



Protection Sector (PWG – GBV SS – CP SS) Update Note

Humanitarian Access in Kachin State

1st draft early September /review end of November 2016

Objectives:

- a) To update the PWG Protection Analysis¹ focusing on humanitarian consequences, in particular protection concerns and risks, resulting from increasing restrictions on humanitarian access in Kachin State. The note further recalls international standards and principles related to humanitarian access, applicable in the Kachin context.
- b) The note is developed for use by the PWG, Protection Sector, AHCT, HCT and other relevant humanitarian actors in Myanmar for information and to complement on-going advocacy efforts at any level carried out by the international and national humanitarian community as well as peace-building actors.

Background:

In Kachin State, access to both Government Controlled Areas (GCAs) and Non-Government Controlled Areas (or KIO controlled Areas: KCAs) for international humanitarian actors has been restricted on and off since the breakdown of the ceasefire and resumption of the conflict in June 2011. As a result, local NGOs are the main source of humanitarian assistance to the conflict affected people in these areas, especially in KCA whose total figure is around 40,000 Internally Displaced Persons.

International staff of humanitarian organizations require travel authorizations from the government to travel outside of the main cities in GCA and into KCA areas. Over the last several months additional procedures and requirements for such authorizations have been introduced, creating additional burdens and in many instances *de facto* preventing staff to obtain travel authorizations, particularly to KCA. In the last months and for the majority of the humanitarian international organizations in Kachin State, humanitarian access has been restricted to a few townships, often coinciding with the touristic areas in Kachin State. For national staff of national organizations access is still allowed but additional administrative burdens have been put in place, in particular way, authorization is required to move any supply to assist IDPs on KCAs, but also increased reports of questioning at checkpoints and logistic challenges due to the alternative routes to be taken to access

¹ Protection Analyses for Rakhine, Kachin and NSS, issued in October 2015 by the Protection sector.

the mentioned areas². These access restrictions, for both international and national humanitarian organizations, have coincided with an increase in deployment of troops and clashes between the Myanmar military and the KIA in Kachin State, possibly in the lead up to the national level 21st century Panglong Peace Conference initiative that took place from 31 August to 4 September 2016³; the follow-up process to the Peace Conference seemed likely to have an impact on the conflict dynamics in Kachin State in the last three months and will probably continue over the next months.

Humanitarian and Protection consequences:

As above mentioned, it has been made more difficult for local/national organizations to deliver assistance in these areas, resulting in limited availability of assistance and protection services for IDPs and other conflict-affected populations. Reportedly, some national organizations have been prevented from bringing medical supplies⁴ or food assistance⁵ into KCA by the Myanmar Army and since April 2016 the Mai Ja Yang route to KCA has been closed for civilians, while challenges have been posed for humanitarian organizations. In September 2016 the General Administrative Department in Bhamo, Putao and Hpakant send official instruction letters to all local and international organizations, religious and social groups, to inform them of the requirement of obtaining the prior permission from the Kachin State Government, in order to deliver food assistance to IDPs in camps in GCA and KCA in Kachin and Northern Shan State. If such authorization is not obtained, the organization in question would be denied access to deliver humanitarian assistance.⁶ Furthermore, it was reported that in one IDP camp the General Administration Department (GAD) questioned the provenience of the food supply and the delivery modality and confirmed to the camp committee that the inspections will be carried out on a monthly basis.

Since May/June 2016 the Myanmar Army has proposed **a new delivery system for food and NFIs assistance** whereby IDPs from KCA would be required to come to newly designated distribution points in GCA to then carry their items back. This proposal would require women, men, girls and boys who are **IDPs or other affected populations to walk for long distances and cross conflict frontlines to access assistance giving rise to several protection risks** such as GBV, risk of being injured during armed conflict, exploitation, extortion, landmines, forced recruitment, portering/forced labor, and children being abducted, forced or encouraged to join armed forces. The ability of IDPs to reach the distribution points would also impact their ability to move freely between

² Having the official route going to KCA from the north of Kachin being closed since April (the so called “Golden Gate” in Nam San Yan, Waing Maw township) for the majority of the humanitarian organizations by the MA/authorities.

³ Protection Working Group Kachin – Protection of Civilians update September 2016.

⁴ Occurred on 3 September 2016 in Bhamo Township.

⁵ Occurred on 14 September 2016 in Bhamo Township.

⁶ E.g. on 18 October 2016 fifteen members of Green Land, a local environmentalist civil society group based in Hpakant, were in the process of transporting rice, oil and of salt to IDPs in Jahtu Zup village on Tuesday afternoon, when they were stopped outside of Hpakant town by soldiers at the Lawa security gate in the area of Kar Mai and asked for their permission. Available online: <http://www.irrawaddy.com/news/burma-army-blocks-food-supplies-to-kachin-idps.html>.

GCA and KCA, a right that is often restricted. Persons with special needs, including persons with disabilities, elderly or child-headed households who may be unable to make the journey to the distribution points, might be cut off from assistance. The proposal has been rejected multiple times by the humanitarian community as well as by IDPs themselves.

In addition to **the inability to regularly provide assistance, the restrictions hamper the ability of humanitarian actors to provide protection services, including protection by presence, to monitor and address key protection concerns as well as to ensure that the assistance provided is in line with international principles of neutrality, impartiality and independence.**⁷ Negative coping mechanisms and a certain level of distress by IDPs in camps have been reported when assistance have been scarce or delayed; furthermore, there have been sporadically identified protection concerns and incidents related to the use of assistance as a mean of leverage in camps by different actors. Protection incidents involving IDPs in camps and civilian population in KCA and in certain GCAs have been reported (*despite the difficulties representing by lack of access enabling systematic protection monitoring*) and the trends identified showed an increase in protection risks in the last quarter⁸. Additionally, the intensification of the conflict affecting areas very close to or in KCAs together with the restriction of the freedom of movement, made civilian population residing in KCA vulnerable to be able to effectively evacuate in case of immediate danger to their life, as well as for humanitarians to respond to any emergency that might occur⁹. Considering the above, a scenario planning exercise has been conducted in October 2016 as a component of a future Kachin contingency plan to be carried out by the humanitarian community to help figure out the best response possible¹⁰.

It is also worth not to note that there has been virtually no access to Sumprabum area (Putao Township) since the displacement occurred in July 2015. Some organizations were permitted road access in early 2016 that proved to be inadequate due to the heavily land-mined route, while access by river has not been granted since 2015¹¹; this has resulted in some displaced civilians having to undertake unsafe journeys to reach Sumprabum town or even Myitkyina town to access services and assistance, while others remain displaced without access to humanitarian assistance from international and national organizations. Some local NGOs have attempted to reach the reception

⁷ Humanitarian principles of humanity, neutrality and impartiality are endorsed in General Assembly resolution 46/182, which was adopted in 1991. General Assembly resolution 58/114 (2004) added independence as a fourth key principle of humanitarian assistance.

⁸ PIM report 3rd quarter 2016, PWG Kachin.

⁹ There have been also reported that some IDPs are considering to move towards Myitkyina and Waingmaw Township to access services such as health and education, while other households already undertook this journey and are now residing mostly in host communities in Myitkyina.

¹⁰ National organizations have been already undertaken preparedness-related exercises.

¹¹ Also, in late 2015, the MA feedback on a UN agency about humanitarian assistance was that the items could have been distributed by MA, option that was without any doubt, rejected.

areas despite the great security and safety risks¹²; information received indicates that the displaced persons are in need of food, shelter, health care as well as protection assistance and services.

It could be also mentioned that while local NGOs are still able to access parts of KCA, despite the difficulties and risks to try to assist the women, men, girls and boys in need of assistance, humanitarian response has also been provided by KIO departments through their own means. Time going by, for what concerns service delivery involving supplies i.e., local actors have found alternative ways to deliver aid using Chinese suppliers but, as previously mentioned, not without undertaking security and safety risks due to the routes taken to transport the goods, other cross-border related risks and the high costs that this solution implies that in turns means that several camps in KCA remains still out of access.

In general terms, the limited and ad-hoc access of humanitarian organizations puts at risk the ability of humanitarian actors to respond adequately to humanitarian needs and does not enable protection risks and concerns to be adequately monitored and timely responded.

Advocacy carried out by the humanitarian community:

Efforts have been made at the state and national level to highlight the constraints and consequences of the restricted access for humanitarian actors in Kachin State on women, men, girls and boys in need of humanitarian assistance. The HCT issued an Advocacy Note released on September 14th 2016 on the constraints of humanitarian access in Myanmar, focusing on Kachin State; the note especially emphasizes the difficulties for WFP food supply delivery in KCAs in Kachin State. The Humanitarian Coordinator ad interim met with the Union government as well as the Myanmar Army Commander in Chief at the Union level, to bring once again this issue under their attention and advocate for unhindered humanitarian access. The Yangon-based Kachin Access WG that continues to work on the matter, recently organized a mission to Kachin State, to help envisaging the best way to negotiate and a plan for the way forward. Furthermore, as a reaction to the additional access formalities for local organizations and the intensification of the conflict in the last three months, the Joint Strategy Team for Humanitarian Response (JST)¹³, released a Statement on October 14th 2016 to call on the Myanmar government and the Myanmar Army to take measures to ensure “unlimited humanitarian access” and to immediately cease all military actions and hostilities.¹⁴

Key messages relating to Humanitarian Access in the Kachin context:

- *Under international law the state has the primary responsibility to ensure the protection of all persons within its country. Where a state is unable to ensure assistance and protection it*

¹² A few attempts to reach the mentioned IDPs by river have been carried out by national organizations running security and safety risks.

¹³ JST: Joint Strategic Team: a coalition of nine local humanitarian organizations active in Kachin and Northern Shan States.

¹⁴ JST Statement, available online: <http://progressivevoicemyanmar.org/2016/10/14/urgent-requests-concerns-and-requests-related-to-the-humanitarian-situation-in-kachin-and-northern-shan-states-myanmar/> (accessed on 16 November 2016).

has a responsibility to allow access for humanitarian actors to provide assistance without undue delays or restrictions.

The state also has the obligation to respect, protect and fulfil human rights for all persons within its country which includes minimum levels of economic and social rights provided for under the International Covenant on Economic, Social and Cultural Rights. This has been determined¹⁵ as including basic shelter, primary health care, housing and essential food.¹⁶ The undue denial of humanitarian access can constitute a violation of international humanitarian law and human rights law.

- *Unconditional and unhindered humanitarian access for national and international humanitarian organizations is needed to assist the women, men, girls and boys in need in GCAs and KCAs, including with protection services and protection by presence to mitigate protection risks and ensure that assistance provided is impartial and in line with do no harm principles.*
- *Mitigation measures or organizations' policies waver to enable a flexible response to the situation as well as supporting local NGOs through strategy to mitigate the risks of safety and security.*

Protection Sector Kachin,

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¹⁵ By the UN Committee on Economic, Social and Cultural Rights.

¹⁶ This protection is also included in the International Covenant on Economic Social and Cultural Rights (ICESCR), recently signed (but not yet ratified) by Myanmar on 10/07/2015.