine villages to relocate, in order to facilitate mining operations. Those forced to move include several well-established communities. These victims of HLP rights abuse have not received any compensation.<sup>232</sup>

### 6.3.6 Gold mining

The rush to cash-in on Kachin State's extensive - but dispersed - gold reserves has had major environmental consequences – e.g. soil erosion and mercury poisoning of water sources. It has also led to people losing their land, in ways similar to those described above.

Since 1996, the Government and KIO, and affiliated companies, have engaged in extensive gold mining in the Danai area of central-western Kachin State. The *Tatmadaw* has confiscated at least 500 acres of villagers' lands.<sup>233</sup> Likewise, at Nong King, fifteen miles (24km) north of Myitkyina, and other villages on the east bank of the Irrawaddy River, because of mining activities, land has been severely degraded and subsequently abandoned. Some villagers reportedly received compensation from the Tatmadaw Northern Command-owned Northern Star Company (or its contractors); others did not.<sup>234</sup> The NDA-K - and especially its leader, Zahkung Ting Ying - is also reported to be heavily involved in gold mining activities.

### 6.3.7 Oil and Gas

The military regime's most important source of foreign currency is natural gas (see Subsection 6.7). Extraction of this natural resource generates more income for the SPDC than logging and mining combined.

## 6.4 Forced labour

Since the late 1990s, there has been some improvement in the forced labour situation, but it remains a serious and widespread problem, particularly in border areas where there is continued insecurity and a large *Tatmadaw* presence. In July 1998, an International Labor Organisation (ILO) Commission of Inquiry reported that the Burmese government and military “treat the civilian population as an unlimited pool of unpaid forced labourers and servants at their disposal.” The report went on to describe “a saga of untold misery and suffering, oppression and exploitation of large sections of the population.” Those affected included large numbers of women, children and the elderly. Workers were usually not provided with food and rarely received any payment or medical treatment. Those perceived by their guards as “unwilling, slow, or unable to comply with a demand for forced labour” were subject to “physical abuse, beatings, torture, rape and murder.”<sup>235</sup>

232 Ibid. p. 7.

233 Kachin Environment Organisation (KEO), *Save the Forest* newsletter (March 2006).

234 Field Notes (13 Nov. 2003). A report on gold mining in Kachin areas states that “many people lose their land due to gold mining, when the Burmese government or the companies to whom they have given concessions force villagers to give up their land. Forced relocations related to gold mining have happened in many places, such as Naung Hkin and in Mali Zup”: Images Asia and Pan-Kachin Development Society, *At What Price? Gold Mining in Kachin State, Burma* (Nopburee Press, Nov. 2004).

235 International Labour Organisation (ILO) Commission of Enquiry, *Forced Labour in Myanmar (Burma)*, 1998.

On 27 October 2000 the (then) Minister of Home Affairs, Col. Tin Hlaing, issued Supplementary Order No. 1/99, officially banning the practice of forced labour, and making its imposition a punishable offence. Over the next two or three years the amount of forced labour demanded of populations in areas more accessible (to the ILO) underwent a gradual reduction.<sup>236</sup> However, many rural populations continued to have little or no form of redress, in respect to a largely unaccountable and highly militarised state apparatus; the practice of *loq-a-peh* ('freely given labour') thus went on much as before in many remote and armed conflict-affected areas.

The ILO established an office in Yangon in 2002 (see Section 8). In February 2005 a high-level mission (led by former Australian Governor-General, Sir Ninian Stephen) cut short its visit, having been denied a meeting with Senior General Than Shwe or other senior leaders. Subsequently, in June, the International Labour Conference concluded that:

*[T]he extent and forms of forced labour had not significantly changed in most areas including ethnic areas... [Therefore] Governments, Employers and Workers, as well as other international organizations, should now activate and intensify the review of their relations with Myanmar ... and ... urgently take the appropriate actions, including as regards foreign direct investment in all its various forms, including relations with State- or military-owned enterprises in Myanmar.*<sup>237</sup>

In September 2005, Amnesty International published numerous testimonies from civilians (including women and children) who had recently been subjected to forced labour and portering by the *Tatmadaw*.<sup>238</sup>

Many interviewees reported fleeing their homes due to the *Tatmadaw's* well-documented practice of forcibly recruiting civilians as porters. In some cases, villagers threatened with forcible relocation are allowed to remain *in situ* if they promise not to have contact with insurgent forces, and to supply the *Tatmadaw* with labour and other resources. Although life in these 'peace villages' (*Nyein Chan Ye* in Burmese) may be bleak, the alternatives are even worse.

The practice of compelling villagers into forced labour directly contributes to displacement: "They took many of the men to be porters, and beat several villagers. Therefore we had to flee to the jungle."<sup>239</sup> In this context, the *Tatmadaw's* policy of using forced labour is particularly pernicious, as it reduces family productivity, and thereby the ability to pay taxes and other 'fees', and therefore the ability to avoid further bouts of forced labour – a vicious circle.

Karen CBOs working 'inside' the country report that forced labour - including forced portering and payment of 'porter fees' - is a major problem for IDPs and others across eastern Burma.<sup>240</sup> In October 2004, the TBBC reported that in Karen areas "more than half [57 percent] of internally displaced households have been forced to work without compensation and have been extorted cash or property within the last year."

236 Field Notes (11 Sept. 2005).

237 International Labour Conference 2005 (93<sup>rd</sup> Session), *Forced labour in Myanmar: Special Sitting of the Committee on the Application of Standards* (4 June 2005).

238 Amnesty International (Sept. 2005), pp. 9-15.

239 Interview with IDP from Nyaunglebin District, at Hor Ker IDP settlement, Kreh Pa village tract, Papun District: Field Notes (May 2003).

240 Field Notes (May-July 2003).

Villagers taken as porters for the KNLA worked without payment, but sometimes received rice (from other villagers). They were not abused, and did not have to work for too long (a day or two, while *Tatmadaw* porters might be taken for a month or more). Some informants said that KNLA came to villages regularly, to protect villagers and inform them about the situation.<sup>241</sup> However, some Karen informants expressed anger at the KNLA's forcible conscription of porters.<sup>242</sup>

Regular conscription for a variety of forced labour tasks remains a regular occurrence in villages across Mon State, and especially in Ye and Yebyu Townships, which continue to be affected by armed conflict. Reliable Mon sources report that those who were unable to comply with forced labour orders in Yebyu Township in August and September 2005 were compelled to pay fines of K 2 000 per household.<sup>243</sup>

The HURFOM's *Mon Forum* has documented incidents of forced labour across Mon State, since the 1990s. Examples of 'development'-induced displacement include the Government's practice of building roads, bridges *etc.* on confiscated land, using conscripted labour. It is clear that abuses have continued on a regular basis, through to 2006 (with a slight lessening of demands in 2003-04, because of the activities of the ILO).<sup>244</sup>

The *Tatmadaw*, in its campaign against the MNDA, continues to conscript large numbers of villagers as porters. Many succumb to landmine injuries.<sup>245</sup>

In Arakan State, demands for labour affect the entire *Rohingya* population, including women and children. Civilians are forced to build and maintain military camps and infrastructure projects (particularly roads), to work on Na Sa Ka-owned plantations, and to serve as military porters or sentries. While some can afford to pay the high bribes necessary to avoid these duties, those who cannot undertake a larger burden, as those unwilling or unable to carry out forced labour have been beaten, imprisoned, or even killed.<sup>246</sup>

## 6.5 Development, displacement and dispossession

Development means different things to different people. Section 8 examines how local and international organisations have addressed HLP issues in Burma, including through the implementation of community-based, participatory development activities. The following material focuses on state and big business-led infrastructure development and its impacts on land rights.

The World Bank Environment Department estimates that roughly 10 million people are displaced each year worldwide due to dam construction, urban (and tourism) development, and transportation and infrastructure programmes. According to a recent study, *Development-induced Displacement and Resettlement* (DIDR):

241 Collated from various Field Notes (May-July 2003).

242 Interview with Karen NGO staff: Field Notes (10 Sept. 2004)

243 IMNA (6 Oct. 2005).

244 See *The Mon Forum* (Oct., Nov. & December 2005).

245 See *The Mon Forum* (*passim* - e.g. Sept. 2003 and Feb. 2004).

246 For documentation of continuing forced labour in Mon State in 2006, see *The Mon Forum* (May 2006).

*[O]ften affects the economically, politically, and socially most vulnerable and marginalized groups in a population. However, at the individual and community levels, impoverishment risks associated with resettlement can be felt more intensely by certain segments of the displaced population ... these groups [women, children, and minorities] make up a disproportionately large percentage of those whose livelihoods are adversely affected by development projects.<sup>247</sup>*

### 6.5.1 Development and armed groups: the SPDC and NMSP

In the late 1990s, significant infrastructure projects were implemented in Government-controlled parts of Mon State. In particular, the construction of two bridges crossing the Ataran and Gaing Rivers, north of Moulmein, opened up the route to Pa'an, reducing the journey time to the Karen State capital from several hours to a little over ninety minutes. Another new bridge was constructed over the Salween River south of Pa'an, facilitating travel to the ancient Mon capital of Thaton (now a small town on the border of Mon and Karen States).<sup>248</sup>

However, the road network in Mon and Karen States was still in a sorry state. The main road from Pegu to Martaban was dotted with potholes and, away from the main routes, many tracks were unusable during the rainy season. Unlike the situation in the north, where new roads had facilitated a growth in trade between Burma and China, in the late 1990s commerce between Burma and Thailand stagnated. Goods that had once passed through Karen and Mon States now by-pass the border, travelling by ship directly to and from Malaysia and Singapore. The major beneficiary of the new infrastructure developments was probably the *Tatmadaw*, which used the improved road and bridge network to move troops around more easily. Local people meanwhile were often forced to work unpaid on these projects – many of which involved the confiscation of village land.<sup>249</sup>

Such institutionalised abuse characterised even the smallest-scale projects, including some of those involving the NMSP. In order to participate in the 'development' process, the Party needed money, and although it mostly eschewed direct co-operation with the Government, the NMSP was not beyond accepting state funds to carry out local road-building projects. In fact, between 1998-2001, the party's Regional Development Committee in Moulmein proposed a number of road and bridge projects to the *Na Ta La*, several of which received support in Kyat or in kind.

In general, these projects were designed to link Government-controlled towns and road networks to areas on the periphery of NMSP-controlled territory. For example, starting in 1999-2000, the party used a combination of its own and government funds to construct a new 20 km tarmac road, which would eventually connect Kawbein with the party's Thaton District headquarters. As this area was already exposed to Government and *Tatmadaw* penetration, the NMSP considered that making it more accessible did not involve any appreciably enhanced security risk. However, more remote areas - such as the Ye River Valley, site of NMSP headquarters - were jealously guarded. Despite Government invitations to initiate 'development projects' in these zones, the NMSP continued to exclude its primary base areas from state intervention.

<sup>247</sup> Jason Stanley, *Development-induced Displacement and Resettlement* (Refugee Study Centre), p. 14 [parenthesis added].

<sup>248</sup> In May 1999 yet another new, 1000 foot [300 M] bridge was officially opened, crossing the Hlaingbwe River southeast of Pa'an.

<sup>249</sup> E.g. an irrigation dam constructed in Paung Township in 2001 involved the forcible relocation of three Mon villages: *The Mon Forum* (April 2001). In 2006, construction of a small dam at Jone Hor village, in Paung Township, flooded 90 acres of farmland: IMNA (21 March 2006).

As the monies received to implement local infrastructure development projects were usually inadequate to the task, the NMSP was in danger of falling into the same abusive practices as the SPDC, and alienating the very people it was pledged to liberate. Nevertheless, party coffers needed replenishing, and elements within the NMSP and the Rehmonya International Co. continued to pursue a policy of ‘constructive engagement’ with the SPDC.

In 2004 efforts to improve human and infrastructure resources continued to be frustrated by the State’s bizarre ‘development model’. When allocating funds for road or bridge projects, the Government generally provides only 30-50 percent of costs. Of these monies, a proportion usually disappears into the pockets of government and military officers associated with such projects. These same local authorities - who are usually *Tatmadaw* officers, and thus not accountable to the public - collect money from local people, in the form of special ‘taxes’, so that work is completed on time. In addition, villagers are often forced to work unpaid on such infrastructure projects, or to pay for labourers to work in their stead.

## 6.6 Mega-projects: natural gas and hydro-power

The late 1980s and early 1990s saw radical changes in the relationships between the Thai and Burmese Governments, and the insurgents. Behind the new Thai and ASEAN policy of ‘Constructive Engagement’ with Yangon lay powerful political, security and - above all - economic interests. Following its suppression of the 1988 democracy uprising and 1990 election results, Burma’s Western and Japanese donors had withdrawn all development assistance to the SLORC. The Burmese economy was crumbling and the regime in desperate need of foreign exchange. Meanwhile, the economies of Burma’s Southeast Asian neighbours were booming and capital in the region was looking for new markets.

The growth of a closer relationship between the Thai military-political establishment and the Burmese military Government was based on natural resource extraction and the prospect of developing new investments in Burma. The most important and controversial of these projects were the development of the Yadana and Yetagun natural gas fields in the Gulf of Martaban, and the construction of two gas pipelines linking these to Thailand via northern Tenasserim Division.

### 6.6.1 Gas pipelines

#### 6.6.1.1 Yadana and Yetagun<sup>250</sup>

In July 1992 the Burmese and Thai governments’ state energy enterprises signed contracts with a consortium of Western oil companies, under which Thailand agreed to buy natural gas from the Yadana (‘Treasure’) gas field in the Gulf of Martaban.<sup>251</sup> By this time, extra *Tatmadaw* battalions had already moved into the pipeline area and begun forcing villagers to work unpaid on the construction of barracks and other installations. In September 1994, the two governments finalised arrangements for the purchase of the gas, and the following year construction of the 649km pipeline began (346km in the sea, 63km overland in Burma, and 240km overland in Thailand).

250 See South (2005), Ch. 13.

251 ERI, *Total Denial Continues: Earth Rights Abuses Along the Yadana and Yetagun Pipelines in Burma* (2000), p.22.

The billion dollar project was financed by a consortium led by Total of France (the implementing company), and included the American oil giant UNOCAL, the state-owned Petroleum Authority of Thailand (PTT) and Myanmar Oil and Gas Enterprise (MOGE). The Electricity Generating Authority of Thailand (EGAT) was contracted to ‘take or pay’ the consortium for the gas, and Burma eventually stood to earn US\$ 200-400 million per year from the project, making the pipeline the country’s most important source of foreign currency.<sup>252</sup>

The history of the US\$ 700 million Yetagun (‘Waterfall’) natural gas project is somewhat more obscure. Burma’s MOGE, Nippon Oil of Japan, Malaysia’s Petronas and Premier Oil of the UK (which in 1997 bought out Texaco) had been involved in negotiations since the early 1990s. However, it was only in the middle of the decade that details emerged of plans to develop the Yetagun natural gas field, to the south of the Yadana field in the Gulf of Martaban. By 1998-99, it had become clear that a second gas pipeline would be constructed from the Yetagun field to Kambauk, and from there to E-Thaung where the two pipelines would be joined.

Unsurprisingly, the pipeline projects were characterised by widespread human rights abuses. Reports began to emerge in 1992 that the *Tatmadaw* had relocated several Karen villages near the pipeline corridor. From around this time, people in the area began to experience a significant rise in demands for forced labour, working on projects directly related to the pipeline, or indirectly linked to security operations in the area, such as the Ye-Tavoy railway and nearby motor road.<sup>253</sup> Other abuses included forced portering, the extortion of illegal ‘pipeline taxes’ and the arrest, torture and killing of suspected rebel sympathisers. Within a few years, dozens of previously self-sufficient farming and fishing villages had been wholly or partly depopulated, and several thousand people deprived of their lands and income.<sup>254</sup> It seems highly improbable that oil company employees were unaware of such activities, undertaken by their partners and bodyguards.

In February 1999, reports emerged in the Thai press that the oil companies had made payments directly to *Tatmadaw* units involved in counter-insurgency operations in the pipeline area, making them directly implicated in security-related abuses.<sup>255</sup> However, the oil companies denied complicity, and focused instead on their investment of tens of thousands of dollars in local schools, clinics and other development projects in the pipeline area.

In 1996, allegations regarding human rights abuses associated with construction of the gas pipelines formed the basis of lawsuits bought against UNOCAL on behalf of a number of refugees from the pipeline area, in the Los Angeles courts. The suits were settled out-of-court. (Similar cases were also filed against TotalFina, in French and Belgian courts; the latter is still outstanding.)

### 6.6.1.2 Myaingkalay

Construction of the Yadana gas pipeline was completed in August 1998, although technical difficulties delayed the start of full operations for more than a year. The Yetagun pipeline was completed in early 2000. Later that year, reports began to emerge regarding plans to build a new, 120 mile (180 km) gas pipeline between Kambauk and Myaingkalay, in Pa’an Township

252 *The Bangkok Post* (5 Sept. 1996) and ERI (2000), pp. 160-61.

253 *The Mon Forum* (March 1999) and ERI (2000).

254 *The Mon Forum* (March and May 1999).

255 *The Bangkok Post* (14 Feb. 1999).

(Karen State), where an existing cement factory was up-graded. (The ‘retired opium warlord’ Khun Sa, the *Tatmadaw* and a Japanese company were reported to be among the investors.)

In preparation for the construction of this off-shoot from the main Yadana pipeline, Mon and Karen village lands along the more than 400km route were confiscated, without compensation.<sup>256</sup> Mon human rights workers have reported on the forcible recruitment of villagers to guard the pipeline since the project’s completion in 2000.<sup>257</sup> Such violations have been particularly widespread in the aftermath of a series of explosions along the route of the Kambauk-Myaingkalay pipeline - which the SPDC has blamed on Mon and Karen insurgent groups, while local people suspect poor engineering on the pipeline is to blame. These factors have also led to fears that gas leaks from this overland pipeline may be affecting villagers’ health.<sup>258</sup>

According to the Democratic Voice of Burma radio station, in 2005 the Ministry for Energy Ministry and Myanmar Oil and Gas Enterprise (MOGE) confiscated more than 20 acres of paddy fields from farmers for oil exploration in Ma-U-Pin Township.<sup>259</sup> The Government and China National Offshore Oil Corp have also reportedly seized more than 160 acres of farmland in Kyaukphyu Township in Arakan State, for oil exploration and extraction.<sup>260</sup>

### 6.6.1.3 Shwe Gas

In late 2003, Daewoo International of South Korea discovered a new gas field off the coast of Arakan State – in the Shwe (‘Gold’) block. The scale of this deposit equals that of the Yetagun and Yadana combined (some estimates put it as high as double), and it looks set to produce one of the largest yields in Southeast Asia.<sup>261</sup>

In 2006 the Burmese Government signed a Memorandum of Understanding (MoU) with PetroChina for the sale of 6.5 trillion cubic feet of gas from the Shwe field. This deal has increased the likelihood of an overland (2380 km, US\$ 1 billion) pipeline from Arakan State through central Burma to Yunnan Province, plans for which received Chinese government approval in April 2006.<sup>262</sup> Arakan, Chin and Shan States in particular are likely to be affected by the pipeline - which is planned to follow the Kaladan River valley, and construction of which is planned to begin in 2007.<sup>263</sup> Over the past two decades, these states have experienced increased militarisation, which will inevitably continue to rise as the pipeline is constructed.

The latest major find off the Arakan coast occurred in July 2007, when Thailand’s PTT Exploration and Production International Limited discovered natural gas in the Zawtika-5 concession, with an estimated reserve of over 8 cubic trillion feet.<sup>264</sup>

256 *The Mon Forum* (Nov. 2000 & May 2001).

257 HURFOM (Oct. 2003), and *The Mon Forum* (*passim* - e.g. Sept. 2003 & June 2005).

258 *The Mon Forum* (January 2006) and IMNA (15 August 2006).

259 *Democratic Voice of Burma* (12 March 2006).

260 *Mizzima News* (14 June 2006).

261 Shwe Gas Movement, *Supply and Command: Natural gas in western Burma set to entrench military rule* (2006).

262 *Shwe Gas Bulletin* (Vol. 2, No. 9 May 2007). This pipeline from Sittwe would also provide an alternative route for China’s oil imports from the Middle East and Africa.

263 April 22, Xinhua (22 April 2007).

264 Independent Mon News Agency (11 July 2007), quoting *The New Light of Myanmar*.

## 6.6.2 Dams

The primary impact of dam-building on HLP rights is the direct loss of land and homes in the inundated area. But beyond that, communities will further be affected by:

- the increased local flooding, which destroys crops
- the loss of irrigation water from tributary streams
- the increased pressure on higher, less productive land as people have to relocate
- the loss of traditional animal migration corridors and wildlife habitats, including those of fish populations in the rivers, which then has a large impact on hunting and fishing activities leading to livelihoods insecurities.

In addition, where dams are built, so are roads, which can give access to hitherto inaccessible areas for further logging. In some instances, the construction of dams and other infrastructure projects is also designed to relocate communities deemed to support opposition groups.

### 6.6.2.1 Balu Chaung

Since 1988, the Government has reportedly built 26 hydro-electric dams and 129 irrigation dams. The first large-scale hydropower project in Burma was built on the Balu Chaung River, at the Lawpita Falls in the 1960s. The Moby Dam, at Lawpita, destroyed the homes of approximately 8 000 people.

### 6.6.2.2 Dams on the Salween River

A series of secretive agreements between the Thai and Burmese Governments, and the Electricity Generating Authority of Thailand (EGAT), culminated in a December 2005 Memorandum of Understanding, to build four mega-dams (Tasang, Wei Gyi, Dar Gwin and Htut Gyi) on the Salween (Thanlwin) River, and one on the Tenasserim River. Environment Impact Assessments on the planned dams have not been released to the public, and at no time in the agreement process were people at the proposed dam sites consulted, or even informed.

The proposed 230-80 metre high, 7 110 megawatt, US\$ 6 billion Tasang Dam, in southern Shan State, on the Salween 53 km west of Mongton, will be the largest dam in Southeast Asia. Following a MoU agreed to in April 2006, the dam is in the early stages of construction by Thailand's MDX Public Company Limited. Villages in the area around the dam site (and elsewhere in central/southern Shan State) were subject to extensive and well-documented bouts of forced relocation in the period 1996-98, when about 300 000 people (56 000 families) were forced to move to relocation sites, or flee; many have never been allowed to return.<sup>265</sup> If the Tasang Dam is completed, about 50 former villages may be flooded. In the meantime, companies connected to the *Tatmadaw* and local pro-Government militia continue to log out large tracts of forest in and around the dam area.<sup>266</sup>

<sup>265</sup> SHRF, *Charting the Exodus From Shan State* (Oct. 2003).

<sup>266</sup> Salween Watch, Southeast Asia Rivers Network and the Centre for Social and Development Studies, Chulalongkorn University, *The Salween Under Threat: Damming the Longest Free River in Southeast Asia* (Bangkok 2004); see also Shan Sapawa Environmental Organisation, *Warning Signs: an Update on Plans to Dam the Salween River in Burma's Shan State* (2006).



In March 2007, the Shan Sapawa organisation reported that the MDX Company had forced some 400 local villagers to attend a ceremony to ‘celebrate’ the start of dam construction. According to Sapawa’s spokesperson, Sai Sai:

*These villagers have already been driven at gunpoint from their homes and lands. Now they are being forced to clap and cheer while MDX joins hands with their oppressors to construct a dam that will flood their homes for ever.”<sup>267</sup>*

The Wei Gyi and Dar Gwin dams, further downstream, are on a 35km stretch of the Salween River which constitutes the Thailand-Burma (Papun District) border. The Wei Gyi Dam as proposed, is ten times the size of the Moby Dam, and

*approximately 30 000 people will be impacted. In addition, an entire tribe of people – the Yintalai, who now number a mere 1 000 – will have to flee rising waters and permanently lose their homelands.”<sup>268</sup>*

If built, at an estimated cost of about over US\$ 5 billion, the Wei Gyi and Dar Gwin dams will flood an estimated 995 sq km of forest – mostly in the Wei Gyi Reservoir, which will reportedly inundate the river up to 380 km up-stream, into Karenni State.

A dam 600 MW is also planned for construction further south on the Salween, at Hutgyi. In total a projected 15 000-20 000 megawatts of electricity will be produced, for sale to Thailand and other Asian countries.

In March 2006, border-based activists reported that:

*more than 500 Karen villagers from Mutraw, Karen State, have fled to Thai-Burmese border after being forced by the Burmese military to build a road for the Salween river dam project... within the past four months the Burmese military regime has sent thousands of its troops into Karen State... Since January 2006, nearly thousand of Karen villagers have fled to Thai border, due to both the Salweendam projects and the movement of the new capital to Pyinmanabythe Burmese government. [...]*

*On 14 March 2006, the green groups of Mon, Karen, Thai, Shan and Karenni had together made a protest at the dam project site of Weigyi in Karen State near the Thai border. They called for a stop to all the projects saying that the way of life of local residents and the environment would be affected by the dams.”<sup>269</sup>*

In November 2004 Karen Rivers Watch (KRW), a coalition of Karen NGOs, reported that three-quarters of the 85 villages in the vicinity of planned dam sites had been forcibly relocated since 1995, displacing tens of thousands of civilians — who are often unable to return, due to the prevalence of landmines in their home areas.<sup>270</sup> According to KRW, “the regime is using ‘development’ to justify its subjugation and militarization of the ethnic-controlled areas ... and

267 Shan Sapawa Environment Organisation, *Press Release* (29 March 2007). See also *The New Light of Myanmar* (4 April 2007).

268 Ibid. Executive Summary

269 Shan Herald Agency for News (20 March 2006).

270 KRW, *Damming at Gunpoint: Tatmadaw Atrocities Pave the Way for Salween Dams in Karen State* (2004), p.49

mask the root causes of civil war in Burma.”<sup>271</sup> Indeed, planned dams will affect the area that contains some of the last strongholds of the Karen and Karenni insurgencies.

At least two further dams are also being planned for the Salween River in northern Shan State, to be built by Chinese companies. Across the border, in Yunnan Province (where the river is known as the Nu), a cascade of seven dams are also in various stages of planning and construction.<sup>272</sup>

The construction of so many dams on the Salween - at present, one of the longest ‘free-flowing’ rivers in the world - is also likely to have adverse affects on people living downstream. In particular, hundreds of thousands of (mostly Mon and Karen) people in the lower Salween region will be vulnerable to the depletion of fish stocks, and salt-water intrusion.

The construction of smaller-scale dams can also cause forced migration on a significant scale. In 2005 for example, during the building of the Ka Baung Dam, 5 000 people from 16 Karen villages were reportedly displaced in Shwe Gyin Township (east of the Sittaung River, near Toungoo). None of these people has received any aid or compensation; many continue to hideout in the forests near their old homes, in the hopes that the waters will not rise any further. The dam is now complete and was due to be flooded mid-2006.<sup>273</sup>

According to a SHAN media release, citing a report by the Kachin Development Networking Group (KDNG) *Damming the Irrawaddy*:

*... the 3 600 MW dam at the Myitsone, where the Mali Hka and N’Maikha join to become the Irrawaddy, will inundate 47 villages, perpetuate unfair development programs, intensify militarisation and aggravate other existing problems such as environmental and social impacts, ...and other rights abuses. Besides the dam site is less than 100km from the highly sensitive Sagaing fault line that runs north-south through Burma. Earthquakes have been experienced along the fault system. “Conversely, there are also cases where large dams can trigger earthquakes,” says the report, quoting a study in 2001.*<sup>274</sup>

The construction of so many dams on the Salween - at present, one of the longest ‘free-flowing’ rivers in the world - is also likely to have adverse affects on people living downstream. In particular, hundreds of thousands of mostly (Mon and Karen) people in the lower Salween region will be vulnerable to the depletion of fish stocks, and salt-water intrusion.<sup>275</sup>

### 6.6.2.3 Kachin State

In early-mid 2004, reports began to emerge of a major dam planned at Tang Hprae, south of the confluence (*Myitsone*) of the N’Mai Hka and Mali Hka Rivers, which join to form the great Irrawaddy River, in the Kachin heartlands north of Myitkyina. According to the Mizzima News Agency:

271 Ibid. p.3.

272 AFP (7 March 2007).

273 Field Notes (30 March 2005).

274 Sources: *Dam on the Irrawaddy: No more rice bowl for Burma media release* (22 Oct. 2007) [www.shanland.org](http://www.shanland.org). *Damming the Irrawaddy* available at [www.aksyu.com](http://www.aksyu.com)

275 Mon Youth Progressive Organisation, *In the Balance: Salween dams threaten downstream communities in Burma* (2007).

*On 1 February, villagers from N'Hkai Bum area submitted an objection letter outlining the negative effects of the dam project to their communities. The impact includes the damage to 5 000 houses, home to 8 000 people living in over 20 villages, damage to 18 000 acres of farm land, and damage to natural resources, wild life and valuable forest products in the N-Hkai bum area. Additionally, a historic Christian missionary monument will also be affected.*

[...]

*[the] hydro-project ... would produce up to 3000 mega watts, in a lowland area 3 miles [5km] from Tang Hpare town, 27 miles [43km] away from Myitkyina Town in Kachin state. The height of the dam is planned to be 500 feet above sea level.<sup>276</sup>*

The Asia-World Company began initial construction work on this dam in late 2006. In May the Kachin National Consultative Assembly, a pan-Kachin forum of political and civil society leaders, submitted, on behalf of local people, another objection letter; however the voice of the local community was ignored, again.

According to the Kachin News Group<sup>277</sup> and Kachin Anti-Dam Committee (KADC, established in May 2007), the military Government plans to construct seven hydroelectric power plants in the confluence area, which will generate 13 369 megawatts of electricity. These projects could displace as many as 50 000 people. As noted by Global Witness:

*electricity generation in Kachin State is totally inadequate. The Jinhkhrang Dam built [using forced labour] by the SLORC in 1993 does not produce enough electricity for Myitkyina let alone the rest of Kachin State, and that which is generated is proritized to the Burma Army bases.<sup>278</sup>*

The Dabak hydro-power project is another major development in Kachin State, being undertaken by the KIO. Chinese engineers are building the Dabak Dam, projected to generate 25 megawatts of electricity. In return, the Chinese have received logging concessions in KIO areas.

After a decade of logging, the Dabak Dam was still incomplete.<sup>279</sup> However, in late 2006 the KIO and Buga Company were able to supply the state capital of Myitkyina with some electricity from the Mali Hka hydropower project.<sup>280</sup> Twelve years after the ceasefire, the KIO was prepared to demonstrate its centrality to the development of Kachin State, by improving the woefully inadequate supply of power to the state capital (where most households received only a few hours of electricity a day, at best). However, at the time of writing in 2007, the Tatmadaw Regional Commander was blocking this possibility, due to concerns that the KIO would gain enhanced respect among the population, should it be credited with improving their daily lives in so dramatic a manner.

#### **6.6.2.4 Western Burma**

A potentially very damaging dam is being planned for the northwest border with India. The proposed 1 200 megawatt Khamti (or Tamanthi) Dam on the Chindwin River in Sagaing Division

276 *Mizzima News* (11 June 2004).

277 *KNG* (7 May 2007).

278 *Global Witness* (2003), p.93 [parenthesis added: Field Notes 15 March 2003].

279 *Global Witness* (2003), p.94.

280 *The Irrawaddy* (25 August 2006).

will displace up to 30 000 people from 35 ethnic Kuki villages, and flood an estimated 17 000 acres of land (including part of the Huwkwang Tiger Reserve). A MoU has reportedly already been signed between the SPDC and India's National Hydro-electric Power Corporation.<sup>281</sup> By mid-2007, large areas of forest had already been logged and shipped downstream, with several hundred households from Leivomjang and Tazong were reportedly displaced in the process.<sup>282</sup>

According to *Mizzima News*, the *Tatmadaw*:

*started destroying houses in the two villages and forced the villagers to relocate to a new village named 'Laung Min' on the eastern bank of Chindwin River. However, as the new village site is barren and is situated in a remote area away from the communication network, villagers have refused to stay in the new place... The Anti-Tamanthi Dam Campaign Committee, a group of activists campaigning against the junta's project, said the junta had forcibly seized about 17 000 acres of agricultural land from villagers for the proposed dam site.*

*There has been accelerated human rights violation such as forced labour and forced relocation for the dam project', said Lu Lun, coordinator of the ATDCC in New Delhi adding that over 61 Kuki inhabitant villages will be forced to relocate as these villages are in the junta's target area for the dam project.'*<sup>283</sup>

## 6.7 Transport infrastructure development and forced evictions

Since the ceasefires agreed between the Government and armed groups in many border areas in the 1990s, the State (especially the *Na Ta La*) has built numerous roads, bridges *etc.* in previously armed conflict-affected areas. Although they have brought some advantages to local populations, such 'development' projects are often undertaken on confiscated land, using conscripted labour.

### 6.7.1 Roads

Over the past ten years, road building has been one of the most significant causes of displacement in southeast Burma. As well as undermining human security among vulnerable populations, the building of roads, using mostly forced labour, has enabled the *Tatmadaw* (and its allies) to extend militarised control into previously inaccessible parts of the country.<sup>284</sup>

Local NGO workers have reported the construction of new roads in the Irrawaddy Delta as a positive development, inasmuch as these allow for better access to markets. However, such advantages are more than out-weighted by the fact that the new access roads add to the value of land, making it more attractive and easily misappropriated by powerful interests (many of the new roads reportedly also obstruct water courses, and cause flooding).<sup>285</sup> This irony exists in Mon State also, where the market price of the 'best' land, near roads, is often less than that in more remote plots, as the former property is always liable to confiscation by the authorities.

281 *The Irrawaddy* (30 August 2006).

282 Field Notes (26 August 2007).

283 *Mizzima* (5 March 2007).

284 For example, the HURFOM has reported on land confiscation in Ye Township, in the context of road building: *The Mon Forum* (August 2006).

285 Field Notes (9 March 2005).

### 6.7.2 The Ye-Tavoy railway (Mon State)<sup>286</sup>

Until the onset of the Yadana gas pipeline, the largest infrastructure development in Mon State and Tenasserim Division was the 160km (110 mile) Ye-Tavoy railway, linking the underdeveloped but resource-rich Tenasserim Division to lower Mon State. For most of its distance, the railway runs parallel to the Ye-Tavoy motor road, which for many years was maintained with local villagers' forced labour. With the start of work on the railway in 1993, the human rights situation in Mon State and upper Tenasserim Division worsened, as increased demands for labour were added to the burdens of arbitrary taxation, forced relocation and the *Tatmadaw's* use of press-ganged porters. Human rights workers calculate that, in the mid-1990s, 300 000 labourers each year did some form of unpaid work on the railway. One result was the gradual emptying of Mon and Karen villages along its route. As the demand for forced labour intensified, those families least able to provide workers or pay off the authorities fled to the jungle. Many continued on to the Mon refugee camps on the border.

### 6.7.3 Bridge construction (Kachin State)

In September 1995, 30-40 households (and their church) were forced to move from Waimaw (Wae Moe) Township - opposite Myitkyina, on the bank of the Irrawaddy River - to Sittaphru Quarter, in Myitkyina City. The community was relocated in order to make way for construction of a new bridge across the river, and a new *Tatmadaw* base. Only a few days' warning was given, no compensation was paid, and only limited transport to the new site was provided. People moved onto much smaller plots of land than those they had previously occupied (most of the land was owned by a Kachin schoolteacher, who had half of her property expropriated, without compensation). More than a decade later, most of these people were still living in reduced circumstances.<sup>287</sup>

### 6.7.4 Airport extension (Kachin State)

In 1998, about 150 households were forcibly relocated from Upper to Lower Haw H pang village, to make way for an extension of the military airport at Myitkyina. Again, no compensation was paid and only new land plots at, and some transport to, the new site were provided. Relocateses faced many economic difficulties at Lower Haw H pang, from which those who could leave did so soon after arriving. By 2003, some of the relocatees had established farm plots up in the hills, but these were far distant, and difficult to access; others (especially 'Indians' - third generation Burmese citizens) worked as cowherds. Some villagers were able to pay the local authorities, and retain access to their old fields, which the *Tatmadaw* now controlled. Meanwhile, the future for residents at Lower Haw H pang remained uncertain, as many believe that they will be moved again, if/when the airport expansion is completed. Understandably, they are therefore reluctant to invest much labour or capital in improving their present circumstances.

## 6.8 Extortion and extraction by the Government and *Tatmadaw*

Especially since 1998, when the SPDC issued a directive instructing *Tatmadaw* battalions to become self-sufficient in rice and other basic provisions, the *Tatmadaw* has 'lived off the land'

286 See Jesuit Refugee Service, *Compassion and Collusion: the Mon Repatriation and the Illusion of Choice* (Bangkok 1996), and *The Mon Forum* (January and July 1998); see also South (2005), Ch. 13.

287 Field Notes (25 May 2003)

by appropriating resources (food, cash, labour, land) from the civilian population. This self-support policy has exacerbated conflict and displacement across much of rural Burma.<sup>288</sup>

### 6.8.1 Rice/paddy tax

One of the main causes of food insecurity in rural Burma is the imposition of government production quotas.<sup>289</sup> Since the early 1970s, the 'rice quota' system has been used to feed state employees (including the *Tatmadaw*), and to earn foreign currency, through rice exports. Under this nation-wide policy, a remnant of the Burmese Way to Socialism, the authorities annually purchased a set amount of rice from each farm, at considerably below the market rate. According to some estimates, since 1994, when the Government announced a new drive to increase rice exports, the State has appropriated as much as twenty-five percent of the rice crop.<sup>290</sup>

Farmers who could not meet the quota often had to buy rice at market prices, to sell to the Government at State prices. Even in cases of flooding and severe environmental crop damage, farmers had to meet the same fixed quotas. However, civil servants and other state sponsored residents were able to buy their rice at government subsidised rates. Those villagers who could no longer pay the 'rice quota tax' often had their land confiscated.<sup>291</sup>

Although the policy was officially abandoned in 2003, 'rice quota' system persists in many areas, often under the semi-official guise of the *Tatmadaw's* self-support policy, which obliges army units to 'live off the land' (confirmed by Amnesty International, in September 2005).<sup>292</sup>

For example, the *Tatmadaw* continued to collect, forcibly, rice from farmers in Mon State in the period 2004-2007. According to the IMNA, in February 2007:

*The Township Peace and Development Council has ordered farmers to hand over paddy as rations for the military for the coming year... According to a farmer from Mudon Township Mon State, on Tuesday they paid about Kyat 5 000 each instead of giving paddy for this year... The authorities told them that they requested farmers to support the army in terms of rations, she said.*

*According to a resident in Chaungzon Township Mon State, most farmers from their township have already given paddy for army rations over the last month. The authorities from the township took more paddy from farmers than from the other townships.*

[...]

*In Mon State, the highest amount of paddy taken was about 60 000 baskets from each township, but some township had to give about 30 000 baskets. Residents in some villages also have to give about one basket of paddy to the people's militia every year"<sup>293</sup>*

288 "In the 1990s, the central command of the *Tatmadaw* reportedly instructed its units in the field to become self-sufficient in securing food supplies. This directive when implemented gave birth to two main problems for villagers living near these units. First, local battalions in many areas confiscated land, forced farmers to clear and cultivate it, and, later, forced them again to harvest the crop.... A second consequence was that government soldiers frequently requisitioned or simply stole food and livestock from the locals": HARP (December 2003), p. 36.

289 BBC (2003), p.3.

290 Mon Information Service, *Abuses Against Peasant Farmers in Burma: Emphasis on Mon State, Karen State and Tenasserim Division* (Bangkok 1998).

291 See also Nationalities Youth Forum, *Our Land and Natural Resources in Burma: Ethnic Youth Perspectives* (2005), pp 21-22 - which also documents the decline of traditional farming technologies in Burma, in the context of militarisation.

292 Amnesty International, (Sept. 2005), p.6.

293 IMNA (1 Feb.2005).

In May 2005, Infantry Battalion 61 in Ye Township (Duya and Ain-Din village tracts) reportedly demanded 2 baskets (66 kg) rice per acre from villagers - taking a total of 2 500 baskets.<sup>294</sup> In many cases, villages (for example in the Ye area) which previously only had to pay tax or give rice to either the MNLA or the *Tatmadaw*, are now forced to pay 'taxes' to both.<sup>295</sup>

Other abuses connected with land rights across Burma include Government demands that farmers grow a second crop of summer paddy. Generally, this means farmers must purchase costly inputs such as fertilisers, and is a widely resented demand in most rural communities.<sup>296</sup>

### 6.8.2 Impacts on traditional farming systems

In Burma, as in most parts of Southeast Asia, 'swidden' or shifting cultivation systems have been practised for thousands of years, and the proper, sustainable management of forests is encoded in the beliefs and traditional practices of indigenous peoples such as the Karen. The Karen traditional rotational system, for example, employs a ten to twelve year cycle (as practised, seven), with perennials and trees as well as annual crops being planted, and a slow and controlled return to 'fallow', with vines and thorns cleared on the land for a couple of years to allow further harvesting of fruit, bamboo *etc.*<sup>297</sup>

In addition to the length of time in which the land is permitted to recover species and fertility, traditional beliefs of the Karen further limit the times and places in which clearing can take place. For example, places not to be used for cultivation include watersheds, high ridges and wetlands; if an unplanned fire breaks out on land prepared for clearing, then that clearing cannot proceed, and the land must be left for a further seven to ten years. Certain trees, such as those reflected in water, or which have beehives in them, are also not to be touched.

When followed, these and other traditional strictures ensure that the land is maintained in 'good heart'. However, a half-century of armed conflict in Burma has put multiple pressures on traditional practises. Forced migration has driven people into less suitable areas for swiddening, and the vital fallow period has been reduced by population pressure on land: "at present, it is being cultivated after only two to four years of lying fallow,"<sup>298</sup> which leads to loss of soil fertility, increased weeds, and soil erosion. As many people have been repeatedly forced to leave their land, they no longer consider it worthwhile planting trees, which they do not expect to see fruit. The forced use of debased swidden systems by IDPs and others in Burma has led some (outsiders) to lump all traditional rotational agriculture under 'slash and burn', and consider it all as equally environmentally unsustainable. Furthermore, as pressure increases, people are driven to cultivate increasingly inappropriate land, including areas traditionally forbidden (thus experiencing a further violation — that of their traditional beliefs and practices).

294 *The Mon Forum* (May 2005).

295 Field Notes (6 & 11 May 2005).

296 IMNA (8 Feb. 2007).

297 See KESAN (2005).

298 *Ibid.* p.28.

According to a recent report by Earth Rights International (ERI) and the Karen Environment and Social Action Network (KESAN):

*Due to the on-going conflict, a significant number ... of IDPs have to engage in environmentally destructive agricultural practices, such as 'slash and burn' cultivation methods, instead of their traditionally more sustainable rotational techniques... many of these families have to harvest forest products ... at unsustainable rates in order to earn enough money to purchase food and other necessities. These factors have contributed to large scale clear-cutting in many areas and a range of environmental problems.<sup>299</sup>.*

## 6.9 Urban displacement

Large scale forced relocation of urban populations in Burma has been practiced by governments since at least the 1950s (and especially since 1988).<sup>300</sup> Urban displacement is considered a cause of Type 2 forced migration, as movement is forced (based on the threat or actual use of violence), and is often conducted in the name of 'development'.

Victims of fire are also sometimes unable to return to their former home. For example, after a fire broke out in Hlaing Township (Yangon) on 28 November 2005, 1 500 households were forcibly moved to a new location, 20 miles away from their original homes. Many people (especially those who had been living in informal settlements) did not receive any with providing new accommodation for their families, and thus found it "hard to survive on open fields as the authorities gave them only 35 000 kyat [\$35] compensation... Some victims claimed that rich people were able to prevent their homes from being swallowed by the fire by bribing fire fighters, and the fire was a deliberate act of the authorities to clear the slum areas."<sup>301</sup> (There are also reports that members of Senior General Than Shwe's family have built a factory on the newly cleared land.<sup>302</sup>)

Conditions, vulnerabilities and needs in 'new villages' vary, but are often similar to those in other Government controlled relocation sites. In addition, - like relocation site residents - many urban relocatees demonstrate great tenacity and resilience in re-building their lives and communities in a new setting, under often very difficult circumstances. For people who relocate elsewhere (i.e. who do not move to the 'new villages'), vulnerabilities and needs will be similar to those in other relatively stable areas. Urban relocatees also have similar protection needs to other Type 2 forced migrants, especially in the field of land and property rights.

Local NGO and international agency programmes with urban relocatees are mostly limited to some substitution and support activities, with occasional denunciatory advocacy conducted by non-Burma based groups. There are major gaps in the data regarding, and analysis of, urban relocation in Burma. This in part explains the limited awareness of this as a protection issue among agencies 'inside' the country, and the subsequent lack of advocacy initiatives.

299 ERI & KESAN (2003), p.61.

300 On the transformation of Yangon under the SLORC/SPDC, and attempts to control the population through re-modelling the urban environment, see Donald M Seekins, *The State and the City: 1988 and the Transformation of Rangoon*, in *Pacific Affairs* (Summer 2005).

301 Democratic Voice of Burma, *Rangoon fire victims forcibly relocated out of town* (12 December 2005). Confirmed by witness: Field Notes (25 August 2006).

302 IMNA (20 Feb.2006).



### 6.9.1 Evictions before 1988

The forced relocation of hundreds of thousands of poor urban dwellers in the late 1980s and early 1990s had its precedents in the early years of military rule, and in particular the ‘cleansing’ of Yangon under the first Ne Win military regime (1958-60). By 1958, about 300 000 of the capital’s one million people were regarded as ‘squatters’.<sup>303</sup> The first half of the following year saw the construction of Yangon’s first two satellite towns, at Okkalapa and Thaketa, north of the city, to which 167 000 of these people (about 25 000 families) were moved.<sup>304</sup>

### 6.9.2 Evictions since 1988

The 1990 UN Centre for Human Settlements (UN Habitat) estimated that the Department of Housing and Settlement has forcibly relocated at least 1.5 million people (16 percent of the urban population) between 1988 and 1990. In one 12 month period (1988-89), 260 000 squatter residents (some 16 percent of the city’s population) were evicted from around Yangon.<sup>305</sup> Many thousands of other people who had been living in marginal conditions, in Mandalay, Pegu (Bago), Sittwe<sup>306</sup> and Taunggyi, were also forcibly resettled.<sup>307</sup>

Following the 1988 ‘democracy uprising’, between 1988 and 1994, many poor urban communities - including several of those associated with the protests - were relocated to ‘satellite towns’ on the edges of major towns and cities. Their previous homes were demolished to make way for wider streets, to ‘sanitise’ major cities and historic sites (such as Bagan), and in order to build new factories and housing developments for the better-off (including Chinese immigrants, particularly in Mandalay).<sup>308</sup> For example, residents of Ward 13 in Insein (a major suburb, north of Yangon) have been forcibly moved to Hlae Ghaw Township on at least three occasions over the past fifteen years: in 1989, 1995, and again in 2001.<sup>309</sup> Other Yangon resettlement sites include Shwe Pyi Tha, Dagon Myo Thit and Hlaingthayar, and in Mandalay Chan Mya Tharzi and Anug Mya Ze.<sup>310</sup>

### 6.9.3 ‘Urban Renewal’

In 1990, the SLORC enacted Law No. 11/90, investing the Yangon City Development Committee (YCDC) with authority to convert “Yangon with the characteristics of the city of international standards.” The Committee was authorised to:

- re-demarcate the territorial limits of the city municipality limits
- operate works independently with funds owned by the Committee

303 BERG (April 1998), p.15.

304 Callahan (2003), p.193.

305 UN Centre for Human Settlements (UNCHS), *Human Settlements Sector Review Myanmar* (1990).

306 NEED has calculated that 3,600 acres of land were confiscated in and around Sittwe, between 1974 and 1993: *Massive Abuse on Land, Environment and Property Rights* (August 2006).

307 Ibid., and BERG (April 1998), p. 16. The US government has calculated that half a million Yangon residents were forcibly displaced to satellite towns between 1988 and 1994: Ibid.

308 “Since 1989, the military junta has been launching the beautification programme of Rangoon and other cities across Burma by forcefully relocating and inducing voluntary relocation to new satellite towns. There are ten satellite towns around Rangoon alone to which almost half a million population has been relocated. Similarly, satellite towns were created around the famous ancient city of Mandalay in Upper Burma, forcefully relocating the residents to attract and accommodate Chinese and other foreign investors as well as tourists. The junta claimed that most of the evicted were squatters and fire victims who were not allowed to re-acquire their old plots of land. However, the Burmese nationals reported that among the forcefully evicted were regular homeowners”: Hudson-Rodd et al (2003), p. 27.

309 Field Notes (12&14 May 2003 & 16 June 2005).

310 Monique Skidmore, *Karaoke Fascism: Burma and the Politics of Fear* (2004), p.150.

- prescribe, revise, assess and collect duties and taxes and specify rates relating to development works
- utilise foreign currency derived from the lease of buildings, lands, or other means of development work.

The YCDC's jurisdiction extends to 33 townships covering an area of 300 square miles (780 sq km). In his address to the 25<sup>th</sup> Special Session of the United Nations General Assembly for the Overall Review and Appraisal of the Habitat Agenda, U Tint Swe explained the role of the private sector working with the Government to develop land for the increased demand for housing. The main focus was squatter upgrading through the 'hut to apartment' projects. To achieve this aim, people living in 'squats' were to be removed and 'accommodated' in new apartments. To remove increased population pressure from the central business areas of the two largest cities of Yangon and Mandalay, a city development committee was formed under direct supervision of the chairman of the SPDC and the Prime Minister.

The SPDC estimated demand for housing and land (5 houses per acre) for the year 2003, for each city with a population over 20 000. The greatest demand was predicted to be in Yangon (20 951 houses on 4 910 acres) and Mandalay (6 189 houses on 1 239 acres).<sup>311</sup> The military junta aim was to "thoroughly clean the city, to dismantle the slums and encroachments and to resettle them in satellite towns"<sup>312</sup> The YCDC asserts that squatters who lived in the back yards of "hospitals, offices, schools, and temples" were moved to six satellite cities, Shwepyithar, Hlaing Thayar, Shwepaukkan, Dagon (North), Dagon (South), Dagon (Port) and Dagon (East). Each township is supposed to be self-contained, with markets, hospitals, restaurants, condominiums and places of worship. About 246 000 households were allocated plots and housing loans.

In Mandalay, people who lived in traditional wooden homes have been forced to convert these structures into modern, two-storey buildings. If residents could not afford this re-construction, they were displaced to satellite towns. Residents have also been forced to leave their homes in Mandalay, to accommodate new commercial ventures and the construction of hotels and accommodation, much of which is occupied by the city's soaring Chinese population.

According to Hsue Hgnet:

*Like the new buildings replacing the old ones, new developments have made the native residents of old Mandalay leave their long-residing homes, departing from this block from that block, this win, that win... .Whenever these Mandalay-thas who have moved away meet among themselves they reminisce about their cherished past...this quarter, this festival, this home, this win and its residents.<sup>313</sup>*

The changing ownership of property is described by Hsue Hgnet, with reference to Theikpan Street, as symbolising change bridging the old and the new Mandalay, the rural and the urban. Theikpan Street runs into a new satellite town, where 60 by 40 foot land plots and thatched houses emerge from small rice fields. Hsue describes a large commercial development by the Mandalay Municipals Department built in 1992, at a cost of K58.2 million, opened as a

311 *Myanma Myo Pya* (Yangon 1990).

312 Yangon City Development Committee, *Yangon Profile* (2003) p.21.

313 Hsue Hgnet, (translated by Yay Chan), *The Straight Lines of Mandalay* (2003).

supermarket specialising in Chinese-made goods. The *Ar Thar Wadi* supermarket paid a rent of K950 000 a month to Municipals, but closed after one year of operation, as it was not supported by local residents. The space is to become a five star hotel.<sup>314</sup>

Central features of ‘new towns’ created across Burma are the modern homes of military commanders and high ranking government officials, built along main highways and railway tracks with access to electricity, telephone or water supplies. In contrast, the homes of evictees are built with traditional bamboo and thatch, have no electricity or water supply, and are located far away from main roads. Military elites and high-ranking officials are able to secure low-interest mortgage loans from state banks, and gain access to building materials at subsidised prices, to build two to three homes in the best sections of satellite towns. They have the option to sell these homes at a profit, or to maintain absentee ownership of unoccupied houses, and rent them out to (often foreign) businessmen and diplomats as means of earning foreign exchange.<sup>315</sup>

‘Newtown’ evictees were generally offered little compensation, and were often asked to pay for the new plots of land in satellite towns. If they could not pay, people were moved further away and forced to settle in towns with no resources. As Aung Thein Lynn, then Mayor of Yangon, boasts:

*Never before in the history of Yangon had so many projects for urban development been undertaken in so short a time. From 1988, vast areas of Yangon teeming with hutments and low grade housing were replaced by apartment buildings, private towers and condominiums.*<sup>316</sup>

#### 6.9.4 Forced evictions around Pyinmana

More recently, thousands of residents in the vicinity of Ayelar and Leway, southwest of Pyinmana - 400km north of Yangon, in central Burma - have been uprooted to make way for construction of a new military/administrative capital city and airport. In late 2005, the SPDC ordered the relocation of Burma’s administrative capital, and military command-and-control centre, from Yangon to Pyinmana. According to the *Bangkok Post*, the construction of Senior General Than Shwe’s new capital has displaced 10 000 local residents, with another 3 000 ordered to move in mid-2005, and more than 5 000 villagers forcibly relocated in 2006.<sup>317</sup> Most government ministries were ordered to move to the area by the end of 2006. Extensive anecdotal evidence suggests that many civil servants resettled to the new capital against their will.<sup>318</sup>

#### 6.9.5 ‘Development’-induced and urban displacement in Mon State

As in Yangon, several ‘satellite towns’ were created in Moulmein municipality, between 1988 and the mid 1990s. At least four main sites exist on the outskirts of the city: Shwemyaing Thiri and Myaing Thaya (both built following the huge 1988 ‘democracy uprising’ in Moulmein), Zaya Thiri (built shortly before the summer of 1988), and Thiri Mingala. Each ‘satellite town’ contains between 750 and 2 000 households, few with access to farmland. Most householders were forcibly relocated from three wards of Moulmein city.<sup>319</sup> As do their equivalents in Yangon,

314 Ibid. p.186.

315 Hudson-Rodd et al (2003).

316 Ibid.

317 Larry Jagan, in *The Bangkok Post* (22 July 2005).

318 Field Notes (July 2006).

319 According to BERG, 18 000 people were forced to move: BERG (Sept. 2002).

relocation site residents complain about the lack of employment and livelihood opportunities in the new settlements.<sup>320</sup>

Starting in 1996, the Government started constructing a rough-and-ready ring-road around Moulmein. According to BERG, “hundreds of households were evicted from their homes ... without being given any compensation or housing assistance.”<sup>321</sup>

The *Mon Forum* reports that, in December 2003, 1 400 houses in three wards of Moulmein were ordered to relocate, so that a railway bridge could be built across the Salween River to Martaban. Householders received one month’s notice to move. Some did receive limited compensation (at 70 percent of the calculated value of their property), as well as plots of land at a new (relocation) site in Pat-kin Ward, east of the city.<sup>322</sup>

The authorities have forced other Moulmein residents to re-model their houses and streets, according to a standard model.<sup>323</sup> There have also been reports of land confiscation at Three Pagodas Pass, which displaced 50 families in early 2005, to make way for a proposed casino in the border trading-town.<sup>324</sup> In early 2006, about 70 private houses at Three Pagodas Pass were forcibly relocated.<sup>325</sup>

## 6.9.6 Tourism, conservation and displacement

Income from tourism accounts for an estimated 5.7 percent of Burma’s GDP. Some 772 000 foreign tourists visited the beautiful and troubled ‘golden land’ in 2004-05<sup>326</sup> (about half of these arrived via Yangon airport, the rest crossed land borders).

A decade previously, in 1994, at least 500 families were evicted from their homes in Yangon, in preparation for the (unsuccessful) ‘Visit Myanmar Year’ tourism promotion campaign. The Government has claimed that most of those people were squatters who lived in poorly constructed hovels, which were fire traps: “Yangon had to be cleared twice of congestion created by squatters who have now been given their own land and helped to build their own houses in the new towns.”<sup>327</sup>

Since the mid-1990s, residents of Burma’s beautiful and fascinating ancient settlements have found themselves living in tourist sites. People in Mandalay, Pagan and Amarapura in upper Burma have been relocated so that these settlements can be renovated as tourist attractions.

Since 2000, about 16 000 people living along a particularly beautiful stretch of the Irrawaddy coast have also had their livelihoods undermined by land confiscation and ‘development’ directly

320 Field Notes (5 February 2003).

321 BERG (Sept. 2002).

322 Construction of the Moulmein-Martaban Bridge has reportedly altered the flow of the Salween River, flooding about 100 acres of farmland on nearby Bilu Kyun (Chaung Zone) Island: Kao Wao (20 Jan. 2006).

323 *The Mon Forum* (December 2003).

324 *The Mon Forum* (May 2005).

325 IMNA (27 April 2006).

326 Hlaing Tun and Sein Htay, *Tourism Promotion Impact in Ngwe Saung, Irrawaddy, Burma* (Burma Fund & National Coalition Government of the Union of Burma, June 2006), pp. 6-7.

327 Aung Thein Lynn, *Yangon Profile* (Yangon City Development Committee 2003).

linked to tourism. This was the year in which the Nga Hsaw area was re-named ‘Ngwe Saung’, and a mini-boom in hotel construction and service road building commenced.

According to a recent report,

*Formerly, the people of Nga Hsaw area made their living by:*

- 1. growing palms to produce the dried flesh of coconuts that meant for them a life term source of major income;*
- 2. fishing along the coast (onshore fishnet hauling) for local use as well as selling out preserved fishery goods for a significant income;*
- 3. growing almost enough paddy for local consumption;*
- 4. growing groundnut as a second crop to get enough cooking oil for local use;*
- 5. growing other crops from annual plants and perennial trees in vacant landscape for domestic use;*
- 6. some small jobs like binding brooms or making nipa palm thatch for supplementary income; and*
- 7. raising domestic animals for local use.*<sup>328</sup>

However, in 2000 several villages along a nine-mile stretch of beach were forcibly dismantled, and moved to relocation sites in the interior. Authorities confiscated about 65 percent of villagers’ farmland and 80 percent of their palm gardens, while fishing by onshore fishnet hauling was banned outright. Although the villagers did receive some compensation, this was not equivalent to the amount of land lost. Furthermore, the loss of their land has severely limited peoples’ livelihood options.<sup>329</sup>

There is a danger that, if and when tourism develops further in Burma, local communities may be moved off their land in order to protect the ‘pristine natural environment’. Efforts should be made to ensure that eco- and adventure-tourism in Burma is developed in partnership with indigenous people, in ways that respect their rights and livelihoods.

### **6.9.7 Hukawng Valley Tiger Reserve**

The Hukawng (or Hugawng, in the local Kachin language) Valley is a remote, mostly forested area of western Kachin State, near the Indian border. In 2001, the Government and the US-based Wildlife Conservation Society (WCS) established the world’s largest tiger reserve established in the valley (with an area of some 21 890 km sq).

Since the mid-1990s however, the regime has expanded its militarised control over the area, but not enforced environmental regulation. Indeed, the demarcation period of the reserve, saw a huge expansion of the gold mining industry, including the introduction of new extraction techniques, which have had a terrible impact on the environment. In their report, *Valley of Darkness*, the Kachin Development Networking Group documents an increase from 14 to 31 in the number of gold mining sites in the Hukawng Valley, between 1994 and 2006. This ‘gold

328 Hlaing Tun and Sein Htay (2006), p. 10.

329 Ibid. p. 14 & p. 17.

rush' has been accompanied by large-scale land confiscation - of at least 100 acres of house plots, and more than 150 acres of farmland, between 1991 and 2005 - to build new *Tatmadaw* bases, and in Danai town. In many cases, well-connected commanders have subsequently sold on stolen property. The mining boom has seen an influx of transient populations, and associated problems of drug addiction and HIV-AIDS in the valley.<sup>330</sup>

## 6.10 The business of border development

In the early 1990s, approximately 80 percent of land-holdings in Burma were below 2 hectares (only 3 percent were bigger than 8 hectares).<sup>331</sup> In the ensuing 15 years, large numbers of the rural poor have lost their land — often in the name of 'economic development'.

Special economic zones have been established in many areas along the Thailand and China borders, to facilitate foreign investment. Most of the limited amount local industry thus far established or planned for the future is quite exploitative in nature, and will do little to improve the long-term livelihoods of local communities. However, these investments will provide further incentives for neighbouring countries' business and political elites to support the continuation of the present military regime, and its self-serving misgovernance.

Thailand's GDP is about four times that of her three poorer neighbours - Laos, Cambodia and Burma - combined. At the initiative of Thailand's ex-Prime Minister, Thaksin Shinawatra, the heads of these four states met in the ancient Burmese capital of Pagan in November 2003, to plan the

*transformation of the border areas into zones of durable peace, stability and economic growth, to promote social progress and prosperity to blend local, national and regional interests for common benefit and shared prosperity.*<sup>332</sup>

At the heart of the agreement was Thailand's commitment to provide soft loans and grants to her neighbours for the development of special economic zones, where Thai businesses would invest in factories and agriculture. Under the Economic Cooperation Strategy, Thai-financed industrial zones are to be constructed at Myawaddy and Pa'an, and near Moulmein. In addition, Thai agro-industries will develop 'contract farming areas', wherein the companies supply agricultural seeds, technology and equipment, while the Burmese Government will 'provide' farmers and land.

Similar zones have been established or are planned at Muse on the China border, and Tachilek, Kengtung, Tavoy, Mergui (Myeik) and Kawthoung, at the major Thilawa Port development in Yangon, and at Kyaukphyu in Rakhine State and Pyin Oo Lwin in Mandalay Division. According to the Xinhua News Agency, "foreign investors making direct investment in the SEZs will be categorically exempted from taxation ranging from two to eight years."<sup>333</sup>

The SPDC reportedly agreed to set aside 7 million hectares (17.5 million acres) to plant sugarcane, oil palm, maize, cassava and rubber under contract with companies in Thailand. Subsequently,

330 Kachin Development Networking Group, *Valley of Darkness: gold mining and militarization in Burma's Hugawng Valley* (2007). According to the KDNG, between 1992 and 2006, the number of *Tatmadaw* battalions in Kachin State increased, from 26 to 41 - despite the NDA-K and KIO ceasefires.

331 John Copland, in Trevor Wilson (2006), p. 128.

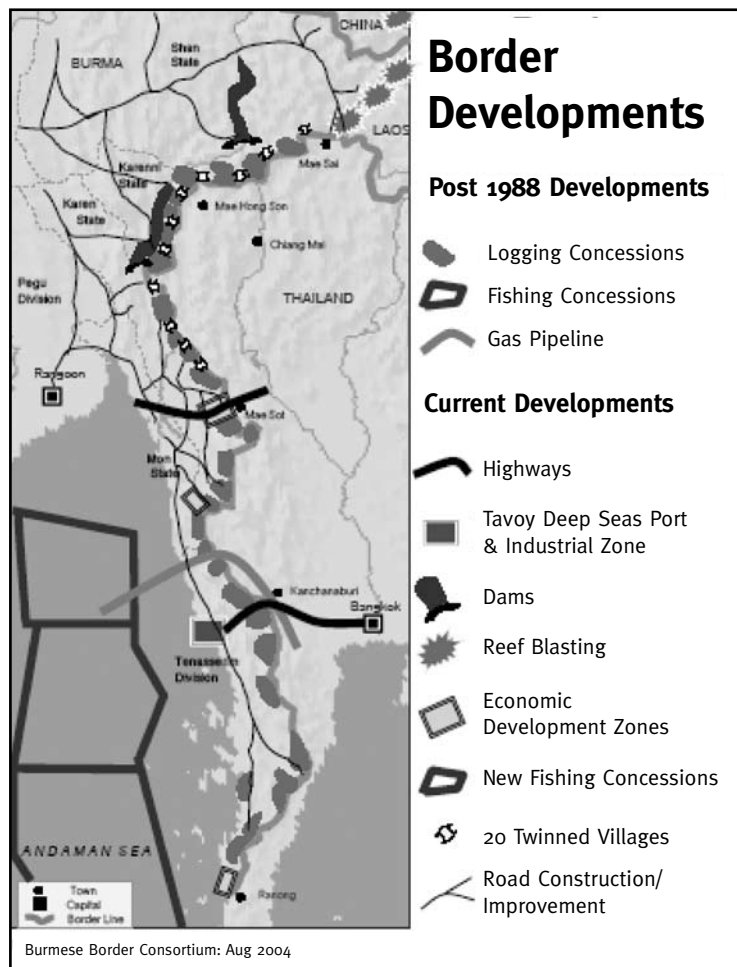
332 'The Pagan Declaration' (12 Nov. 2003); see *The Bangkok Post* (15 Nov. 2003), and *The Irrawaddy* (3 Feb. 2004).

333 Xinhua (14 August 2007).

some 37 000 acres of land in Muse (northern Shan State) have been confiscated since 2004, for rubber farms to be run managed by Thai companies, undermining livelihoods in 16 villages.<sup>334</sup>

Since the Pagan Declaration, numerous new contracts and plans have been announced. These include grants and loans to the Burmese Government for construction of the Asian Highway link through Myawaddy to Kawkareik and Pa'an, and assistance in building a US\$ 3 million, 18km stretch of this road, between the border and Thingang-Nyinaung, along which factories, large-

scale farms and orchards are to be established.<sup>335</sup> The Thai Government has also promoted the twinning of 20 villages along the northern section of the border. There are also reports of Thai businesses staking interests in wolfram and antimony mines along the border (including in KNU-controlled areas). Such developments are likely to be facilitated by a new law establishing Special Economic Zones, due to be promulgated by the SPDC in 2007.<sup>336</sup>



MAP 4 - Border Development [TBBC]

334 SHAN (25 January 2006).

335 Interview with KNU leader: Field Notes (17Oct. 2004).

336 *The Irrawaddy* (1 Sept. 2006).

It is unclear what - if any - will be the consequences for such 'border development' programmes of the removal from power of Thaksin Shinawatra, as a result of the *coup d'état* of 19 September 2006. In general, the Council for National Security (CNS) has distanced itself from the policies of its predecessor - but not moved to cancel any specific projects. However, the situation could again change quickly if and when new elections are held in Thailand.

### 6.11 'Type 3' forced migration - state agriculture policies

Since the BSPP era, the Government has made efforts to control the crops that its citizen-farmers grow. In particular, state policies have focused on the cultivation of rice, rubber, cotton and sugar.

According to a recent study, "the avoidance of social unrest and the maintenance of control by the regime are identified as the two key factors that have determined the nature of agricultural policy after 1988."<sup>337</sup> In 2001, the same researcher discovered that

*income levels are higher in villages far from the center than in villages located in regions under the tight control of the central authorities [and] farmers and villages that emphasise a paddy-based, irrigated cropping system have lower farming incomes than those that do not. The reason for these paradoxes are the distortions created by agricultural policies that restrict land use and the marketing of agricultural produce.*<sup>338</sup>

Government sources state that 25 percent of land in Burma is non-agricultural, 25 percent is agricultural, and the remaining 50 percent is forest, of one sort or another (on forest cover in Burma, see Subsection 6.4.2).<sup>339</sup> In order to extend the amount of land under agricultural production, in the mid-1990s, the Government introduced a 'land reclamation plan', intended to expand the amount of productive land in Burma. However, in practice, rather than expanding agricultural land, existing farmland is often stolen from local communities - especially in minority-populated areas - and handed over to more powerful interests.<sup>340</sup>

Since 1991, the Government has promoted commercial plantations, with the aim of increasing agricultural production. Blocks of land as large as 2 000 hectares each have been granted to agri-companies on 30 year leases.<sup>341</sup> Confiscated land has been used to develop the agri-business projects, in parts of northern Shan, Kachin, Karenni and Arakan States, and in Tenneserim Division (prawn-farming in coastal areas; and rubber, palm oil and other plantations further inland). For example, in early-mid 2005, the State reportedly confiscated land from several villages in southern Tenneserim Division, and 'gave' it to agri-companies, for the development of palm oil business.<sup>342</sup>

In the period 1997 to 2006, 36 square miles of land were confiscated from eleven villages in Palauk Village Tract (Tavoy Township, Tenneserim Division) (11 square miles since 2005), to create large-scale rubber and palm oil plantations. In the process, 730 households were forcibly

337 Koichi Fujita and Ikuko Okamoto, *Agricultural Policies and Development of Myanmar's Agricultural Sector: An Overview* (Institute of Developing Economies, Discussion Paper No. 63, June 2006).

338 Ikuko Okamoto, Kyosuke Kurita, Takashi Kurosaki and Koichi Fujita, *Rich Periphery, Poor Center: Myanmar's Rural Economy* (Institute of Developing Economies, Discussion Paper No. 23, March 2004).

339 Field Notes (8 June 2006). Figures broadly confirmed by John Copland, in Trevor Wilson (2006), p 128.

340 Field Notes (8 June 2006).

341 John Copland, in Trevor Wilson (2006), p. 128.

342 Land was also cleared for construction of a dam near Tenneserim town: Field Notes (10 May 2005).



relocated. The Kyi Sin and Pyae Phyo Tun companies, which were granted the concessions to run these plantations, gave no compensation to the affected communities.<sup>343</sup>

The Government restricts export of 16 key commodities, including rice. Furthermore, in many areas, local markets are controlled by mafia gangs (e.g. in northern Shan State cows are reportedly often sold in China and the meat re-imported to Burma, to avoid paying high taxes on cattle slaughter to Wa gangsters).<sup>344</sup>

### 6.11.1 Imposed and traditional farming systems

Many varieties of rice are traditionally grown in Burma (e.g. 29 types in Ta Paw Der village in Karen State, alone). Each of these requires specific growing conditions for the best yields. Local people take care not to let one variety interbreed with another, store harvested varieties separately and exchange seed with other farmers to ensure continuity of the varieties.<sup>345</sup>

The Government's imposition of specific rice and other seeds undermines such traditional practices. For example, across most of northern Shan State, the *Tatmadaw* Northeast Commander has insisted that farmers purchase set amounts of a hybrid rice variety, developed in southern China. Unless they can afford expensive inputs (such as chemical fertilisers and pesticides), farmers cannot use these seeds, which are generally inappropriate to the local environment - especially in areas of upland swidden rice cultivation. Locally, this form of forced cropping is perceived as a form of taxation. In fact, in many villages, the forcibly purchased seed is discarded as worthless.

The *Tatmadaw* has also imposed inappropriate rice types in other parts of the country - e.g. 'Shwe Wah Htun' rice around Myitkyina.<sup>346</sup> Other imposed seed types include hybrid corn in northern Shan State - and the forced cultivation of physic nuts, across Burma.

#### Box 2: The Physic Nut Saga

Since late 2004, the Government has forcefully promoted the nationwide cultivation of physic nut (*Jatropha Curcans*, or *Kyet Su* in Burmese). The plant is poisonous, and has a serious effect on long-term soil fertility. However, oil from its nuts can be mixed with diesel, and used as a low-grade fuel.

In many developing countries (including Malaysia and India) household-level physic nut cultivation has been used to supplement incomes, and reduce dependency on increasingly expensive imported oil. However, its promotion in Burma illustrates a key theme in the military Government's misguided attempts to impose top-down 'development' on the populace. By insisting on the cultivation of this unproven (in the

343 Information collected by local sources (August 2006).

344 Field Notes (23 April 2007).

345 See Karen Environmental and Social Action Network (KESAN), *Diversity Degraded: Vulnerability of Cultural and Natural Diversity in Northern Karen State, Burma* (2005), p. 38.

346 Field Notes (5 July 2006).

## Box 2: The Physic Nut Saga (*continued*)

Burmese context) fuel oil, often at the expense of other, viable and locally appropriate crops, the SPDC is attempting to impose a 'one size fits all' solution to nationwide economic crises.



The Government has reportedly set a quota of 500 000 acres for each State and Division to plant physic nut, which in turn is allocated among Townships, and at the village level. Numerous reports exist of the use of forced labour on Government physic nut plots - as often as six times a year, in parts of Shan State. These plots tend to be near roads - presumably, in order that they are easily displayed to visiting military dignitaries.

From northeast Shan State, to southwest Arakan, villagers and townspeople are also required to grow physic nut on their own land. For example, *The Mon Forum* reports that people in Mudon and Thanbyuzayat Townships have been forced to plant, in front of their houses, 5-10 physic nuts per family. Rubber plantations in Mudon Township have also been ordered cut down, again to plant physic nuts, the seeds of which plantation owners were forced to buy (at between K150-350 per seedling).<sup>347</sup>

<sup>347</sup> *The Mon Forum* (May & August 2006). Further to the south, in Kaleinaung sub-township (Tenasserim Division), villagers have been forced to cut down their cashew nut trees, to grow rubber: IMNA (4 Sept. 2006).

### **Box 2: The Physic Nut Saga (continued)**

Similar patterns continued into 2007. For example, in May the authorities in Kyaikmaraw, Mudon and Thambuzayat Townships in Mon State directed families to purchase and grow physic nut plants along the roadside, and in household plots.<sup>348</sup>

In October it was reported that in Yepyu the TPDC was forcing the VPDC:

*to collect two Tin (Burmese basket) of nuts from their villagers and if they cannot send it, they would have to pay 120,000 Kyat. "No village has nuts to give. Because villagers do not bother about the nut plant and are not interested in growing it," a VPDC member said. Most VPDCs paid the money instead of giving two Tins of physic nuts because they could not find it.*

*According to a VPDC member, villagers in the township were forcibly ordered to grow the physic nut last year. The TPDC also extorted money from the local people for the Township project planned by the Burmese military junta.*

*The TPDC ordered each family to grow 10 to 20 plants and took at least 2,000 Kyat from each family as cost for the seed.<sup>349</sup>*

### **6.11.2 Other large-scale agriculture projects**

The Government has reportedly agreed to lease 7 million hectares of land in eastern Burma to Thai Companies, to grow sugar, cassava for export to Thailand.<sup>350</sup> Such new agricultural practices and patterns of land ownership often cause mass dispossession.

Where villagers have failed to re-settle land they had previously abandoned during the armed conflict, the land is often sold to investors. People are also dispossessed of land that they currently occupy and farm. For example, over the last few years, a large amount of land has been confiscated in the Palaw-Beik area (Tenasserim Division), to make way for large-scale rubber and palm oil plantations. The Pe Pe Pyu and other companies lease land from the Ministry for Agriculture and *Tatmadaw* Southeast Regional Command. The villagers who have traditionally cultivated this land are generally given one month to leave. In a phenomenon typical of forced relocation in rural Burma, many civilians dismantle their houses, and take what possessions they can with them. Some flee to the border (either becoming illegal migrants in Thailand, or remaining in the Burmese jungle, as IDPs); others attempt to settle new lands, or join relatives in other villages.<sup>351</sup>

The Government has also leased land to agri-companies in Mon State. In October 2005 reports emerged that rights to collect rubber from plantations in Ye Township, which had been seized

348 IMNA (29 May 2007).

349 IMNA (30 Oct. 2007)

350 Field Notes (17 July 2006).

351 Field Notes (29 May 2006).

by the *Tatmadaw* (Infantry Battalion 586) in 2001, were being auctioned off - sometimes to their original owners.<sup>352</sup> In the Irrawaddy Delta, people have also lost their land to prawn farms.<sup>353</sup>

In Kachin State, the Buga Company - the main commercial wing of the KIO/ KIA - also has interests in mining, transport and other ventures in Kachin State. Although its record in such respects is generally better than other players in the unregulated and cut-throat post-ceasefire environment, in 1999-2000 the Buga Company reportedly confiscated villagers' orange orchards, to grow sugar for the KIO-owned Nam Ti Sugar Mill, 10 miles (16km) from Mogaung and 36 miles (58km) from Myitkyina.

### 6.11.3 Livelihoods and food security<sup>354</sup>

Across rural Burma, arbitrary and multi-layered taxation, and restrictions on economic activity - including confiscation of livestock and other property - undermine human and food security, and further impoverish the population. Nevertheless, communities continue to struggle to uphold their traditional practices, many of which offer alternative, more sustainable models of livelihoods security (see Sections 8 and 9).

In remote areas of Burma, such as the Karen hills, parts of which are still (at least partially) characterised by a subsistence – rather than cash – economy, sustainable livelihoods are particularly vulnerable to conflict, militarisation, displacement and underlying structural violence. Among other problems, these factors make it difficult for villagers to tend their fields, and guard against pests such as rats and wild pigs – all factors that tend to undermine food security further. According to the CIDKP, “upland farmers in hiding generally only harvest 40 percent to 50 percent of their crop for the year.”<sup>355</sup>

Another aspect of militarisation in eastern Burma is disruption of the long-established links between lowland traders and Karen (and other) hills-people, denying both communities markets for their respective (manufactured, and cultivated or foraged) goods, and contributing to social atomisation. One consequence is sharply increasing prices for rice and other goods, especially in remote, conflict-affected areas, which are often under virtual blockade by the *Tatmadaw* (and/or DKBA).

According to the Karen Office for Relief and Development (KORD), rice prices in Nyaunglebin District increased by 25 percent in 2003 to K 5 000 per tin (US\$ 5 per kg).<sup>356</sup> In many conflict-affected areas “it is only possible for villagers in hiding to access traders if they can send a message to the towns and KNU can arrange a temporary and unofficial ‘jungle market’.”<sup>357</sup>

352 Ibid.

353 Field Notes (18 June 2006).

354 The UN Committee on Economic, Social and Cultural Rights states that “the right to adequate food is realised when every man, woman and child ... has physical and economic access at all times to adequate food or means for its procurement”: General Comment No. 12 [1999], *The Right to Adequate Food*. Food security is “the capacity of households to produce or procure a stable and sustainable basket of adequate food” (CARE USA Menu of Standard Indicators); “a condition where people at all times have access to sufficient food to allow them to lead an active and healthy life” (World Food Summit 1996).

355 BBC (2003), p.30.

356 Ibid. p.21.

357 Ibid. p.21.

The experience of forced displacement has serious impacts on the depletion of family assets, which in turn undermines capacities for future recovery. Three-quarters of IDPs surveyed by TBBC and partner groups in 2004 had suffered food shortages for at least one month in the previous year; 20 percent had had access to sufficient food for less than three months.<sup>358</sup>

### **Box 3 Land-loss: case study of a mixed Burman-Karen village in the Irrawaddy Delta**

For several years, the Township authorities have issued instructions to plant two rice plus one other (often summer beans) crop per year. This inappropriately intensive agricultural regime has leached nutrients from the soil. Livelihoods have been further undermined by the requirement that farmers buy one basket per household of '747' variety hybrid rice seed. This variety requires many expensive inputs, but income from the second rice crop often does not cover expenses of fertiliser, pesticides *etc.*, the cost of which is usually met by going into debt.

Villagers owe money to the State Bank, and to merchants and moneylenders. The latter are usually very high interest loans (typically, 10-20 percent per month). This debt often leads to land loss: if farmers cannot service their debts, they may be forced to 'sell' land to local elites (often ethnic Burman speculators from nearby towns). Although these are unofficial transactions, they are formalised by the Land Records Office.

By mid-2006, less than one third of Karen households in the village had land to cultivate. The landless engage in firewood collection and charcoal production, which are environmentally destructive and non-sustainable economic activities. Others enter the day labour market, including sending their children to Batheingyi, Yangon and beyond. The incidence of this Type 3 economic migration has reportedly increased dramatically over the past 10 years, especially among women.<sup>359</sup>

## **6.11.4 Opium eradication and forced migration**

According to the UN Office on Drugs and Crime (UNODC), in 2005 some 193 000 households in Burma (181 000 in Shan State) were dependant on opium cultivation, deriving on average 70 percent (US\$ 160 per year) of household income from the poppy. By 2006, this number had dropped to 126 500 families.<sup>360</sup> These figures reflect the continuation of a trend: between 1998 and 2006, poppy cultivation in Burma was reduced by 83 percent. (However, in 2007, opium production in Burma began to rise again.<sup>361</sup>)

The imposition of opium bans in many ceasefire - and some Government-controlled areas - has had a profound impact on livelihoods, and patterns of settlement. According to the Kokang authorities, following the implementation of an opium ban in 2003, about one third of the population (60 000 people out of an estimated population of 180-200 000) of Special Region One (SR1) left the area.<sup>362</sup>

358 TBBC (2004), p.50.

359 Field Notes (14 June 2006).

360 UNODC, *Opium Poppy Cultivation in the Golden Triangle: Lao PDR, Myanmar, Thailand* (2006).

361 *Ibid.*. However, opium production in parts of southern Shan State, and in Chin and Kachin States, has been on the rise. The overall reduction in heroin manufacture has also been accompanied a huge rise in methamphetamine production.

362 See South (2008 - forthcoming).

Similarly, a by-product of opium eradication in Wa areas has been the forcible relocation, since 1999, of between 50 000 and 125 000 villagers (estimates vary). These people have been forced to move from opium growing areas in the north of Special Region 2 (SR2), to the UWSA's Southern Command area on the Thailand border (and also to areas within SR2 proper) – where more flat and fertile farmland was available.<sup>363</sup> In the process of transmigration, thousands of Wa IDPs have reportedly died.

Relocated villagers have received some support from the UWSA, in the form of rice and cash.<sup>364</sup> However, many of the original inhabitants of the area (mostly Shan and Lahu); have been displaced by the new arrivals; many had little choice but to seek refuge (and places in the informal economy) in Thailand.

There is disagreement regarding the Wa authorities' motives in relocating such large numbers of people, as well as those of the SPDC and (state and private) Chinese interests. One reason given for the relocations (which were ongoing in mid-2007) is to break villagers' dependency on opium cultivation. Wa leaders consider the transmigration programme to be a positive contribution to the development of their people, providing desperately poor villagers with new lands and new socio-economic opportunities. However, the programme clearly contravenes many of the Guiding Principles on Internal Displacement (see Appendix 3).

Meanwhile, the relocations have allowed the UWSA to consolidate its presence along the Thailand border, and exacerbated long-running tensions between Wa and Shan communities. The SPDC presumably welcomes this development, as since the mid-1990s it has used the UWSA as a proxy army in its campaigns against the Shan State Army-South (SSA) insurgents.

### 6.11.5 Natural disaster-induced displacement

The Representative of the UN Secretary-General on the Human Rights of IDPs, Professor Walter Kälin, has called on states to “seek to mitigate the human toll of damage from such natural phenomena ... and to protect and assist populations within their jurisdiction (Guiding Principles 3 and 25).” Professor Kälin has asked the international humanitarian community to provide assistance, and to address “issues of human rights protection... [including] access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, recruitment of children into fighting forces, loss of documentation, safe and voluntary return or resettlement, and issues of property restitution.”<sup>365</sup>

A recent example of natural disaster-induced displacement in Burma includes the impact of a cyclone which hit the North Arakan (Rakhine) coast, near Bangladesh, on 19 May 2004, and made some 20 000 people homeless (about 300 killed).<sup>366</sup> Many people reportedly received no aid at all – although some assistance was distributed by the Myanmar Red Cross Society (MRCS) and UN agencies.

363 These figures do not include the tens of thousands of people relocated in previous years, or the underlying strata of persons displaced by fifty years of war in Shan State.

364 Field Notes (Oct.-Nov. 2001).

365 Walter Kälin, *Protection of Internally Displaced Persons in Situations of Natural Disaster: A Working Visit to Asia* (27 Feb. to 5 March 2005).

366 *The Irrawaddy* (June 2004).



A make-shift shelter in an IDP hiding site

## Local responses to forced migration and HLP violations

*to be truly effective in addressing the crisis [of internal displacement], the international response must acknowledge ... and supplement the efforts of local and national authorities... [and] pay due regard to the efforts of the displaced themselves to cope with, and respond to, their situation.*<sup>367</sup>

This section focuses on the responses to displacement and dispossession of the people affected. Rather than viewing the subjects of HLP and other rights violations as passive victims, the report takes an actor-oriented approach, which explores how communities have responded to abuses with resilience. While the national authorities, and the *Tatmadaw* and its proxies, are the main causes of the crises described in Section 7, local people and agencies can and should be part of the solution.<sup>368</sup>

<sup>367</sup> Dr Francis Deng, the previous Representative of the UN Secretary General on IDPs. Foreword, to Vincent and Sorensen (2001).

<sup>368</sup> In the same volume, Marc Vincent writes that “one aspect of the problem that has been too frequently overlooked is the ability of IDPs to adapt to the experience of displacement. This oversight robs the displaced of their voice and belittles the substantial contributions they make in shaping their own lives. It also reinforces the incorrect perception that the international stage is the only venue for action... international organisations in designing policies and in developing relief plans and programming in internal displacement crises ... [should] recognise and support, rather than inadvertently damage or destroy, existing mechanisms”: Ibid. pp.1 & 6.

## 7.1 Community coping mechanisms<sup>369</sup>

Community coping strategies vary across a range of scenarios, from the constructive (building community cohesion), to the potentially damaging, leading to greater vulnerability and decreased human security (e.g. exposure to trafficking pressure, depletion of family assets). In general, people affected by displacement and dispossession in Burma are very resilient, and adopt a number of often inspiring responses – including forms of resistance to attempts to remove them from their ancestral lands, and innovative adaptations to the challenging circumstances of displacement.

A common violation or threat will not necessarily produce a common response. In many cases, civilians from the same community, subject to the same migration pressure (e.g. a relocation order), will adopt a variety of different responses (plus the increasingly difficult and dangerous option of seeking refuge in a neighbouring country). They can:

- hide in - or close to - zones affected by on-going armed conflict and forced relocation (with the hope of returning home, but often remaining mobile for years)
- move to a relocation site
- enter a ceasefire area
- move to relatively more secure villages, towns or peri-urban areas, including ‘behind the front lines’ in war zones, in ceasefire zones, and in Government-controlled locations.

Indeed, this is often the case within an individual family: elderly folks may attempt to stay at home; adults will go into hiding in the jungle, enter a relocation site, or seek new livelihood options in relatively more secure and stable villages, towns or urban areas; while some children may be sent to join relatives in town. Equally, the response cannot be determined from the cause: a particular response (e.g. entering a relocation site) may be the result of a variety of different pressures.

Chris Cusano notes that in the case of Type 1 (armed conflict-induced IDPs), villagers “assume a subtly defiant wait-and-see attitude ... [and] ignore the first notice.”<sup>370</sup> When the soldiers return, they usually enforce their orders with vigour - although villagers are sometimes able to bribe *Tatmadaw* (or DKBA) officers, to abandon, or at least postpone, their relocation (a ‘coping mechanism’, of sorts).

Kevin Heppner (of the Karen Human Rights Group) adopts a ‘popular sovereignty’ perspective.<sup>371</sup> He sees the continued presence of civilian populations in zones of on-going armed conflict as a form of resistance:

*In contexts of human rights abuse and forced displacement, survival strategies incorporate elements of resistance. This includes behaviour like deliberately slow compliance with military orders, hiding rice from soldiers, passing information to resistance forces, etc.*<sup>372</sup>

369 The following subsections include material derived from Human Rights Watch (2005) and South (Independent Study, Commissioned by the Office of the UN Resident Coordinator in Myanmar, June 2006).

370 Chris Cusano, in Mark Vincent and Brigitte Refslund Sorensen (eds), *Caught Between Borders: Response Strategies of the Internally Displaced* (2001) p.149.

371 Which recalls Scott’s ‘weapons of the weak’ paradigm: James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (1985).

372 Kevin Heppner, *Sovereignty, Survival and Resistance: Contending Perspectives on Karen Internal Displacement in Burma* (KHRG Working Paper, March 2005), p.13.



The KHRG has documented some of the brave and ingenious ways in which villagers evade the demands for forced labour and other abuses perpetrated by the Burmese military and state agencies.<sup>373</sup> These include “forced agricultural programmes, forced labour, and forced recruitment to SPDC-run organisations and administrative structures ... [combined] with systematic state-run extortion, looting, and confiscation of land and crops.”

### 7.1.1 IDPs in hiding (zones of on-going armed conflict)

As noted above, people from the same community, subject to the same migration pressure (e.g. a relocation order), will adopt a variety of different responses.

A displaced family or individual is more likely to adopt a life ‘in hiding’, in a zone of on-going armed conflict, if they have some form of pre-established relationship with an armed opposition group - for example, relatives already living in insurgent-controlled areas, or family or friends in the KNU.

Given the serious and sustained human and other rights violations, migration itself constitutes a coping mechanism (a response to displacement). Villagers in armed conflict zones are usually prepared to flee at short notice. They have bundles of possessions ready to move quickly, and have often prepared secret rice stores, hidden in the jungle.

Heppner provides a comprehensive list of Karen IDP survival strategies, many of which “are built around Karen traditions that predate the current displacement situation by centuries. For example, storing rice in small storage barns outside the village is a longstanding Karen tradition...which has been adapted to hiding food stores.”<sup>374</sup> (Nevertheless, Karen informants report that this method of - traditionally short-term - storage can lead to food loss, through rice rotting in the jungle *etc.*<sup>375</sup>)

Some people hide in the forest for a few days during the immediate displacement crisis (e.g. fighting), and then return to their village, when conditions allow, to re-build their burnt and looted homes and rice barns. Others migrate and re-settle elsewhere, including in temporary settlements in the jungle, in nearby towns or villages, or as refugees/ migrants in Thailand. Some remained ‘in hiding’, on the move in the jungle for years. This has serious implications for the depletion of IDPs’ material assets, as well as their education and health status.

In moving between displacement episodes, Karen and other IDPs hide in the jungle, and move on foot by night. Even if food is available, they are often unable to cook, as they are afraid of lighting a fire in case the *Tatmadaw* spot it.

Displaced people often remain in hiding for longer periods, living in temporary shelters in the jungle. They clear areas of jungle for swidden rice cultivation,<sup>376</sup> forage for supplementary food in the forest, and fish in the streams. IDPs ‘in hiding’ also cultivate tapioca, chillies, yams, and other vegetables (which can occasionally be traded). In many cases, when rice supplies run low, IDPs

373 Karen Human Rights Group, *Setting Up the Systems of Repression: The progressive regimentation of civilian life in Dooplaya District* (KHRG #2006-04, Sept. 2006).

374 *Ibid.* p.22 & p.26.

375 Field Notes (4 August 2006)

376 According to the CIDKP, “for a family of four to hide and survive in Tenasserim Division, they need to clear more than five acres of forest”: BBC (2003), p.14.

resort to drinking diluted, nutritionally inferior rice porridge, and supplement this with wild roots and tubers.

Their temporary shelters - often little more than bamboo lean-tos - are scattered in remote locations, to avoid *Tatmadaw* patrols, which search for and destroy IDPs' hiding places, rice fields and hidden storage barns. The *Tatmadaw* targets IDPs in hiding, which they suspect of being rebel supporters, and subject them to a range of well-documented human rights abuses. In some areas (for example in parts of Karen State and Tenasserim Division) IDPs remain in hiding for years, moving regularly to avoid *Tatmadaw* patrols. Since the mid 1990s, this pattern of continuous displacement has become particularly pronounced.<sup>377</sup>

One of the most inspiring aspects of displacement among Karen communities is the manner in which vulnerable communities share resources, especially food. As Cusano notes, "there is no organised system of food rationing; it just seems to be a natural part of communal life."<sup>378</sup> IDPs in hiding are also often able to communicate with family and friends in relocation sites and other Government-controlled areas, and can sometimes use these networks to access food and other items.

In general, displaced people are more likely to adopt a life 'in hiding', in a zone of on-going armed conflict, if they have some form of pre-established relationship with an armed opposition group – such as relatives already living in insurgent-controlled areas, or family or friends in the KNU. However, significant (but unknown) numbers of IDPs in zones of on-going armed conflict attempt to avoid both the *Tatmadaw* and insurgent groups.<sup>379</sup>

Those who remain in hiding or attempt to re-build their villages are often subjected to further rounds of forcible relocation, when *Tatmadaw* officers (often newly rotated into the area) initiate a renewed 'Four Cuts' campaign. For example, in October 2006 the TBBC and its partners reported that in 2005-06 attempts to return and re-establish over 100 villages in eastern Burma were thwarted by further conflict and displacement.<sup>380</sup>

Three-quarters of IDPs 'in hiding' interviewed for the primary research said they would like to remain where they are, if conditions improved, rather than return 'home'. Displaced people may not want to return 'home' (itself a problematic concept) for a number of reasons: their previous land and property may have been confiscated, landmined or occupied by other displaced people, and the likelihood that the types of abuses that IDPs have fled are still ongoing in their places of previous or habitual residence.

It is notable that, of the 36 Karen IDPs interviewed in the Papun hills, during the primary research phase, only 17 wanted to go back to their 'original' home and/or land, if conditions allowed. This is a problematic concept, given that most people had moved numerous times: it was not usually clear to which of various previous settlements the informants wished to

377 BERG (1998), p.38.

378 Cusano, in Vincent and Sorensen (2001), p. 158. On the importance of sharing and cooperation as survival strategies, see also Christian Aid, *Burma's Dirty War: the Humanitarian Crisis in Eastern Burma* (2004), p.17.

379 Field Notes (2 July 2005).

380 TBBC (2006), p. 8.

return, although this often appears to be their place of birth.<sup>381</sup>

None of the informants considered themselves currently to be in a safe place. However, most of them (28 people, 78 percent) said that they would like to remain where they are, *if* conditions improved. This perhaps surprisingly low number of people wishing to return ‘home’ may in part be explained by the fact that many of these people know that their homes and farms have been confiscated and/or land-mined by the *Tatmadaw*, or re-settled by others.<sup>382</sup>

These findings caution against assuming that all IDPs will always want to ‘go home’. As noted, for many people, the option of returning home is not a viable possibility - at least in the short-to-middle term. However, it may still be the preferred outcome for many displaced and dispossessed people, *if/when* the political-economic-military situation allows for a dignified and sustainable return. (Thus, the importance of regularly gauging displaced peoples’ changing aspirations.) Indeed, too narrow an adherence to the concept ‘not returning’ may reinforce the results of the military regime’s ethnic cleansing strategies.

## 7.2 Relocation sites

Displaced people are more likely to comply with a relocation order, and enter a relocation site, if they have non-threatening relations with the state authorities. Much more information is available on people being forced into relocation sites, than on those leaving them.

The distinction between different types of relocation sites, and organic settlements, in Burma is rather arbitrary – particularly in an historical context where villages in the hills relocate periodically for socio-economic reasons (e.g. to access new lands). Furthermore, it is by no means clear when a relocated settlement stops being a ‘relocation site’. Most villages in eastern Burma have experienced displacement at some time over the past half-century, in the context of a protracted civil war and wider state-society conflict. People have, in many (probably most) cases, re-built their lives, and re-settled at least semi-durably in new settlements. Whether these should still be regarded as relocation sites is a moot point.

Nevertheless, ‘classic style’ Relocation Centres and Relocation Villages still exist in many areas. The State and/or *Tatmadaw* sometimes provide a few weeks or months’ supply of rice to new arrivals in Relocation Centres – although this has often been taken from other villagers’ granaries. In many cases, the Government also provides limited education and health services, as it does in much of rural Burma. Access to schools and markets - and the ‘protection’ from further bouts of relocation afforded by residence in relocation sites - explains the reluctance of some residents to leave, when conditions allow.<sup>383</sup>

381 A recent study of IDPs in Sierra Leone suggests that “many IDPs do not want to be resettled. Their reasons vary: some are traumatised, some have security fears ... some have lost their coping mechanisms ... others are unwilling to return to areas where they know there is a lack of infrastructure and basic services. Many have become urbanized”: Claudia McGoldrick, *Sierra Leone: Resettlement Doesn’t Always End Displacement*, in *Forced Migration Review*, Issue 17 (May 2003).

382 “Forced migrants’ notion of home is continuously challenged and transformed from the time of the events that lead to one’s flight, up until one’s return. The way returnees perceive ‘home’ and the way they define their identity will impact their reintegration process. The objective of this study is not to provide a typology of the meaning of returning home but a hint of its complexity”: Tania Ghanem, *When Forced Migrants Return ‘Home’: The Psychosocial Difficulties Returnees Encounter in the Reintegration Process* (RSC Working Paper No. 16, Oct. 2003).

383 In some cases, Karen and Karenni relocation site residents welcome the fact that they no longer have to pay taxes to, or be intimidated by, insurgent groups: various interviews.

According to TBBC, in 2004 “half of households in relocation sites were recorded as offering daily labour for cash wages ... [but] less households in relocation sites were ... involved in any type of rice farming... This can be attributed to the lack of access to agricultural land and greater restrictions on movement.”<sup>384</sup> Save the Children UK (SCUK) reports that government-forced relocation policies have “not only resulted in people losing their homes with little or no compensation, but also their ability to farm their land or maintain their jobs.”<sup>385</sup> Regular paid work is rarely available to new arrivals, who may have to sell off any property or possessions they were able to bring with them. However, due to their proximity to roads and other settlements, some Relocation Centres afford greater access to markets and work opportunities than do the isolated villages from which many residents were relocated.<sup>386</sup>

Overcrowding in relocation sites creates unsanitary conditions, and often leads to a greater prevalence of communicable diseases. Access to water and sanitation (WATSAN) at relocation sites varies, but the quality is often very poor. The provision of schools, clinics and other services is often minimal or non-existent, especially in the early days of resettlement. In many relocation sites, the Government provides school and other buildings, but as in other parts of rural Burma, teachers and books, medics and medicines are often in short supply. At best, already destitute IDPs are likely to be charged for any medicines available. Where Government schools do exist, there are usually also fees to pay, and - as in the rest of Government-controlled Burma - ethnic nationality children may not study their own languages in school.

However, conditions at some settlements are better than at others. Particularly in the longer-established sites, there are schools, some paid work is available, and - as in any community - people attempt to re-establish their lives. In such cases, residence is often no longer (or not entirely) a product of coercion, and it is debatable whether such ‘new villages’ should still be considered relocation sites.

Displaced families and individual are more likely to enter a Government-controlled relocation site, if they have relatives or friends already living in the area, and/or if they have non-threatening relations with the relevant authorities. According to CIDKP:

*people who went to relocation sites [in Kyauk Kyi Township] did wages labor, tenant [farming], look for seasoning food in the jungle and along the stream and sell back, did handy weave bamboo baskets for selling, some young people went to town or city find job and send back money for their family. But nearly all people do not have permanent job.*

*On the other hand people are facing with forced labor and extortion, whenever they don't have money to pay the Burma army demanding they have to sell it out their possession such as jewellery, cattle, lands etc...to pay porter fees, sentry fees, monthly fees, etc.... so people getting poorer and poorer.<sup>387</sup>*

However, the lack of food and extremely difficult conditions may eventually drive large numbers

384 TBBC (2004), p. 46.

385 Therese Caouette/ Save the Children UK (SCUK) (2001), p.43; numerous testimonies provided in the text.

386 Until late 2003 - when a new round of forced relocation began in the Mawchi area of southern Karenni State - many of those remaining in the half-dozen relocation sites in Karenni State did so because health and education services, markets and jobs were more readily available than in the chronically under-developed and war-torn hills. In contrast however, large numbers of Karen and other villagers continue to reside in relocation sites against their will, in Tenasserim Division and elsewhere.

387 Field Notes (12 August 2005).

of residents to leave - with or without permission from the authorities. In many cases (e.g. parts of Karenni State in 1999-2002), the authorities turn a 'blind eye' to these departures, and IDPs are able to return to - and attempt to re-build - their old villages. In others (such as Tenasserim Division in the same period), departed relocation site residents have joined the IDP population hiding in the jungle (among whom are likely to be fellow-villagers, who fled following the original relocation orders and chose to take their chances in the hills). A few make it to the uncertain refuge of neighbouring Thailand.

In 2006 the TBBC recorded 118 000 people, living in Government-controlled relocation sites in eastern Burma.<sup>388</sup> Relocation sites are found across central and southern Shan State, in Karenni, Karen and Mon States and Tenasserim Division – and in parts of central Burma, and in Rakhine and Chin States, and Sagaing Division.

As described below, types of relocation site vary: at one end of the spectrum are fenced-in, concentration-style camps, tightly controlled by the *Tatmadaw*; at the other are more relaxed settlements, which, in time, displaced people may find preferable to their original villages. That many thousands of residents 'choose' the life of an IDP in hiding (or in a ceasefire area), often under conditions of minimal food and personal security, is testimony to the poor conditions in many relocation sites.

### 7.3 Relocation Centres

These are artificial settlements ('administrative' rather than 'natural' villages). They are usually located in lowland areas, often near infrastructure projects (e.g. roads), with *Tatmadaw* bases nearby (sometimes actually on-site). As well as any original inhabitants of the area - who often live in their old houses, adjacent to the relocation site proper - the residents of 'Relocation Centres' may include people from a dozen or more outlying villages, who have been forced to move down from the hills to the Government-controlled lowlands. In most cases, their original houses will have been dismantled by residents prior to their relocation, and/or destroyed by the *Tatmadaw* (fruit trees and other crops are also routinely destroyed, and property looted). Generally, villagers are not told where in the Relocation Centres to settle, merely ordered to move within a set period.

Patterns of relocation are complex. As a forced relocation campaign slackens, people may be allowed to return to their villages for days - then weeks - at a time. However, they must still periodically return to the relocation site for a few days or weeks, and are often subject to further 'serial relocations'.

Relocation Centre residents risk being displaced again should they leave the site and resettle elsewhere (especially in or near their 'home' village, as this is likely to have been in an armed conflict zone). Many therefore opt to stay in Centres, even after departure becomes an option.

The situation for civilians in large Relocation Centres varies across a range of experiences. The acute early stage of displacement and relocation is usually the most difficult, as newly arrived families often lack land and access to community support networks.

388 TBBC (2006), p. 8.

People living in Relocation Centres, who are liable to various official and unofficial taxes, are also often subject to extensive bouts of forced labour on state-sponsored projects, such as roads. Such depredations leave families with little time and human resources to devote to their own survival. Forced labour is particularly onerous for vulnerable groups (e.g. female-headed households). In some cases, the amount of work demanded is so great as to occupy entire families full-time. The only alternative is to pay others to go on their behalf.

Overcrowding in Relocation Centres creates unsanitary conditions, and often leads to a greater prevalence of communicable diseases. Children and young men in relocation sites are reportedly also subject to forced conscription into the *Tatmadaw*.

Unless they have access to cash, or relatives in the area, new arrivals usually cannot acquire land at Relocation Centres, because these are so crowded, and often situated on the outskirts of an existing village or towns. There is not enough agricultural land to cultivate sufficient rice and other crops, for new arrivals in particular. This can lead to conflicts with neighbouring villages and original inhabitants/ earlier migrants. Newly relocated families are often particularly vulnerable, if they lack access to community support networks.

New arrivals in some Relocation Centres are allocated plots to farm (although the quality of the land may be poor). However, in many Relocation Centres, residents are required to hand over their remaining rice stocks to the local authorities (i.e. the *Tatmadaw*), which then ration these back to villagers. Even in sites where residents retain control over their own food stocks, these are likely to be insufficient for subsistence, for three inter-related reasons:

1. The destruction and looting of villagers' rice supplies by the *Tatmadaw* (with the pretext that these may find their way to the insurgents) is itself a major factor in forcing people into relocation sites.
2. Villagers can usually only carry limited amounts of rice with them to the relocation sites.
3. In many cases residents are issued with (or can buy) passes allowing them to re-visit their original farms. However, the often considerable distances to their old homes, combined with the limited amount of time allowed (they are often barred from staying away overnight) mean that the amount of rice and other crops harvested is usually much lower than that grown before relocation.

As food security is undermined by confiscation, and competition for land and other resources - including access to labour markets - among a rapidly enlarged population, food is often very expensive at Relocation Centres. Although firm data is not available, anecdotal evidence indicates the existence of chronic malnutrition in many of these sites - especially in the first year or so after relocation. In the Karenni and Shan State relocation sites in the late 1990s in particular, large numbers of people are reported to have died of treatable diseases (suicides are apparently common in Relocation Centres too).

Relocation Centres also include sites controlled by non-state agencies. Since 1999, the UWSA has forcibly relocated up to 125 000 villagers from northern Shan State, mostly to the UWSA's Southern Command area on the Thailand border, displacing several thousand Shan and other



Boy fleeing Burma Army  
in the rain

local inhabitants in the process. The DKBA has also been responsible for relocating civilians: in 1995, several thousand Papun and Pa'an District villagers were moved into its Myaing Gyi Ngu/ Kamamaung headquarters area; in some cases at least, these war-weary people seem to have moved voluntarily.

#### **7.4 Relocation Villages**

These are pre-existing settlements, which have not been relocated in their entirety, but where outlying houses and satellite hamlets have been forced to move into the village centre. As such, they might also be described as 'consolidated villages'. Across large swathes of rural Burma (e.g. almost the whole of Tenasserim Division) they are the only villages remaining.

Relocation Villages are smaller than Relocation Centres, and more difficult to document and map. They may be situated in areas firmly controlled by government forces, with *Tatmadaw* bases nearby, but are sometimes also found in 'brown' areas, where insurgent forces have some operational capacity.

Like most Relocation Centres, smaller Relocation Villages are often fenced in, and the *Tatmadaw* more or less tightly controls entry and exit. Residents of Relocation Villages are also often called upon to do forced labour. However, they usually have some opportunity to tend their farms (although with various restrictions), as these are generally closer to home than those belonging to Relocation Centre residents are.

A 47-year-old farmer described conditions at one such site:

*We had a bamboo house at Plaw Lah Hay Relocation Site, but it was difficult to get enough good bamboo, because we were not allowed out of the Relocation Site. The Burma Army*

*soldiers gave us two pots for cooking, but the rest of our household goods we had to find for ourselves. We had to sell our rice and betel nut crops, which was very difficult. Our family struggled to support ourselves. All the time, the Burma Army took porters and watchmen, and stole our few possessions.*<sup>389</sup>

Relocation Village residents (who may include IDPs displaced from other, previously relocated villages) are in general subject to less strict control than those of the big Relocation Centres. As is the case when land is confiscated from the original inhabitants Relocation Centres, no compensation is given to those affected. Overcrowding in the centres of Relocation Villages creates unsanitary conditions, and often leads to a greater prevalence of communicable diseases.

In some areas, Relocation Villages are allowed to remain *in situ* (i.e. not forced to move to large Relocation Centres) if they guarantee not to have contact with insurgent forces. The *Tatmadaw* frequently warns such 'peace villages' (*Nyein Chan Ye* in Burmese) that, if any fighting should occur in the area, they will be forced to move. In many cases, *Tatmadaw* (and/or DKBA) commanders give permission to remain *in situ*, on receipt of payments (bribes) from villagers. Often, relocation sites are allowed to disperse, following the agreement of ceasefires with insurgent groups.

## **7.5 Urban and peri-urban relocation sites**

For many people subject to - and dispossessed of their property by - forced relocation, the options of hiding-out in the jungle, or moving to a government (or ceasefire group)-controlled relocation site are equally grim. Large numbers of displaced people choose rather to join relatives or friends in relatively more secure and stable villages (in Government-controlled, or ceasefire areas), or move to the outskirts of larger towns or cities (where they often settle in 'ghettos', populated by people of similar ethnicity). Often the experience of displacement causes families to break up, with some members (often children and the elderly) sent to join relatives in larger settlements.

Karen and other communities often deposit displaced children with religious organisations (churches and monasteries) in larger villages or towns. The best practice guidelines of development agencies generally discourage this practice, as it can lead to family break-up. However, such opportunities do provide some education - and security - to many displaced minors, especially if the family can remain in contact.

### **7.5.1 Relatively more secure villages and peri-urban areas**

The situation for IDPs who move to more secure villages and peri-urban areas (ceasefire zones and Government-controlled areas) is likely to vary across a range of experiences. The early stages of displacement and resettlement are probably the most difficult, as newly relocated families and individuals may lack access to community support networks.

However, very little is known regarding the vulnerabilities of people living outside areas of on-going armed conflict, or relocation sites. In terms of protection, the most vulnerable groups

389 Interview with displaced Karen farmer, Papun District (June 2003).



are likely to be new arrivals, female-headed households, and unaccompanied children - whose families often send them to study in towns, with relatives or religious institutions.

In general, the situation for IDPs who move to Government-controlled villages and peri-urban areas is likely to be similar to that of the wider population, among whom they settle (thus the importance of community-based needs assessments, including for protection issues). A range of indicators shows that conditions for IDPs - and presumably other vulnerable populations - are significantly better in ceasefire areas than in zones of on-going armed conflict, or relocation sites. Reports of human rights abuse (with the exception of forced labour and local 'taxes', which ceasefire groups extract<sup>390</sup>) are less frequent in ceasefire areas than in what the TBBC classifies as Free-fire Areas, Partial/Mixed Administration Areas or Relocation Sites. People in Ceasefire Areas are reportedly less likely to be forcibly displaced (on average, once every five years) than those in Free-fire Areas (1.4 times per year), Partial/Mixed Administration Areas (once every three years) or Relocation Sites (annually), and are less likely to become casualties of war.<sup>391</sup>

### 7.5.2 Conditions in satellite villages

Communities forcibly resettled in the late 1990s were provided with plots and some services at their new locations on the urban periphery.<sup>392</sup> According to a more recent report though, Yangon relocatees were:

*asked to pay for the new plots of land in satellite towns. If they could not pay, they were moved further away and forced to settle in shabbier satellite towns outside Rangoon division. ... the homes of forcefully relocated people are built with traditional bamboo and thatches that are located far away from the main roads with no electricity and water supply. Military elites and high ranking officials secured low-interest mortgage loans from state banks and building materials at subsidized prices to build two to three homes in the best sections of these satellite towns.<sup>393</sup>*

In general, the new sites are supplied with few or no services - although some were reportedly provided with transport links, drainage and water management facilities.<sup>394</sup> Despite the many hardships faced, urban relocatees (e.g. at Hlae Ghaw) have made great efforts to re-build their lives and communities, and have often provided their own schools and social services.

People complain of a lack of roads and transport infrastructure in satellite towns and new villages, preventing them from continuing with their jobs back in the urban centre.<sup>395</sup> As well as undermining livelihoods options (reducing incomes and increasing indebtedness) relocation also affects access to health and education services.

390 For example, resettled IDPs in the Me Sae ceasefire zone (southeast Karenni State) have reportedly been used as porters by the Karenni National Peoples Liberation Front (KNPLF, which split from the KNPP on ideological grounds in 1978, and agreed a ceasefire in May 1994), in its state-sponsored military campaign against the KNPP insurgents: Field Notes (28 March 2005).

391 People in Ceasefire Areas are more likely to cultivate paddy fields (49%) - as opposed to less food-secure swidden cultivation - than those in Free-fire Areas (14%), Partial/Mixed Administration Areas (32%) or Relocation Sites (27%); they also have better access to education (but not to health) services: TBBC (2004), pp 75-80.

392 UNCHS (1990).

393 Hudson-Rodd et al (2003), p.27.

394 BERG (Sept. 2002), p.231.

395 Field Notes (12 May 2003).

Monique Skidmore provides horrific accounts of the impacts of relocation on the physical and mental health of poor women in the ‘New Fields’ (as her informants call them) of Yangon — many of whom have apparently been forced into prostitution (and suffer the effects of actual and structural violence).<sup>396</sup> She also reports that satellite town residents were often subject to forced labour in the 1990s, and that many men have become migrant labourers.<sup>397</sup>

## 7.6 Refuge across the border

When all other options are exhausted, IDPs may attempt to flee to neighbouring countries, and become either refugees or migrant workers. Most Karen refugees in Thailand have previously spent several months or years as IDPs in Burma. Since the mid-late 1990s, the journey to Thailand has become increasingly difficult and dangerous, due to the prevalence of landmines, and because the *Tatmadaw* has sealed the border.

According to BERG, the main factors inhibiting IDPs’ access to refuge in Thailand include:

- their distance from the border;
- *Tatmadaw* or DKBA patrols blocking escape routes;
- restrictive Thai asylum policy, and the crowded nature of refugee camps;
- the fear of refugee culture and camps in Thailand; and
- “Choice - people prefer to remain on the Burma side of the border if they are able to survive; they cross the border as a last resort.”<sup>398</sup>

(Section 3 provides an outline of the situation of Burmese refugees and migrant workers in Thailand and elsewhere.<sup>399</sup>)

396 Skidmore (2004), Chapter 8. See also Janette Philip and David Mercer, ‘Politicised Pagodas and Veiled Resistance: Contested Urban Space in Burma’ (2002), in *Urban Studies* (2002; 39/9).

397 Skidmore (2004), p. 154.

398 BERG (April 1998), p. 4.

399 For more detailed treatments of this important subject, see TBBC, *Program Report: July to December 2006* (Bangkok 2007), and Ashley South (2005 & 2008 - forthcoming).



IDPs on their way to the Salween River



# Institutional responses to forced migration and HLP violations

This report has described a range of HLP and other rights abuses, which occur in the context of various types of conflict in Burma, and especially as a result of forcible displacement. This Section examines the activities of local, national and international actors (including duty-bearers), in respect of the crises in rights and security of tenure in Burma.

## 8.1 Rights-based approaches

Section 3 of this report addresses the status of HLP rights violations and forced migration under international law and statutes. A key element of the humanitarian approach is the concept of ‘protection’, which has been defined by the ICRC (and adopted by the UN Inter-Agency Standing Committee) as:

*all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law, international humanitarian law and refugee law).<sup>400</sup>*

<sup>400</sup> Sylvie Caverzasio (ed), *Strengthening Protection in War: A Search for Professional Standards* (ICRC 2001). See also Slim and Bonwick, *Protection: An ALNAP Guide for Humanitarian Agencies* (ALNAP & Overseas Development Institute 2005).

The protection of these rights is first and foremost the responsibility of States - although not all States are signatory to all aspects of international law (e.g. the Burmese Government has not ratified the instruments of UNHCR, the ICESCR, the Geneva Convention's Additional Protocols, or the Statute of the International Criminal Court). In cases such as Burma, where the State is unwilling or unable to protect its citizens, this responsibility falls on the international community. Some international agencies (e.g. UNHCR, UNICEF and ICRC) are specifically tasked with protecting certain rights, or categories of people. In addition, the UN has a mandate to protect and promote human rights: the Secretary-General has encouraged all agencies to expand and strengthen the protection of civilians, in conformity with international humanitarian law.

International agencies have developed tools for analysing 'modes' of humanitarian protection:

- provision of previously non-existent assistance (substitution mode)
- provision of assistance via existing (Government or non-state) structures (support to services/ capacity building mode)
- advocacy activities (persuasion, mobilisation and denunciation modes).<sup>401</sup>

## 8.2 Local and international interventions

Displaced and dispossessed people's needs for assistance and protection are caused by exposure to violence, and a range of other rights violations. The entitlements to receive aid, and to be protected from abuse, are universal human rights. The following subsections describe how a range of different organisations respond to displacement and dispossession.

In keeping with the 'bottom-up' approach of this report, the analysis begins with the activities of community-based organisations (CBOs) and local/national (Burmese) NGOs.<sup>402</sup> The next level of analysis focuses on non-state Actors (ceasefire and non-ceasefire groups) and the military Government. The focus then turns to the interventions of international NGOs and UN agencies - both those working 'inside' Government-controlled areas, and those operating cross-border (mostly from Thailand) - before assessing the roles of exile Burmese political groupings and the global 'Burma solidarity' campaign.

### 8.2.1 Civil society - Burmese CBOs and NGOs

The term 'civil society' is used here to denote voluntary, autonomous, public associations and networks, intermediate between the state and the family. These include a broad range of CBOs and NGOs; media and social welfare organisations; religious and cultural groups (traditional and modern); as well as more overtly political organisations — but not political parties, which aim to assume state power.<sup>403</sup>

Civil society groups - including those working 'inside' Burma, and those operating cross-border from Thailand (and to a much lesser degree, China) - implement *substitution* and *support* programs throughout much of Burma, including in many conflict-affected areas,

<sup>401</sup> See Slim and Bonwick (2005) and South (February 2007).

<sup>402</sup> On the history, current situation and strategic roles of terms CBOs and NGO in Burma, see Ashley South, *Political Transition in Burma: a New Model for Democratization*, in *Contemporary Southeast Asia* (August 2004).

<sup>403</sup> Some of the following material is derived from Ashley South (Independent Study, Commissioned by the Office of the UN Resident Coordinator in Myanmar, June 2006).

which are inaccessible to international agencies. The Burmese staff of local and international organisations working ‘inside’ the country can sometimes engage in *persuasive advocacy*, and some mobilisation of resources; national NGO leaders engage in some *persuasive advocacy*, and limited mobilisation activities. Non-Burma based groups also engage in extensive *denunciation* mode advocacy.

Burma-based local NGOs engage in *advocacy* and relationship building with various Government agencies, at different levels (Township and State Peace and Development Councils, and in Yangon), as well as some low-key *mobilisation* of other actors. National NGOs and civil society leaders have also played important roles in consolidating ceasefire agreements, especially in Kachin State.

### 8.3 Historical overview: civil society under military rule

Following the military takeover of 1958, and especially after the 1962 *coup d’etat*, the State extended its control over previously autonomous aspects of social life. Most civil society networks could no longer operate independently, and were eliminated, driven underground, or forced into revolt. The existence of renewed armed opposition to the military Government provided a pretext for the further extension of state control, and suppression of diverse social groups deemed antipathetic to the modernising state-socialist project.

This situation has led some (especially overseas-based) activists and Burma-watchers to assume that there is no civil society in the country. However, over the past decade, civil society networks have begun to re-emerge in and between the ceasefire and war zones of Burma, as well as in areas under Government control (the majority of the country).

### 8.4 Civil society ‘inside Burma’

A variety of local civil society networks exist among ethnic nationality communities ‘inside’ Burma, including religious (primarily Christian and Buddhist) organisations, and traditional village associations, as well as more formally established local NGOs (e.g. literature and culture associations and business-support groups). Examples of CBOs in Burma include Farmer Field Schools (FFS), farmer interest groups, village development groups, villager organisations, community savings groups, early childhood centre committees, and local Parent-Teacher Associations (PTAs).

In 2003-04, a survey conducted by Save the Children UK found that since the 1990s, large numbers of new CBOs and local NGOs had been established in Burma.<sup>404</sup> This study estimated that some 214 000 CBOs were operational throughout Burma, in addition to 270 local NGOs.

The most common sectors for local NGOs were education, health and social welfare; the least common were conflict resolution, nutrition and emergency response. Most NGOs and CBOs were working at the ‘primary’ level (welfare activities), with a few NGOs expanding to the ‘secondary’ level (community development), but almost none at the ‘tertiary’ level (rights-based). Although very few civil society groups in Burma are explicitly engaged in HLP issues, several are in fact working on land-related themes (see Subsection 8.4.1).

<sup>404</sup> Save the Children/ Brian Heidel, *The Growth of Civil Society in Myanmar* (Books for Change 2006).

‘On the ground’, patterns of development are mixed. Over the past ten years, extensive community networks within the clan-based Kachin society have re-emerged in the space created by the relatively stable Kachin ceasefires. Meanwhile, further to the south, since the 1995 NMSP-SLORC ceasefire, several local organisations have been active in community development projects throughout - and, crucially, beyond - the ceasefire zones. However, across much of Arakan State, and in the ex-communist strongholds of the Kokang and Wa ceasefire groups (with their ‘top-down’ political cultures), civil society and social capital are less well-developed.

#### **8.4.1 Access to the displaced and dispossessed from ‘Inside’**

International agencies do not have access to the more tightly controlled relocation sites (described in Section 7). Therefore, most humanitarian and other assistance reaching relocation sites comes from the affected communities themselves. This may take the form of ‘self-help’ initiatives undertaken by extended family and ethnic nationality networks, often organised and mediated by local religious leaders. A more systematic approach has been adopted by some CBOs and local NGOs, which have established low-profile aid programmes in a number of relocation sites (and some ceasefire areas) in eastern Burma.

Local access to relocated populations must be negotiated with local *Tatmadaw* (and less problematically, DKBA) commanders and officials, usually by local or national religious leaders. Groups involved in such activities may be accused of abetting the State’s draconian forced relocation programme. However, in providing relief in partnership with relocated populations, local NGOs help to build community networks and develop capacities. Such humanitarian efforts strengthen local civil society and human capital, in ways that contribute towards peace making and conflict transformation capacities, and indirectly support processes of political transition.

Some welfare activities cross the ‘front-line’ of conflict, and are implemented by Burma-based groups, in areas of on-going armed conflict. Similarly, some cross-border aid reaches populations in relocation sites and ceasefire areas. However, there is still relatively little overlap in the populations assisted by groups from ‘inside’ Burma (in Government-controlled and ceasefire areas), and those working cross-border from Thailand (in zones of on-going armed conflict).

Over the past few years, local NGOs and CBOs in Burma have focused increasingly on environmental issues, seeing this agenda as not inherently ‘political’, and therefore less likely to receive unwanted attention from the authorities. A number of civil society actors have also begun to address HLP rights, especially in the area of sustainable and appropriate agriculture and land use policies and practice.

Civil society organisations have enjoyed some success in engaging with the authorities, to protect local communities. For example, the Metta Development Foundation has invited Government officials to its Farmer Field Schools, to explain land registration procedures (including the *Community Forest Instructions*. See further discussion in this Subsection).

Although its importance to the broader scale of development initiatives in Burma should not be overestimated, Metta (established in 1998) is often viewed as a success story that other local NGOs might emulate. Metta and its local CBO partners implement projects in Shan, Karenni,

Karen and Mon States, and the Irrawaddy Delta, which employ participatory methods, leading to the creation of CBOs, and action plans and project proposals. Metta's FFS in Kachin State and elsewhere provide community-based training to participants on both sides of the 'ceasefire front line' (including from the KIO and NDA-K). Through the use of 'demonstration plots', the FFS have sometimes been able to convince local Government authorities that indigenous farmers have valuable knowledge of local crops and farming techniques (e.g. that the imposition of Sein Shweli variety hybrid rice is not appropriate to a specific locality: see Section 6).

A number of other local and international agencies in Burma have made use of the 1995 *Community Forestry Instructions* (appended to the 1992 *Forestry Act*), which allow for the registration of community forests, which are thus granted some protection from expropriation. Local people in Kachin and Shan States have successfully used these regulations.<sup>405</sup>

For example, villagers in northern Shan State have gained long-term (leasehold) tenure to their land, by registering their farms as commercial enterprises. This initiative has increased their incentives to invest in their land for the long term. Similarly, two national NGOs are working with local Kachin communities to negotiate secure tenure and access to community forests using the CFI, in an uneasy partnership with both the KIO and the SPDC.<sup>406</sup> Another national NGO has successfully advocated with the UWSA authorities, regarding villagers' secure access to farmland.<sup>407</sup>

## 8.5 Constraints on civil society

The civil society sector continues to be distrusted by the Government – and by some ceasefire groups. State attempts to penetrate and mobilise civil society have been on going since the Ne Win era, and are exemplified by the formation of the pro-SPDC Union Solidarity and Development Association (USDA), and the activities of a range of 'government-organised NGOs' (GONGOs).

Government attempts to penetrate and co-opt autonomous civil society networks have been stepped-up since 2005, in the context of the expected completion of the SPDC's National Convention. The military regime seems intent on suppressing all form of social organisation not under its control, as it prepares to mobilise the population in support of the new Constitution (either via mass 'popular' rallies, or in a formal referendum), before eventually organising an elections.

In a worrying development, in 2006-07 the authorities suppressed a number of CBOs local NGOs - including the Free Funeral Services Society (FFSS, founded in 2001), a well-known charitable social welfare organisation, based in Rangoon and Mandalay.<sup>408</sup> Meanwhile, in Mon State, the Government has also recently de-registered a number of active CBOs.<sup>409</sup>

Like their government counterparts, most ceasefire-group cadres are more familiar with 'top-down' military and political forms of governance, than with 'bottom-up' development methods. Therefore, poor governance, parallel exploitative practices and a lack of strategic planning and implementation capacities often undermine civil society initiatives in and adjacent to ceasefire areas.

405 Field Notes (17 July 2005).

406 Field Notes (8 June 2006).

407 Field Notes (2 May 2006).

408 *The Irrawaddy* (23 March 2007).

409 *The Mon Forum* (June 2007).

Nevertheless, many local NGOs and CBOs continue to forge the space within which to work for ‘development from below’, and build networks of independent, community-level participation. These locally rooted associations undermine the ideological and practical basis of military rule, creating autonomous spaces, at least in limited spheres.

## 8.6 Cross-border groups

Since the 1990s, civil society networks have begun to expand in non Government-controlled areas. Supported by a range of Thailand-based INGOs and international donors, a number of local NGOs and community-based networks have been organised by Chin, Kachin, Shan, Lahu, Karenni, Karen, Tavoyan, Mon and all-Burma student and youth, women’s, environmental and human rights groups in the border areas. They tend to occupy the political space created by the declining influence of mainstream, armed groups. Representing new models of organisation, these networks have constituted one of the most dynamic aspects in an otherwise bleak political scene. As a result of their activities, those engaged in the struggle for ethnic rights and self-determination in Burma have been obliged to acknowledge the importance of women’s rights, community-level participation and democratic practices — not just as distant goals, but as on-going processes. They have challenged the KNU and other armed organisations to reassess their records, and examine the degree to which their strategies reflected the ideals of democracy and self-determination.

Over the past decade, border-based activist groups and humanitarian NGOs have brought the plight of IDPs in Burma to the attention of the international community, and focused on the humanitarian, socio-political and economic consequences of military campaigns, and ill-conceived ‘development’ projects in the border areas of eastern (and, to a lesser degree, northern and western) Burma. In recent years, several of these groups have expanded their advocacy work to focus on environmental issues, and HLP issues in general. Much of the research included in this report derives from their dedicated activities.

The Nationalities Youth Forum (NYF), launched in March 2003, and which subsequently held a series of workshops along the Thailand border and in Burma is one example. Composed of youth from Arakanese, Chin, Shan, Karen, Karenni, Kayan, Lahu, Mon, Palaung and PaO opposition communities, in 2005 the NYF published a report on *Our Land and Natural Resources in Burma: Ethnic Youth Perspectives*. The NYF report describes how:

*land has been confiscated without compensation for the Burma Army’s benefit ... villagers are forced to apply agricultural methods imposed on them by the regime, often with the result of damaged soils and increased debt... Large-scale development projects and business ventures that generate income for the regime extract natural resources in ethnic areas without benefits for local people and result in environmental destruction.*

*We have a common vision for the future that includes recognition of land rights and the right to self-determination, improved management of forests, and the preservation of cultural identity through daily practice. It also includes the adaptation of traditional structures in order to learn from and adopt what is good from them, and to change what is bad, for example structures which hold women in a lower place in society.<sup>410</sup>*

410 NYF (2005), p.5.



## 8.7 Non-State actors

### 8.7.1 Ceasefire Groups

Ex-insurgent leaders can sometimes advocate with the *Tatmadaw* and Government, at different levels (Area and Regional Commands) but with limited impacts, especially regarding national-level structures of governance and accountability. Ceasefire groups vary in their willingness to engage with the Government. For example, the PNO does not challenge the Government nationally, but has won important concessions in PaO-populated areas of southern Shan State. In contrast, the NMSP and KIO have pushed the Government to engage in dialogue on the national political stage (but without much success) – and in consequence have been denied international aid or economic development opportunities.<sup>411</sup> Other ceasefire groups, such as the MNDAA, lack leverage with the Government, at either national or local levels, leading to considerable frustration among communities who have been subject to abuse (e.g. land confiscation).

### 8.7.2 Kachin State<sup>412</sup>

In contrast to Karen, Karenni and Mon refugees in Thailand, few of the unofficial Kachin refugee population in China and India in the 1980s and 1990s received any international assistance. Although local authorities unofficially tolerated their presence, episodes of forced repatriation from China did occur sporadically throughout the 1980s.<sup>413</sup>

In 1991 (the year that heavy fighting ended in Kachin State – three years before the KIO ceasefire) the KIO Eastern Division organised the repatriation of some 3000 refugees from China. The KIO prepared some resettlement sites and basic infrastructure for the returnees, in a ‘dry run’ of the 1994-95 repatriation exercise.<sup>414</sup>

The Chinese Provincial Government in Yunnan - which had put pressure on the KIO to negotiate the ceasefire - encouraged the repatriation of a further 10-20 000 Kachin refugees (the bulk of those remaining in China) in the early to mid 1990s. Consequently, between 1991 and 1996, the KIO organised return of some sectors of the exile community (mainly KIO family members, who had received some support from the organisation and Kachin sympathisers while in China). Other less well-connected refugees underwent ‘spontaneous’ repatriation.

By 1996, most of the refugees in China (and 2 000-4 000 of those from India) had returned to KIO and joint KIO and SLORC-controlled zones in Burma.<sup>415</sup> After the ceasefire, an unknown number of people also left Government-controlled relocation sites, and moved to KIO-controlled areas from traditionally Kachin-populated parts of northern Shan State.<sup>416</sup> Attempts were also made to re-settle the internally displaced in Kachin State, although communities were not systematically consulted about their wishes.

411 The KDA, a Kachin ceasefire group which enjoys good relations with the SPDC, has been able to intervene with local authorities, on behalf of villagers put into custody for not paying back Government loans: Field Notes (2 May 2006).

412 For more on post-ceasefire politics and development in Kachin, Mon and Shan States, see South (2008 - forthcoming).

413 Field Notes (10 Nov. 2003).

414 Field Notes (10 Nov. 2003).

415 KIO (1995), p. 2, & Field Notes (29 Jan. 2003).

416 Field Notes (7 August 2003).

According to the KIO, the resettlement areas “are already existing towns and villages which are in the process of being upgraded. Others were villages destroyed and abandoned during the civil war and must be re-established.”<sup>417</sup> In the early 1990s the KIO Central Committee ordered each of the organisation’s divisions to establish a Rural Development Committee, and produce a Rural Development Plan.

The KIO’s 1995 *Kachin Resettlement Report* describes a number of reconstruction activities in Kachin State, which received no government - and almost no international - funding (informants laughed at the very idea).<sup>418</sup> Seven resettlement sites were designated in each of the KIO’s six administrative divisions, and various welfare facilities and infrastructure developments were planned. The majority of refugee-returnees were settled at two main sites near the Chinese border: around Laiza, and at Pan Dawng (a joint KIO- and Government-controlled area on the Myitkyina-Bhamo road, where seven thousand acres were cleared to grow rice, and the *Na Ta La* provided some bridges and land reclamation assistance).<sup>419</sup>

The KIO surveyed the proposed resettlement sites. Many were previously abandoned village sites; some were already partially occupied (existing residents were reportedly pleased to receive new arrivals, as this indicated that limited resettlement resources would follow).<sup>420</sup>

The KIO built clinics and schools in - and roads to - several of these new settlements, as well as in longer-established villages. Returnees often brought cattle or seeds with them from China, and were given rice and other assistance on arrival by the KIO and the organisation’s humanitarian wing, the Kachin Relief and Development Committee (KRDC).

However, the KIO’s and associated local agencies’ refugee and IDP resettlement and reconstruction activities were not well-documented – mostly due to a lack of international support (and therefore little need to account to donors). The KIO organised the resettlement of some refugees and IDPs in designated sites; others spontaneously re-settled in these same areas (or already lived there). Some people almost immediately moved on, to settle in other KIO- and/or Government-controlled zones (where they may have had relatives); others stayed put in (or returned to) the places to which they had been displaced. An unknown number of people (probably several thousand) returned to a rapidly changing China as migrant workers within a few months or years of being ‘resettled’<sup>421</sup> (c.f. the Mon case study, at Subsection 8.7.3). Many people also moved into Government-controlled towns during the early-mid 1990s, considering these offered the best physical security. In general, the resettlement projects demonstrated questionable voluntariness, as little attempt was made to elicit local participation in the planning - or implementation - phases.

Certainly, only a minority of IDPs and refugees returned ‘home’, and few were consulted over their needs. Many displaced people chose to remain in KIO-controlled areas, due to their fear of the *Tatmadaw* (c.f. the Mon case study, at Subsection 8.7.3). In some cases, families settled first in KIO-controlled ceasefire areas, ‘tested the water’, and then returned deeper inside Kachin State.<sup>422</sup>

417 KIO (1995), p. 5.

418 Field Notes (13 Nov. 2003).

419 KIO (1995), pp. 4-6, & Field Notes (11/12 Jan. 2005).

420 Field Notes (10 Nov. 2003).

421 Field Notes (30 July 2003).

422 Field Notes (7 August 2003).

The situation in remote zones away from the China border (before and after the ceasefire) is very difficult to assess. In many areas, villagers remained mired in poverty. Indeed, since the early 1990s, many better-off and able-bodied people have moved from the countryside to the towns, in order to access education and other services, and to work.

People in border areas generally have better access to (still very limited) KIO services, and opportunities to trade. They are therefore more likely to cultivate market gardens and fruit orchards, both of which are encouraged by the KIO (which generally disapproves of 'destructive', 'slash and burn' rice farming).

Unfortunately, the KIO's resettlement initiative exhibited poor strategic and site planning, reflecting the organisations' limited human and financial resources and administrative capacity, and very low levels of state or international support. Nevertheless, the 'new village' initiative seems to have been relatively successful in some places, but less so in others - e.g. some new villages were subject to flooding, and many people subsequently left the new settlements, for the towns and cities.

In the Kachin 'new villages' conditions, especially health and education services, have often been far from optimal. For example, a number of malaria deaths have been reported at the Pan Dawng site. In the mid-1990s, the churches dispatched large numbers of volunteer teachers to the resettlement sites and other remote, KIO-controlled areas (more than 100 Catholic volunteer teachers alone); by the start of the next decade, only about 20-30 remained, due to lack of access to services, and lack of financial support. Many 'new villages' have since been abandoned, due to lack of water (or floods in some cases), and very limited agricultural and other livelihoods opportunities.<sup>423</sup>

The KIO, together with the two major NGOs established after the ceasefire - the Metta and Shalom Foundations - remain keen to strengthen governance structures and 'develop' these new communities, but lack many of the skills and resources to do so. Several Kachin interviewees identified training in appropriate agricultural techniques as a primary need among displaced villagers, in order to secure livelihoods.<sup>424</sup>

In one of the largest re-forestation programmes ever undertaken in Burma, the KIO administration has planted 700 000 trees since the mid-1990s, mainly around N'Ba Pa and Sadaung. Meanwhile, the KRDC, with some international support and training, has undertaken liaison between KIO 'civilian departments' and a limited number of INGOs and other (mostly church) donors. The KRDC also implements its own programmes, including welfare activities with Kachin refugees (before and after repatriation) and IDPs - e.g. distributing blankets and mosquito nets. Another local agency with strong links to the KIO is the Kachin Women's Association (KWA), which implements a wide range of income generation projects, a series of nursery and primary schools, and community health centres, which have been partly funded by a logging concession granted by the KIO.

Impressive post-ceasefire developments in Kachin State (and other ceasefire areas) have often been achieved at considerable cost - both to the standing of local actors, and to the natural environment. Many resources have been sold off, in order to fund local development initiatives.

423 Field Notes (11/12 Jan. 2005).

424 E.g. Field Notes (11 Nov. 2003).

In most cases, once funds reach the actual implementing agencies, they have been used well. However, a good deal of money may have been diverted along the way, serving to undermine morale among - and respect for - the KIO and other ceasefire groups.

### 8.7.3 Mon State

In 1996, the year after the NMSP-SLORC ceasefire, the Thai authorities repatriated the last of the Mon refugees to the NMSP-controlled ceasefire zones explicitly against their will. This was done with assistance from INGOs - and in particular, the Burma Border Consortium (BBC - since 2004, TBBC), which provided food and other humanitarian supplies to the refugee camps in Thailand. UNHCR refused either to assist or to condemn this forced repatriation. The agency - which at this time was not operational along the Thailand border - used perceived differences of opinion regarding the merits of repatriation, between the Mon refugee and political leadership, as a pretext for not getting involved.<sup>425</sup>

In the period 1995-96, some refugees chose to return home under their own initiative. The Mon refugee authorities estimate that about 10 percent of the refugee population in the mid-1990s has returned to their original villages (and/or other Government-controlled areas), in the decade since.<sup>426</sup> Unfortunately, this 'spontaneous' or 'invisible' refugee repatriation is completely undocumented.

Most of the Mon returnees remained in limbo, in camp-like conditions, just over the border in the NMSP-controlled resettlement-repatriation zones. Although now largely 'invisible' to Thailand and the international community, they had not returned 'home'. Despite efforts to grow their own rice, the Mon returnees - and to a degree the NMSP - remained dependant on continued, but now reduced, cross-border humanitarian aid.

Meanwhile, since 1996, regular waves of new IDPs have entered the NMSP ceasefire zones, and refugee resettlement sites, fleeing on-going human rights abuses in Mon State, perpetrated by the *Tatmadaw*, especially in the context of counter-insurgency campaigns in Ye and Yebyu Townships.

Despite its generally quite adversarial relations with the SPDC since the ceasefire, the NMSP has received some assistance from the Government. Recent joint NMSP-SPDC development projects include the planning of 1 000 acres of rubber trees in eastern Mudon Township, and 400 acres of cashew trees in the same areas. The Government also donated a bulldozer to the Party in 2004.

Another promising development involves the formation of Mon Farmer's Associations (or Unions) in many rural areas. These have been active in lobbying the authorities for some degree of compensation following the confiscation of lands by the *Tatmadaw*, especially since 2001.

### 8.7.4 Kokang Special Region 1

In response to the drug eradication policies in Kokang Special Region 1, Shan State, and illustrating its top-down command style, the MNDAA has "ordered people to grow more food" - but it is not yet clear if this strategy will work. In the short-to-middle term, the MNDAA

425 South (2005), Chs. 12 & 16.

426 Field Notes (24 Sept. 2005).

leadership expects to continue to rely on the Government and international community for aid; in the longer-term they would like SR1 to become food self-sufficient. A committee has been established to achieve this goal, but its members seem to possess few of the necessary skills or experience. The Kokang leadership are aware of the local unpopularity of the opium ban - and of the need for, and responsibility of, the MNDAA to deliver alternative livelihoods options to 'their people'.<sup>427</sup>

### 8.7.5 Non-ceasefire groups

Insurgent organisations, which continue to fight the *Tatmadaw* and military Government in the name of the ethnic communities they purport to represent, bear considerable responsibility for patterns of displacement described in this report. Through their pursuit of a protracted armed conflict, groups such as the KNU, KNPP and SSA invite retaliation against the civilian population, whom they are largely powerless to protect.

Nevertheless, these armed groups do sometimes provide limited medical and food aid to IDPs and villagers. The KNU and other insurgent groups also engage in some 'protective activities', as described in the 2005 TBBC *Protection Survey*:

*in areas of ongoing armed conflict, the non state actors responded that short term protection objectives are limited to deterring and delaying SPDC patrols, using radio communication to provide warnings to villagers of approaching troop movements, and securing access for local humanitarian agencies to provide relief aid.*<sup>428</sup>

In the period 2005-06, the KNU established a Department of Land and Agriculture. One of the department's main concerns is the issue of property restitution and land registration for displaced people.

The FTUK (an umbrella organisation, composed of the KNU-aligned Karen Teachers' Union, Karen Health Workers' Union and Karen Agricultural Workers' Union), has started to document land confiscation in *Kaw Thoo Lei*. Another Karen organisation, enjoying more independence from the KNU, is Karen Rivers Watch. This coalition of six Karen organisations is working to document the actual and potential impacts of - and to campaign against the construction of - major hydroelectric dams on the Salween River.

## 8.8 The military Government

Ardeth Maung Thawngmung<sup>429</sup> has described the complex relationships that have developed since independence between Government agencies and farming communities in rural Burma. She points out that the State is not monolithic, and various local and national agencies interpret and implement policies in different ways. This variety of practices influences the manner in which rural people perceive the state, and its legitimacy.

427 Field Notes (16 May 2005)

428 TBBC (2005), Executive Summary.

429 Ardeth Maung Thawngmung, 'Rural Perceptions of State Legitimacy in Burma/Myanmar', in *The Journal of Peasant Studies* (Vol. 30, No. 2 2003).

The ceasefires agreed to between the Government and most ethnic insurgent groups since 1989 were accompanied by promises of development for armed conflict-affected areas. Since 1989, the Border Areas Development Program (renamed in 1992, as the Ministry for the Progress of Border Areas and National Races - the *Na Ta La*) has built dozens of hospitals and health centres, hundreds of bridges, dams, and more than 430 schools, and thousands of miles of roads, in 65 border townships, in both Government-controlled and ceasefire areas.<sup>430</sup> Ostensibly aimed at improving conditions in the ethnic minority borderlands, the *Na Ta La* claims to have spent US\$ 43 million since 1993.<sup>431</sup>

According Senior General Than Shwe, since 1989 the state has built 7 865 km of roads, 763 bridges, 767 schools, 54 hospitals, 32 rural health care centres and 81 dispensaries in border areas.<sup>432</sup> However, most hospitals and schools still lack proper equipment - and often staff - while many ethnic nationality citizens still feel discriminated against in the provision of services and access to opportunities.

Limited *Na Ta La* aid to displaced populations has focused on assistance to 'peace' (ceasefire) groups, which have 'returned to the legal fold'. Two main groups have been targeted: re-settled ceasefire group soldiers and their family members, and (occasionally) civilian villagers displaced by the armed conflict.<sup>433</sup> This has mostly been in the form of infrastructure development - e.g. roads, bridges, schools, hospitals - sometimes constructed on land confiscated from local villagers (see Section 6).

According to this perspective, new (or 'reassembled') villages may be viewed as welfare and resettlement centres for displaced people (especially the victims of fire and insurgency), and ceasefire group members. Meanwhile, the *Tatmadaw* continues to occupy most of the ethnic nationality-populated homelands.

### 8.8.1 The growth of GONGOs

Since the late 1980s, the state has sponsored the growth of a number of national, 'government-organised NGOs' (or GONGOs). While organisations such as the Myanmar Maternal and Child Welfare Association (MMCWA) and Myanmar Red Cross (RC) are often compromised by their relationship with the Government, and their independence is severely restricted, local staff is nevertheless often committed to improving conditions in the communities where they work. Furthermore, due to the 'top-down' command style of Burmese political culture, GONGOs can often work well with the authorities and implement programmes quite efficiently, which may be perceived as giving them important advantages over more participatory local NGOs and CBOs, despite the GONGOs' legitimacy deficit.

### 8.8.2 Urban relocatees

The Relief and Resettlement Department of the Ministry of Social Welfare, Relief, and Resettlement is technically responsible for resettled populations, but the Government has

430 Ministry for the Progress of Border Areas and National Races, *Measures Taken for Development of Border Areas and National Races* (Yangon 1992).

431 Ministry for Progress of Border Areas and National Races and Development Affairs, Information Pamphlet (Yangon 2003).

432 Xinhua, *Myanmar top leader stresses border areas development* (30 March 2004).

433 Ibid. p. 19.

generally not given any compensation to people forcibly relocated out of Yangon and other cities since the 1990s. However, transport to the new satellite towns has usually been provided by the state, and some land is often made available at the new sites.

## 8.9 The international community

Following the violent suppression of the 1988 democracy uprising, most donors terminated assistance to the new SLORC military regime. The World Bank and Asian Development Bank have not provided any loans to the Government since 1987.

Against this backdrop, between 1991 and 1993 MSF Holland (AZG) and World Vision International (WVI) became the first INGOs to (re-)establish official programmes in Burma. Since the mid-1990s, the number of international organisations working in the country has gradually increased. By 2007, there were over 50 registered INGOs in Yangon, with Memoranda of Understanding (MoU) with the Government (mainly the Ministry of Health, and also with the *Na Ta La*, Home Office and Ministry of Education) - with several others hoping to negotiate agreements - plus the two branches of the International Red Cross.

Through to September 2004, international organisations in Burma experienced an opening humanitarian space, and were able to begin to access some previously out-of-bounds areas, including regions affected by armed conflict. Under a dynamic UN Resident Coordinator (who in 2006 was designated Humanitarian Coordinator), INGOs and UN agencies working 'inside' Burma began to access greater levels of funding - although some Thailand and overseas based activist and lobbying groups continued to oppose any international engagement with the SPDC regime. Over the next few years a rather polarised - and often unnecessarily personalised - 'debate' developed between agencies working 'inside' Burma, and those working cross-border (mostly from Thailand).<sup>434</sup>

By 2007, about US\$ 60 million was being channelled annually through Thailand-based organisations supporting refugees in the kingdom, and some IDPs in parts of eastern Burma. In contrast, only small amounts of aid were provided via Yangon: in 2005 total ODA was approximately US\$ 150 million per year — or less than US\$ 3 per person, compared to US\$ 47 per person for Cambodia and US\$ 63 for Laos.<sup>435</sup>

### 8.9.1 Working 'inside' Government-controlled 'Myanmar'

UN agencies and INGOs working in Burma implement a range of substitution and support programs - but generally not in the most remote, conflict-affected areas, where HLP and other violations, and subsequent needs, are the most acute. Some Burmese staff of international agencies are able to engage in *persuasive advocacy*; some international staff also undertake limited *persuasive advocacy* and *mobilisation* activities.

434 Some of the arguments on both sides were presented to the UK House of Commons International Development Committee's inquiry into *DFID Assistance to Burmese Internally Displaced People and Refugees on the Thai-Burma Border* (Tenth Report of Session 2006–07 Vol. 1, 25-July 2007, House of Commons Stationery Office).

435 UN sources (2006).

Due to a reluctance to engage with the Government on longer-term development projects, most foreign aid has been designed to meet humanitarian needs. Many projects focus on Burma's worsening health status and in particular the deepening HIV/AIDS crisis.

International programmes in Burma are still spread very thinly. Yangon-based INGOs and UN agencies generally took a long-term, incremental approach to expanding access into conflict-affected parts of the country, starting programs in areas adjacent to state capitals, and gradually moving into more remote locations. The *Joint Principles of Operation of INGOs Providing Humanitarian Assistance in Myanmar* (2000) guides the majority of INGOs in Burma. This document, developed in response to the criticisms of exiled activists, commits them to "balance the importance of our advocacy activities with the importance of our operations."<sup>436</sup>

Very few international organisations operating inside Government-controlled Burma implemented programmes specifically target at IDPs, as such, or focus on land rights issue. However (as noted in Section 8), some agencies have worked with local NGOs and CBOs to support sustainable agricultural projects, and to register community land under the Forestry Instructions.

### **8.9.2 Recent restrictions on humanitarian space**

Following the October 2004 demise of Khin Nyunt and his MI colleagues, the extent and quality of political and humanitarian space in Burma declined. For humanitarian agencies, this constriction was reflected in a set of draft *Guidelines for UN Agencies, International Organisations and NGO/INGOs on Cooperation Program in Myanmar*, issued by the Ministry of National Planning and Economic Development in February 2006. According to the Guidelines, state officials should accompany UN and INGO staff on all field trips; with enhanced supervisory roles to be played by Central, State-Divisional and Township Coordinating Committees (including a prominent role for the USDA). The Government also planned to vet all new Burmese staff of the UN and INGOs.

It seemed likely that, if these regulations were implemented systematically, some international agencies would withdraw from Burma. Already the Global Fund for HIV/AIDS, Malaria and Tuberculosis had ceased operation in the country, in August 2005 – although in this case, there were additional, politically driven considerations behind the decision to leave. In February 2006, *Medecins Sans Frontieres* (MSF)-France also withdrew from Burma, claiming that increased government restrictions, imposed since 2005, had made its operations in Mon and Karen States untenable.

### **8.9.3 The UN in Burma**

UN agencies provide a range of assistance programmes in Burma. These include technical assistance and capacity building, community development, social service delivery (including alleviating poverty and malnutrition), and the provision of humanitarian assistance (food, health and sanitation, education).

<sup>436</sup> Yangon INGOs and UN Agencies, *Joint Principles of Operation of INGOs Providing Humanitarian Assistance in Myanmar* (2000).



In December 2005, the UN Inter-Agency Standing Committee assigned to UNHCR primary responsibility for leading a 'cluster of agencies' in coordinating assistance to - and the protection of - the estimated 20-25 million IDPs worldwide. Adoption of the new 'cluster' approach may prompt UNHCR to lead international organisations in addressing gaps in response to IDP crises in Burma.

#### 8.9.4 The UN Development Programme

Since 1994, UNDP assistance has been restricted to “programmes having grass-roots-level impact in a sustainable manner.”<sup>437</sup> This Governing Council mandate is designed to limit the agency's engagement with the military Government, which is highly unusual for the UN. In this restricted environment, the UNDP has implemented a Human Development Initiative (HDI), focused on working with among the poorest of poor (especially women and landless people). Because of donor reluctance to directly fund programmes in the country, UNDP projects in Burma employ the largest proportion of the agency's core funds in the world.

In 2005, the UNDP undertook a major expansion of the HDI to cover 64 remote townships in Burma. Throughout its partnership with local NGO-CBO networks, this programme has access to armed conflict-affected populations (including Type 1 IDPs), 2006, the UN Resident Coordinator oversaw the creation of a UN Country Team Population Movement Working Group, which has since taken tentative steps towards addressing some of the 'protection gaps' in responses to the IDP crises in Burma.

#### 8.9.5 The International Labour Organisation (ILO)

The ILO established an office in Yangon in 2002. In June 2005, the International Labour Conference concluded that forced labour was still a major problem throughout the country. Of particular concern was the SPDC's prosecution of people reporting instances of forced labour. Together with death threats made against the ILO representative in Yangon, these problems contributed towards a climate of impunity for state officials — despite the Government having officially banned the practice in October 2000.

Under pressure from the ILO, which had threatened to refer Burma to the International Court of Justice and UN Security Council, in February 2007 the SPDC agreed to establish a mechanism, enabling the ILO to investigate allegations of forced labour, and allow Burmese people to complain to the ILO about cases of forced labour. However, as noted in a critical assessment of the ILO's engagement in Burma (which also documents on-going cases of forced labour in Mon State 2005):

*Although it is so hard for the ILO officials in Rangoon to work with SPDC ... the general people feel that the practices of using forced labour have reduced after ILO set their office in Rangoon.... If the [ILO] withdraws from Burma, the SPDC authorities and troops ... will have an open chance to apply more oppression against the people and the suffering from forced labour will be protracted and increased.<sup>438</sup>*

437 UNDP Governing Council decision no. 92/21 (June 1993).

438 *The Mon Forum* (Oct. 2005) [parenthesis added].

### 8.9.6 The International Committee of the Red Cross (ICRC)

Between 1998 and 2004, ICRC sub-delegations were established in Pa'an, Moulmein, Kengtung, Taunggyi and Mandalay, from where ICRC teams implemented water and sanitation and other projects in conflict-affected areas, with the aim of providing 'protection by presence'. However, following the October 2004 purge of Khin Nyunt and colleagues, the ICRC experienced significantly reduced access to most parts of eastern Burma. In mid-March 2007, the organisation announced the closure of its Moulmein and Kengtung field offices, and stated that prison visits were also being systematically obstructed. On June 29 2007, the ICRC took the unusual step - for an organisation that prefers to carry out its humanitarian work behind-the-scenes - of publicly denouncing the military regime's systematic abuse of prisoners, and of civilians in conflict zones. The ICRC president, Jakob Kellenberger, stated that:

*the persistent use of detainees as porters for the armed forces is a matter of grave humanitarian concern. The actions of the authorities have also resulted in immense suffering for thousands of people in conflict-affected areas...The ICRC has repeatedly drawn attention to these abuses but the authorities have failed to put a stop to them... The repeated abuses committed against men, women and children living along the Thai-Myanmar border violate many provisions of international humanitarian law.<sup>439</sup>*

### 8.9.7 International NGOs (INGOs)

In general, INGOs in Burma operate with more independence than do their better-funded UN counterparts. While the Government can - and increasingly does - restrict their access to sensitive areas, the private aid agencies are not told where or with whom they should work. Like the UN agencies, most INGOs in Burma concentrate on humanitarian needs, although some do implement a broader range of development-oriented programs, often in partnership with local civil society groups.

Following the suppression of the sangha-led protests of September-October 2007, a group of thirteen INGOs in Burma issued a rare public statement, calling on the military Government to allow them to assist the poorest members of society. Later the same month, the UN WFP announced that some five million people in Burma were chronically short of food, but that the Government was restricting the agency's access to 300 000 of the 500 000 people it aimed to assist.<sup>440</sup>

### 8.9.8 Cross-border aid

Like their counterparts working 'inside' the country, international organisations based outside of the country have little or no direct access to the most vulnerable, conflict-affected communities in Burma. However, a number of donors and INGOs - including several of those that support the refugee camps in Thailand - do provide assistance in these areas, via local NGOs and CBOs (see Section 7). Several international organisations and networks are also engaged in advocacy, aimed at denouncing the abuses of the military Government.

439 ICRC Press Release (29 June 2007).

440 *The Irrawaddy* 20 Oct. 2007.

The past decade has seen the flourishing of partnerships between local and international organisations along the Thailand border – but generally not in Burma’s other frontier areas. The growth of the refugee-IDP industry along the Thailand border since the 1990s has therefore resulted in a bias towards eastern Burma, in most situation and needs analyses – and in human rights research, interventions, and advocacy activities.

Groups working cross-border from Thailand justify their position in terms of solidarity with the displaced people of Burma, and with the armed ethnic groups which seek to represent them. This position moves beyond the constraints of neutrality, insisting that the humanitarian imperative places the rights of citizens above those of the sovereign Burmese state – which is itself the primary agent of displacement.

Unlike the situation along the Thailand-Burma border, the Chinese authorities and the international community has never acknowledged the presence of refugees from Burma in China. As the China-Burma border was not internationalised, no Kachin-oriented INGO industry grew-up in the shadow of the refugee camps. Therefore, before the ceasefires, local Kachin NGOs and CBOs had very limited international contact, beyond a handful of mostly church-based donors, which supplied some rice and other humanitarian basics to KIO and NDA-K controlled areas.<sup>441</sup>

### **8.9.9 Refugees in Thailand - and beyond**

The UNHCR has discussed refugee repatriation options with both the Thai authorities and the Burmese Government. The UN refugee agency has also implemented a repatriation contingency planning process, including some consultation with refugees and CBOs, and INGOs on the border.

However, over the past year, the main trend in the movement of refugees from Thailand has been towards resettlement in third countries, rather than return home. After various delays, 2006-07 saw substantial numbers of Karen and Karenni refugees from camps along the border - some of whom had been in Thailand for two decades - achieve the ‘durable solution’ of resettlement to third countries (primarily, but not exclusively, the USA). According to the TBBC, “targets set by the resettlement counties for 2007 are considerably higher than for 2006, totalling at least 20 000”.<sup>442</sup>

### **8.10 Engagement and isolation at the global level**

Since the late 1990s, international awareness of the plight of refugees from and IDPs in Burma has grown considerably, due in large part to the documentation of abuses and lobbying activities of a handful of Burma-oriented NGOs. As a result, the international community has come to view the political and humanitarian situation in ethnic nationality-populated areas of Burma almost exclusively from the perspective of Thailand border-based opposition groups.

The situation in the eastern border zones has been so bad, for so long, that it has not been difficult to find evidence of serious and systematic abuse on the part of the *Tatmadaw* and its

441 Field Notes (24 Sept. 2003).

442 TBBC (2007).

proxies. Little if any of the testimony collected by border-based groups is fabricated: life for civilians in the war zones really is that bad. However, the Thailand-based human rights and advocacy industry has failed to appreciate the benefits brought to many communities by the series of (albeit problematic) ceasefires agreed to between the military Government and most armed ethnic groups, since 1989.

International Burma solidarity and support networks have helped to move Burma up the crowded international agenda. Since the mid-1990s, their lobbying has pressured scores of western companies into withdrawing from Burma. However, in the absence of western businesses, Southeast Asian and Chinese companies have invested heavily in the country, but without the (minimal) accountability that characterises most US and European-based multinationals.

As the country enjoys little strategic significance in the West, it has been fairly easy for a handful of politicians and their aides to capture Burma policy in Washington and London, making grand rhetorical gestures and statements, which would be unimaginable in the case of a more geo-politically significant human rights violator, such as China (for example). In 1994, the Free Burma Coalition in the USA, together with groups such as the Open Society Institute's Burma Project, persuaded the Clinton administration to impose sanctions against the SLORC, which were significantly strengthened in 2004, and again in 2007 (see below), under President George W. Bush.

In the meantime, the military Government has gone from strength to strength, bankrolled by the sale of huge offshore natural gas deposits. Indeed, Burma's foreign trade is expected to exceed US\$ 8 billion in 2007-08, a 40 percent increase on the previous year, despite the ongoing US and EU economic sanctions.<sup>443</sup>

In view of the immense suffering in Burma, surely it is time to re-think issues of aid and engagement. Ten years ago, the international community knew little about the situation in ethnic nationality populated parts of Burma. Today - in large part due to the work of Thailand-based activist groups - the plight of people in the eastern war zones is much better documented. While it remains appropriate to denounce the human rights abuses perpetrated by the *Tatmadaw* and its proxies, it is also necessary to take a more nuanced view of possible solutions to the protracted and complex conflicts in Burma.

### **8.10.1 Regional power politics**

Support from the two energy-hungry regional powers, China and India, bolsters the military Government; on 12 January 2007, China together with Russia vetoed a US-sponsored resolution on Burma at the UN Security Council. Meanwhile, the SPDC remained wary of forging close links with the ASEAN regional grouping, which Burma had joined in 1997 – a move that provided the military Government with a good deal of diplomatic cover.

A draft ASEAN Charter that included provision for a Human Rights Commission was completed in July 2007. Although sceptics were doubtful whether such a body would be credible, the selection of Surin Pitsuwan, Thailand's liberal ex-foreign minister, as the next ASEAN Secretary-General led some observers to predict that the bloc might become more activist in future.

443 *The Irrawaddy* (21 May 2007: [www.irrawaddy.org](http://www.irrawaddy.org)).

## 8.11 Human Rights and Land Rights at the UN

In September 2006, HLP issues were included - for the first time - in the report by the Special Rapporteur on the Situation of Human Rights in Myanmar to the UN General Assembly:

### Land and management of natural resources

50. *Access to and control over land and natural resources have long been central to the political economy of Myanmar. In many ethnic minority-populated areas, repeated incidents of forced displacement — interspersed with occasional periods of relative stability — have been a fact of life for generations. Some 75 per cent of the population is engaged in the agriculture sector (including fisheries, forestry and livestock), which accounts for 40 per cent of the gross domestic product. Land and natural resources issues lie, therefore, at the heart of livelihood in Myanmar.*
51. *A large-scale and effectively arbitrary land confiscation policy prevails throughout the country. Several aims appear to form the basis of these confiscations, including relocating civilian populations deemed sympathetic to the armed opposition, anchoring military presence in disputed areas through the construction or support of new army battalions, opening the way for infrastructure development projects (e.g., Lawpita dam, three proposed Salween dams, Day Loh dam in Toungoo district), facilitating natural resources extraction (e.g., Arakan Shwée Gas offshore) and vesting various interest groups (including the military and foreign groups) with business opportunities (e.g., economic concessions, including logging and mining). This policy has led to numerous forced evictions, relocations and resettlements especially in rural areas but also in urban areas, most notably in connection with the move of the capital from Yangon to Pyinmana.*
52. *Under the Land Nationalization Act of 26 October 1953, all land is owned by the State. Legal practice in Myanmar today generally reverts to the above law, which recognizes some private ownership of agricultural land, although it restricts land sales or transfers. However, this law provides for the State to confiscate land that is left fallow. The current legislation on land offers little protection to rural farmers. In addition, victims of land confiscations are not encouraged to lodge complaints by fears of reprisals and knowledge of the lack of independence of the judiciary.*
53. *The Special Rapporteur is not aware of any specific provisions of the draft Constitution which would provide for secure land and housing rights of citizens, protect rights to fair and just compensation as a result of legal or illegal land or property expropriation or guarantee traditional practices of ethnic minorities in relation to land and natural resources management, such as collective property rights and swidden culture.*
54. *The Special Rapporteur views the ongoing large-scale confiscation of lands as a matter of grave concern that will continue to impact dramatically on the political and economic stability of the country, if not addressed. The Special Rapporteur notes the increasing recognition among human rights, humanitarian and development groups of the need to document issues related to land and natural resources management in Myanmar. In this context, he welcomes the organization in August 2006 in Chiang Mai by the Centre on Housing Rights and Evictions of a workshop on housing, land and property rights in Myanmar. The Special Rapporteur will further document this issue in his next report to the Human Rights Council in June 2007.<sup>444</sup>*

<sup>444</sup> *Situation of Human Rights in Myanmar*, UNGA Sixty-first Session (21 Sept. 2006). Similar themes were included in Professor Pinheiro's report of 13 August 2007 (Paragraphs 46-49).

In May 2007, Gambari Ibrahim was named as the new UN Secretary General's advisor on Burma – a role he had previously filled in an informal capacity for Kofi Annan. Following the brutal suppression of the 'saffron revolution' of September 2007, Mr Gambari was again dispatched to visit Burma. He was able to meet with Aug San Suu Kyi (twice) and (eventually, after a somewhat humiliating delay), with Gen. Than Shwe.

On 11 October, the UN Security Council issued a fairly critical - but non-binding - Presidential Statement regarding the situation in Burma. However, neither China nor Russia was inclined to increase the pressure on the SPDC, by agreeing to impose sanctions. The European Union announced some new measures against the SPDC, and on 19 October further US Government sanctions came into effect, freezing the bank accounts of an additional 25 military officials and 12 businessmen associated with the regime.<sup>445</sup> On 24 October, in a further example of strong UN advocacy on Burma, the UN Country Team in Yangon released a statement reiterating the "calls for action made at the most senior levels of the UN system," calling on the "Government of Myanmar to take all necessary measures to address the political, economic, humanitarian, and human rights issues that are the concern of its people."<sup>446</sup> On 25 October, an SPDC minister held talks with Daw Suu Kyi, but the lack of substantial progress only served to illustrate the international community's lack of leverage with the SPDC, despite the renewed attentions of the Security Council. On 3 November in response to the UN Country Team's statement, the government ordered the expulsion of Charles Petrie, the UN humanitarian co-ordinator in Burma.

Meanwhile, on 2 October 2007, the UN Human Rights Council urged an immediate investigation of the rights situation in Burma. In a surprise development, later that month Professor Paulo Sergio Pinheiro, the UN's Special Rapporteur on the Situation of Human Rights in Myanmar, was given permission to visit the country, for the first time since November 2003; Professor Pinheiro arrived in Burma on 11 November. Ibrahim Gambari made his second trip to Burma in the week of 3 November. On his return to New York, he released a statement from Aung San Suu Kyi, strongly supporting a new dialogue process with the SPDC:

*"...in this time of vital need for democratic solidarity and national unity, it is my duty to give constant and serious considerations to the interests and opinions of as broad a range of political organizations and forces as possible, in particular those of our ethnic nationality races.*

*[...]*

*To that end I am committed to pursue the path of dialogue constructively and invite the Government and all the relevant parties to join with me.*<sup>447</sup>

<sup>445</sup> *The Irrawaddy* 26 Oct.2007

<sup>446</sup> Statement of the United Nations Country Team in Myanmar on the Occasion of UN Day (24 Oct. 2007)

<sup>447</sup> *Associated Press*, (November 2007)



A Karen IDP woman flees with her two babies

9

## Conclusion

Burma's current crisis in security of land tenure includes the widespread abuse of human, economic, social, cultural, and political rights. The lack of respect for Housing, Land and Property (HLP) rights in particular undermines human security, and is reflected in a range of problems, described in this report. For Burmese citizens, the most acute HLP rights violations relate to land confiscation by the military Government and its agents and proxies: during counter-insurgency operations; for the construction or support of *Tatmadaw* garrisons; to make way for infrastructure development projects; in the context of natural resource extraction; and to provide vested (including military) and foreign interest groups with business opportunities.

### 9.1 The need for fundamental change – and respect for local practices

Many of these problems will only be resolved by substantial and sustained change in Burma. What is required is a fundamental reform of the 'political regime' – the structure of interests and institutions, which shape policy, and the practices of state and non-state actors. Political change in Burma should include improved access to a range of fundamental rights, as enshrined in international law and conventions – including respect for HLP rights (see Section 3).

The issue of HLP rights in Burma is linked to the larger struggle for justice and democracy in the country, and for sustainable livelihoods. For ethnic nationality communities in particular, this includes the right to reside in - and participate in decisions regarding - their ancestral homelands.

In addressing land rights issues, it is important not to focus exclusively on individual legal title, and security of private property in the marketplace (although secure legal provisions for ownership

of land for the benefit of smallholders are required). Various forms of community ‘ownership’ and access are important too, especially for indigenous peoples, such as Burma’s ethnic nationalities, who enjoy a special relationship with the land. The NYF describes this bond:

*Ethnic peoples perceive land in a holistic way, and are intimately connected with the ecosystem they inhabit... The struggle for land rights can be linked to other struggles, including those for cultural identity, bio-diversity, environmental conservation and political rights.*<sup>448</sup>

It is important to recognise the value of forest-based and other self-sufficient subsistence livelihoods, which are not based on a cash economy. In the past, indigenous farming systems have sometimes been condemned as destructive, because they do not yield cash profits or boost economic growth statistics. This distrust has in part been motivated by the fact that many indigenous communities are not fully under central state control, in Burma and elsewhere in Asia. In recent years however, there has been a growing awareness of the importance of local farming systems, and their expressions in customary law. Indeed, as noted by the Minority Rights Group, “rotational farming has been demonstrated to be a long-term, sustainable agricultural system and therefore an effective system of natural resource management”.<sup>449</sup>

Far from being ‘backwards’, community-based farming systems are often sophisticated indigenous adaptations, which have low impacts on the natural environment, and preserve resources (such as watersheds) for future generations. Forestry and land policy should acknowledge these systems, and build on them, by eliciting local communities’ informed consent over decision-making.

This approach requires the recognition of many aspects of traditional customary law. To quote again from the NYF:

*We have a common vision for the future that includes recognition of land rights and the right to self-determination, improved management of forests, and the preservation of cultural identity through daily practice. It also includes the adaptation of traditional structures in order to learn from and adopt what is good from them, and to change what is bad, for example structures which hold women in a lower place in society.*<sup>450</sup>

Customary law must be handled carefully, in order to empower communities and preserve the environment. One possible way forward is through the establishment of public bodies, to administer and interpret customary law, and deliberate over questions of natural resource exploitation.

A necessary first step will be to examine how customary law is used elsewhere in relation to statutory law - e.g. in Nagaland and Mizoland in India (where customary law is protected in the Constitution), and the Solomon Islands (use of Incorporated Municipal Associations, to represent community interests and interpret customary law). Another possible model is *The Philippines’ Indigenous Peoples’ Rights Act*, which civil society and indigenous peoples’ organisations played key roles in drafting.

448 NYF (2005), p. 24.

449 Minority Rights Group (MRG), *Forests and Indigenous Peoples of Asia* (1999).

450 NYF (2005), p.5.



## 9.2 The danger of unforeseen consequences

In the context of political, legal and constitutional change in Burma, the provision of secure land titles (including recognising the complexities of customary law) is essential – but also problematic. In a society with very limited rule of law, vested interests, including local and national power holders and private businesses, can hijack land and other reform processes. It is therefore important to ensure that affected communities hold political actors accountable and monitor changes in the HLP regime.<sup>451</sup>

Even the best-intentioned approaches to reform can have unintended consequences. Registration can make land more valuable and thus more liable to expropriation by the powerful. It can also ultimately lead to land-loss through indebtedness, when the poor use land as collateral on loans. Again, such possibilities indicate the importance of careful monitoring of HLP issues, especially during periods of political transition.

As has been the case around the world - especially during periods of dramatic change - it is quite possible that land reform in Burma will not receive the attention it deserves. Community and political leaders must be encouraged to prioritise HLP rights issues, as part of any transition that occurs in Burma - be this gradual or more abrupt transition.

## 9.3 Durable solutions to displacement and HLP crises

Protection from forced migration, and solutions to the widespread HLP crises in Burma, depend ultimately on settlements to the conflicts that have wracked the country for more than half a century. Unfortunately, efforts at conflict resolution have thus far met with only very limited success.

As noted, the ability of humanitarian, development and political actors to understand long-term patterns of forced migration in Burma is particularly important, given the evidence from Kachin, Mon and Shan States that conflict and displacement may not end with the cessation of insurgency. These findings should alert local, national and international agencies to the fact that civilians in supposedly ‘post-conflict’ settings in Burma experience continuing (including HLP) rights abuses.

Nevertheless, the Mon and Kachin cases illustrate the range of projects that can be implemented by local authorities (ceasefire groups) and civil society (CBOs and local NGOs), in the context of less-than-ideal ceasefires, in previously armed conflict-affected areas. More might have been (and still might be) achieved, with greater support from the Government and international agencies.

These examples illustrate that it is not necessary to wait for root-and-branch democratic reform, before addressing HLP issues in Burma. Many impressive initiatives are already underway - in Government- and ceasefire group-controlled areas, and in border areas under the influence of armed opposition groups. Such initiatives (many of which must remain confidential, in order not to jeopardise vulnerable groups and individuals) should be supported, in order to build a foundation for social and democratic change in Burma.

<sup>451</sup> See Geoffrey Payne's work on security of tenure for the poor, in the context of rights to access land (rather than titling *per se*): *Land, Rights and Innovation: Improving Tenure Security for the Urban Poor* (Stylus July 2004).

These developments raise the subject of displaced people's rehabilitation, including issues of resettlement and return. The primary concern relates to 'durable solutions' – both political settlements, and aid interventions which link relief and development.

Due to the prevalence of refugee-oriented mindsets, humanitarian and political strategists often assume that most IDPs will want to go home (the equivalent of refugee repatriation - but with less legal protection). However, at least some forced migrants may prefer to *in situ* - especially if their concerns for physical security are adequately addressed. (Other displaced people will of course want to resettle elsewhere – either returning home or moving to a new location.)

The 'durable solution' of local integration may allow some IDPs to escape cycles of displacement, and begin to re-build their lives. Whether they want to stay in their present settlement, or return to a previous place (which may, or may not, constitute 'home')<sup>452</sup> will in part depend on IDPs' current degree of livelihoods and human security *in situ* (i.e. whether they have found at least semi-durable solutions to their plight). Another important factor in the decision will be their knowledge of what has happened to their old homes, land and other property, and whether these have since been occupied - by the State or *Tatmadaw* (or other armed group), by private commercial interests (often linked to state or para-state agencies), or by other civilians (quite possibly, other IDPs). As in refugee repatriation, the principle of informed voluntariness should be central to any decisions regarding solutions to internal displacement Burma.

#### 9.4 Restitution and/or compensation

'Restitution' is achieved when property is returned to an individual or household, who had been unlawfully deprived of it, in such a way as restore them to their original state before the violation occurred. 'Compensation' occurs when an individual or household is provided with cash or other assets equivalent in value to the property they were deprived of.

*Tatmadaw* officers and other state officials often transfer unjustly acquired land and property to second and third-level investors, through 'legitimate' business deals. Such transactions serve to further entrench illegal stakeholders in the economy, and raise complex issues of restitution – as do international and trans-boundary investments in border areas, from neighboring countries. Such problems will need to be addressed with skill and sensitivity, as part of any comprehensive solution to the HLP and wider rights crisis in Burma.

This problem relates to fundamental questions regarding the status of 'secondary occupants'—those who occupy other's property or land (who may themselves be displaced, or dispossessed). Other outstanding issues include the question of *who* will arrange for restitution, or pay for any compensation package. One option might be to establish a national fund, using a percentage of the profits from natural gas and oil concessions, to compensate the victims of HLP violations.

452 A recent publication suggests that "studying displaced people's longer-term strategies of mobility and locality will help humanitarian organisations to avoid basing their assistance on false assumptions about 'home' and 'belonging'.... [Such an approach] should underscore the importance of designing actions not according to preconceived notions, but according to the way internally displaced persons live their lives, in all their complexity": Vincent and Sorensen (2001), p. 266.

# Recommendations

Based on the findings of this project and grounded in human rights principles, COHRE respectfully makes the following recommendations to the various actors involved:

## **To the Government and quasi-governmental entities: [The SPDC, Ceasefire and Insurgent Groups, and future regimes]**

1. Immediately cease violations of housing, land and property rights, including the illegal and abusive appropriation of land and property, and the forcible eviction and displacement of civilians. Implement a moratorium on the construction of large-scale dams in Burma.
2. Ratify the international human rights treaties relating to housing, land and property rights, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Embed these standards into national legislation, and implement them through policy.
3. Enshrine the United Nations Principles on Housing and Property Restitution (‘the Pinheiro Principles’) in national legislation and create legal and other mechanisms aimed at guaranteeing the rights of displaced persons to voluntarily return to their placed of origin in conditions on safety and dignity.
4. Ensure that housing, land and property rights (including customary law) are addressed in any future Constitution in a manner consistent with international human rights law. Include measures to protect the equal HLP rights of vulnerable and/or marginalised groups, including ethnic minorities, women and the landless.
5. Develop a comprehensive land-use policy, in consultation with ethnic nationality communities and develop capacity within government to implement it. Forestry and land policy should respect community-based farming systems and forestry rights, and build on them in a participatory and informed manner. Local communities must be allowed to grow crops of their own choice, and to protect and promote local plant varieties.
6. Ensure security of tenure, recognising the complexities of customary law (including through establishment local public bodies, which may adjudicate conflicts).
7. Implement a comprehensive study of HLP and restitution issues facing displaced people in and from Burma, to clarify the dimensions of land tenure problems and offer constitutional and legal options for their resolution.
8. Establish effective mechanisms whereby displaced persons, including IDPs and refugees, can make claims to illegally seized property (through the courts or other institutions). Consider establishing a national fund, using a percentage of the profits from natural gas and oil concessions, to compensate the victims of HLP violations.

9. Create an environment conducive to the growth of civil society. CBOs and other independent bodies must be allowed access to Government (including ceasefire groups) at all levels, have significant input into decisions regarding development projects affecting their communities (as part of EIA assessments), and be able to monitor impacts of such projects.

### **To Burmese civil society and political actors**

10. Ensure that HLP rights, including secure access to land and respect for customary law, are addressed in any future political settlement and in future constitutions.
11. Raise awareness of international human rights standards in relation to housing and land, and of HLP issues (including among ceasefire and non-ceasefire groups): implement training and capacity-building projects.
12. Prioritise surveys of land-holding and customary law in vulnerable areas, liable to HLP rights abuses. Implement community mapping of previous and existing ownership pattern (including access to and extent of commons, and customary usage).

### **To foreign governments, and national and international development and investment agencies**

13. Raise the issue of violations of HLP rights at international forums, and lobby for accountability for those engaged in such violations
14. Implement a moratorium on development projects, investments, or other activities in Burma which contravene HLP rights, or other international human rights standards
15. Provide support to Burmese civil society groups and political actors willing to support HLP rights.

### **To companies and other commercial enterprises operating in Burma**

16. Ensure that all future commercial and development projects undertaken in Burma fully comply with HLP rights under international law. In particular, ensure that commercial and development projects do not lead to forced eviction or other forms of displacement, in contravention of international law and standards.
17. Conduct stake-holder analyses before undertaking commercial and development projects to identify appropriate and independent community groups. Liaise with these at all stages of project planning and implementation.
18. Develop genuine partnerships with local communities, and respect community-based farming systems and HLP rights.



Hta Kaw To Baw  
villager fleeing

## To international aid and United Nations agencies

19. Support and help to build the capacities of civil society organisations in Burma that are working on HLP issues.
20. Ensure that all projects protect and promote HLP rights. Conduct stake-holder and peace and conflict impact analyses, prior to and during project implementation, and as part of evaluation. Identify and work to develop the capacities of community groups, and ensure that these are consulted at all stages of project planning and implementation.

# Glossary of Groups in Burma<sup>453</sup>

## Conflict Actors & Ceasefire Groups

### **Burma Army/Tatmadaw** △

The Tatmadaw, the national armed forces of Burma (or Myanmar), took control of key state institutions in the 1950s and 1960s, and has been the primary agent of land confiscation and forced relocation by the military regime.

The Tatmadaw regarded itself as the ultimate protector of the state from disintegration, promoting a strong homogenous Burman identity with ethnic minorities on the periphery. Hence, its chief motivation has been to expand militarised state control into conflict areas and eliminate opposition forces.

The Tatmadaw routinely perpetrates land confiscations during military operations against insurgent groups; to make way for development of infrastructure, to extract natural resources and to support new army battalions. Forced displacement has become a key tool against insurgency in undermining the perception of support for ethnic groups, and limiting access to resources (including food).<sup>454</sup> Responsible for violent suppression of monks and other democracy protestors in September and October 2007.

### **Democratic Karen Buddhist Army (DKBA) – Kayin (Karen) State** ○

The DKBA emerged in 1994 as a consequence of the neglect of the Buddhist and Pwo Karen majority by the KNU Christian (and S'ghaw-speaking) elite. The split represented a major crisis in the Karen insurgent movement. The DKBA acts as a proxy force for the military Government, as well as pursuing its own ethno-nationalist agenda.

### **Kachin Independence Organisation (KIO) Special Region-2, Kachin State** ○

The KIO was established by a group of Kachin University students in 1961, and was a founding member of the National Democratic Front (NDF) and Democratic Alliance of Burma (DAB). In 1994 the KIO became the first major member of the NDF/DAB/NCUB alliance to agree to a truce with Yangon. The KIO retains control of some 15,000 square miles of territory, and has implemented some community rehabilitation projects in partnership with local civil society groups since the ceasefire, but has achieved few of its political goals.

### **KNPP – Karenni National Progressive Party** △

Karenni separatist forces established the KNPP in 1957, with the aid of the KNU, as a political organisation with its own military wing.

A factional split occurred in 1978, leading to the formation of the Karenni National People's Liberation Front (KNPLF). The split was primarily due to ideological differences over the KNPP's relationship with the Communist Party of Burma (CPB).

<sup>453</sup> Adapted from [www.irrawaddy.org](http://www.irrawaddy.org)

<sup>454</sup> Robert Taylor, 'Government Responses to Armed Communist and Separatist Movements: Burma', in Chandran Jeshurun (ed.), *Governments and Rebellions in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 1985).

The KNPP was weakened as a consequence of the split, further heightened after a failed cease-fire agreement in 1995, which had been negotiated with the regime but which broke down three months later. Further splits occurred in 1999; however the KNPP retains troops in Karenni.<sup>455</sup>

**KNU – Karen National Union (armed wing: Karen National Liberation Army)**



The movement towards the idea of a Karen nation emerged during the British colonial period, and following independence in January 1949, led to the growth of the insurgency movement. The insurgency was primarily concerned with protecting Karen villages from attacks by Burman-dominated militias, alongside the ongoing aim of achieving some form of Karen independence across lower Burma.

As an anti-communist group during the Cold War, the KNU received covert support from Thai national security forces along the border region.

Whilst significantly weakened by internal and the ongoing external conflict, the KNU remains the oldest, and to many Karen people and outside observers, the only legitimate Karen ethno-nationalist group. Having never followed other groups into the cease-fire movement, the KNU retains significant credibility amongst the Burmese opposition.

**Karen Peace Force (ex-KNU) (KPF) – Southern Karen State**



The ex-KNU KPF agreed to an unofficial truce with the Tatmadaw, in the face of an overwhelming offensive in 1997. Controls territory in southern Karen State and in Mon State.

**Myanmar National Democracy Alliance Army (Kokang) (MNDA) – Special Region-1, Northern Shan State**



Ex- Communist Party of Burma (CPB) militia. Signed a ceasefire agreement with SLORC in 1989 and controls Kokang Special Region 1, Northern Shan State, an ex-opium growing area that has seen large scale population movement following aggressive opium eradication conducted since 2002.

**National Democratic Alliance Army (Shan/Akha) (NDA) – Special Region-4, Eastern Shan State**



Signed ceasefire agreement with the military Government on June 30, 1989. Controls Special Region-4, eastern Shan State.

**New Democratic Army-Kachin (NDA-K) – Special Region-1, North-East Kachin State**



Defected from the KIO to CBP in 1968. Previously the CPB 101 military zone; renamed NDA-K at time of ceasefire in December 1989, and granted control over Kachin State Special Region 1. Like several other ceasefire groups, the NDA-K leadership is implicated in large-scale logging activities in areas under its control.

**New Mon State Party (NMSP) – Mon State**



The NMSP, established in 1958, was an early ally of the KNU and a member of the NDF and DAB. With the forced repatriation of refugees from Thailand in 1995-1996, the NMSP faced pressure from the Royal Thai Army and the National Security Council to agree to a ceasefire with Yangon,

<sup>455</sup> See Vicky Bamforth, Steven Lanjouw, Graham Mortimer, Conflict and Displacement in Karenni: The Need for Considered Responses (Burma Ethnic Research Group, May 2000).

which was finalised in 1995. Like the KIO, the NMSP has overseen some impressive civil society development schemes since the ceasefire, but has been frustrated on the national political stage.

**Pa-O National Organisation (PNO) – Special Region-6, Southern Shan State** ○

The PNO signed a ceasefire agreement in 1991, and controls Special Region 6 of southern Shan State. Opium ban since 2007.

**Shan State Army (Shan State Progress Party) (SSA) – Special Region-3, Shan State** ○

Signed ceasefire agreement in September 1989. Controls Special Region 3 – Shan State.

**SSA – Shan State Army (political wing: Restoration Council of Shan State)** △

The major insurgent group still operating within Shan state, the SSA/RCSS has not signed a ceasefire agreement and is still engaged in fighting with the regime.

**Thandaung Special Region (ex-KNU) – Northern Karen State** ○

Ex-KNU faction. After completing an agreement with the military Government in 1997, the Thandaung Special Region group was granted control of around 20 villages in the far north of Karen State.

**United Wa State Army (Myanmar National Solidarity Party) (UWSA) – Special Region-2 Shan State** ○

Ex-CPB militia, signed a ceasefire agreement in 1989; currently strongest non-state group in Burma, (c.20 000 soldiers). Controls large ceasefire area in northeast Shan State. Opium ban since 2005, associated with large scale impoverishment and population movement (including forced relocation of civilians).

Key:

△ Conflict Actors

○ Ceasefire Groups



# Appendix 1

## Burmese place names

<b>STATES AND DIVISIONS</b>	<b>CAPITALS</b>	<b>STATES AND DIVISIONS</b>	<b>CAPITALS</b>
<b>Pre-SLORC name</b>	<b>Pre-SLORC name</b>	<b>Official name</b>	<b>Official name</b>
<b>Arakan State</b>	<b>Akyab</b>	Rakhine State	Sittwe
<b>Chin State</b>	<b>Hakha</b>	Chin State	Hakha
<b>Irrawaddy Division</b>	<b>Bassein</b>	Ayeyarwady Division	Patheingyi
<b>Kachin State</b>	<b>Myitkyina</b>	Kachin State	Myittha
<b>Karen State</b>	<b>Pa'an</b>	Kayah State	Hpa-an
<b>Karenni State</b>	<b>Loikaw</b>	Kayah State	Loikaw
<b>Magwe Division</b>	<b>Magwe</b>	Magwe Division	Magwe
<b>Mandalay Division</b>	<b>Mandalay</b>	Mandalay Division	Mandalay
<b>Mon State</b>	<b>Moulmein</b>	Mon State	Mawlamyine
<b>Pegu Division</b>	<b>Pegu</b>	Bago Division	Bago
<b>Rangoon Division</b>	<b>Rangoon</b> [former capital]	Yangon Division	Yangon
<b>Sagaing Division</b>	<b>Sagaing</b>	Sagaing Division	Sagaing
<b>Shan State</b>	<b>Lashio</b>	Shan State	Lashio
<b>Tenasserim Division</b>	<b>Tavoy</b>	Tanintharyi Division	Dawei

# Appendix 2

## Abbreviations and acronyms

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>BERG</b>	Burma Ethnic Research Group
<b>BSPP</b>	Burma Socialist Programme Party
<b>CBO</b>	Community-Based Organisation
<b>CIDKP</b>	Committee for Internally Displaced Karen People
<b>COHRE</b>	Centre on Housing Rights and Evictions
<b>DKBA</b>	Democratic Karen Buddhist Army
<b>DKBO</b>	Democratic Karen Buddhist Organisation
<b>HLP</b>	Housing, Land and Property
<b>HRP</b>	Hongsawatoi Restoration Party
<b>HURFOM</b>	Human Rights Foundation of Monland
<b>IASC</b>	UN Inter-Agency Standing Committee
<b>ICRC</b>	International Committee of the Red Cross
<b>IDP</b>	Internally Displaced Person
<b>IMNA</b>	Independent Mon News Agency
<b>ILO</b>	International Labour Organisation
<b>KESAN</b>	Karen Environment and Social Action Network
<b>KHRG</b>	Karen Human Rights Group
<b>KDA</b>	Kachin Defence Army
<b>KIA</b>	Kachin Independence Army
<b>KIO</b>	Kachin Independence Organisation
<b>KNLA</b>	Karen National Liberation Army
<b>KNPP</b>	Karen National Progressive Party
<b>KNU</b>	Karen National Union
<b>KRDC</b>	Kachin Relief and Development Committee
<b>KWA</b>	Kachin Women's Association
<b>KWO</b>	Karen Women's Organisation
<b>MNDAA</b>	Myanmar National Democratic Alliance Army
<b>MNEC</b>	Mon National Education Committee
<b>MRDC</b>	Mon Relief and Development Committee
<b>MNLA</b>	Mon National Liberation Army
<b>MSF</b>	<i>Medecins Sans Frontieres</i>
<b>NDA-K</b>	National Democratic Army - Kachin
<b>NDF</b>	National Democratic Front
<b>NLD</b>	National League for Democracy
<b>NMSP</b>	New Mon State Party
<b>UNOCHA</b>	UN Office for the Coordination of Humanitarian Affairs
<b>PNO</b>	PaO National Organisation
<b>SCUK</b>	Save the Children UK
<b>SLORC</b>	State Law and Order Restoration Council
<b>SPDC</b>	State Peace and Development Council
<b>TBBC</b>	Thailand Burma Border Consortium
<b>UNDP</b>	United Nations Development Program
<b>UNHCR</b>	United Nations High Commission for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>USDA</b>	Union Solidarity and Development Association
<b>UWSA</b>	United Wa State Army
<b>WFP</b>	World Food Program

# Appendix 3

## The Guiding Principles on Internal Displacement<sup>456</sup>

### Introduction - Scope and Purpose

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
  - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
  - (b) States when faced with the phenomenon of internal displacement;
  - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
  - (d) Intergovernmental and non-governmental organisations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

### Section I. General Principles

#### Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

#### Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of

<sup>456</sup> [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html) (English); [http://www.unhchr.ch/html/menu2/7/b/principles\\_burm1.htm](http://www.unhchr.ch/html/menu2/7/b/principles_burm1.htm) (Burmese); [http://www.unhchr.ch/html/menu2/7/b/principles\\_karen1.htm](http://www.unhchr.ch/html/menu2/7/b/principles_karen1.htm) (S'ghaw Karen).

their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

### **Principle 3**

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

### **Principle 4**

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

## **Section II. Principles Relating to Protection From Displacement**

### **Principle 5**

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

### **Principle 6**

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
  - (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
  - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
  - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
  - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

**Principle 7**

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
  - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
  - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
  - (c) The free and informed consent of those to be displaced shall be sought;
  - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
  - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
  - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

**Principle 8**

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

**Principle 9**

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

**Section III. Principles Relating to Protection During Displacement**

**Principle 10**

1. Every human being has the inherent right to life which shall be protected by law.

No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

#### **Principle 11**

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
  - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
  - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
  - (c) Acts of violence intended to spread terror among internally displaced persons.Threats and incitement to commit any of the foregoing acts shall be prohibited.

#### **Principle 12**

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

**Principle 13**

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

**Principle 14**

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

**Principle 15**

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

**Principle 16**

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organisations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

**Principle 17**

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such

families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organisations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

#### **Principle 18**

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - (a) Essential food and potable water;
  - (b) Basic shelter and housing;
  - (c) Appropriate clothing; and
  - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

#### **Principle 19**

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

#### **Principle 20**

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.



**Principle 21**

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
  - (a) Pillage;
  - (b) Direct or indiscriminate attacks or other acts of violence;
  - (c) Being used to shield military operations or objectives;
  - (d) Being made the object of reprisal; and
  - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

**Principle 22**

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
  - (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
  - (b) The right to seek freely opportunities for employment and to participate in economic activities;
  - (c) The right to associate freely and participate equally in community affairs;
  - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
  - (e) The right to communicate in a language they understand.

**Principle 23**

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

**Section IV. Principles Relating to Humanitarian Assistance****Principle 24**

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

**Principle 25**

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

**Principle 26**

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

**Principle 27**

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

**Section V. Principles Relating to Return, Resettlement and Reintegration**

**Principle 28**

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.



Villagers in hiding  
in Mon Township

### **Principle 29**

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

### **Principle 30**

All authorities concerned shall grant and facilitate for international humanitarian organisations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

# Appendix 4

## Principles on Housing and Property Restitution for Refugees and Other Displaced Persons (The Pinheiro Principles) <sup>457</sup>

### Section I Scope and application

Principle 1. Scope and application

### Section II The right to housing and property restitution

Principle 2. The right to housing and property restitution

### Section III Overarching principles

Principle 3. The right to non-discrimination

Principle 4. The right to equality between men and women

Principle 5. The right to be protected from displacement

Principle 6. The right to privacy and respect for the home

Principle 7. The right to peaceful enjoyment of possessions

Principle 8. The right to adequate housing

Principle 9. The right to freedom of movement

### Section IV The right to voluntary return in safety and dignity

Principle 10. The right to voluntary return in safety and dignity

### Section V Legal, policy, procedural and institutional implementation mechanisms

Principle 11. Compatibility with international human rights, refugee and humanitarian law and related standards

Principle 12. National procedures, institutions and mechanisms

Principle 13. Accessibility of restitution claims procedures

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Principle 15. Housing, land and property records and documentation

Principle 16. The rights of tenants and other non-owners

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Principle 20. Enforcement of restitution decisions and judgments

Principle 21. Compensation

### Section VI The role of the international community, including international organisations

Principle 22. Responsibility of the international community

### Section VII Interpretation

Principle 23. Interpretation.

<sup>457</sup> UNCHR, Sub-Commission on the Promotion and Protection of Human Rights, *Housing and property restitution in the context of the return of refugees and internally displaced persons: Final report of the Special Rapporteur, Paulo Sérgio Pinheiro - Principles on housing and property restitution for refugees and displaced persons* (E/CN.4/Sub.2/2005/17; 28 June 2005) <http://www.cohre.org/hprframe.htm>.

## **Preamble**

Recognizing that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands,

Underscoring that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin,

Reaffirming the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed,

Welcoming the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognized and reaffirmed the right to housing, land and property restitution,

Convinced that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution programmes, on the part of international organizations and affected States, is indispensable to ensuring their effective implementation,

Convinced also that the implementation of successful housing, land and property restitution programmes, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace.

## **Section I Scope and application**

### **Principle 1: Scope and application**

- 1.1 The Principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.
- 1.2 The Principles on housing and property restitution for refugees and displaced persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter “refugees and displaced persons”) who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

## **Section II The right to housing and property restitution**

### **Principle 2: The right to housing and property restitution**

- 2.1 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.
- 2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

## **Section III Overarching principles**

### **Principle 3: The right to non-discrimination**

- 3.1 Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.
- 3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

### **Principle 4: The right to equality between men and women**

- 4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.
- 4.2 States should ensure that housing, land and property restitution programmes, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.
- 4.3 States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

### **Principle 5: The right to be protected from displacement**

- 5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.
- 5.2 States should incorporate protections against displacement into domestic legislation, consistent with inter-national human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.
- 5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.
- 5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

### **Principle 6: The right to privacy and respect for the home**

- 6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.
- 6.2 States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.

### **Principle 7: The right to peaceful enjoyment of possessions**

- 7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.
- 7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.

### **Principle 8: The right to adequate housing**

- 8.1 Everyone has the right to adequate housing.
- 8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

### **Principle 9: The right to freedom of movement**

- 9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.
- 9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

## **Section IV The right to voluntary return in safety and dignity**

### **Principle 10: The right to voluntary return in safety and dignity**

- 10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.
- 10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.
- 10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.
- 10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.



## **Section V Legal, policy, procedural and institutional implementation mechanisms**

### **Principle 11: Compatibility with international human rights, refugee and humanitarian law and related standards**

- 11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.

### **Principle 12: National procedures, institutions and mechanisms**

- 12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.
- 12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests of the child”.
- 12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.
- 12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other rights of possession, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.
- 12.5 Where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, States should request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.

- 12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

**Principle 13: Accessibility of restitution claims procedures**

- 13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.
- 13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.
- 13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child”.
- 13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.
- 13.5 States should seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.
- 13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.
- 13.7 States should develop restitution claims forms that are simple and easy to understand and use and make them available in the main language or languages of the groups affected. Competent assistance should be made available to help persons complete and file any necessary restitution claims forms, and such assistance should be provided in a manner that is age and gender sensitive.

- 13.8 Where restitution claims forms cannot be sufficiently simplified owing to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner that is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.
- 13.9 States should establish a clear time period for filing restitution claims. This information should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of collecting information and access, the extent of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.
- 13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.
- 13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (whether national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.
- 13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

#### **Principle 14: Adequate consultation and participation in decision-making**

- 14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.
- 14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

#### **Principle 15: Housing, land and property records and documentation**

- 15.1 States should establish or re-establish national multipurpose cadastral or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution programme, respecting the rights of refugees and displaced persons when doing so.

- 15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.
- 15.3 States should ensure, where appropriate, that registration systems record and/or recognize the rights of possession of traditional and indigenous communities to collective lands.
- 15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format), transferring them securely and recognizing the authenticity of said copies.
- 15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.
- 15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.
- 15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.
- 15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

## **Principle 16: The rights of tenants and other non-owners**

- 16.1 States should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

## **Principle 17: Secondary occupants**

- 17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.
- 17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.
- 17.3 In cases where evictions of secondary occupants are justifiable and unavoidable, States should take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means of facilitating the timely restitution of refugee and displaced persons' housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.
- 17.4 In cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, States may consider establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.

## **Principle 18: Legislative measures**

- 18.1 States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for

protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.

- 18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.
- 18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

#### **Principle 19: Prohibition of arbitrary and discriminatory laws**

- 19.1 States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.
- 19.2 States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.
- 19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice.

#### **Principle 20: Enforcement of restitution decisions and judgments**

- 20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgments.
- 20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgments made by relevant bodies regarding housing, land and property restitution.
- 20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgments. Threats or attacks against officials and agencies carrying out restitution programmes should be fully investigated and prosecuted.

- 20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programmes.
- 20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

### **Principle 21: Compensation**

- 21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.
- 21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

## **Section VI The role of the international community, including international organisations**

### **Principle 22: Responsibility of the international community**

- 22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.
- 22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.
- 22.3 International organizations should work with national Governments and share expertise on the development of national housing, land and property restitution policies and

programmes and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.

- 22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through the establishment of national procedures, institutions, mechanisms and legal frameworks.
- 22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programmes may be successfully implemented and enforced.
- 22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgments. Members of the Security Council should consider including this role in the mandate of peace operations.
- 22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

## **Section VII Interpretation**

### **Principle 23: Interpretation**

- 23.1 The Principles on housing and property restitution for refugees and displaced persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.



In Burma, Housing Land and Property (HLP) rights are inextricably linked to the country's ongoing struggle for justice and democracy and sustainable livelihoods. Since 1962, when the military regime took power, over one million people have been displaced; a substantive number are from ethnic nationality communities denied the right to reside in their homelands. Land confiscation by Government forces is responsible for many such HLP violations in Burma.

In 2006, COHRE commissioned Ashley South, one of the world's leading Burma researchers to carry out on-site research on HLP rights. The ensuing report - *Displacement and Dispossession: Forced Migration and Land Rights in Burma* - forms a comprehensive look at the key HLP issues affecting Burma today, and how these might best be addressed in the future.

This report finds that such problems can only be resolved through substantial and sustained change in Burma, a political transition that should include improved access to a range of fundamental rights, as enshrined in international law and conventions - including respect for HLP rights. Protection from (and during) forced migration, and solutions to the widespread HLP crises in Burma, depend ultimately on settlements to the conflicts which have wracked the country for more than half a century.

Efforts at conflict resolution have thus far met with only very limited success. Nevertheless, this report describes some interesting and useful projects that have been implemented by civil society groups in Burma. These examples show that, notwithstanding the need for fundamental political change in Burma, steps can and should be taken now to address HLP issues. In particular, opportunities exist to assist the rehabilitation of displaced people, in ways which link political action with humanitarian relief and development.

#### Centre on Housing Rights and Evictions (COHRE)

The Centre on Housing Rights and Evictions (COHRE) is an independent, international, non-governmental human rights organisation with its International Secretariat in Geneva, Switzerland. COHRE undertakes a wide range of activities to promote the full realisation of housing rights for everyone, everywhere. COHRE opposes and actively campaigns against forced evictions wherever they occur or are planned. It works in all world regions to ensure protection and fulfilment of the right to adequate housing and related economic, social and cultural rights.



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