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Forced Migration and the Myanmar Peace Process

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Abbreviations

BGF	Border Guard Forces
CSO	Civil society organisations
CIDKP	Committee for Internally Displaced Karen People
CBO	Community-Based Organisations
DKBA	Democratic Karen Benevolent Army
EAG	Ethnic Armed Groups
HLP	Housing, Land and Property
IDP	Internally Displaced Person
KIO	Kachin Independence Organisation
KNU	Karen National Union
KNPP	Karen National Progressive Party
KKO	Klohtoobaw Karen Organisation
MoU	Memoranda of Understanding
MoBA	Ministry of Border Affairs
MNLA	Mon National Liberation Army
MPSI	Myanmar Peace Support Initiative
NCA	Nationwide Ceasefire Agreement
NCCT	Nationwide Ceasefire Coordinating Team
NMSP	New Mon State Party
NGO	Non-governmental organisation
RCSS	Restoration Council of Shan State
RTG	Royal Thai Government
SNPLO	Shan Nationalities People's Liberation Organisation
UPWC	Union Peace Working Committee
USA	United States of America

Executive Summary

Background

During the course of more than six decades of armed conflict in southeast Myanmar, hundreds of thousands of people have been displaced. The precise number of currently Internally Displaced Persons (IDPs) in the region is unknown. While relatively few civilians (perhaps just over 10,000)¹ have been displaced by armed conflict since the emergence of the peace process in 2011, several hundreds of thousands remain displaced, and have yet to find a 'durable solution' to their plight. Furthermore, in Thailand there are some 120,000 refugees from southeast Myanmar living in temporary shelters, plus another 2-3 million migrant workers, many of whom are acutely vulnerable and left their homeland for similar reasons to the refugees.

Forced migrants in and from Myanmar demonstrate significant resilience, and often high levels of social and political capital. Nevertheless, refugees and IDPs have been among the principal victims of armed conflict in their homeland. Communities have suffered greatly, with many people dispossessed and traumatised. To some degree, the overall success of the peace process can be measured by the extent to which the country's most acutely affected populations are able to achieve durable solutions. At the same time, durable solutions for forced migrants will depend on sustainable improvements in the political and security environment and an end to armed conflict, and thus are tied inextricably to the peace process.

Since late 2011, most of the 17 major Ethnic Armed Groups (EAGs) in Myanmar have agreed (or renegotiated) ceasefires with the government. Negotiations are ongoing toward the implementation of a joint Nationwide Ceasefire Agreement (NCA), but have slowed significantly since mid-2014. It is possible that such negotiations will stall almost entirely until after the post-2015 elections, when a new government may even re-frame the process. It remains to be seen whether and how a political settlement can be achieved, addressing the underlying grievances and aspirations of ethnic nationality communities, while at the same time being acceptable to the Myanmar government and army. Furthermore, three years of intense fighting in northern Myanmar and recent bursts of armed conflict in the southeast raise serious questions about the credibility of the peace process. Nevertheless, ceasefires in southeast Myanmar have resulted in major improvements in living conditions for many conflict-affected communities.

This report was commissioned by UNHCR to explore how refugee and IDP issues are featuring in the peace process, and what recent developments might mean for forced migrants' future prospects. The focus is primarily on southeast Myanmar, and armed conflict-induced displacement, with less emphasis on development-induced and other forms of forced migration.

¹ TBC (2012; 60) documents the displacement of 10,000 people between August 2011 and July 2012, but was unable to collect comparable data for the following year. TBC (2014; 14) notes that 4,200 people were displaced between August 2013 and July 2014, though over half were forced from their homes by natural disasters. Amidst the outbreak of armed conflict in Karen and Mon states in September and October 2014, local organisations supporting the displaced reported that over 2,000 IDPs remained unable to return home in October 2014 (KRW 2014; 2). Other reports from humanitarian sources based along the border state that 260 people crossed the border to Thailand before being pushed back by the Thai authorities.

Forced migration and the peace process

While the peace process represents a significant opportunity to rehabilitate conflict-affected communities and work towards durable solutions for refugees and IDPs, the mere existence of ceasefires and associated political negotiations does not in itself constitute an end to humanitarian crises in southeast Myanmar, or sufficient grounds to promote IDP return and/or refugee repatriation. UNHCR's '*Strategic Roadmap for Voluntary Repatriation*' recognises that the key factors triggering more proactive engagement with refugee and IDP return and resettlement are fundamentally political in nature, and dependent on progress in the peace process. It should not be assumed that challenges in southeast Myanmar are now concerned primarily with economic development, rather than humanitarian concerns. Southeast Myanmar will remain a site of acute humanitarian vulnerability for some time to come.

Following decades of armed conflict, the situation of IDPs in southeast Myanmar is highly complex. Many individuals and communities have moved dozens of times. In this context, it is often difficult to know what constitutes 'home' for displaced people. Some will wish to *return* to a previous settlement, while others will prefer to seek greater human security in the present location (*local integration*), or *resettle* in a new location (including newly established 'resettlement villages' or 'pilot project' sites). For most forced migrants, movements over the coming years are unlikely to constitute definitive decisions to rebuild lives in a particular location, but will more likely involve trial and error, in many cases dividing family members to maximise the benefits and spread the risks inherent in different options.

Understanding the varied situations faced by forced migrants is crucial to envisioning what durable solutions might look like. This report distinguishes eight main types of forced migrant, ranging from those in refugee camps to those in various ceasefire areas under the control of EAGs, and those in government-controlled relocation sites. Thousands of IDPs and smaller numbers of refugees have returned to their places of origin, but it is not clear how permanent these moves are, and if they represent *durable* (in the sense of lasting) solutions. The factors influencing forced migrants' decisions (to stay, return or resettle) include: 1) physical security; 2) prospects for stable livelihoods, including access to land; 3) access to services and amenities; 4) perceptions of, and confidence in, the peace process; and 5) influences from various political actors and authorities.

The primary obstacles to durable solutions relate to the continued presence and conduct of military actors (particularly state, but also non-state actors) often stationed close to civilian settlements, and particularly in areas from which people have fled. This has meant that ceasefires remain fragile, and – despite significant improvements – human rights abuses and exploitative practices persist. Solutions are also hindered by widespread landmine contamination throughout southeast Myanmar, and secondary settlement (displaced persons' land being occupied by other vulnerable groups). Myanmar army (*Tatmadaw*) occupation of previously civilian-owned land, and government control over areas previously held by EAGs, further complicate matters. A commitment from the government to reduce military expansion in ceasefire areas would demonstrate a significant break from the past and boost confidence among IDPs, as would a firm commitment to establishing military codes of conduct, both through the NCA and at bilateral level. Such provisions should allow for the beginning of landmine demarcation, and eventual de-mining, further building trust on the part of forced migrants, and enabling people to consider returning to previous settlements.

A key factor in forced migrants' decisions about the future is access to appropriate livelihoods, and particularly land. Widespread land-grabbing, which has grown as ceasefire areas become more accessible to private actors, presents a risk to the credibility of the peace process. Forced migrants should be able to gain access to land through restitution of previous landholdings, including those confiscated by well-connected ('crony') companies, or through compensation and land allocation. These issues should be urgently addressed in political negotiations. Given the slow pace of peace talks, these arrangements could be 'fast tracked' in parallel to NCA negotiations, and would not have to wait for implementation of a final settlement to the peace process. Many IDPs, including those who have been in hiding or previously forced to reside in government-controlled 'relocation sites', have already started to return to their previous villages; however, for the landless (including those whose land has been confiscated) their options are limited.

Ultimately, finding durable solutions to forced migration in Myanmar will depend on the resolution of armed and political conflicts. As is well known, there are rarely humanitarian solutions to political problems. It is only through negotiations between the Myanmar government and army (*Tatmadaw*) and EAGs, that a political and security framework can be established to achieve durable solutions for refugees and IDPs. UNHCR and other international organisations should ensure that their interventions are complementary to the peace process, and at the very least 'do no harm' by framing interventions in accordance with the evolving political dynamic.

That being said, key stakeholders (e.g. Myanmar government and *Tatmadaw*, and EAGs) do not unproblematically represent the interests and identities of forced migrants. Therefore, national and international organisations seeking to help forced migrants in and from Myanmar should be guided primarily by consultations with IDP, refugee and host communities, and encourage key peace process actors to do so also. Overall, forced migrants have received little information about the status of the peace process or other elements of Myanmar's ongoing transition that impact their futures. There is a need for the peace process to be deepened, by eliciting more comprehensive involvement from displaced people themselves. This is particularly important given the significant social and political capital which exists within IDP and refugee communities, and the local organisations which for many decades have been working to support them and advocate on their behalf. Attempts at finding durable solutions for forced migrants should be undertaken in close partnership with Community-Based Organisations (CBOs) and other community leaders.

NCA negotiations have addressed refugee and IDP issues only in general terms. It is important that parties to the conflict and peace process commit to consulting with, and supporting the agency of, forced migrants, in accordance with international humanitarian and human rights law, and best practice. While such a commitment could usefully be included in the NCA, it is understood that parties to the peace process want to keep this document as simple as possible, and not get side-tracked by complex legal and technical discussions.

To some extent, bilateral negotiations may provide a more suitable forum for dealing with issues directly related to forced migration, as they can be more sensitive to local dynamics, and depend on trust at the local level. In parallel to peace talks between the government and both the Karen National Union (KNU) and Karenni National Progressive Party (KNPP), a number of 'pilot projects' have been initiated to support the return and/or resettlement of IDPs, which could provide key lessons moving forward.

While all return and resettlement must take place voluntarily and at the discretion of the individual, the reality is that vast numbers of IDPs and refugees will need support from relevant authorities, and in some cases will depend on highly organised programmes. Key stakeholders within the government and EAGs are of the view that initial efforts should focus on the rehabilitation of IDP communities, before serious consideration of organised refugee return. This makes it even more critical that refugees are not unduly compelled to leave the refugee camps as a result of pressure from the Thai authorities, which has become a significant concern since early 2014,² or as a result of cuts in donor funding.

Peace talks will also need to address a range of broader issues, including managing and reducing high levels of militarisation (and associated abuse and exploitation), particularly on the part of state armed forces in ethnic nationality-populated areas; land rights management, and dispute resolution; economic activity in newly accessible, previously conflict-affected areas (particularly in the extractive industries); and negotiating the roles of EAGs in governance and social service provision. Such issues have been addressed to varying degrees in NCA drafts as 'interim arrangements' that would be put in place during the period of political dialogue, until more regular future systems are negotiated. However, due to outstanding disagreements in this area, it is likely that many of these issues will continue to be governed through *ad hoc* local arrangements, for the time being. Progress in these areas will depend on concerted negotiations during or alongside multi-stakeholder political dialogue, which those involved in the peace process still hope can be achieved.

Prospects for durable solutions are intimately connected to those for a sustainable end to conflict. In turn, such an achievement will depend not just on successful negotiations at the table, but more systemically on a transformation of the security, political and economic environment. While international engagements in southeast Myanmar have the potential to contribute to such processes, they will be contingent primarily on local actors and local dynamics. Ongoing research into these issues will be necessary, in order to ensure that the international community is making a positive contribution to the emergence of durable solutions, and more broadly to the peace process in general.

Recommendations

- Durable solutions to forced migration in Myanmar will ultimately depend on a comprehensive end to conflict, a normalisation of state-society relations, and the emergence of a legitimate and functioning state. Without a negotiated political settlement, the prospects for sustainably ending displacement crises are low.
- While ceasefires have brought significant improvements to the security and human rights situation, communities continue to express concerns regarding the sustainability of existing ceasefires, and face continued threats due to militarisation and exploitative commercial activity. Efforts must be made to consolidate existing ceasefires, and guarantee the safety of all civilians. Clear codes of conduct for armed actors, and monitoring mechanisms, should be established.

² While these concerns were raised in the spring, when the new Thai junta announced plans to repatriate the refugees, they were exacerbated in early October, when around 260 newly displaced refugees crossed the border before being pushed back by local Thai authorities.

- All return and resettlement must be voluntary, respecting the dignity of individuals in accordance with international law. While some refugees and IDPs may choose to repatriate or resettle 'spontaneously', many will require support from relevant political authorities and mandated agencies. All stakeholders should aim to facilitate the emergence of a 'protected space' in the Thailand-Myanmar borderlands, in order to encourage trust in the peace process and prospects for repatriation on the part of the refugee population.
- The principal parties to the peace process (government and EAGs) should commit to regular consultation with IDPs and refugees, and to respecting their rights under Myanmar and international law. They should enshrine such commitments in the Nationwide Ceasefire Accord, and/or any other political and security agreements. Refugee and IDP issues should also be taken into consideration when negotiating military codes of conduct.
- Relevant EAGs should be included in discussions about the future of refugees and IDPs, in addition to the governments of Thailand and Myanmar, and UNHCR.
- Durable solutions for forced migrants should be context specific. Some arrangements require bilateral discussion between individual EAGs and the government. Involvement of both parties is crucial, not just due to overlapping administrative and security apparatuses, but more broadly to ensure that activities are sequenced with the peace process, and do not unreasonably promote the agendas of specific parties. It is critical that the return or resettlement of vulnerable populations is undertaken in a conflict-sensitive manner, in discussion with local stakeholders.
- The rights of refugees and IDPs to return to previously settled land should be addressed in the NCA and other multilateral and bilateral agreements. Restitution of and/or compensation for land and assets misappropriated from refugees and IDPs, including issues of 'secondary settlement,' should be addressed in any forthcoming political dialogue. Myanmar's inequitable land laws (particularly the 2012 legislation) should be revised as a matter of urgency, and perhaps suspended in conflict-affected areas.
- Political negotiations should address how civilians can be guaranteed immunity from punishment or harassment for suspected connections with EAGs, particularly those who are returning or resettling after periods of displacement in areas under the authority of EAGs, or from refugee camps.
- Regarding durable solutions for forced migrants in Thailand, the particular circumstances and needs of out-of-camp refugees should be taken into account, including Shan and others who left Myanmar for reasons related to conflict and/or persecution. Many out-of-camp refugees have the same needs and aspirations for 'organised repatriation' as those in the refugee camps.
- International aid actors should ensure a continued focus on the humanitarian (protection and assistance) needs of IDPs and other forced migrants in southeast Myanmar, while acknowledging also the needs for economic development and jobs in transitional/post-conflict environments.

- International support should continue to aid networks with head offices in Thailand (including those linked to EAGs), which retain a crucial role in providing assistance and protection to some of the most vulnerable populations in southeast Myanmar. Where access is possible from ‘inside Myanmar’, and is not perceived by conflict-affected communities or other key stakeholders as threatening, this option can often be more practical and ultimately sustainable.
- In carrying out assessments, partnerships should be utilised to maximise the relative strengths of CBOs and international actors, whilst minimising potential bias. The former possess strong local knowledge and networks; the latter may bring technical competence and a degree of political impartiality.

1. Introduction

In the context of more than six decades of armed conflict in southeast Myanmar, hundreds of thousands of people have been forcibly displaced.³ At present, some 120,000 people are living in temporary refugee camps in Thailand. And while some Internally Displaced Persons (IDPs) within Myanmar's borders have over the years found 'durable solutions' to their plight, hundreds of thousands remain highly vulnerable, due to their displacement. Over one million migrant workers from Myanmar also live a sometimes precarious existence in Thailand. Under the new Myanmar government which assumed office in early 2011, ceasefires have been agreed with most of the country's Ethnic Armed Groups (EAGs). The resulting peace process however is still in its early stages and in places (i.e. Kachin and northern Shan States) ceasefires are yet to be concluded or are fragile with frequent clashes continuing. Nevertheless, the peace process represents a significant opportunity and a requirement for key stakeholders (displaced communities, EAGs, state agencies, civil society actors and local community-based organisations (CBOs) and non-governmental organisations (NGOs), and international organisations, including UNHCR, to work towards durable solutions for Myanmar's forced migrants.

Overview of the report

Following the Introduction and overview (Part 1), Part 2 of the report introduces a new eight-part typology of forced migration in and from Myanmar. It then examines how each of these sub-types of forced migrant is affected by five cross-cutting factors: 1) physical security; 2) access to livelihoods (including access to land); 3) access to services and amenities; 4) perceptions and levels of confidence in the peace process; and 5) influences from various political actors and authorities.

Part 3 provides an overview of the peace process, before assessing how IDPs and refugees have been consulted. With the exception of some good practice on the part of a few EAGs and ethnic civil society actors, forced migrants have largely been excluded from peace process negotiations, or broader political discussions. As noted, refugee and IDP issues have been addressed only in general terms in negotiations towards an NCA, in part due to a legitimate concern that such discussions could slow down already protracted negotiations. Some bilateral agreements between individual EAGs (e.g. the Karen National Union) and the government include substantial provisions regarding IDPs and refugees, but unfortunately several key elements of these ceasefire agreements have yet to be implemented in practice. Nevertheless, a number of local 'pilot projects' have been implemented by EAGs, or are in the planning stage, to begin the massive task of rehabilitating conflict-affected communities. Part 3 sketches how forced migration as an issue, and refugee and IDP populations, figure in the positions of different actors in the peace process, including the government and international organisations.

³ Based on TBC and other data, the Internal Displacement Monitoring Centre (IDMC) "estimates that there are up to 642,600 IDPs in Myanmar, forced to flee their homes by armed conflict and inter-communal violence. The figure includes up to 400,000 people living in protracted displacement as a result of conflict in the southeast of the country – in southern Shan, Kayah, Kayin and Mon states and Bago and Tanintharyi regions - and 98,000 displaced by conflict in Kachin and northern Shan states since 2011. It also includes around 140,000 people displaced by inter-communal violence in Rakhine state since 2012, and more than 5,000 who fled their homes in Mandalay region in 2013." (IDMC July 2014).

Part 4 is more normative in tone, deepening the analysis, and developing some general principles regarding how forced migration should feature in, and be framed by, the peace process. Part 5 consists of key findings and recommendations

1.1 Background and Rationale

The relationship between forced migration and the peace process represents one of the most important challenges of humanitarian and political action in Myanmar in recent decades. To some extent, the overall success of the peace process can be measured by the extent to which the primary victims of conflict – forced migrants (refugees and IDPs) – are able to achieve durable solutions.⁴ Progress in this area is therefore an important indicator for assessing the sustainability of the peace process. At the same time, durable solutions for forced migrants will depend on sustainable improvements in the political and security environment, further emphasising the need to understand the relationship between forced migration and the peace process.

UNHCR has therefore commissioned this study to explore the relationship between the peace process and refugee and IDP issues. Drawing on extensive primary research undertaken by the authors, the report seeks to address how discussions of, and interventions to support, durable solutions to displacement are featuring in ceasefire talks as well as the extent to which forced migrants (IDPs and refugees) themselves are consulted about, and have their concerns and interests represented in, the peace process. (For a list of Research Questions, see Annex 1.)

It is worth noting at the outset that few of the informants consulted in this research considered the organised repatriation of refugees from Thailand to be likely, at least in the short-term. However, the prospect of greater Thai pressure on the refugee population cannot be ruled out.⁵ In this context, some refugees – and somewhat greater numbers of IDPs – have begun responding to ceasefires by making voluntary (‘spontaneous’) movements back to places of origin or to new areas. Furthermore, issues in relation to forced migration have featured to some extent in ceasefire and peace negotiations, and in several areas ‘pilot projects’ are being undertaken by EAGs and the government to resettle IDPs, and former combatants. Assuming the peace process moves forward, such activities on the part of government, ex-combatants and humanitarian/development agencies could be expanded, potentially to include refugees too. Indeed, many refugees consulted for this study envisaged

⁴ For refugees, achieving the protection of a state is generally secured through one of the three durable solutions, "that ends the cycle of displacement by resolving their plight so that they can lead normal lives. The three durable solutions are: Voluntary repatriation, in which refugees return to their country of origin, based on a free and informed decision, in and to conditions of safety and with dignity, with the full restoration of national protection as the end product; Local integration, in which refugees legally, economically and socially integrate in the host country, availing themselves of the national protection of the host government; Resettlement, in which refugees are selected and transferred from the country of refuge to a third State which has agreed to admit them as refugees with permanent residence status. While there is no formal hierarchy among the durable solutions, voluntary repatriation is the solution sought and attained by most refugees. Nonetheless, the three durable solutions are complementary in nature and when applied together, can reinforce each other and contribute to a viable and comprehensive strategy for resolving a refugee situation" (UNHCR May 2014, p.5).

⁵ The Royal Thai Government (RTG) has consistently asserted to UNHCR that any refugee returns to Myanmar must be voluntary and conducted in safety and dignity, and that international standards will be upheld at the time when a voluntary return of refugees becomes possible. At the time of writing, the RTG is reported to be actively engaging with refugees and aid agencies to identify steps that might be taken towards voluntary repatriation.

organised repatriation of this type taking place, *if* a lasting peace can be achieved. Therefore, while internationally mandated protection agencies, such as UNHCR, and other humanitarian actors have thus far generally avoided involvement in developing large-scale plans for IDP and refugee return, they should in the future be prepared to respond positively, in order to uphold their mandates, particularly in their efforts to ensure international rights frameworks are respected by those planning and implementing return and resettlement.

Background Context

Myanmar is home to more than 100 ethno-linguistic groups, with an estimated population in 2012 of 58 million people - although exact data are hard to come by. Non-Burman communities make up at least 30% of the population. According to 2011 UN estimates, there are around 10 million people in southeast Myanmar, the part of the country which borders Thailand, and encompasses Tanintharyi, Mon, Kayin, Eastern Bago, Kayah and southern Shan.⁶ For more than half-a-century, ethnic nationality-populated⁷, rural areas across Myanmar have been subject to an overlapping set of conflicts between EAGs and the militarised state. For several decades following independence, communist and ethnic insurgents controlled large parts of the country.⁸ During this period, EAGs developed extensive (if under-resourced) parallel administrative regimes, including in some cases service structures, with departments of education, health, finance etc.⁹ For many non-Burman people living in rural areas, the state has been experienced primarily in the form of violent and predatory incursions of the Myanmar Armed forces (*Tatmadaw*), with EAGs often regarded as a more legitimate presence than the central government, offering some protection and humanitarian assistance to beleaguered minority communities.

Since the 1970s, EAGs have lost control of much of their once extensive 'liberated zones',¹⁰ but have maintained strong relations with hundreds of thousands of civilians, many of which are displaced people. Protracted armed conflict, and particularly the *Tatmadaw's* 'four cuts' (*pya-ley-pya*) counter-insurgency campaigns, have destroyed lives and disrupted communities, especially in ethnic nationality-populated areas. The 'four cuts' strategy was developed to deny insurgent organisations access to civilian communities and support by forcibly moving the latter out of 'black' areas where they could support the insurgents and into 'white' government-controlled areas where they could not. Contested or mixed authority areas were designated 'brown.' On some occasions, 'brown' or 'black'¹¹ areas were designated 'free-fire zones', and civilians forced to flee for fear of detention, summary execution, or other forms of violence,

The hundreds of thousands of people moved into white areas, during decades of (often 'low intensity') armed conflict, were typically ordered to set up new settlements, or construct extensions to existing ones near military camps and towns; these have typically been called

⁶ Myanmar Information Management Unit, *South East*, undated; available at: <http://www.themimu.info/special-interest-region/south-east>. In April 2014 the government conducted a census, the credibility of which was challenged by some observers, particularly in relation to conflict-affected areas. The population of Myanmar was recorded as 51,419,420. A breakdown by state taken from the census can be found in Annex 2.

⁷ Elites within Myanmar's minority communities prefer the designation 'ethnic nationality', believing this confers greater political status.

⁸ See Smith (1999) and South (2008) for detailed histories of the conflicts.

⁹ Smith (1999), Callahan (2007), South (2008), Jolliffe (2014).

¹⁰ Smith (1999); see also South (2008: 26-27).

¹¹ According to Myanmar army designation, 'white' areas are those firmly controlled by the government, 'brown' areas actively contested with insurgents, and 'black' areas are those under EAG control.

relocation sites.¹²

Others moved into government-controlled areas by choice following displacement, to wherever they calculated the best chance of survival, usually to existing villages or towns unaffected by conflict.

Hundreds of thousands of others moved into areas under the authority of EAGs or across the border, to seek refuge in neighbouring countries where EAGs were instrumental in establishing refugee camps through negotiation with Thai authorities. In later years, the camps came under the authority of the Thai security establishment, and with growing interventions on the part of international agencies, including UNHCR. The ‘choice’ (if it can be termed thus), to flee into EAG-controlled areas or to refugee camps under the partial administration of EAG-established bodies or to government-controlled areas depends in part on local networks of association, and the kinds of relationship which vulnerable civilians have with state/*Tatmadaw* and EAG/ethnic national civil society power-holders.¹³

For those opting to stay closer to home, these choices often also represent attempts to maintain access to lands that people have had to abandon, leaving large numbers of forced migrants in a state of limbo for decades, uncommitted to new locations, intent on return. Out of these protracted forced migration crises, eight main types of IDP and refugee situations may be discerned, which will be detailed in section 2.3.

The dynamics of forced migration have undergone profound changes in southeast Myanmar since 2012, following the signing of new bilateral ceasefires between twelve EAGs and the government (discussed below). It should be noted that nearly all communities in southeast Myanmar (beyond the major towns) have been subject to armed conflict and degrees of forced migration at some point over the past half-century. Thus, the question of when displacement comes to an end is central to conceptualising forced migration in Myanmar (see below - section 3).

Newly onset armed conflicts in Kachin and northern Shan states have also seen more than 100,000 people displaced since 2011, mostly by *Tatmadaw* offensives, with large numbers fleeing into EAG areas.¹⁴

The patterns of displacement there have been similar, but with no clear signs of *Tatmadaw* use of relocation sites, with those fleeing into government areas settling in less restrictive IDP camps that receive some local and international humanitarian support.

In roughly the same period, intra-communal (anti-Muslim) violence in Rakhine State and elsewhere in the country has forcibly displaced at least as many people again. However, the drivers of forced migration in Western Myanmar (in the context of Buddhist-Muslim/*Rohingya* violence) are different, and beyond the scope of this study.

In addition to displacement due to armed conflict, people in all rural areas are displaced directly and indirectly by commercial and military development projects (development-induced forced migration).¹⁵

¹² ‘Relocation sites’ is the term usually used by local and international aid agencies and scholars; in some areas they are called by their Burmese term ‘*Su Sees*’ (by governments, residents and some aid actors).

¹³ South *et al* (2010), South (2012).

¹⁴ Human Rights Watch (2012).

¹⁵ A previous, fairly widely used, typology of forced migration in Myanmar, designated three types of IDP:

In other cases, they are displaced by natural disasters, such as cyclones, floods, or – less dramatically – by drought. Importantly, in conflict-affected areas, forced migrants of all types face similar choices about whether to move to government-controlled areas, EAG-controlled areas or refugee camps abroad, among other options.

The election of a military-backed, semi-civilian government in November 2010 represented a clear break with the past. In late 2011 and 2012, preliminary ceasefires were agreed between the government and most EAGs, bringing a number of long-standing conflicts in southeast Myanmar to an uneasy halt. Now, for the first time in the country's history, most major EAGs are engaged in (albeit protracted and difficult) multilateral negotiations to consolidate existing ceasefires, and achieve a lasting peace agreement. Negotiations appear to have brought about the best opportunity in decades to address political, social, economic and cultural issues which have driven conflict since independence. This can be considered a significant and historic peace-making achievement.

As of mid-2014, a coalition of 17 EAGs are involved in negotiations through the Nationwide Ceasefire Coordination Team (NCCT) – with other EAGs, including the key Shan and Wa armed groups, involved in bilateral negotiations, while observing the progress of NCCT-government negotiations – and a joint negotiation team of government, parliament and high-ranking *Tatmadaw* officials. Negotiations are currently focused on the achievement of a Nationwide Ceasefire Agreement (NCA), for which a joint draft is being developed by both sides. At the time of writing, several key passages of the NCA have yet to be agreed – although it is reported that much progress has been made. On the Myanmar *government* side, the President (and by extension, Minister U Aung Min¹⁶ and the Myanmar Peace Centre) have agreed in principle that this document should refer to a federal political settlement to Myanmar's state-society conflicts – one of the key demands articulated by ethnic communities.

If and when a final text of the NCA is agreed, it is expected to include provision for a timeframe for commencement of a process of multi-stakeholder political dialogue, including government (and Myanmar army), EAGs, political parties and civil society actors. (For coverage of forced migration, and potential 'durable solutions' in the NCA, see below.)

However, while the resumption of armed conflicts in northern Myanmar in mid-2011 has caused mass displacement, new ceasefires with Shan armed groups have failed to bring an end to hostilities, with hundreds of clashes having taken place since the deals were signed.¹⁷ Even in more stable areas, such as Kayah, Karen and Mon States,¹⁸ civilians in conflict-affected areas continue to express fear of a breakdown in the peace process, and resumption of armed conflicts. There are also serious concerns regarding widespread land-grabbing in ceasefire areas, and the expansion of unregulated and environmentally and socially damaging natural resource extraction activities.

Nonetheless, patterns of displacement, and the threats and options facing forced migrants

armed conflict-induced, development-induced and economic migrants: South/Refugee Studies Centre (2007).

¹⁶ Chairperson of the Myanmar Peace Centre.

¹⁷ See for example, *Shan Army Publication: More than 200 Clashes Since Ceasefire*, Shan Herald Agency for News (09-05-2014).

¹⁸ It should be noted that 'Karen State' is the locally preferred term for the government designation 'Kayah State'.

from communities across most of southeast Myanmar have been profoundly affected by the peace process.

Many communities report having benefited significantly from the cessation of hostilities, although displaced communities remain among the most vulnerable victims of armed conflict and associated human rights abuses. Notwithstanding ongoing concerns and vulnerabilities, conflict-affected communities are resilient, and in many areas forced migrants are beginning to rebuild their lives and rehabilitate their communities, often with the assistance of local (and sometimes international) aid organisations.

In this context, UNHCR commissioned this study to explore the relationship between the peace process and refugee and Internally IDP issues. UNHCR is first and foremost an organisation mandated to lead and coordinate international action to protect, assist and find solutions for refugees, as well as to prevent, reduce and protect stateless persons. Since the early 1970s, it has also taken on a strong engagement in relation to IDPs, initially based on General Assembly Resolutions and more recently, emerging from the 2005 humanitarian reform process. In the opinion of the authors, UNHCR's added value in the context of Myanmar lies in its authority to elicit coordination of assistance to displaced people, and above all, in the mandate to work with other stakeholders (particularly state parties) to ensure the protection of forced migrants (in accordance international human rights and humanitarian law) and to support efforts towards durable solutions.

1.2 Methodology

This report focuses primarily on the situation of forced migrants in and from southeast Myanmar. Much of the analysis will be relevant to the situation of IDPs in other parts of the country (e.g. Kachin and northern Shan States), although other findings will be context-specific. It should be noted that the report focuses mostly on the situation of armed conflict-induced forced migration, in the context of the peace process in Myanmar. The following analysis should be supplemented by an assessment of the situation and prospects facing development-induced and climate change-induced migrants, as well as economic migrants within Myanmar, and in neighbouring countries.

Field research specifically for this study was undertaken in Loikaw and Shadaw townships, Kayah State; Hpa'an town, Karen (Kayin) State; and Yangon, Myanmar as well as in Mae Sot, Mae La refugee camp, and Chiang Mai, Thailand. The study also draws extensively on research previously conducted by the authors for UNHCR in EAG-controlled areas of Mon, Karen and Kachin regions, as well as the mostly Karen refugee camps in Thailand. Email correspondence with a number of stakeholders also provided additional data.

The authors have also incorporated additional data collected over the past two years, through primary interviews and informal discussions with hundreds of stakeholders, including IDPs in government-controlled, EAG-controlled areas and mixed areas; members of local aid agencies and other community based organisations (CBOs); members of EAGs, including rank-and-file and senior leaders; government staff at state/region and township levels; international aid practitioners from various INGOs and UN agencies operating in the southeast; and relevant academics. The study has been augmented by a literature review, and draws on existing knowledge of the authors, Ashley South and Kim Jolliffe, who have worked in Myanmar's conflict-affected areas and with forced migrants in and from the country for over 20 years and five years respectively.

2. Forced migration and the peace process

This section details the various conditions faced by forced migrants displaced by ethnic armed conflict in Myanmar. Section 2.1 introduces an eight-type typology of forced migration, and an overview of the prevalence of these types in different areas and contexts. Section 2.2 examines five key factors that influence the decision-making processes and options of conflict-induced forced migrants in relation to the current peace process. Section 2.3 then provides a table outlining how these factors impact each type.

2.1 Typology of conflict-induced forced migration

Based on data provided by the relief agency, The Border Consortium (TBC) and UNHCR's own data on registered and unregistered refugees and IDPs, UNHCR estimates there are about a quarter-million IDPs in the four states/regions in southeast Myanmar where it operates (Kayah, Kayah, Mon and Tanintharyi), plus approximately 120,000 refugees in Thailand, (officially, 'displaced persons' residing in Temporary Shelters) in camps along the Thailand-Myanmar border, of whom more than three-quarters are ethnic Karen (and about 10% Karenni).¹⁹ There are also some 2 to 3 million migrant workers (plus non-working family members) from Myanmar currently in Thailand, many of whom are ethnic minorities (including Karen and Mon), and have often left their home country for similar reasons to the refugees, and are also highly vulnerable.

Understanding the varied situations faced by the different types of forced migrants rendered by conflict is crucial to envisioning what potential durable solutions might look like. Eight distinct types of forced migrants remain without durable solutions today, categorised primarily in relation to their current locations:

A. Refugees in camps in Thailand

According to UNHCR and TBC latest figures, some 119,000 refugees (officially, "temporarily displaced people") are currently provided support (assistance and protection) in nine refugee camps (or 'temporary shelters') in Thailand, of which some 40,000 have not been through the UNHCR and Royal Thai Government's (RTG's) Government's status determination procedure, which took place in 2005-2006 and remain 'unregistered'²⁰; in January 2015 the RTG announced its intention to undertake a process of verification for unregistered refugees in the camps, in partnership with UNHCR. The majority of these are Karen and Karenni people who were displaced by conflicts between the government and the KNU or KNPP, and will be a major focus of this study. The needs of other refugees in these camps such as those from other ethnic groups, including the sizeable Muslim population may differ at times, but will not be covered in great depth here. The camps are managed by elected camp management structures that fall under the guidance of refugee committees established in the 1980s by the KNU and KNPP.

Since the mid-2000s, the primary option for durable solutions pursued by the humanitarian community for refugees in Thailand's refugee camps has been resettlement. More than

¹⁹ 'Supporting Durable Solutions in South-East Myanmar' (UNHCR 2013).

²⁰ Most of these were not registered because they arrived after 2006, when the Thai Government ended the process.

90,000 refugees have been resettled since 2005, mostly to the United States of America (USA); another 5000 'residual cases' are still to be processed.

However, since the closing of the US group resettlement programme in 2013, resettlement figures have significantly declined. Resettlement to USA, Australia, Canada and several other countries does however remain open for some registered refugees. Unregistered refugees that have family members already in third countries may be eligible for resettlement under the Royal Thai Government (RTG)-UNHCR Fast Track process. Generally, resettlement has not been an option for the 40,000 unregistered refugees that have arrived in the camps since 2005. The refugee camps in Thailand also constitute base areas for a range of local NGOs and CBOs, some of which have been working to assist and advocate on behalf of forced migrants in and from Myanmar for some two decades.

B. People in Thailand outside camps but with refugee-like causes of displacement

Since the 1990s, large numbers of people who may have fled Myanmar for similar reasons to the refugees have found themselves in a highly precarious situation, living hand-to-mouth beyond access to the refugee camps. This population tends to live in fairly remote and rural parts of Thailand, close to the border areas. In some cases, these people have not sought access to camps because they have limited community links to EAGs (which they perceive as determining access to refugee camps). In others, there may be no camps in the part of Thailand adjacent to the area of Myanmar from which people fled (e.g. south of Kanchanaburi and north of Mae Hong Son). In other cases, people prefer to stay outside of camps, in order to better access the labour market. Regardless of the 'choices' made, these out-of-camp populations are highly vulnerable, and often subject to the same pressures and limited options available to refugees - but with less prospect of organised assistance and systematic protection.

Hundreds of thousands of Shan live throughout Thailand, especially in northern Thailand, often in makeshift settlements on the outskirts of towns, adjacent to construction sites where the migrants work, or on fruit or other plantations. A few thousand of these live in a small refugee settlement in northern Chiang Mai Province - although the Thai authorities have been highly reluctant to allow Shan migrants from Myanmar to establish camps in the kingdom. There are large working communities of Mon and Karen people who fled Mon and Tanintharyi to Kanchanaburi Province, as well as unknown numbers who have sought work in Bangkok and throughout southern Thailand. Provisions for the 'organised return' of refugees in Thailand will be particularly problematic in the case of Shan and other vulnerable communities, not residing in formal camps.

Some of these 'out-of-camp refugees' (or 'Externally Displaced People', to use the designation coined by some KNU leaders) have started returning to their old lands in Myanmar - at least for 'go and see' visits (as have refugees in more camps). In part, this reflects the vulnerabilities and limited options available to migrant workers in Thailand. In part, it constitutes a proactive attempt to protect the lands left behind in Myanmar. There are also more people of this type (possibly tens of thousands) living in neighbouring countries or further afield.

C. *Refugees and asylum-seekers other than in Thailand (mostly Malaysia, India, China)*

These are people surviving in similar conditions to refugees outside camps in Thailand. Not living close to the borderlands, these (often *de facto*, if not officially recognised) refugees have fewer options of return than refugees in Thailand (in or out of camps).

In Malaysia, tens of thousands are registered with UNHCR as refugees, many due to conflict-induced displacement.²¹ Meanwhile, far greater numbers (including migrants from southeast Myanmar) remain unregistered with the UNHCR, but receive support from 'refugee committees' established in the names of various ethnic groups (including Mon, Karen, Karenni and Shan from the southeast) - although many of these people attest to being forced to leave their homes due to conflict and the associated impacts of militarisation. Some refugees resettled to Western countries over the past decade (particularly Karen and Karenni) may wish to return to Myanmar, now that changes are underway at home. These returnees potentially have much to offer the country. Some have already made preliminary visits, with several prominent exiles relocating long-term to Yangon.

D. *IDPs in new ceasefire areas (EAG-dominated areas that are not formally demarcated)*

Before the government signed ceasefires with the KNU, KNPP and RCSS in 2012, over 100,000 IDPs lived 'in hiding' in southeast Myanmar, refusing or unable to move out of areas influenced by the EAGs and therefore protected to some degree from *Tatmadaw* patrols.²² Receiving varying levels of support and security from EAGs and related civil society actors, these IDPs typically lived in temporary settlements in mountainous and forested areas, often moving regularly to avoid *Tatmadaw* patrols. As well as targeted and indiscriminate attacks from the *Tatmadaw*, they would face severe human security threats, including food scarcity and health issues.

Though ceasefires have greatly curbed threats to their physical security, until now most of these IDPs remain in temporary settlements away from their places of origin. In a significant number of cases, 'hiding sites' are near to their villages of origin, where they often still have land, staying as close as possible to their original homes, in the intention one day of returning. Others have moved far from their homes, to be in areas away from *Tatmadaw* access. Many of these displaced communities have been on the move for years, and in some cases decades, settling temporarily (for a few days, months or years) in one location, only to be forced to move to another nearby site. Furthermore, a series of more regularly settled and organised 'IDP camps' exist along the border, in areas under the authority of the KNU (at least two camps) and Restoration Council of Shan State (RCSS) (five camps). However, in a number of ways, the situation for these IDPs is more similar to those in long-established ceasefire areas (Type 6), because they have been able to remain relatively stationary and under the authority of EAGs, even during times of conflict.

²¹ 'Figures at a glance,' UNHCR; available at: http://www.unhcr.org/my/About_Us-@-Figures_At_A_Glance.aspx

²² TBBC estimated that 115,000 IDPs remained in hiding sites in southeast Myanmar in 2010 (TBC 2010: 60).

E. IDPs newly displaced by armed conflict

Due to ceasefires, and a period of relative calm before the post-2012 truces, there are very few newly displaced IDPs in southeast Myanmar. UNHCR estimates some 100,000 IDPs displaced in Kachin State, in northern Myanmar, by the government-Kachin Independence Organisation (KIO) conflict, whose needs and situations are different from those in ceasefire areas but to whom many of the lessons of this report would apply if a ceasefire can be achieved. It also estimates 140,000 IDPs displaced due to violence in Rakhine State, for whom the political context is very different.

Displacement has also been a continuing phenomenon among Shan, Kachin, Palaung and other communities across Shan State, although reliable data is hard to find.²³ Amidst an outbreak of armed conflict in Karen and Mon States in September and October 2014, local organizations reported that 2,000 people had been displaced.²⁴

F. IDPs in long-established ceasefire areas

In the late 1980s and early 1990s, ceasefires were brokered between the Myanmar military government and many of the EAGs active at that time. Most of these groups were provided with demarcated ceasefire territories (some called Special Regions). In a number of cases, these provided a relative safe haven for IDPs to move to, at times with the enthusiastic encouragement of the EAGs. In particular, the New Mon State Party (NMSP) ceasefire zones, in Ye Township, Mon State and parts of adjacent townships in Karen and Tanintharyi, have been home to around 40,000 IDPs since the mid-1990s. These include some 10,000 previous refugees, who were forced to return from Thailand following a 1995 arrangement between the military government and the NMSP ceasefire (see Jolliffe and South 2013). There are also IDPs in the ceasefire territory established under the KNU/KNLA-Peace Council (a KNU splinter faction) ceasefire agreement in 2007, and the Shan Nationalities People's Liberation Organisation (SNPLO) Special Region in southern Shan State. Other ceasefire territories, including a number in Kayah and southern Shan States, have probably also become home to numerous IDPs. This study will focus on the NMSP area, due to available data, but much of the analysis here is may be indicative of the situations in some other ceasefire areas.

G. IDPs in government-controlled relocation sites

According to TBC, there were 125,000 IDPs in relocation sites across southeast Myanmar in 2010, spread across all states and regions.²⁵ These IDPs were restricted from returning to their places of origin, and in some cases were not permitted to leave the relocation sites at all. In many sites, they could request permission to leave during the day but were subject to strict

²³ TBC (2014: 14) notes the displacement of around 600 people in southern Shan State between August 2013 and July 2014, but does not collect data on central and northern Shan State, where fighting has been more intense in the period since 2011.

²⁴ Local organisations supporting the displaced documented that over 2,000 IDPs remained unable to return home in October 2014. (KRW 2014: 2). Other reports from humanitarian sources based along the border confirmed that 260 people crossed the border to Thailand before being pushed back by the Thai authorities.

²⁵ TBBC (2010, p. 60). In 2014 the TBC supported 11 partner CBOs to conduct video interviews with IDPs and conflict-affected communities across 16 townships in southeast Myanmar, regarding the impacts of the ceasefire agreements. This footage was edited into 16 videos, which are available from TBC's website under the title of "What Villagers Say": <http://www.tbcc.org/> TBBC (2010: 60).

curfews. Since ceasefires were signed, these restrictions seem to have been largely lifted, allowing IDPs to begin moving back to their places of origin if they so wish (and if they have land available in the original location).

In many cases, the Myanmar army's choice of location for relocation sites was primarily based on security considerations, meaning these settlements often had inadequate land and water to sustain thousands of new arrivals. In most cases, state authorities provided little or no assistance to populations at relocation sites, who were forced to fend for themselves. However, over time, communities learned to cope, and sometimes state services were provided.

Occasionally assistance was also available from local or international organisations, including UNHCR (which at the time had only very limited access to EAG-controlled areas). In some locations, IDPs were provided with title documents for land allocated for shelter, but this was the exception rather than the rule.²⁶

H. IDPs in urban and peri-urban settlements

In addition to IDPs in longer-established ceasefire zones, a number of displaced people live in urban or peri-urban settings. Globally, this sub-set of forced migrants is attracting increased research and policy attention. However, in the context of Myanmar, little is known about their condition and vulnerabilities.

Tentative returns and resettlements

In several (e.g. Karen and Karenni-populated) areas, quite large numbers of IDPs are reportedly beginning to (or planning to) resettle, either in a previous village (sometimes the original home), or elsewhere. Predominantly, these are IDPs that have until recently been 'in hiding' in what have now become ceasefire areas, as well as those in relocation sites who have now been permitted to leave.

As of 31 August 2014, UNHCR had documented reports of the return of 9,112 IDPs in the four states/regions in which it operates in Southeast Myanmar (Kayin, Kayah, Mon and Tanintharyi) since the beginning of 2012. Some 4,881 of these had been verified by UNHCR through direct community-level monitoring as of 8 September 2014. This represents only a portion of the total number, given the vast areas covered and limited access in certain locations, due primarily to government restrictions. The number of verified refugee returns is much lower, but taking into account reports from partners and other information, UNHCR estimates around 3,000 spontaneous definitive refugee returns in 2013. The Border

²⁶ According to KNU-affiliated CIDKP, "Some of the villagers [in relocation site X], who still have land and some property in their original village, have already returned to their villages before cease-fire, and some have returned in the beginning of cease-fire already. All the current dwellers remaining in X mentioned that they would continue to live in X because they have no land or property in their original villages. The distance between [relocation site Y and] their original villages is about 10 miles. Half of the villagers had betel-nut, betel-leaf, durian, and dock-fruit orchards in their original village areas. After the cease-fire, they went back and repaired the former orchards in their original village areas. They built bamboo huts to stay for work but not to resettle again there. When I asked them whether they would like to go back to their original villages, some villagers mentioned that 'We don't know whether the cease-fire between KNU and Myanmar Military can last long or they can guarantee for our life and property. So, we don't dare to go back yet' (personal communication 13-6-2014).

Consortium estimated that as of July 2014, 9,918 forced migrants had returned or resettled.²⁷

While such movements remain tentative, and numbers are unknown, it is premature to talk about IDPs in southeast Myanmar having achieved widespread ‘durable solutions’. Firstly, it is not clear whether these returns are permanent, or if forced migrants are simply ‘testing the waters’, as is often the first step. (As will be discussed in later sections, returnee families will often leave some members and/or property in their previous location - including refugee camps in Thailand). Cautious assessment of these positive signs is also warranted as the territorial extent and specific governance authority arrangements in these newly-agreed ceasefires have yet to be clarified in ceasefire negotiations, continuously undermining stability and security in these areas.²⁸

2.2 Factors shaping the decisions and potential solutions for forced migrants

Forced migrants' potential solutions and decision-making processes appear to be influenced by five main factors, as well as a range of more idiosyncratic familial, spiritual, and social conditions and preferences. The five main factors include three main practical needs: 1) physical security; 2) prospects for stable livelihoods; and 3) access to services and amenities; as well as 4) perceptions and levels of confidence in the peace process and 5) influences from various political actors and authorities.

These factors shape the reasons forced migrants have for staying-put, the ‘push factors’ urging them to leave, the ‘pull factors’ of their places of origin (or nearby areas), and the potential hindrances they might face if attempting return. Most migration decisions, including those concerning return to places of origin, typically require attempts to balance the benefits and opportunities of various locations with the potential risks. This at times involves individual family members making different decisions - in order to spread the risk or maximise the benefits by adopting multiple strategies/attempted solutions, within a particular family unit. As one respondent mentioned, many displaced people are stuck in terrible dilemmas - barely able to survive in their current situation, but not yet convinced about the possibility of returning in safety and dignity. This section provides a broad overview of each of these factors, and how they relate to the peace process, though the specific ways these factors affect forced migrants vary among the different types.

A. Physical security

The majority of conflict-induced forced migrants have faced severe physical security threats before fleeing, either as individuals or in their families, particularly as targets of *Tatmadaw* counter-insurgency operations. Abuses suffered include the systematic destruction of villagers' homes, food stores and killing of livestock; forced portering, forced labour duties, and conscription of males; arrest, detention and torture (particularly among males); arbitrary acts of violence; and sexual abuse (particularly among females). For many IDPs and other civilians, EAGs are often significant protection actors (as well as sometimes also agents of threat).

²⁷ TBC (2014: 33).

²⁸ According to the TBC (2014) annual IDP survey, there were approximately 110,000 IDPs in 23 townships across southeast Myanmar in 2014. As only 33% of the population in 23 townships were surveyed, this would lead to an approximate IDP population of close to 400,000 IDPs in 36 townships, similar to the levels recorded in 2012. A similar methodology leads TBC and its partners to estimate that somewhere over 10,000 new IDPs had been forced to flee in 2014.

Tatmadaw-led (ex-insurgent) Border Guard Forces (BGFs) have also been involved with state-led counterinsurgency, and have engaged in particularly severe predatory activities, including widespread forced recruitment of males, including under-18s; excessive and arbitrary taxation; forced portering and forced labour. Civilians in brown and black areas also face exploitation and less severe forms of abuse by EAGs, particularly during times of conflict. These include taxation, conscription (sometimes including under-18s: child soldiers).

Landmines are used by all armed actors in these areas during times of conflict, and remain a significant threat to security in most conflict-affected areas.

Consistently, ceasefires signed in Myanmar over the years have reduced human rights abuse significantly.²⁹ However, as the military has expanded and remained dominant in civil affairs, particularly in ceasefire areas, while discipline and oversight over military actors remains weak, many threats to the physical security of civilians remain. Further, in some cases, displaced people face individual threats to their security, having refused to accede to conscription demands, or to pay hefty taxes, for example.

An end to these abuses in the long term will likely depend on comprehensive security sector reform, involving significant demilitarisation. This in turn would likely depend on a negotiated political settlement to the conflicts themselves.

In the short-term though, negotiations regarding ceasefire provisions could begin to address such issues to a lesser degree. Agreements from the *Tatmadaw* to significantly decrease troops in KNU, KNPP and RCSS ceasefire areas would improve the confidence of IDPs to return home significantly. The KNU announced in June 2014 that the Myanmar army had committed to withdrawing some troops from positions regarded as threatening by villagers, but not as strategically essential.³⁰ However, it seems unlikely that large scale withdrawal of either government or EAG armed personnel will occur in the short-to-middle term.

In the meantime, the achievement of agreements on Codes of Conduct could bring significant improvements to the conduct of troops in these areas and increase the confidence of IDPs. This would be enhanced further if effective monitoring mechanisms can be established, particularly if civilians (including IDPs and returnees) were able to submit complaints to an authoritative body and could be assured some degree of protection.

Refugees consulted for this study explained that they would require an amnesty to be officially announced by the government, before they would feel safe to return.³¹ Many IDPs in new ceasefire areas may feel the same. Others, particularly young males who fled their homes to avoid forced conscription, explained that their repatriation would depend on

²⁹ For example, see an overview of trends in human rights abuses in Karen areas since the 2012 government-KNU ceasefire (KHRG (2014)).

³⁰ Saw Yan Naing, *KNU-Govt Talks Yield Troop Withdrawal Pledge*, 'The Irrawaddy' (05-06-2014); <http://www.irrawaddy.org/burma/knu-govt-talks-yield-troop-withdrawal-pledge.html>

³¹ In the context of transitional justice, the concept of 'amnesty' is in general used primarily in relation to combatants and other power-holders, in relation to whom guarantees of non-prosecution (e.g. in relation to penalties for illegal departure, or association with proscribed groups) would normally be a pre-requisite for refugee returns, often included in Tripartite Agreements. In some cases refugees might only feel confident returning home if amnesties have also been extended to combatants. A wider issue is the need for recognition of the violations that have been committed against refugees/IDPs and other civilians, through apologies, truth commissions etc.

assurances from armed actors in their areas that they were exempt from further such demands. Provisions for such measures to be taken could potentially be agreed upon in ceasefire negotiations, particularly if confidence is further developed. The signing of such agreements by multiple actors would help to make them more binding.

B. Prospects for stable livelihoods (including access to land)

The majority of conflict-induced forced migrants come from rural areas and have traditionally depended on agriculture to ensure their livelihoods, primarily for sustenance, and to a lesser extent for sale in local markets. The main crop is rice paddy, which can be grown most easily in wet lowlands, but also in the hills. However, after in some cases more than 20 years in exile during which a significant proportion of refugees were born in the camps, many will not return to the agricultural lifestyles that they left.

Access to land has been restricted in many ways for rural people across Myanmar by armed actors, particularly the *Tatmadaw*, which has systematically confiscated land for military expansion and development projects. More recently, since the agreement of ceasefires, private companies connected to influential (including military-connected) power-holders have been implicated in widespread ‘land grabbing’ cross the southeast.³²

Since 2012, new land legislation has been used increasingly by the state and private companies to confiscate unregistered land, even where it has been used by local communities.³³ This is made easier for the government and associates where land has been left unused. Difficulties of this kind are experienced particularly by people with claims to upland fields where they engage in rotational (swidden) agriculture, who often leave large areas of land untouched for years. Furthermore, more long-standing practices of land confiscation carried out by security forces (*Tatmadaw* and BGFs) with no apparent reference to law, persist and leave victims with few options for legal action.³⁴ People living in areas under the authority of EAGs, and/or zones of on-going armed conflict, rarely have land documentation (beyond occasionally that provided by EAG administrations), making them highly vulnerable to speculative appropriation of their traditional lands, by powerful outside interests. Furthermore, among many conflict-affected communities, customary land ownership and local recognition of holdings remains a widely practised and respected system.

In a number of areas, IDPs and refugees (or individual members of some families) are beginning to return to their old land, in order to assess the prospects of return/resettlement, and rehabilitation. In parts of southern Karen State and Tanintharyi Region, IDPs (and some refugees and ‘Externally Displaced People’) are returning, in order to protect their land.

During the years of armed conflict, in many areas which people had fled, land remained more-or-less vacant, as control was actively contested by the Myanmar army and EAGs, and/or because of landmine contamination. In this sense, displaced communities have

³² KHRG (2013), HURFOM (2013), KHRG (2014).

³³ KHRG (2013), HURFOM (2013), TNI (2013).

³⁴ For two examples in Karen State, see: KHRG, ‘*Hpa-an Situation Update: Hti Lon Township, March 2014*’; available at: <http://www.khrg.org/2014/09/14-28-s7/hpa-an-situation-update-hti-lon-township-march-2014#sthash.isFdneBp.dpuf>; and KHRG, ‘*Human rights violations by BGF Cantonment Area Commander Kya Aye in Paingkyon Township, Hpa-an District, February 2013 to July 2014*’; available at: <http://www.khrg.org/2014/09/14-8-nb1/human-rights-violations-bgf-cantonment-area-commander-kya-aye-paingkyon-township#sthash.sffe7oIC.dpuf>.

considered EAGs as protectors of their homeland, preventing the *Tatmadaw* or government from occupying abandoned settlements and farms. In other cases, the *Tatmadaw* would prevent EAGs and their supposed civilian supporters from re-accessing their lands and settlements by contaminating the areas with landmines, and/or setting up new camps nearby.

In the context of the ceasefires however, access to these areas is opening up, providing new opportunities for the private sector - for example large-scale plantation agriculture in Tanintharyi Region (oil palm, and to a lesser degree rubber). Many displaced people are concerned that if they do not reclaim their land, well-connected companies or other outside interests and power-holders may do so. Therefore, patterns are emerging of IDPs returning to their farmland, on the understanding that (although they usually lack official documentation) 'possession is nine tenths of the law', and by re-occupying their lands they can dissuade outsiders from considering dispossession. Thus, in some cases at least, IDP and refugee return may constitute a form of land rights protection.³⁵

In Tanintharyi (and perhaps elsewhere) the situation is complicated by various attempts at environmental conservation. International NGOs in Tanintharyi Region are keen to access forested and richly bio-diverse areas, which have long been under KNU authority areas, in order to map and survey, so that they can encourage the government to register new protected forests (and have credibility with donors). While laudable in many ways, such activities are complicated by the fact that these remote areas were often previously home to IDPs (currently in government-controlled relocation sites) or refugees (now in Thailand). To the extent that IDPs' previous homes are designated as empty forest to be preserved, this could create problems in the future, if and when displaced people choose to return to their previous settlements. If the government (and/or environmental conservation organisations) designates these forests as empty, this may lead to accusations in the future of returning displaced people of trespassing on 'virgin forest' reserves. This case also illustrates the kinds of problems that arise when international NGOs sign Memoranda of Understanding (MoUs) with government, and then seek access to EAG-controlled areas, without proper consultation. This explains why the KNU and other EAGs want agencies working through government-sanctioned channels to liaise and seek EAG authorisation. While some agencies are committed to working primarily with government (or in the case of the UN, are bound to), in areas with EAG administrations already in place, it is crucial that international actors are not aiding the government to create parallel structures prior to a political settlement. This is important in order to promote both aid effectiveness and conflict sensitivity.

According to the Committee for Internally Displaced Karen People (CIDKP), the IDP relief wing of the KNU, more than half of the IDPs remaining in relocation sites in Tanintharyi are unable to return home because their land has already been taken by companies. In some cases, palm oil plantations have already been planted, in others logging is underway or completed to clear land in preparation for plantations. A few brave people from villages near

³⁵ According to the Committee of Internally Displaced Karen People, "[between early 2013 and 2014], approximately 30003,000 displaced people from hiding, relocation sites and Thai border villages returned to 20 origin villages. Some people rehabilitate by themselves [while some are] some supported by relief agencies from religious ministries, KNU, NGO and government. Most people making (sic) their living by shifting cultivation. Hunting, collecting products from jungle and selling to accessible traders is the secondary work for their income. When some armed conflict affected people are returned, some people facing with (sic) land grabbing problems caused by economic project and governmental project. Administration governing also make returnees confuse difficult (sic) because there is no clear demarcation line between KNU and government" (personal communication 11-6-2014).

Myeik have returned to their old places, in the middle of plantations, and are waiting to see what the companies will do. For most IDPs remaining in relocation sites, if their land has already been taken by the companies, there will likely need to be a political agreement with the government, and some kind of legal settlement with the companies, before they can hope to regain access. This kind of arrangement could be ‘fast tracked’ in parallel to negotiations toward a Nationwide Ceasefire Agreement, and would not have to wait for a final negotiated settlement to the peace process to be implemented.

Land tenure issues also arise between civilians as a result of displacement, as populations are moving around frequently. In some cases, for example, relocation sites were situated on land previously belonging to other civilians (including neighbouring villages’ grazing lands or rice farms). During the period of authoritarian military rule, those upon whose land relocation sites were built were unable to complain. In the more open political context of Myanmar in transition, such dispossessed communities are beginning to demand return of their land and other properties. In other cases, land belonging to those who left has been occupied by other locals who were able to stay, or at times by other displaced people who moved into the region at a later date. Such episodes of ‘secondary occupation/displacement’ are underreported, but are likely widespread across conflict-affected parts of Myanmar. There are also cases where economic migrants from other parts of the country have moved into lands previously occupied by people who fled the areas due to conflict.

As movements of forced migrants in relocation sites become less restricted, and old settlement sites have become available again, disputes have emerged over land management issues. Areas with better land for farming have typically attracted greater numbers of IDPs than other areas, leading to disputes for which no clear traditional resolution mechanisms exist. In relocation sites in Kayah State, for example, cases were documented of IDPs leaving the relocation sites and starting work on land that had belonged to other IDPs who were unable to send working-age members of their own families to reclaim their farmland. In some cases, land was sold by people before they left their homes, particularly where departure was due to a slow build-up of pressure rather than one traumatic event.

The peace process has the potential to address the broader issues shaping land tenure insecurity, while more specific negotiations will likely be necessary to help forced migrants without land to secure access to sustainable livelihoods. Forced migrants returning to places of origin may in some cases benefit from local level negotiations between present authorities to assist them in regaining access to new or old lands, and securing tenure through registration. In other cases, forced migrants without land to return to may be in need of more organised resettlement programmes that provide them with land in new areas. The basis for some such joint programmes for IDPs has been established between the government and KNU, KNPP and KIO, often with the support of international aid agencies. However, in most cases, there does not appear to have been systematic action towards providing them with land.

In the context of refugee and IDP rehabilitation and access to land, it is important to note two of the key principles articulated by Prof Sergio Pinheiro, as UN Special Rapporteur on Housing and Property Restitution.³⁶ According to the 2005 *Pinheiro Principles*, the restitution of land and other property belonging to displaced people is a key element of any

³⁶ *The Pinheiro Principles*: UN Principles on Housing and Property Restitution for IDPs and Refugees, available at: http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf

rehabilitation efforts, as part of durable solutions to forced migration. Wherever possible, housing, land and property should be returned to its original owners ('restitution'); where this is not possible, its monetary value must be paid to the rightful owners ('compensation'). This leaves open significant questions regarding the availability of land in conflict-affected areas, for those returning from displacement, and also which agency (the state?) has the political will and resources to provide compensation for victims of past abuses, including misappropriation of land and other property.

As the peace process continues, the issue of 'convergence' between land documentation (and understandings thereof) provided by EAGs, and those of the state will likely become increasingly important. Among EAGs in southeast Myanmar, the KNU (and to a lesser degree, the NMSP) have issued land documents to at least some civilians in their areas of authority, while the former is currently undertaking a survey of land ownership in the areas under its authority. The KNU's draft land policy is also rare in Myanmar in seeking to engage with and respect customary land usage, including rotational (swidden) farming systems in upland areas. However, convergence efforts will depend on a level of trust not yet in place between the government and EAGs. For decades, EAGs and their associated civil and social networks have been highly protective of their documentation of land, and settlement data.

C. *Access to services*

In a number of cases, displaced people have secured better access to services in their new locations than they had at their places of origin, despite their situation not being sustainable (or 'durable') overall. This has encouraged them to find ways to keep children in these locations, while other family members attempt return or resettlement for other benefits such as access to old lands. This 'coping mechanism' has divided families in a number of areas. Particularly in relocation sites, in refugee camps in Thailand and in organised IDP camps, access to services represents a central factor keeping families *in situ* (as opposed to attempting return to their places of origin), despite other difficulties faced.

Despite this emergent demand for services in places of origin, it is crucial that ambitious development strategies do not get ahead of the peace process, as long as ceasefires remain fragile. As the failure of *all* millennium development goals in *all* conflict-affected and fragile states shows, an end to conflict is a pre-requisite for successful development.³⁷ Therefore, durable solutions ultimately depend on a resolution of conflicts, which places a high level of risk on efforts to rapidly develop contested areas ostensibly to provide for displaced people.

Refugees in Thailand and IDPs in EAG-controlled areas have depended for decades on social services networks provided by EAGs and their associated networks. There are therefore key questions regarding the extent to which these medics, teachers and other staff (and their qualifications) will be recognised by the Myanmar government, or if/how they will be able to operate independently in the long-run. Likewise, truly durable solutions will depend on similar considerations regarding the qualifications received by children studying under EAG education systems. To a large extent these issues depend on the way that relationships between EAG social service systems and those of the state develop in the context of the peace process. While ongoing negotiations to achieve a Nationwide Ceasefire Agreement should address the need for interim arrangements that enhance access to the services provided by all actors, considerations for more long-term arrangements such as 'convergence' (see

³⁷ World Bank (2011: 1).

below) will be necessary alongside political dialogue.

D. Perceptions of the peace process and its sustainability

Decisions about return/resettlement among all types of people displaced by conflict depend largely on their confidence that conflict has come to an end. The movements of displaced people are typically tentative during times of ceasefire and often involve protracted processes of trial and error, before it can be said they have fully settled in a particular location. Central to the growth of confidence during these periods, are the perceptions among conflict-affected communities of the sustainability of peace agreements.

Across southeast Myanmar, communities are experiencing the benefits of the 2011-2012 ceasefires. Key improvements include: freedom to travel, and spend time on farms without fear or having to bribe Myanmar army; decreased taxation and fewer checkpoints; greatly reduced incidence of human rights abuses; and improved livelihoods. However, widespread concerns persist regarding durability of ceasefires, as well as emerging issues that include widespread land-grabbing (often facilitated through 2012 land laws) and mega-infrastructure projects (implemented without proper consultation or impact assessments). The drug trade is also on the rise in most ceasefire areas presenting a range of new security and social concerns.

Overall, displaced people have received no information or consultation from the government regarding ceasefires and how that affects their prospects for finding durable solutions. Limited consultations of this kind have been undertaken by armed groups and associated networks but have been somewhat *ad hoc*, sometimes coming only after official milestones, and not regularly enough to help displaced people gauge accurately how much progress is being made. These consultations will be discussed more in section 3.

Forced migrants interviewed for this study typically have a basic understanding that current ceasefires are not yet permanent, and that sustainability depends on more comprehensive 'peace agreements' being signed. In some cases, interviewees explained that 'real peace' would mean that 'the Burmans' would return to 'their place' implying that current Myanmar rule of their lands is considered an external occupation. More frequently, 'real peace' was said to mean freedom to work without excessive taxation, violent harassment, forced labour and other demands, as well as freedom to associate with 'their Karen leaders' without punishment. In almost all cases, forced migrants interviewed made a firm distinction between 'peace', that implied a lasting end to conflict, and ceasefires, which were seen as fragile – even in cases like the NMSP ceasefire which has been stable for almost 20 years, while political issues remain unsolved.

E. Influence from political actors

While international standards place importance on the decisions of displaced people being entirely voluntary, combinations of loyalty to, respect for, and fear of, armed actors (including the state) inevitably impact the decisions made by conflict-displaced people about their futures. 'Voluntary' decisions are inevitably impacted by the range and nature of options available, and in all situations are heavily influenced by the views/interests of figures who hold legitimacy and/or authority among migrant communities. However, this does not negate the key premise that forcibly displaced persons have the right to choose the solution that works for them, and to not have the decision made for them. Particularly where

displacement has been caused by state attempts to forcibly relocate people to live under its control, and where EAGs have asserted claims to govern populations of their ethnicity, solutions for displaced people risk being shaped by political factors and dynamics.

On the whole, rural non-Burman communities in Myanmar hold deep loyalties to those they consider leaders, including those who may be part of or retain close relations with an EAG, meaning that the armed groups at times can exert considerable influence over the decisions of forced migrants regarding their future. This is hardly surprising, given that forcibly displaced persons represent a sub-set of the broader conflict-affected community, having chosen to ‘vote with their feet’ and enter areas of perceived EAG control.

However, such leaders’ interests and identities may be shaped by economic, political and other considerations which are not necessarily aligned with the interests of forcibly displaced persons. Furthermore, there are often significant differences (and tensions) over differing positions, policy and doctrines within EAGs, sometimes between figures at headquarters (or even District/Brigade) level, and those at lower-levels. This is particularly notable in cases where EAG leaderships are based in neighbouring countries or otherwise distant from the situation on the ground, while lower-level commanders remain in the field.

For forced migrants making decisions related to return or movements elsewhere, their own relationships with particular commanders or other EAG personnel play a significant role – potentially a more important role than their allegiances to particular EAGs as a whole. Geo-political changes in places of origin, such as the expansion of influence, or conquering of lands by new armed actors, or the splintering of EAGs / BGFs, therefore adds a complex dimension to decision-making. The most obvious examples are those where lands formerly governed by EAGs are now under state control, but this can also be seen in areas where EAGs have expanded to those formerly held by other groups.

Aside from those in relocation sites, the majority of forced migrants in southeast Myanmar have never been properly governed by the state, with only the *Tatmadaw* having interacted with them before – usually in a violent and predatory manner. Civilians who refused to leave ‘black areas’ have been named by the government as ‘none other than members of KNU/KNLA and their families’ and have been typically perceived and treated as insurgents by the *Tatmadaw*.³⁸ Interviews with an officer from the Ministry of Border Affairs working on displacement recovery, and a national humanitarian worker in one ethnic state, recently confirmed similar sentiments remained. It is assumed that civilians who refused to move to relocation sites and remain in the forests must be family members of EAGs.³⁹ Similarly, prior to 2011, state media often accused refugees of being insurgent supporters.⁴⁰

2.3 How these factors influence each type

Table 1 provides an overview of how these variables look for each type of forced migrant, excluding Type 3, ‘*Refugees beyond Thailand*’ and Type 8, ‘*IDPs in urban/peri-urban settlements*’, due to insufficient data available on these types. The table also outlines the various stages in the decision-making or movement processes that some people in each type are at. There are a number of key factors intrinsic to migration choices anywhere in the world

³⁸ Myanmar Ministry of Foreign Affairs, ‘*Ministry of Foreign Affairs releases Press Statement in response to declaration of EU Presidency*’ (13-06-2009).

³⁹ Specific state withheld to ensure anonymity.

⁴⁰ See for recent examples, Saw Po Si, ‘*What is KNU?*’, ‘*New Light of Myanmar*’ (08-01-2010); and ‘*Which way, KNU?*’, ‘*New Light of Myanmar*’ (14-02-2010).

not covered here in detail. For example, decisions to stay close to family members might have a greater impact on the decisions of some individuals than any of the variables detailed in the table.

Table 1: Typology of forced migrants, with overview of personal influencing factors

Type	Sub-types	Reasons for staying	Push factors from current location	Pull factors of places of origin (or nearby areas)	Hindrances to returning to place of origin (or nearby areas)	Stage of decision-making or movement	Influential actors / authorities
Refugees in Thailand camps	1. Registered 2. Unregistered	<ul style="list-style-type: none"> - Physical safety - Education and healthcare - Electricity and relief supplies - Livelihood security - Familiarity (particularly for youth who have never left) - Preference for governance of EAGs/associates - To maintain security and solidarity of close community 	<ul style="list-style-type: none"> - Restricted movement - No livelihoods -Decreasing rations -Overcrowded conditions - Uncertain residency status (potential for Thai policy shift) 	<ul style="list-style-type: none"> - Improved livelihoods (particularly if have land) - Need to reclaim lands (refugee return as land rights protection) - Spiritual and symbolic importance of homeland - Family / elders -Following leadership of EAG - Desire to return to normal life and to break the dependency on aid? 	<ul style="list-style-type: none"> - Ceasefires not certain - Fear of losing refugee status / access to shelter and rations - Broad physical security concerns (e.g. landmines) - Personal physical security concerns (e.g. conscription) - Fear of persecution as supporters of EAGs - Potential social issues (e.g. being rejected by old community for leaving) - No, or problematic, access to land - Uncertainty regarding access to citizenship - Ongoing opposition to nature of state-society relations, as presently configured in Myanmar 	<p>A diverse range of positions can currently be observed:</p> <ol style="list-style-type: none"> 1. Actively considering return (including go-and-see visits) 2. Waiting to see how the situation develops (often reliant on guidance from 'leaders') 3. Looking towards local integration or third-country resettlement 4. Have divided families so working-age members can tend to fields, and youth can continue education (very few but likely to increase) 5. Not considering durable solutions at all, as no desire to go - hoping status quo continues or comprehensive plans are made for them by 'leaders' 	<ul style="list-style-type: none"> - KNU and KNPP - GoM - Royal Thai Government - UNHCR - INGOs (e.g. TBC) - Media (particularly opposition-oriented/activist media) - Donors
Refugees and other vulnerable people outside camps	1. In ordinary housing in towns 2. In make-shift migrant settlements 3. In remote villages in border areas with hosts of own ethnic group 4. In remote makeshift settlements near borders	<ul style="list-style-type: none"> - Physical safety - Access to modern amenities (e.g. electricity and commerce) -Jobs 	<ul style="list-style-type: none"> - Insecure residency status - Livelihood insecurity - RTG policy (regularization of migrants, crackdown on irregular migrants) 	<ul style="list-style-type: none"> - Spiritual and symbolic importance of homeland - Family / elders - Need to reclaim lands - Desire to return to normal life 	<ul style="list-style-type: none"> - Ceasefires not certain - Possible decreased earnings - Physical security concerns - Potential social issues - No, or problematic, access to land - Uncertainty regarding access to citizenship - Ongoing opposition to nature of state-society relations, as presently configured in Myanmar 	As above, without the option of third country resettlement	Generally little influence. Some from: <ul style="list-style-type: none"> - Royal Thai Government - EAGs (if have personal connections)
IDPs newly displaced by armed conflict	1. In EAG areas / 'IDP camps' 2. In government - controlled areas / camps 3. 'In hiding'	<ul style="list-style-type: none"> - Physical safety - limited relief assistance (if in IDP camps) 	<ul style="list-style-type: none"> - Poor livelihoods - Overcrowded conditions - Restricted movement - Dependent on 	<ul style="list-style-type: none"> - Livelihoods (particularly if have land) - Need to reclaim lands - Spiritual and symbolic importance of homeland - Family / elders 	<ul style="list-style-type: none"> - No or extremely uncertain ceasefires - Physical security concerns (including prevalence of landmines) - Potential social issues 	<ol style="list-style-type: none"> 1. Awaiting end to conflict, with view to return 2. Involved in organized in-country resettlement programmes (government-led so far) 3. Spontaneous return is occurring, 	Depends on location: <ul style="list-style-type: none"> - EAGs (e.g. KIO, Palaung State Liberation Fron, Shan State Progressive Party) - Government and

			aid; - Potential for conflict or other security threats at camp locations		- no, or problematic, access to land - Uncertainty regarding access to citizenship (particularly among those from EAG-controlled areas originally - Ongoing opposition to nature of state-society relations, as presently configured in Myanmar	including in order to protect land 4. Families adopting different strategies the different members (spreading risk within the family unit)	<i>Tatmadaw</i> - Local and International NGOs - Media
IDPs in new ceasefire areas (without clearly defined territories)	1. In hiding 2. In semi-stable settlements	- Physical safety - To avoid Burman /state rule; - Preference for governance of EAGs/associates - Limited relief assistance (mostly cross-border) - To maintain security and solidarity of close community	- Poor livelihoods - Health issues - Landmines - No amenities - Potential for conflict or other security threats at camp locations	- Improved livelihoods (particularly if have land) - Need to reclaim lands - Spiritual and symbolic importance of homeland - Family / elders	- Ceasefires not certain - Physical security concerns - Fear of Burman /state rule -No, or problematic, access to land - Uncertainty regarding access to citizenship - Ongoing opposition to nature of state-society relations, as presently configured in Myanmar	1. Have found at least semi-durable solutions, and may stay put 2. Might return to a previous settlement 3. Might move elsewhere 4. Already moved, mostly ‘testing the water’	- EAGs (primary) - Government and <i>Tatmadaw</i> - BGFs / Militia - Media
IDPs in longer-established EAG-run IDP settlements	1. In long-established ceasefire territories 2. In new ceasefire territories but which have long been under EAG control. ⁴¹	- Physical safety - Education and healthcare - Electricity (level of access varies) - group solidarity/support for EAGs - Limited relief assistance (mostly cross-border) - To maintain security and solidarity of close community	- Poor livelihoods - Dependent on aid - Uncertain territorial arrangements	- Improved livelihoods (particularly if have land) - Need to reclaim lands - Spiritual and symbolic importance of homeland - Family / elders	- Ceasefires not certain - Physical security concerns - Fear of Burman / state rule -No, or problematic, access to land - Uncertainty regarding access to citizenship - Ongoing opposition to nature of state-society relations, as presently configured in Myanmar	1. Actively considering return (including go-and-see visits) 2. Waiting to see how the situation develops (often reliant on guidance from ‘leaders’) 3. Have found at least semi-durable solutions, and may stay put. 4. Face ongoing difficulties but have no land or family to return to.	- EAGs (often just one) - Media
IDPs in relocation sites	1. In specifically created ‘relocation site’ settlements’ 2. In extended	- Physical safety - Education and healthcare - Electricity (level of access varies)	- Poor livelihoods - Overcrowded conditions - Dislike of government/autho	- Improved livelihoods (particularly if have land) - Need to reclaim lands (return from relocation sites as land-protection)	- Ceasefires not certain - Physical security concerns - Lack of land	1. Have begun working on old fields but still live in relocation site 2. Have divided families so working-age members can tend to fields, and youth can continue	- Government - EAGs (particularly if near liaison offices) - BGFs/militia - Media

⁴¹ For example, the RCSS and KNU administer six and two long-established IDP camps respectively, in areas along the border that have been under their control throughout the period of armed conflict.

	'relocation site' parts of existing settlements	- Fear of government/authorities	rities	- Spiritual and symbolic importance of homeland - Family /elders - Support for/solidarity with EAGs		education 3. Have found at least demi-durable solutions and may stay put 4. Have returned home with whole family 5. Observing the political situation with a view to move home 6. Have been restricted from leaving by the authorities 7. Have no land or family to return to	- Local and international aid agencies
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3. Key Issues: forced displacement, durable solutions and the peace process

This section identifies key issues regarding forced migration and the Myanmar peace process, in relation to the Research Questions (see Annex 1). It begins with an overview of the peace process.

3.1 The Myanmar peace process

Since late 2011, the military-backed government has agreed preliminary ceasefires with 14 EAGs. Although at the time of writing negotiations between the government and EAGs have struggled to reach agreement on a number of key issues, there is still the prospect of negotiating a Nationwide Ceasefire Agreement (NCA). Such an accord would be intended to pave the way for all actors – including non-armed opposition groups (such as political parties) – to undertake long-awaited political dialogue. From the perspective of Myanmar's diverse ethnic opposition groups, it is widely hoped that such a forum would lead to constitutional changes to establish a democratic federal union, providing non-Burman leaders and communities an equal role in national affairs, and greater local autonomy in areas inhabited by non-Burman ethnic nationalities. The stated objectives of the government have been more general, revolving around bringing a swift end to armed conflict and strengthening the reform and transitional process being led by the government in line with the 2008 Constitution.

Significant progress has been made both on the substance of negotiations and in bringing key actors to the table. However, continued military clashes in northern Myanmar have damaged confidence in the peace process, while progress in the talks has been slow due to differing conceptions regarding the structure and legitimacy of the state, and of its challengers, and also due to some differences of approach among key parties to the peace process. Among the main sticking points at the time of writing are the negotiation of 'interim arrangements' that would establish the EAGs as recognised governance actors in their localities while political dialogue takes place; the establishment of a clear code of conduct; and a range of more granular issues around specific language used, whether to include EAG-backed provisions for creating a 'Federal Army' in the future, and/or government-backed stipulations to frame the subsequent stages of the process within 'existing Myanmar law'.

Until late last year, Myanmar's ethnic armed groups had negotiated individually with the government's chief peace envoy, U Aung Min, assisted by the Myanmar Peace Center. In an important development, in November 2013 most – but not all – ethnic armed groups established a Nationwide Ceasefire Coordinating Team (NCCT), tasked with engaging in multilateral ceasefire negotiations with the government. For the first time in the country's history, the government was willing to recognise and engage with EAGs collectively, rather than deal with these groups one-by-one. In another important development, since late last year the *Tatmadaw* has been closely involved in negotiations toward a nationwide ceasefire. In April 2014, the government and NCCT for the first time agreed a partial joint single text for a draft NCA (albeit with several important points yet to be agreed). Once agreed upon by the two sides, it is hoped the accord will be signed by the government and all EAGs, including non-NCCT members. However, differences of opinion exist within and between different EAGs (and also with and between the Myanmar government and Armed Forces), making the agreement of a comprehensive settlement still quite problematic.

Despite provisional agreement on a number of substantive issues, the two sides have disagreed on the language and substance of ethnic demands for a re-structuring of state-society relations in Myanmar to achieve a federal settlement. The President has in principle endorsed a federal solution to ethnic conflict in Myanmar but concrete negotiations to this end have yet to materialise.

Many ethnic stakeholders consider the current structure of the state of Myanmar as illegitimate, while senior *Tatmadaw* commanders have sometimes seemed dismissive of armed groups' concerns and demands. Ultimately, this is as much a matter of changing political cultures and attitudes as achieving agreement on paper. By claiming the designation of 'revolutionaries', ethnic armed groups indicate their desire to radically change the nature of the state in Myanmar, to better reflect the aspirations and address the concerns of ethnic communities. For the government and army however, the problem seems rather one of placating restive minorities through the provision of economic development and other benefits in remote areas. This 'economic development first' agenda fails to recognise the fundamentally political nature of ethnic grievances and demands.

The normalisation of state-society relations and stabilisation of the security environment necessary for truly durable solutions will depend on far more than what can be achieved at the negotiation table. In many conflict-affected areas, the state is not present, or is only represented by the *Tatmadaw*, which is experienced as a violent and predatory force by local populations. Ethnic administrations often enjoy considerably more local recognition and support than those of the government, and in many areas the only existing services are delivered by non-state actors, including community-based organisations associated with armed groups. However, of course, EAGs cannot claim to be the sole political representatives of ethnic communities, and their legitimacy is often rightly contested. If and when substantial political dialogue starts, it will need to be more inclusive than the process of negotiating military ceasefires, including representatives of political parties, civil society actors and women.

Given the many uncertainties in the peace process, refugee and IDP issues have only been addressed in a fairly superficial and general manner (see section 3.3). It therefore remains difficult to assess the extent to which forced migration issues should be addressed explicitly in what is ultimately a political (and security) agreement, or to what extent they would be more appropriately addressed in the political dialogue expected to come out of the NCA.⁴² More broadly, questions remain regarding whether and how refugee and IDP issues should feature directly in peace process negotiations, or to what extent they should be considered separate (although clearly interlinked) issues.

3.2 Limited consultations with IDPs and refugees

Overall, forced migrants have received little information about the status of the peace process or other elements of Myanmar's current transition that impact their futures. There has also been little opportunity for input from forced migrants on peace negotiations. The majority of forced migrants interviewed – including those who had been consulted to varying degrees –

⁴² The government and NCCT have agreed that multi-stakeholder political dialogue (including Myanmar's political parties, and possibly civil society actors) should begin within two months of concluding the NCA. However, political parties have already been involved in some preliminary discussions, indicating that political dialogue may be starting informally in parallel to NCA negotiations.

explained that they did not feel that they were well enough informed to assess the potential for a lasting end to conflict. Even where consultations have been held by EAGs that have allowed civilians to voice their concerns and to ensure they ‘agree with [EAGs’] approach’,⁴³ there are few signs that their needs and concerns have been systematically logged and used to inform negotiations. Input of this kind from forced migrants may become particularly important at the political dialogue stage rather than specifically with regard to the current negotiation of an NCA.

The consultations carried out by EAGs have generally followed significant milestones in the peace process or have been carried out in an *ad hoc* way, for example, during national or ‘revolutionary’ celebrations. Prior to the peace process, EAGs were largely pinned back in jungle enclaves in border areas (and/or ceasefire zones), and denied access to populations in government-controlled areas. The KNU, NMSP and KNPP have used the political-security space provided by the peace process in order to engage with previously inaccessible populations, and government-controlled areas, undertaking a series of consultations with the ethnic communities they seek to represent. EAGs have used these community consultations to elicit feedback regarding local concerns and priorities in the peace process, and to explain the respective EAGs’ political positions to civilian communities. However, the consultations have not generally focused on issues of concern to IDPs and refugees.

For the KNU and KNPP, and perhaps other groups, such consultations have been carried out with IDPs in some relocation sites, with a broad focus on the peace process, but some discussion of their situation. The KNU has done more systematic consultations on the peace process with IDPs and other people in their areas of influence, sometimes in coordination with Karen CBOs, including women’s organisations, religious groups and civil society groups from urban areas.⁴⁴ A few international organisations - e.g. TBC and Myanmar Peace Support Initiative (MPSI), in the context of IDPs in pilot projects - have also undertaken consultations with displaced people about the peace process and related issues. None of the forced migrants interviewed for this study had been consulted on the peace process by government authorities, including those living in government-administered areas.

The KNU and KNPP have each held a few public consultations with refugees, as well as a greater number of informal discussions with elected refugee leaders and CBOs that work in the refugee camps. In the Karen refugee camps, a consultation programme is being carried out by the Karen Women’s Organisation, providing participants with information about the peace process and discussing their options for the future; the Karenni Women’s Organisation has undertaken similar consultations.

Although generally not well-informed about the peace process, refugees and IDPs get limited information by talking informally with lower level soldiers and administrators of EAGs, as well as individual better-connected/informed members of their community. These will often be people with whom they have personal connections, but also – particularly in ‘hiding’ areas – include soldiers on patrol in areas near to IDP settlements. The information received is often not systematic and feeds into rumours inevitably generated around such important issues. In some cases, EAGs have responded to this information vacuum by ensuring their infantrymen have a rough update on the peace process that they are able to convey to those who ask.⁴⁵

⁴³ Interview with KNPP leaders (Yangon, June 2014); likely indicative of the approach taken by other armed groups.

⁴⁴ See KHRG (2014: 120).

⁴⁵ According to the KNPP, their Shadaw Liaison Office has done this in an unsystematic way (Interview,

UNHCR has developed a series of protection and humanitarian needs-based consultations with refugees, about durable solutions after life in the refugee camps. This has included focus group discussions, information and Q&A sessions, and UNHCR's participation in several Karen Refugee Committee (KRC) and Karenni Refugee Committee (KnRC)-organised meetings and workshops. During a one year period (May 2013 – June 2014), UNHCR commissioned a survey by the Mae Fah Luang Foundation, which interviewed refugee families and individuals in all nine camps. Among other things, participants were asked to indicate their main concerns about their futures and focused on past, present and potential future livelihoods, with a particular focus on repatriation and their basic needs. The results of the surveys are being shared with the refugee leaders and the two refugee committees (KRC and KnRC).

Unfortunately, some refugees lacked trust in the survey, leading to the writing of an open letter to UNHCR which claimed that Mae Fah Luang had forced refugees to answer questions they were uncomfortable with. Suspicions surrounding the survey were also high due to the foundation's close association with the Thai authorities and as it was seen as a direct attempt to undermine refugees' claims to third-country resettlement. Some refugees interviewed for this study in Mae La noted that the survey had scared them, that they were unclear of its purpose, and that the way the questions were presented gave them little flexibility to describe their hopes and needs. According to UNHCR staff, there was also support for the survey from many refugees, which was "the first systematic exercise in 30 years to gauge the perceptions / intentions of all households regarding their future, and to put together a detailed socio-economic profile".⁴⁶ However, a full assessment of the perceptions among refugees of the survey are beyond the scope of this paper.

TBC has provided some basic information to refugees in the camps. As part of a project led by the Committee for Coordination of Services to Displaced Persons in Thailand, information centres are being established in refugee camps as focal points for dissemination of relevant information, including in relation to peace processes.

An off-line version of a 'Cross-Border Web Portal' developed by UNHCR is available in these information centres, in camp libraries and in UNHCR workstations in the camps.⁴⁷ Some Japanese aid agencies with projects on 'refugee repatriation' in southeast Myanmar have carried out consultations with refugees.⁴⁸

3.3 Discussion of IDP/refugee solutions in peace negotiations

IDP and refugee issues have been addressed rather superficially so far in formal peace negotiations, both in multilateral negotiations for a Nationwide Ceasefire Agreement (NCA) and in bilateral talks. Key actors (EAG and government) have in general preferred to defer

Shadaw, June 2014).

⁴⁶ Comments provided by email, November 2014.

⁴⁷ The Web Portal can be visited at: <http://data.unhcr.org/thailand/regional.php>

⁴⁸ The Japan Platform (JPF, a consortium of Japanese NGOs) has a Reintegration Assistance Program for the Refugees/IDPs of Myanmar 2013-2015, with a total estimated budget of \$13.9 million, the "General Objective" of which is "to facilitate voluntary return and resettlement of Myanmar refugees and IDPs by assisting the potential host communities in Kayin State to prepare a sustainable environment for return". JPF members work primarily with the Myanmar Peace Centre and the Karen/Kayin State government (JPF document 08-05-2014).

discussion of refugee and IDP issues, until such time as substantial political dialogue is initiated.

Indeed, according to more than one EAG informant, government negotiators prefer to avoid discussion of “refugees”, referring instead to the more general category of “displaced persons.” This is understood to reflect government negotiators’ reluctance to be tied to the specifics of international law, for example, in relation to refugee rights.

The partial draft of the NCA made available for this research⁴⁹ addresses refugee and IDP issues in Article 7.B, which identifies the importance of government and EAGs working together to address the needs (including for resettlement) of displaced populations “in cooperation with NGOs, international NGOs and local organisations providing humanitarian aid.” (In this context, the term ‘resettlement’ is used not to refer to third-country refugee resettlement of refugees, but the ‘resettlement’ of IDPs and refugees in new locations within Myanmar.) Talks in December 2014 led to an agreement that aid agencies assisting displaced people should operate with permission of - and coordinated by - both the government and relevant EAGs. The NCA negotiators have accepted that if displaced people want to relocate to new villages, these can be built by the state and its aid partners; the NCCT has insisted on the importance of consultation with, and the consent of IDPs, in accordance with international norms. Still outstanding however, is the question of whether IDPs currently residing in areas designated as reserve forests can stay put, or should be resettled. It has been agreed that displaced people can return to EAG-controlled areas, should they so wish.

Issues related to forced migration were earlier discussed to varying degrees in bilateral agreements between individual EAGs and the government. The topics have featured somewhat more prominently in KNU and KNPP bilateral talks with the government. Following an initial KNU-government ceasefire 11 January 2012, a 12-point ceasefire agreement was signed on 6 April, which includes a number of articles of relevance to IDPs and refugees. This included a commitment to “implement a mutually-binding ceasefire Code of Conduct to guarantee livelihood and security of the people” (Article 2), “Implement resettlement programs to restore normal livelihoods for IDPs” (Article 3), “Work on long-term needs for civilian population (demining; systematic relocation, repatriation, and resettlement of refugees; rule of law; sustainable economic development)” (Article 4), “Acknowledge land ownership agreements existing within the KNU and other ethnic organizations; find solutions in consultation for customary land ownership and other land rights issues for IDPs” (Article 10), and “Identify mutually-acceptable peace monitors to support durable peace process (Article 12).” Various negotiations between the government and the KNU also contained some cursory (but politically important) mention of the need to resolve land disputes, including recognising the importance of customary law.

Negotiations between the government and KNPP have also focused on the need to work together, to resolve the plight of IDPs and refugees, leading to a number of areas of measured cooperation on IDP and refugee issues (discussed later in this section). The RCSS and the government also have engaged in some level of discussion regarding IDPs in Shan State.

⁴⁹ All references to the draft NCA are provisional, with unofficial translations, relating to a document which is undergoing regular (negotiated) change, and has yet to be ratified by principal actors in the peace process. Documentary references are supplemented by confidential interviews with key peace process actors.

Negotiations between the Klohtoobaw Karen Organisation (KKO) and government seem not to have addressed issues of IDP or refugee rehabilitation.⁵⁰

However, private discussions between the DKBA and government (and some NGOs) have focused on the possibility of resettling IDPs and refugees. Furthermore, KKO officials have been involved in the resettlement of vulnerable communities in and to some of the areas of its authority.⁵¹ In general, negotiations between the NMSP and government have not addressed issues of forced migration, in large part because it is 20 years since there were significant armed clashes between the government and NMSP's armed wing, Mon National Liberation Army (MNLA), making IDP and refugee issues less prominent on their political and humanitarian agenda.

For EAGs and the government, there are strategic (and also economic) implications to these decisions as well as humanitarian ones. Refugees and IDPs may be regarded as 'base populations' for armed organisations. Meanwhile, throughout decades of military rule, the state's primary method for tackling EAGs was to take control of populations deemed loyal to the insurgents by moving them into government territory. This line of thinking is therefore bound to shape government and EAG policies towards seeking durable solutions. According to an informant working with very high-level government authorities, state officials often conflate the concepts of IDP and refugee solutions with those of disarmament, demobilisation and rehabilitation.

Ceasefires have also opened space for more practical discussions between EAG-linked humanitarian agencies and government bodies. For example, there have been some informal discussions between the Karen State government and the KRC. Also, the KRC and Karen CBOs have formed a working committee together with the KNU, to assess and evaluate refugee issues.⁵²

The KNU and other Karen armed groups have indicated their interest in the 'pilot project' approach to IDP rehabilitation, and the possibility of applying a similar approach to refugee repatriation.⁵³ In this context, the KNU-affiliated CIDKP is undertaking a survey of IDPs' concerns and needs in 6 of the 7 KNU/KNLA Districts/Brigades (not Thaton District/1 Brigade, where there are reportedly very few IDPs). The questions of the survey relate to intentions regarding resettlement, and needs - now and for the future. The results will be used to aid strategic planning activities on the part of KNU central and District leaderships and related organisations (e.g. CIDKP, and its partner, the Karen Organisation of Relief and Development). The CIDKP has also developed a document for consideration by the KNU outlining 'KNU Policy for Return and Resettlement of IDPs', based on the 1999 UN *Guiding Principles on Internal Displacement*, augmented by details of bilateral ceasefire agreements between the KNU and Myanmar government.⁵⁴ If and when it is ratified by headquarters, this document should become the KNU's doctrine on forced migration. The KNU Agriculture Department, in partnership with the Karen Environmental Social Action Network) is

⁵⁰ The KKO is better known by the name of its armed wing, the Democratic Karen Benevolent Army (DKBA), previously called the Democratic Karen Buddhist Army.

⁵¹ Lawi Weng, *Displaced Villagers Defy Govt, Resettle in Karen Rebel Territory*, 'The Irrawaddy' (10-4-2014).

⁵² 'Karen State Government Ministers Proposal to Build Village for Refugees Lacks Details', Karen News (13-10-2014); <http://karennews.org/2013/10/karen-state-govt-ministers-proposal-to-build-village-for-refugees-lacks-details.html/>

⁵³ *Armed groups in Kayin State to help resettle returned refugees*, 'Mizzima News' (16-7-2014); the source for this story is an ex-DKBA/KNU Border Guard Force officer.

⁵⁴ Some KNU Districts are also drawing up guidelines for refugee and IDP policy.

undertaking a survey of land use/access in KNU areas, which could have implications for the return and resettlement plans.⁵⁵

The KNLA (armed wing of the KNU) has also undertaken its own ‘pilot project’ activities, primarily focusing on veterans and disabled former fighting personnel. For example, the KNLA 7 Brigade has received assistance from the government’s Ministry of Border Affairs (MoBA) to construct 50 new houses for ex-combatants, at two locations on the Myanmar side of the border (Maw Po Kay & Mae Salit); the 6 Brigade has, reportedly constructed three such settlements along the road between Three Pagodas Pass and Thanbyuzayat (all in Karen State). Some other KNU District administrations and individual military commanders have developed their own plans for refugee and IDP resettlement, sometimes in collaboration with international partners. Meanwhile, refugee representatives have reportedly identified potential resettlement areas opposite their camps, and have informed the KNU of this, as part of preparations for negotiations with the government. Partial information is available regarding potential pilot projects for IDPs and other groups (including migrants, EAG family members and disabled veterans) in more than 20 locations in the four states in southeast Myanmar where UNHCR operates.

The KNPP has also discussed with the government the establishment of a 50-household IDP resettlement pilot project in eastern Shadaw. The KNPP have chosen a site, and its armed wing, the Karenni Army has begun demining the area; construction work seems to have commenced in late 2014, with government funding.⁵⁶ Government and KNPP agencies have also cooperated, with the support of numerous community based organisations and UNHCR, to support IDPs returning from relocation sites to their places of origin, with water and sanitation (WASH) project and provision of other non-food items. The returnees are generally of working age, and have moved back to farm, while leaving children and the elderly at the relocation sites. These sites have attracted back members of some refugee families too.

Schools are also being constructed in a few of these sites, often with the support of government, KNPP and community groups. Cooperation between KNPP and the government has also been seen in IDP ‘hiding’ sites too, where joint mobile teams, made up of Ministry of Health and health staff from various Karenni and Kayan armed groups are undertaking missions into remote areas to provide IDP families with immunisations and primary healthcare. Steps are also being taken by the KNU’s health department and the Karen State government to begin cooperation on providing healthcare for IDPs and other civilians. Collaboration of this kind has a positive cyclical effect where ceasefires allow space for cooperation on humanitarian support for IDPs, which in turn strengthens the ceasefire, by building relations and improving confidence among civilians. According to one government official in Kayah State, his department had found it helpful to work with the KNPP social departments because they had a much better grasp of international aid practices such as systematic project cycle management.⁵⁷ However, there remain considerable hurdles to overcome, largely related to a lack of clarity over competing claims to governance over these and other settlements between the KNPP and government, and concerns on the part of the

⁵⁵ Mon CBOs are also undertaking some land surveys, in their respective areas.

⁵⁶ ‘IDP Resettlement Programmes to Restart in Karenni State’, Kantarawaddy Times (17-11-2014) : <http://www.bnionline.net/index.php/news/kantarawaddy/17876-idp-resettlement-programmes-to-restart-in-karenni-state.html>

⁵⁷ The RCSS has also reportedly discussed the establishment of refugee/IDP resettlement sites with the government.

government that IDPs re-occupying abandoned villages have not sought to formally re-register them under government administrative procedures.

In March 2013 the KNU released a 'Policy on Humanitarian Operation in Ceasefire Zone.' This document, which is currently under review by the KNU leadership, requires NGOs and other aid agencies working in KNU-controlled areas (especially those starting new programs) to first seek authorisation from, and registration with, the KNU. In practice, this has not been uniformly applied and KNU restrictions on and regulation of outside agencies vary somewhat, district by district. There has been some (not entirely unjustified) perception on the part of international organisations of a KNU agenda to control their activities, in the context of suspicions that Myanmar-based aid agencies are seeking to access conflict-affected communities without taking the political and peace context properly into account. It may be helpful to encourage the KNU to frame their intention as enhancing coordination, and encouraging aid actors to recognise the organisation's *de facto* authority in and among conflict-affected areas and communities.

Other EAGs, including the RCSS and KNPP have less consistent arrangements, but have expressed scepticism regarding new aid activity through government-sanctioned and guided channels which has not been fully notified to them and/or approved by them in advance. The NMSP, which governs a clearly demarcated ceasefire territory, has been more explicit in its rejection of all aid activity in its areas unless it has been fully sanctioned by them in advance.

All of these arrangements depend on a broader set of questions regarding the forms of governance likely to prevail in the short to medium term, in previously armed conflict-affected areas. Will the current round of ceasefires see the continuation/replication of (relatively) territorially-bounded ceasefire zones, controlled by EAGs with little state interference; and/or will there be a process of negotiated 'convergence' between parallel state and non-state areas of authority (and systems of service delivery); and/or will the coming years see the expansion of state authority (and associated service delivery), into previously (semi-) autonomous, conflict-affected areas? Beyond the immediate ceasefire arrangements, what will future governance structures look like? And will they accommodate or marginalise governance structures linked to EAGs? These bigger questions have a profound impact on the types of durable solutions that will become possible as the peace process continues, particularly to forced migrants who identify with being governed by EAGs rather than the Myanmar government.

In the context of formal peace negotiations, these issues are addressed in section 4 of the draft NCA mentioned above ('Ways and Means for a Lasting Ceasefire'). Negotiations have referred to 'Interim Arrangements', as a means of recognising and ensuring continued support for EAG governance and service delivery structures, during the (likely protracted) interim period, between the agreement of a comprehensive nationwide ceasefire, and the conclusion and ratification of a political settlement to decades of armed conflict in Myanmar. Given the slow progress of negotiations towards achieving a comprehensive NCA, there is an urgency to such issues being discussed through other channels, including bilateral negotiations between individual EAGs and the government, and any future political dialogue.

3.4 Perceptions and conceptions of forced migration issues and solutions

Government perceptions and conceptions

One of the government's main concerns is to identify and make legible (to the perceptions of state and international actors) communities living in areas previously inaccessible to the state. These include so-called 'lost villages' - communities in armed conflict-affected (usually, EAG-controlled) areas, which are generally not recognised by the government unless they existed on official maps before the outbreak of armed conflict.⁵⁸ The government seeks to map and access these villages, in order to bring them under state authority, through the provision of administration and services. The government will apparently acknowledge settlements of more than 50 households.

Although not necessarily conceived as such, this policy is nevertheless potentially concerning to conflict-affected communities, who often perceive the state and its armed forces as threatening. Re-established villages of forced migrants returning to their places of origin, and settlements that have always been out of state reach, are sometimes required to register with the Ministry of Home Affairs in order to receive support through the Ministry of Border Affairs. This is problematic in a context where some international aid agencies (including UNHCR) have been required to work with the MoBA as their key government counterpart on IDP/refugee affairs.

A good deal of uncertainty remains regarding government plans for conflict-affected areas, and in particular displaced populations. EAGs and local CBOs, particularly Karen and Karenni, have expressed concern that the government, and some donors and aid agencies, are moving ahead with plans to rehabilitate displaced populations, without adequately consulting them, or most importantly, IDPs and refugees. In this context, EAG leaders are generally sceptical about the possibility of undertaking substantial needs assessments, or large-scale aid interventions, unless and until the ceasefire is consolidated, and a political process is demonstrably underway.

In particular, numerous Karen actors, including KNU leaders, have expressed concerns regarding government plans to develop nine sub-townships in Kayin State, with one of the stated purposes being the reintegration of returning IDPs and refugees. In 2013, the Japan International Cooperation Agency (JICA) cooperated with the government to produce a 593-page 'Preparatory Survey for the Integrated Regional Development for Ethnic Minorities in the South-East Myanmar', the objective of which was to 'to examine existing conditions and development issues related to return and settlement of refugees and IDPs, and to formulate specific measures to support the integrated regional development of the two states and return and settlement of refugees and IDPs in line with the regional development.' A number of Karen EAGs and CBOs have expressed strong concerns that such activities were premature and highly inappropriate in the absence of substantial consultations with key local actors. An additional concern raised was that constructing these new sub-townships might involve the expropriation of land from local communities and/or IDPs.⁵⁹ In response, JICA has reportedly

⁵⁸ Even villages which were formerly registered may have been de-registered once abandoned. See, for example, comments above regarding returns to Shadaw, where abandoned villages have been re-established by IDP returnees, who *did not* wish for them to be formally registered with the government.

⁵⁹ See for example, Karen Environmental Social Action Network, 'Japanese Government Plan for Development of Southeast Burma: A briefing by the Karen Environmental and Social Action Network', 19-2-2014; available at: <http://www.kesan.asia/index.php/what-we-do/advocacy-campaign/development-and-resources-extraction->

adjusted its approach to incorporate systematic engagement with local communities and other local stakeholders.

Such state-centric planning seems particularly to focus on economic development agendas, and has framed rehabilitation efforts purely as a development challenge. This appears to be motivated in part by an assumption on the part of the government that the primary needs of displaced people, akin to the needs of other people generally, are development ones, and overlooks the many complex factors detailed in section 2. Perhaps more worryingly, the government's approach appears to represent an attempt to bring IDP and refugee issues into the much broader statebuilding-through-development agenda being pursued across the country, rather than treating forced migration as a unique challenge. In fragile ceasefire areas particularly, this agenda is met with extreme scepticism by ethnic national communities and EAGs, and may be alarming to displaced people, and their advocates. Nonetheless there is some indication that the government at state level increasingly recognises the need for negotiation with local actors on return-related issues (e.g. their involvement in discussions around pilot projects, and meetings with KRC). It is also possible that framing problems in southeast Myanmar as development challenges may allow aid agencies to access new types of funding - an important consideration, given the 'global squeeze' on humanitarian funding, in the context of massive and protracted crises in Syria, Iraq and elsewhere.

International perceptions and conceptions

Support for refugee and IDP return and rehabilitation should be guided by international refugee law and other international standards, including (for IDPs) the principles set out in the Interagency Standing Committee (IASC) Framework on Durable Solutions. The Humanitarian Country Team (a humanitarian committee including UN agencies plus key NGOs) has in recent years developed a 'Strategic Response Plan' for Myanmar, focusing primarily on conflict-affected populations in Kachin and Rakhine States. The plan does not include the southeast, which has led to concerns that chronic humanitarian needs in southeast Myanmar are receiving inadequate attention, and that conditions in this part of the country are being framed prematurely as a development challenge, in the context of pre-determined transition from armed conflict.

It is critical that approaches to securing durable solutions for displaced populations fully reflect ongoing humanitarian needs and the rights-based elements of protection, and avoid shifting to a more technocratic, less conflict-sensitive and protection-oriented approach. In particular, it is crucial that the international aid community does not view the southeast primarily as a post-conflict development challenge, and is aware of the fragility of the current process. Aid strategies for the southeast should ensure that local capacities are supported, and key conflict actors engaged, and should avoid the introduction of heavy humanitarian or development coordination architecture. Aid policy should also recognise that likely hundreds of thousands of forced migrants remain extremely vulnerable throughout southeast Myanmar, with significant humanitarian needs, as they have for generations.

While the transition to peace across much of Myanmar remains fragile, development strategies have significant political implications. Several CBOs and EAGs have expressed concerns that large-scale development (and particularly infrastructure) activities should not be implemented in ceasefire areas until long-standing political disputes have first been addressed. Most EAGs contain elements that remain highly sceptical of the peace process, and

are less enthusiastically involved with ceasefire negotiations. They are wary of the potential for the government to elicit support from international agencies to spread state dominion in ethnic areas, through ‘economic development’ projects. During fragile stages of a peace transition, it is crucial that aid is provided in a way that enhances confidence in the process, and does not undermine it. Additionally, to the extent that efforts are made to link support for durable solutions to broader peacebuilding and development strategies, it is crucial that all parties to the peace process are included in discussions.

There is still uncertainty regarding the number of IDPs and returnees in southeast Myanmar (and still uncertain outcomes of the peace process). According to UNHCR, the number of refugees returning spontaneously to southeast Myanmar was estimated to be in the low thousands (3,000 in 2013). In 2012, border-based agencies working in partnership with TBC estimated some 240,000 IDPs in Karen, Kayah, Mon States and Tanintharyi Region, the great majority of whom were displaced some time ago, but were assessed as not yet having found durable solutions to their plight. In 2012 the TBC estimated that 27,000 IDPs had returned home in the previous 18 months.

Discussion of returnee and IDP numbers relates to a fundamental question regarding forced migration worldwide: ‘when does displacement come to an end?’ For refugees, refugee status comes to an end when one of three durable solutions is achieved (resettlement to a third country, local integration in the host country, or voluntary repatriation to the country of origin). For IDPs, the UN Inter-Agency Standing Committee *Framework on Durable Solutions*⁶⁰ states that: “a durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.”⁶¹ Durable solutions can be achieved through: “Sustainable reintegration at the place of origin (hereinafter referred to as ‘return’); sustainable local integration in areas where internally displaced persons take refuge (local integration); [and] sustainable integration in another part of the country (settlement elsewhere in the country)”. This approach was reiterated by the UN Secretary General’s Policy Committee in April 2012, which also underlined that “the search for durable solutions includes efforts ... that must address human rights”, among other factors (paragraph 4).⁶²

The announcement of ceasefires and emergence of a peace process in Myanmar may create conditions which in turn may lead to durable solutions for IDPs and refugees. Nevertheless, at present (mid-2014) it is too early to generalise that conditions causing forced migration have ended, or that previously displaced individuals or communities can easily achieve durable solutions to their plights.

Recent scholarship, and UNHCR policy⁶³, emphasises that it cannot be assumed that when the causes of forced migration come to an end, IDPs and/or refugees can return to their previous settlement. In contexts where people have been forced to move just once or a few times, this may be a viable scenario, but it rarely reflects the reality of protracted displacement. Research

⁶⁰ Brookings-Bern Project on Internal Displacement, *IASC Framework on Durable Solutions for IDPs*, April 2010, available at: <http://www.refworld.org/docid/4c5149312.html>

⁶¹ This does not mean that former refugees and IDPs may not continue to have needs for protection and assistance, but their needs would be no different from other similarly situated citizens.

⁶² The Policy Committee also notes that “lack of national reconciliation and peace building efforts” can lead to the isolation and stigmatization of returnee populations.

⁶³ See, for example, UNHCR’s *Policy on Return and Reintegration of Displaced Populations* (2008).

indicates that displaced populations in and from southeast Myanmar have often moved dozens, or even several scores of times, sometimes over protracted periods of several decades.⁶⁴ When an individual or community has been displaced more than 100 times, over a period of up to half-a-century, what does it mean to 'return home'? Furthermore, for people whose areas of origin may now be located in government-controlled areas (or are under control of different armed actors than those who governed before they left), returning 'home' may not be desirable, or even be an option.

Related concerns have been documented among refugees and IDPs who remain under the leadership of EAGs and may view a solution to conflict (i.e. an end to the causes of their migration) as tantamount to the 'the Burmans' leaving their lands.

Assessments of the prospects for forced migrants must also take account of patterns of movement between internal displacement locations and refugee camps - including individuals and families undertaking 'go and see' trips to previous (or potential new) settlements. Further complicating matters are issues of secondary displacement - for example, when displaced or otherwise vulnerable families are occupying land previously settled by current refugees and IDPs, in which case it is not clear that restitution to the original landowners is equitable; in this case, some sort of compensation may be appropriate. However, it is not clear by whom such compensation would be paid.⁶⁵

There is a related risk in assuming that refugee repatriations taking place now or in the future will be primarily 'spontaneous' in nature. This supposition is prevalent among some individuals in local and international agencies as well as in the media. While some posit an idealist view, that the refugees will be able to stay in Thailand until there is a perfect peace and will then be able to 'go home' and rebuild their lives, others believe that refugees will just drift back to Myanmar once the fighting stops. The reality will be much more complex and messy, as improvements on the ground will be incremental and refugees all have wide-ranging needs.

A minority of individual refugees and refugee families are already choosing to return to Myanmar 'spontaneously' - either to a previous settlement, or to somewhere new. While relatively few of these people are resettling permanently, a great many refugees from Thailand have made one or more temporary 'go and see' visits. However, the potential for ad-hoc spontaneous patterns of return to provide durable solutions to the majority of refugees would appear limited in practice, and it can be anticipated that the majority of refugees will prefer to repatriate as part of an organised process. If the peace process moves forward, the government, EAGs and related humanitarian structures are likely to expand their pilot projects and begin providing options for organised repatriations to new sites.

Furthermore, a large sample of Karen refugees in Thailand have expressed a strong desire for an organised repatriation, led by KNU-linked refugee agencies. In many cases, participants described such a process as involving UNHCR playing a lead coordinating role, and – most importantly – guarantor of protection.⁶⁶ Particularly for refugees who have no land or

⁶⁴ South (2007), TBC (2013a).

⁶⁵ Issues of compensation and/or restitution for displaced persons' misappropriated Housing, Land and Property are discussed in the COHRE report on the 2005 *Pinheiro Principles*.

⁶⁶ Interviews and focus groups held with over 50 refugees in Thailand in February 2012 found that the vast majority could only envision going back to Myanmar as part of an organised mass repatriation led by their designated 'Karen leaders' (i.e. KRC, KNU, CBOs and associated international agencies – sometimes UNHCR

communities to return to – having spent so long away – this type of arrangement is seen as crucial to their security and livelihoods. Furthermore, organised returns would provide significantly more space for the UNHCR to properly exercise its protection mandate. Indeed, some refugee leaders (including at Tham Hin camp) have themselves started to explore the possibility of small group organised returns.⁶⁷ Here as elsewhere, several outstanding issues remain, including problematic access to land and apparent impediments for refugees and IDPs in and from Tanintharyi Region in reclaiming lost assets.

Furthermore, it is important to note that vulnerable communities in southeast (and other conflict-affected parts of) Myanmar include not only IDPs (and returnees) but the broader population, including ‘host communities’. There is a potential risk in focusing particularly on IDPs and refugees, to the possible exclusion of other vulnerable groups. There is a particular danger of creating or exacerbating resentment towards forced migrants, as privileged beneficiaries of international assistance.

Ultimately, ‘durable solutions’ to the plight of forced migrants in Myanmar will depend on the adherence of power-holders (both the state and EAGs) to internationally endorsed rights frameworks. This will require careful monitoring, by impartial and credible observers.

Royal Thai Government and security establishment

Refugees in Thailand continue to be concerned about the possibility of the Royal Thai Government (RTG) reversing its decades-long policy of granting ‘temporary asylum’ to displaced people from Myanmar. Although recent political changes in the kingdom have raised some alarm, most observers see little prospect of the Thai authorities moving decisively to forcibly repatriate refugees from Myanmar, at least in the immediate future. A large-scale, predominantly coercive, refugee repatriation would not seem to be in the interests of an RTG keen to rehabilitate its international image - despite the present government’s desire to ‘clean up’ the legacy of previous civilian regimes.⁶⁸ Nevertheless, the prospect of greater informal Thai pressure on the refugee population (e.g. in the form of sometimes intimidating ‘headcounts’, tightened restrictions on refugee movement and limiting relief supplies to displaced communities) cannot be ruled out, and would likely represent an emergent ‘push factor’ influencing some refugees’ decisions to return to Myanmar. Indeed, recent reports indicate that the Thai military may be actively contemplating such measures.

3.5 Deepening IDP/refugee involvement in the peace process

This report is premised on the notion that key stakeholders in the peace process (government and EAGs) and their supporters (including national and international aid agencies) should work to support forced migrants’ agency.⁶⁹ Refugees and IDPs have been the primary

specifically); see Jolliffe (2014b).

⁶⁷ According to the Democratic Voice of Burma (*Tenasserim to allot land for refugees, officials say* - 28-8-14), government officials in Tanintharyi Region have allocated land in the area of Maungdaw Pass, for returning refugees from Tham Hinn. "Government officials claimed that refugees residing in a camp in Thailand would soon be able to return to Burma as they are scouting for land for their resettlement."

⁶⁸ Based on a longitudinal study of relationships between the Thai authorities, international NGOs and Karen refugees, Sang Kook Lee (2014) proposes that during periods when economic interests are to the fore, the RTG and Thai security establishment adopt a relatively benign approach towards the refugees, while at times when ‘national security’ concerns are more prominent, the authorities tend to impose greater restrictions and pressure on the refugees. Based on this reading, one might expect the present Thai authorities to be less accommodating of refugees than previously.

⁶⁹ ‘Agency’ refers to the capacity of individuals to act independently and to make their own decisions or actions.

victims of armed conflict, and should play a leading role in their own rehabilitation.

Following the agreement of a Nationwide Ceasefire Agreement, it is expected there will be a 90 day period during which the structure and logistics of political dialogue are agreed between government and EAGs. In order to be successful and sustainable, this political dialogue should be broadened (in terms of topics covered), and deepened (in terms of participation, in particular to elicit engagement on the part of IDPs and refugees). This section will look at a few key ways in which this process should be deepened to ensure the participation of refugees and IDPs on issues related to their situations.

Recognising and supporting local agency

The limits of international assistance and protection highlight the importance of local agency. Important elements of local protection include behind-the-scenes advocacy on the part of community leaders, including monks and pastors, and village headmen and women, who are sometimes able to engage with power-holders and local authorities, in order to mitigate the impacts of abuses.

In order to ensure just and sustainable durable solutions for displaced people, outside actors need to better understand, explore and support such local coping mechanisms, and cultures. Especially in situations of protracted and repeated displacement, local people have well-developed coping strategies, including short and longer-term episodes of migration, and local information and resource-sharing, based and building upon social capital. Outside interventions should seek to understand and support such activities, rather than substituting with international (or state) agency. This is particularly the case in a context where state agents are the main perpetrators of threat. Nevertheless, given the severity of threats which continue to be faced by civilian populations in southeast Myanmar, local agency has its limits and cannot be said to provide full protection. This highlights the need for international actors to take on a ‘context-sensitive as well as conflict-sensitive’ protection role in these areas, making the mandate of agencies like UNHCR particularly important.

Contrasting international and local norms and perceptions indicate tensions in relation to where agency sits. International human rights and humanitarian law (including the 1951 Refugee Convention and 1967 Protocol) follow the UDHR in situating agency with individual rights-holders. However, ‘traditional’ communities (including conflict-affected populations in ethnic nationality-populated parts of Myanmar) often conceive of identity and agency also in terms of the group. This is not the place for an extended discussion of individual versus group rights. However, it should be noted that while (for example) ‘Voluntary Repatriation’ is considered by UNHCR an issue for individual consent, IDP and refugee communities often state that such considerations “depend on our leaders”. As noted by Jolliffe,⁷⁰ conflict-affected communities are characterised by deeply-rooted patron-client relations and structures of ‘human capital’.⁷¹ A source of great resilience, such local political cultures are based around the group and community, more than individual decision-making. In order to engage properly with local agency, it will be necessary for international (rights-based) actors to explore these local realities.

This report is primarily concerned with the agency of displaced people to protect themselves, improve their own situation, and work towards durable solutions by their own means.

⁷⁰ TAF (2014).

⁷¹ South (2012).

Assessment and analysis

Durable solutions to forced migration depend on supporting local agency. This places importance on asking communities about their concerns, hopes and intentions - which will change according to the political-security situation - and available options of assistance/protection. A significant number of IDPs will likely prefer to stay *in-situ*, having found semi-durable solutions to displacement in a new location. The equivalent option for refugees is local integration in a country of asylum. Others will want to return to a previous location - raising the question of where is 'home', if an individual or family have moved dozens of times over decades. Other IDPs may consider options for organised in-country resettlement, perhaps to a 'resettlement village'.

As noted, people's hopes and fears, and intentions, will vary, both within and between families and communities, and also over time, depending on options available and the social-political-economic context. As the political and development context will remain fragile for some time, large numbers of forced migrant families are likely to become divided, to spread the risks and maximise the benefits available in various locations. In many cases, truly durable solutions will likely emerge out of these 'transitional' scenarios. It is crucial that assistance reflects this reality, ideally with flexible and responsive programming that focuses on the transition rather than jumping to pre-supposed 'durable solutions' plans. What is required is a flexible approach from donors and international organisations, responding to local realities and needs emerging from the peace process - rather than imposing agendas top-down, based on external actors' assumptions regarding what is useful for peacebuilding and rehabilitation of forced migrants in southeast Myanmar.⁷²

Failure to support locally-defined and led approaches would likely lead to return/repatriation/resettlement strategies that provide options (but not necessarily durable solutions) for forced migrant families to test, and use for whichever benefits they can garner. Resettlement villages for example, if not based on organic efforts of forced migrants themselves or not in tune with the surrounding security environment, could become just another type of temporary 'relocation site' (albeit a voluntary one), rather than part of a truly durable solution.

Consultation with displaced populations carried out by all actors should not be a 'one off' activity, but an iterative and continuous process, demonstrating real commitment to act on displaced persons' concerns and aspirations. Consultations by all actors would benefit from being more proactive. Consultation must be more than the one-way provision of information, particularly in societies where over-exertion of one's personal needs or concerns is considered brash and arrogant and where fear and distrust is a primary response when dealing with 'outsiders'. In addition to more public group consultations, options should be explored for outreach consultation projects that mobilise people to approach families one-by-one to discuss their options, particularly where international actors hold mandates for protection. CBOs in numerous areas have been carrying out activities in relation to recent ceasefires already and would be strong partners for other actors aiming to consult communities. It is important that mandated international agencies support and respond to such consultations.

⁷² For a critique of, and recommendations regarding, international support to the peace process, see MPSI, *Lessons Learned* (2014). This approach is in line with William Easterly's distinction, in *The White Man's Burden* (2007), between foreign aid 'planners', who impose top-down blueprints, and 'searchers', who proceed by innovative trial and error.

International agencies could demonstrate greater support for the independent efforts of CBOs to inform and consult forced migrants, in order to promote the deepening of the peace process more broadly. Karen CBOs, including the KRC, have formed a working committee together with the KNU, to assess and evaluate refugee issues.⁷³ This represents a clear channel by which these communities could gain greater participation in, and influence over the peace process, as well as be kept up-to-date on key developments.

It is particularly important that discussions in the context of the peace process regarding forced migration are broadened to include not only women's voices, but those of other specific groups within the refugee population, including the elderly and youth, the disabled, minority communities from other parts of Myanmar, and sizeable Muslim populations under threat. Particular attention should be drawn to the situation of some 10,000 Muslim residents of the refugee camps in Thailand. Discussions of refugee repatriation should be sensitive to the particularly vulnerable position of Muslim communities in Myanmar, in a context where members of some Karen EAGs have expressed strongly anti-Muslim sentiments.

These comments notwithstanding, informants have suggested that southeast Myanmar faces impending 'assessment fatigue'. It is therefore important to coordinate needs assessment activities, to avoid duplication and aid coherence. Coordination activities should be carried out in partnership with local agencies, which have the best access to, and generally enjoy high levels of trust among, forced migrants. It should also be noted that host communities express strong desires to know about plans/scenarios for IDP and refugee resettlement, so should be actively included in consultations.

3.6 Context, peace and politics

Context is king

In order to support local agency, and respond appropriately to varying local conditions, interventions to support durable solutions for forced migrants in Myanmar should be context-specific. This further amplifies the need for regular consultations with conflict-affected communities, and other key stakeholders. However, this kind of approach is very labour-intensive, raising questions about how aid agencies can 'scale-up' assistance to forced migrants, and at the same time remain sensitive to local realities. This question will become increasingly urgent, if and when large numbers of forced migrants seek to resettle (including possible refugee repatriation from Thailand).

The most crucial resource for understanding these complex dynamics is local knowledge and experience. Part of the answer lies in recruiting and listening to experienced national staff (including wherever possible, from minority communities in question), and encouraging them to reflect on the impact of their programs on their environment. (Although it should be acknowledged that national staff sometimes bring their own prejudices and assumptions to working with conflict-affected communities, as do internationals.)

Also, international organisations should commit time and resources specifically to engaging more 'upstream' with local organisations, during the planning and design phases of interventions (not just co-opting locals as part of implementation). While an awareness of local groups' potential biases is important, their first-hand knowledge and nuanced insights are unparalleled. Furthermore, the development of close reciprocal relations with such groups

⁷³ Karen News, 'Karen State Government Ministers' Proposal to Build Village for Refugees Lacks Details' (October 2013: <http://karennews.org/2013/10/karen-state-govt-ministers-proposal-to-build-village-for-refugees-lacks-details.html/>).

should be seen as a crucial investment to ensure a positive reputation among communities, over whom local organizations have immeasurable influence through entrenched relationships.

In light of these observations, it is important to note that UNHCR's *'Strategic Roadmap for Voluntary Repatriation'* recognises that the factors triggering refugee and IDP return and resettlement are fundamentally political in nature, depending on progress in the peace process. This document (which is being shared with the Myanmar and Thailand governments, regional ambassadors, key EAGs and refugee authorities) designates five strategic pillars in relation to voluntary repatriation (each with indicative benchmarks): preparedness; spontaneous return; facilitated/group return; promoted return; long-term integration.

The degree of UNHCR's proactive involvement would increase along this continuum (from 'spontaneous', through 'facilitated' to 'promoted' return), depending on the wider political and security environment. Thus UNHCR recognises that durable solutions for refugees (and IDPs, who are mentioned less frequently in the Roadmap) are ultimately dependent on the politics of the peace process. This document also makes it clear that UNHCR understands the importance of engaging with key EAGs, as well as the governments of Myanmar in Thailand.⁷⁴

Do No Harm - in this case, to the peace process

Humanitarian aid should be politically informed - but not politically driven. Specific to the research questions of this report (see Annex 1), it is important that international interventions to support durable solutions for forced migrants in Myanmar do not inadvertently damage (and wherever possible, positively support) the emerging peace process. Aid in ceasefire areas tends to impact peace processes in two main ways: by affecting confidence in the process among all stakeholders (including conflict-affected communities); and by contributing to the evolution of institutions, which have the potential to either exacerbate or alleviate grievances and other structural conditions fuelling conflicts.⁷⁵

As noted above, the lives of civilians affected by decades of armed conflict in Myanmar are undergoing profound transformations for the better, thanks to the ceasefires agreed between the government and more than a dozen ethnic armed groups. For most ethnic stakeholders (or at least political elites), the primary need is for structural changes to the state and real autonomy for ethnic communities (usually expressed as an aspiration for constitutional federalism). However, historically in Myanmar the army has opposed such changes, deeming them as threatening to national unity. During the current peace process, the government has sought to escape this thorny issue by focusing primarily on the humanitarian and development needs of ethnic communities. While there are extensive needs among forced migrants and other vulnerable populations, it is important that international assistance to these populations does not undermine or obscure the possibility of reaching a substantial political resolution, after decades of armed conflict.

Unfortunately, international support to the peace process has largely reinforced the

⁷⁴ The *'Strategic Roadmap for Voluntary Repatriation'* seems to assume that most refugees will return to areas under government authority. This may be the case for some, but many would probably choose to settle in areas under the authority of EAGs.

⁷⁵ These basic principles are drawn from the World Development Report 2011, which provides a useful framework for understanding how development and other processes impact peace transitions (World Bank 2011: 8-23).

government's view of what peace-building means (more and better development, enhancing and strengthening the state), at the same time proceeding in accordance with donors' assumptions and agendas rather than an understanding of political concerns, and local needs and realities. It is critical that international actors move beyond the provision of assistance through government-regulated or state-friendly structures, and seek out appropriate local partners on the ground. This situation is not unique to Myanmar.

It is not uncommon for peace-support initiatives to fail to engage with the issues identified by communities and other stakeholders, instead falling in behind government-led development and rehabilitation projects. However, the problem in Myanmar is not primarily a failing or weak state that needs to be strengthened or fixed, but rather an urgent need to re-imagine and re-negotiate state-society relations.

Aid agencies working in conflict-affected areas need to strive to understand local political cultures and perceptions, and the dynamics of peace and conflict.

The Myanmar government's legitimacy is still highly questionable for many ethnic stakeholders - and particularly displaced people. Meanwhile there are still significant questions regarding the forms of governance to take hold in contested areas as the peace process moves forward. As noted in section 3.2, both during the ceasefire period, and in the context of a potential political solution, it is yet unclear how administration and service provision responsibilities will be shared between different actors in contested areas. As these affairs remain central to the forms of contestation driving conflict, interventions in these sectors are particularly sensitive.⁷⁶ Illustrating these issues, one informant described how in mid-2014 a group of Karen IDPs chose to move "deeper into the jungle", in the face of a perceived threat as a result of government teachers being deployed to a previously KNU-controlled area.

International actors should therefore exercise caution, to ensure that their support for government or EAG policies to rehabilitate forced migrants do not inadvertently harm the peace process. This is of particular risk with activities seeming to support the government's military-political objectives, as this can be a key factor contributing to damaging confidence in the peace process among some EAG leaders, ethnic national civil society actors and some conflict-affected communities.⁷⁷ International agencies should likewise critically assess the agendas and strategies of Myanmar's various EAGs for any IDP and refugee related activities that may relate to their political agendas. In seeking to 'do no harm', outside actors should also take into account the likely significant impacts (positive, but also negative) upon 'traditional' societies, and forms of livelihoods, led by the expansion of markets and opening up of remote, conflict-affected areas to forces of 'modernity'.

Primacy of Politics

The parameters of the peace process will ultimately determine the prospects for, and scenarios regarding, durable solutions for IDPs and refugees in Myanmar. During the present transitional period, refugees and (particularly) IDPs may choose to return home or otherwise resettle. They should receive support in doing so, but care should be taken not to actively promote returns until the sustainability of the peace process is assured and tangible, and

⁷⁶ Jolliffe (2014a).

⁷⁷ Such conflict sensitivity issues are discussed broadly in Jolliffe (2014). Such concerns were raised frequently by Karen refugees in Thailand and IDPs in the NMSP ceasefire area, during consultations held by one of the authors in 2013 and 2014.

visible progress has been made in addressing the causes of displacement. In the meantime, lessons should be drawn from attempts to find solutions for those who elect to return before such conditions are in place. Certain key actors in the peace process (including some government entities and EAGs) are of the view that IDP rehabilitation should be undertaken before refugees return from neighbouring countries. Whilst current monitoring suggests that IDPs are indeed already returning in greater numbers than refugees, it is nonetheless important that both refugees and IDPs are able to exercise their right to return, and the associated right of freedom of movement in an equitable manner, and are enabled to exercise freedom of choice as to the timing, manner and destination of return. A good approach may be to avoid promotion of refugee repatriation until political negotiations have begun, to the extent that forced migrants begin substantially to trust the peace process.⁷⁸ As well as the risk of duress from the RTG, a primary source of pressure that could coerce premature repatriations may come from cuts in donor funding. To promote a measured and considered repatriation process, which maximises the potential for truly durable solutions, it is critical that donors make efforts to maintain support until voluntary repatriation in safety and dignity is a viable option for refugees and adequate arrangements can be made by relevant authorities.

As noted above, there is a need for more focus and better wording in relation to forced migration, in the draft (joint) NCA, and other multilateral and bilateral negotiations. To the extent that durable solutions for forced migrants are dependent on the peace process, it will be necessary for state and international actors to engage constructively with EAGs - as principals in the peace process, and (variably) legitimate and credible political representatives of displaced communities. Negotiators from the NCCT, government, legislature and Myanmar army should be encouraged to deepen their understanding of durable solutions for forced migrants, including the need to consult with, and support the local agency of, IDP and refugee communities.

EAGs enjoy significant legitimacy among conflict-affected, ethnic nationality civilians - especially IDPs who have effectively 'voted with their feet', by entering EAG-controlled areas. Thus the need to engage with EAGs, and particularly their 'line departments', which often deliver fairly substantial programs, for example in the fields of health and education - to ensure respect for human rights and participatory governance. Engagement with local actors is particularly important, given that communities, EAGs and CBOs have been at the forefront of community rehabilitation in the Kachin and Mon case studies.

4. Addressing durable solutions for forced migrants in the peace process

This penultimate section explores how displacement-related issues, and particularly durable solutions for refugees and IDPs, could be brought into the political process, and how displaced persons' engagement in the peace process could be facilitated. This report has argued that local, national and international agencies (including mandated organizations, such as UNHCR) should address issues of forced migration in the context of a complex political and security environment, and emerging peace process in Myanmar.

In part, this approach requires recognising and responding to the lead of principal actors in the peace process - i.e. the government and the EAGs. However, it is also important to recognise that refugees and IDPs (and other conflict-affected, including 'host', communities) enjoy

⁷⁸ There is a need to develop indicators of trust in the peace process, particularly in a context where a comprehensive political settlement may be delayed.

significant agency. Forced migrants and other civilians should be consulted regularly and extensively, in order to ensure that durable solutions are not imposed, but rather implemented in a safe, voluntary and dignified manner. Therefore, what is required is a blend of political sensitivity and supportive response to local agency.

As the peace process in Myanmar remains indigenous and locally owned, the international humanitarian community's scope to work within it to address issues of forced migration is limited. Therefore, the roles of international actors should include engaging with parties to the peace process, with advocacy messages based on international standards and the provision of capacity building and other auxiliary support. This section outlines some key considerations for parties to the peace process to consider, in order to address IDPs and refugee issues adequately.

To varying degrees, all key actors in the peace process have committed themselves to addressing the specific concerns, needs and aspirations of IDPs and refugees. Nevertheless, the government and EAGs have their own agendas and positions, which are not always commensurate with those of forced migrants. It is therefore important that IDPs and refugees are able to have independent voices in that process. As noted above, displaced communities in EAG-controlled areas of southeast Myanmar (and many of the refugees in Thailand) enjoy trusting ('patron-client') relationships with EAGs, including the KNU, KKO/DKBA, KNPP, RCSS and NMSP. The human and political capital involved in such relationships constitute significant assets supporting local resilience. Nevertheless, there should not be an automatic presumption that EAGs always speak for or act on behalf of forced migrants. Armed groups, and individuals EAG leaders, have their own political (and often intertwined economic) agendas. Therefore, it will always be necessary to consult regularly and substantively with forced migrants themselves, in order to understand their perceptions, concerns, aspirations and needs (for protection and assistance).

The peace process has potential to enhance durable solutions for IDPs and refugees both directly and indirectly. Indirectly, lasting solutions will depend firstly on significant improvements in the security, political, legal and economic environments in conflict-affected areas. At a minimum, it will be important to agree a code of conduct between the Myanmar army and EAGs, and the basic parameters of ceasefire monitoring, which could include provisions related specifically to the needs of forced migrants. These issues will be addressed in section 4.1.

More directly, as a result of the protracted nature of conflict, the dire socioeconomic conditions faced by communities and the levels of distrust between the state and society, there are a number of ways in which parties to negotiations could aim to address IDP and refugee issues in order to facilitate the return, resettlement of forced migrants. These more direct aspects of negotiations are addressed in section 4.2.

Negotiations towards achieving a Nationwide Ceasefire Agreement have been protracted, in part due to laborious, drawn-out disputes over the wording of key phrases (e.g. 'armed group' vs 'armed resistance group'). Key stakeholders (particularly the government/MPC) are therefore reluctant to drag out the talks with further discussion of the fine points of language (which is already in many instances sensitive and highly politicised).

Nevertheless, the NCA should include some points of principle, committing parties to achieving voluntary and dignified durable solutions for IDPs and refugees, on the basis of regular consultations with displaced people.

In other cases, there may be more scope for bilateral talks to address important issues, particularly given the increasing difficulty of achieving a comprehensive NCA, during the limited window of opportunity available to principal actors in the peace process. These might involve less formal discussions between relevant departments of government and EAGs related to specific practical issues, rather than explicit peace negotiations per se. Such discussions have taken place between social and economic departments of several EAGs and relevant ministries or government departments on a number of issues, and could be helpful in addressing the needs of IDPs and refugees. Given the difficult and protracted negotiations towards achieving a NCA, it may be useful for the NCCT and the government's negotiation body, the Union Peace Working Committee (UPWC) to establish joint working groups on some of these key issues (discussed below), in order to move forward, and maintain a level of nationwide coordination, without the process getting bogged down by the need for universal agreement.

4.1 Addressing broad issues necessary to facilitating durable solutions

Broadly speaking, durable solutions to forced migration will ultimately depend on a comprehensive end to conflict, a normalisation of state-society relations, and the emergence of a legitimate and functioning state. Therefore, as has been seen in cases of ceasefires signed in the 1990s between the government and EAGs, without a political settlement through peace negotiations, the prospects for sustainably ending displacement crises are extremely low.⁷⁹ Therefore, the achievement of a political solution to conflict would ultimately be the most effective way for peace negotiations to facilitate durable solutions. However, while such a settlement is far from guaranteed in the near to medium term, negotiations will need to address a number of broad outstanding issues if they are to further improve the prospects for displaced people attempting to rebuild their lives in the context of ceasefires.

First and foremost, forced migration in the context of conflict has been a result of persistent threats to the security of civilians. Ceasefires in southeast Myanmar have seen an almost total end to the destruction of civilian settlements, as well as drastic decreases in other forms of human rights abuse, though numerous threats remain. Going forward, it is crucial that efforts are made to solidify these gains and guarantee the safety of all civilians above all other aims. This would involve the implementation of strict codes of conduct that include provisions for the protection of civilians.

While some progress was made in 2013 toward the establishment of a code of conduct between the KNU and the *Tatmadaw*, which has seemingly contributed to the curbing of hostilities between troops, this process is yet to be formally finalised. A code of conduct, would be augmented further by the establishment of monitoring committees of various forms (partisan, joint, community-based, internationally-led) to provide oversight and to keep track of progress, or identify emerging issues. Provisions for Codes of Conduct and monitoring committees have been discussed in the context of the NCA (perhaps to be decided in a proposed joint Myanmar army-NCCT Working Group), but in some cases may be more successful through bilateral negotiations, where they can be tailored to the specific dynamics in each area.

While it remains an extremely contentious issue, efforts should be made by all parties to establish the degree of trust necessary for all sides to commit to security sector reform aimed

⁷⁹ Jolliffe and South (2014: 36-37)

at alleviating the threats faced by local communities as a result of excessive presence of military actors, particularly in proximity to civilian settlements and places of work. This may involve reductions of troop's numbers and outposts from some regions, and should at least ensure that soldiers are kept away from civilians and are restricted from exploiting, abusing or otherwise harming them. This should be seen as a priority for boosting confidence in the peace process, and in allowing forced migrants to return to their homes, or find new places to settle. Furthermore, agreements should be made both in the NCA and bilateral agreements that ensure an end to the military targeting penalisation and/or harassment by the *Tatmadaw* of people assumed to be supporting, or otherwise connected to, EAGs.

The NCA, and other multilateral and bilateral negotiations, should contain commitments in principle to addressing land rights issues, with detailed arrangements to be discussed as a key element of nationwide political dialogue. Key concerns include: Recognising that many refugees and IDPs have lost Housing, Land and Property (HLP) during more than half-a-century of armed conflict; devising a system to record and address HLP rights issues, including frameworks for restitution and/or compensation; addressing the phenomena of 'secondary settlement' and land disputes. Revision of Myanmar's inequitable 2012 land laws (as part of a nationwide political dialogue, or otherwise) should include recognition of, and measures to protect and respect, customary land tenure systems (including traditional upland farming). Discussion and negotiation are needed on the relationship between EAG land surveys and documentation, and those undertaken and provided by the state. Such processes should draw on the extensive capacities within civil society focused on land rights issues – both national entities, and regional ethnic national civil society organizations (CSOs) and CBOs focused on land management, human rights, environmental issues, and other related fields.

As well as land, it is crucial that similar considerations are made to ensure that everyday natural resources on which people depend, such as bamboo, leaves, cane and wild foods, are available to local communities. These kinds of arrangements may depend primarily on local level agreements between lower-level commanders and authorities from different sides (as well as local communities), but could be encouraged by efforts of higher-level authorities to acknowledge such matters in talks.

The rebuilding of livelihoods for forced migrants will depend more generally on reforms to the economic environment that facilitate inclusive human development. As post-conflict areas open up for investment, there is a risk that such areas will primarily attract exploitative private sector interests, particularly those looking to extract and export natural resources. High levels of risk associated with such regions make it difficult for more responsible private actors to engage, while structures to ensure oversight of conduct by private actors (and local authorities benefiting from projects) remain extremely weak. Such issues need to be better addressed (primarily in bilateral negotiations) to ensure that processes are established to ensure responsible private sector activity that benefits local communities is favoured by all sides.

The widespread contamination of landmines is an issue that also needs to be addressed as a matter of urgency. Although the issue remains extremely sensitive, efforts should be made by government and EAGs to establish inclusive processes to begin surveys and mapping exercises, with a view to move onto clearance as the political and security space opens up. Landmines have also long been used by civilians (particularly IDPs in hiding) to protect

themselves from state security forces,⁸⁰ so it is crucial that they are involved in discussions over ending the use of landmines. Such processes will therefore depend on substantial discussions between all stakeholders and multi-stakeholder agreements between relevant armed actors and communities.

Through the NCA or otherwise, there is a need to establish a legal mechanism that recognises, and ensures interim support for, the existence of EAG governance and service delivery systems (and those of related civil society actors), during the transitional period between ceasefires and the negotiation of a final political settlement. Formal recognition of such ‘interim arrangements’ is necessary, in order to build trust in the peace process on the part of conflict-affected communities and other ethnic stakeholders, by ensuring that locally owned and delivered regimes are not displaced by state actors (or international agencies).

A related issue is if and how the qualifications of refugee camp (and IDP) medics and teachers will be recognised by the state health and education systems, and likewise how the qualifications received by children studying under the EAG education systems will be recognised in government-controlled areas.

4.2 Addressing IDP and refugee issues directly through the peace process

As described in section 3.3, specific arrangements to assist forced migrants in returning to their places of origin or resettling elsewhere in Myanmar have already been discussed in bilateral talks between the government and some EAGs. As the process moves forward, direct efforts of this kind could make the difference for tens (if not hundreds) of thousands of forced migrants in their struggles to rebuild their lives. From a conflict-sensitivity standpoint, involvement of both parties is crucial not just due to the complications of overlapping administrative systems, but more broadly to ensure that activities are sequenced in line with the peace process, and are not perceived to be being pushed or manipulated by specific parties. As populations (and particularly their relocation) have been central to the ways that wars have been fought, it is critical that further relocations are undertaken through negotiation and using conflict-sensitive means. This section will make recommendations for addressing IDP and refugee issues directly in the peace process.

It is only through negotiations between the Myanmar government and army, and EAGs, that an overall political and security framework can be established to achieve durable solutions for refugees and IDPs. If a framework for nationwide political dialogue can be established, it should include provisions for participation on the part of conflict-affected communities, including refugees and IDPs, and ‘out-of-camp refugees.’

Commitment to such a principle should be included in the NCA, and should include a commitment to women’s participation in the peace process and related discussions. It is a matter of debate whether forced migrants should be included in political dialogue as a specific group, or whether refugees and IDPs are subsumed under a broader category of conflict-affected communities. The former would recognise their unique situation and concerns; including forced migrants as part of the broader civilian population would help to mitigate against any accusations of bias in favour of refugees and IDPs.

Issues of terminology and categorisation raise another important caveat: a careful balance needs to be struck in the wording of IDP and refugee issues in peace negotiations, to ensure

⁸⁰ See for example KHRG (2012: 81-87). Recent data provided in confidence by an INGO involved in Mine Risk Education also reported displaced communities using landmines to protect themselves.

that while the group status of forced migrants is recognised, their rights as individuals are also assured. It is often helpful to frame forced migration in Myanmar in terms of group status, particularly when looking at different ethnicities, different types of forced migrant, or specific communities. Indeed, many refugees and IDPs invoke group identities as much as (or even more than) they do their status or rights as individuals; decisions and efforts to find durable solutions will often be characterised by collective action. Nevertheless, it is also important to recognise that refugees and IDPs are individuals, with human, political, and social-economic-cultural rights, recognised in international law. As such, they should be respected, accorded dignity and supported to achieve full access to their rights. Ultimately, these are individual decisions, regardless of the position of community and political authorities.

More immediately, bilateral negotiations, particularly where trust is high between EAGs and government negotiators, might provide a more viable forum for more detailed discussions toward durable solutions. Specific arrangements for IDPs that have come out of government peace talks with both the KNU and KNPP will provide critical lessons to this end. While all returns, resettlements and repatriations must be entirely voluntary, large numbers of forced migrants could benefit greatly from highly organised programmes of this kind. Many of the displaced have no 'home' to return to (due to land confiscation, conquering of lands by new authorities to whom they have no connection, and/or estrangement from former communities). Even those who are able to return to old lands would require significant support – which could be facilitated by agreements between parties to conflict – to re-establish their livelihoods and gain access to basic services.

However, it is crucial that arrangements made off the back of ceasefire negotiations do not attempt to provide quick fixes to displacement by simply building new shelters and inviting displaced people to move in, without dealing with the more systemic issues driving and sustaining displacement. The typical programme cycles preferred by international aid agencies also risk encouraging shorter – at times more superficial - programming of this kind.

For programming to best reflect the approaches to durable solutions pursued by forced migrants themselves, it will likely need to be seen as a slow and evolving process that is guided as much as possible by target communities. A degree of trial and error will therefore be necessary, allowing families to slowly make decisions, and to shape the focus of projects as their confidence grows. A more tempered and considerate approach could be facilitated by the establishment of joint committees between social departments (or relevant authorities focused on IDPs and refugees) from both/all sides of conflicts. Such committees should commit to undertaking comprehensive consultations with forced migrants of all types to help formulate joint principles that would then guide all organised movements of displaced people.

At present, numerous projects geared towards durable solutions for IDPs and refugees are being initiated by various government and EAG actors without systematic coordination. Negotiations could help to develop processes for merging such efforts, or at least ensuring they are guided by common principles and learning from successes and failures. National principles of this type would be best formulated alongside a political dialogue, while efforts should already be made to ensure that projects undertaken in the meantime are agreed upon bilaterally by relevant parties to conflicts, framed in line with international standards, and 'do no harm' to the peace process. Through such mechanisms, specific arrangements will be necessary for both forced migrants who aim to return to former locations (or at least have somewhere to go, e.g. have family), for those who chose to remain in a place of displacement (local settlement) and perhaps more comprehensively for those who would need to resettle.

To facilitate both return and resettlement, conflicting parties will first need to ensure the safety and security of those moving in. As noted in section 4.1, this will depend to a large extent in broader improvements to the security environment. More intricately though, it may require the promulgation of amnesties for civilians deemed to have connections to rival armed actors, to protect from risk of punishment or retribution for their perceived loyalties. This is particularly the case for civilians who fled to refugee camps in Thailand or deep into EAG controlled territories, who then return, or resettle, to areas of whole or partial government authority. For many refugees interviewed in February and March, such an amnesty (on paper) was seen as a prerequisite to returning to Myanmar. Relatedly, many refugees explained that they would not dare to enter Myanmar for ‘go-and-see’ visits with paperwork that showed they come from the camps (such as documents intended to ensure them safe passage) for fear of direct penalisation by state security forces.

Particularly in areas of contested authority between EAGs and government, committed efforts should be made to ensure that codes of conduct for actors are established, even if in some cases, this is done at the local level for specific localities where forced migrants wish to return. The right to freedom of movement implies the right for IDPs and refugees to settle at a place of their choosing, to the extent that this does not infringe the rights of others. Indeed, the Myanmar authorities have on a number of occasions stated that returning refugees will have freedom of choice as to their place of residence inside Myanmar. However, given the continued prevalence of eviction and land confiscation carried out by well-connected power-holders across rural Myanmar, it is hard to imagine such choices will be entirely free. Indeed, there is little scope for forced migrants to return to areas that have since been put to use by military or commercial actors. While authorities will need to work with local communities to mitigate the potential for intra- or inter-communal disputes, it is crucial that movements of forced migrants are not impaired by threats to their security.

The lack of clear demarcation of boundaries in newly established ceasefire areas (in contrast with those established in the 1980s and 1990s), and the inherent overlapping of administrative systems and security apparatuses, present significant complications in finding politically sensitive durable solutions for forced migrants. In numerous cases, the mere presence of multiple authorities has been a cause of displacement, as it means higher taxes and increases the potential for disputes to emerge. Civilians in southeast Myanmar often speak of the difficulties of gaining permission (such as to secure land for a house, or to harvest wild bamboo) when they have to deal with competing authorities who give mixed messages. Meanwhile, a lack of clear patrol routes or boundaries is one of the major causes of military clashes in the southeast.

While the establishment of such boundaries does not appear likely in the near-term, given the many political, security and economic complications involved, this would probably represent the most effective short-term measure in terms of minimising the threats to civilians, and thus to IDP and refugee rehabilitation. At a minimum, bilateral negotiations - and potentially multilateral talks - should establish rules and regulations on patrol routes of security forces (e.g. restricted to certain distances from military camps and settlements, with specific protocols or understandings for travel along jointly used roads or pathways). In areas where overlapping authorities are unavoidably present, negotiations should aim to establish clear joint mechanisms for forced migrants to gain permissions related to land and everyday resources.

Where specific programmes are being established for return and resettlement, it will be critical that there are robust mechanisms in place to ensure effective consultation by NGOs (international and local) with all stakeholders, including EAGs. This will involve a clear understanding on how they are to access relevant areas, and with whom (i.e. which formal/informal authorities) they must coordinate their activities. For communities recovering from decades of war, who in many cases remain sceptical of ceasefires, it is crucial that they are confident that programmes developed to support them are not going to encourage new disputes or foster resentment between armed actors. Rather, visible cooperation between parties to conflict will demonstrate that ceasefires have real substance and are aimed at addressing the needs of conflict-affected civilians.

5. Conclusions

Civilian populations have been the primary victims of more than half-a-century of armed conflict in Myanmar. Forced migration has been driven by armed conflict and associated human rights abuses, as well as inappropriate ‘development’ activities and insecure livelihoods, and intra-communal violence. The extent to which IDPs and refugees can find durable solutions to forced migration will indicate the credibility and sustainability of the ceasefires and emerging peace process.

Agencies working to assist and protect forced migrants thus play a central role in supporting the peace process. Although driven by humanitarian values, and by its mandate to provide international protection and seek solutions to displacement, the work of UNHCR in promoting durable solutions for forced migrants has inevitable political implications. UNHCR’s added value lies in its authority to elicit coordination of assistance to displaced people, and above all, in the mandate to work with other stakeholders (particularly state parties) to ensure the protection of forced migrants in accordance with refugee law, international human rights law and humanitarian law. Of most immediate concern, UNHCR’s protection role will be critical in ensuring that repatriation from refugee camps take place voluntarily and in safety and dignity. Furthermore, as state- and EAG-led initiatives to return or resettle IDPs look set to proliferate, advocacy and direct interventions that work to safeguard the basic rights of civilian populations will prove critical.

Ceasefires in southeast Myanmar have already transformed the environment for forced migrants, and have opened up limited opportunities for them to rebuild their lives. Meanwhile, the peace process shows potential to address a range of issues related directly and indirectly to the prospects for forced migrants to find durable solutions. While some spontaneous processes of return and resettlement have emerged, it must be recognised that such efforts on the part of forced migrants will likely involve protracted decision-making processes, and will be guided by a wide range of factors (covered in section 2). Until the basic needs of conflict-affected communities (including the need for protection) can be satisfied in one location, many families will remain divided. While returns and resettlements are likely to increase in number over coming years (particularly as programmes are expanded by local and international actors), ending cycles of displacement in a sustainable manner will likely take many years, if not decades, to achieve. Furthermore, given the economic situation in Myanmar neighbouring Thailand, related patterns of ‘economic migration’ are likely to persist for some time.

International organizations should be cautious in how they frame and present the challenges of transition in conflict-affected areas. Although across most of southeast Myanmar armed

conflict has come to an end (for now at least), conflict-affected communities - particularly IDPs and refugees - remain highly vulnerable. Ending armed conflict is necessary - but not sufficient - to achieving durable solutions for forced migrants. Therefore, for the time being at least, southeast Myanmar remains a site of chronic humanitarian crises. The basic needs of those affected by armed conflict in southeast Myanmar have been neglected over the decades – primarily due to government restrictions on humanitarian agencies, and because of international reluctance to work comprehensively through alternative channels (e.g. ‘cross-border’). While the needs of these people remain largely unchanged, international organisations – especially those with unique mandates, such as UNHCR – have important roles to play in providing and facilitating protection and assistance.

In doing so, it is necessary to recognise and enhance the significant capacities and impressive resilience of conflict-affected communities, and the key assistance and advocacy roles played by local CBOs.

In order for solutions for refugees and IDPs to be really *durable* (in the sense of lasting), interventions on the part of the state, and national and international organisations, should be based on extensive and regular consultations with IDPs and refugees, as well as with local organisations which work closely with migrant communities. This will require regular engagement to assess stakeholders’ varying positions and options, in a dynamic political and security situation, and to keep track of how their needs and conditions are changing over time.

In order to be conflict sensitive and ‘do no harm’ to the peace process, interventions to support durable solutions should be aligned with the broader political environment. Aid agencies and donors should recognise the (albeit sometimes contested) legitimacy of Ethnic Armed Groups (EAGs), which have been recognised by the government as partners in peace. Ultimately therefore, the relationship between peace and forced migration in Myanmar involves four parties: the government, EAGs, forced migrants and other conflict-affected communities (including CBOs) and international actors (e.g. UNHCR); in the case of refugees, the RTG also has a key role to play. Coordination between these actors could be greatly improved, and facilitated by UNHCR and other international agencies.

Stakeholders working to support the emergence of durable solutions for forced migrants should carefully observe – and to an extent, take their lead from – ongoing multilateral and bilateral peace negotiations. Due to the understandable reluctance of parties to the NCA negotiations to overcomplicate the agreement with technicalities related to every conflict-related issue, this stage in the peace talks is unlikely to see more than limited and general references to IDP and refugee issues. However, bilateral negotiations could continue to expand the space available for comprehensively addressing durable solutions. Eventually, if progress towards a nationwide political dialogue can be achieved, space will emerge for more concerted multi-stakeholder negotiations on issues related directly and indirectly to forced migrants.

Ultimately, prospects for durable solutions will remain deeply connected to those for a sustainable end to conflict. In turn, such an achievement will depend not just on successful negotiations at the table, but more on a transformation of the security, political and economic environment. While international engagements in southeast Myanmar have potential to contribute to such processes, they will be contingent primarily on local actors and local dynamics, which for the time being remain uncertain, and in some ways highly problematic.

Moving Forward

As noted in the Introduction, this report focuses on the situation in southeast Myanmar. Further research is necessary, in order to explore the relationship between forced migration, conflict and peace in northern Myanmar (Kachin and Shan States) and in relation to inter-communal (including Buddhist-Muslim) violence.

The following conclusions and recommendations represent key issues in relation to refugees and IDPs, in the context of the peace process.

Peace Process

- While all repatriation, return and resettlement must be entirely voluntary, parties to the peace process should make concerted efforts to address related issues in multilateral and bilateral talks, to ensure the safety and dignity of forced migrants and to facilitate durable solutions.
- The principal parties to the peace process (the government and EAGs) should adopt language in the Nationwide Ceasefire Accord, and in any other political and security agreements, committing to regular consultation with IDPs and refugees, and to respecting their rights under Myanmar and international law. Refugee and IDP issues should also be taken into consideration when negotiating military Codes of Conduct.
- Durable solutions for forced migrants should be context specific. Some arrangements will therefore need to be discussed bilaterally, between individual EAGs and the government. Involvement of both parties is crucial, not just due to overlapping administrative systems and security apparatuses, but more broadly to ensure that activities are sequenced in line with the peace process, and do not unreasonably promote the agendas of specific parties. As populations (and their relocation) have been central to the ways that wars have been fought in Myanmar, initiatives to resettle vulnerable populations should be undertaken in a conflict sensitive manner, in discussion with local stakeholders, including CBOs.
- Forced migrants should be explicitly included as stakeholders in any political dialogue – arising from or parallel to NCA negotiations. Civil society actors in all areas could play key roles in promoting and facilitating the participation of forced migrants.
- The NCA and other multilateral and bilateral agreements should address the rights of refugees and IDPs to return to previously settled land. These issues should also be addressed in the policies and positions of principal peace process actors (government and EAGs). The restitution of and/or compensation for land and other assets misappropriated from refugees and IDPs should be addressed in any forthcoming political dialogue. Mechanisms should also be established to address issues of ‘secondary settlement’ (where other - potentially vulnerable - people are living on land previously owned by forced migrants). Such arrangements could be ‘fast tracked’ in parallel to negotiations toward an NCA, and would not have to wait for a final settlement to the peace process, to be implemented. Outstanding questions remain regarding who would pay for such settlements, and how.⁸¹ Property ownership and

⁸¹ The restitution of and/or compensation for confiscated farmland may require legal settlements with private

related disputes should be managed with a contextual awareness that traditional community structures and conflict resolution mechanisms have been disrupted, and in many conflict-affected areas there is no effective rule of law.

- Parties to negotiations (particularly bilateral talks) should develop protocols for information sharing on pilot projects or other initiatives related to the return or resettlement of forced migrants. This could be achieved through quarterly dialogues and forums, with an aim to coordinate efforts, learn lessons from one another, and ensure transparency regarding programmes.

Refugees

- Decisions about the future of refugees and IDPs should be undertaken through comprehensive consultations with these communities, respecting their dignity and the voluntariness of any movements. Local NGOs and CBOs can advise on such processes, but are not in a position to speak independently on behalf of forced migrants.
- When considering durable solutions, it is necessary to consider the (protection and assistance) needs of particularly vulnerable sub-groups (e.g. the elderly, women, religious or ethnic minorities), whose participation in discussions should be maximised and supported.
- Regarding durable solutions for forced migrants in Thailand, the particular circumstances and needs of out-of-camp refugees should be taken into account - including many Shan and others who left Myanmar for reasons related to conflict and/or persecution. Many 'externally displaced people' have the same needs and aspirations for 'organised repatriation' as those in the refugee camps.
- Any refugee repatriation must be voluntary, on the basis of well-informed individual choice. Nevertheless, it should be recognised that many non-Burman people in and from Myanmar are closely tied to collective social and political identities, and confer significant legitimacy and leadership roles on EAGs. Therefore, relevant EAGs should be included in any negotiations, in addition to governments (in this case of Thailand and Myanmar) and UNHCR.
- All stakeholders should aim to facilitate the emergence of a 'protected space' in the Thailand-Myanmar borderlands, in order to encourage a sense of trust in the peace process and prospects for repatriation, on the part of the refugee population. This might depend on concerted efforts by UNHCR and other international actors to broker agreements with relevant authorities to allow freer movement – and periodic return - of refugees.
- All stakeholders should work to ensure that refugees are not pressured into premature repatriation, but that options are provided for organised repatriation in safety and dignity, when the time is right. At the same time, local efforts to support spontaneous repatriation and resettlement, should be recognised and supported, in particular through assistance to appropriate CBOs.

- It is crucial that the Myanmar government finds ways to recognise the qualifications of graduates from EAG-linked education systems, or to fast-track their matriculation, to ensure that individuals and families that have been displaced in the refugee camps or in areas under the authority of EAGs can return and resettle to government-controlled areas if they so choose.

Similar considerations should be made for teachers and medics of EAG-linked education and health systems alongside ongoing discussions on ‘convergence’ between the relevant departments of some EAGs and relevant government ministries.

- Vocational training’ provided to refugees should be suited to their eventual return to Myanmar, noting that many refugee camp residents have never lived in rural settings, and therefore require skills for non-agricultural livelihoods.

Internally Displaced Persons

- Options should be explored for relocation site residents who are unable or unwilling to leave, as they lack ‘durable solutions’ elsewhere (often being landless, and dependent on hand-to-mouth day labour).
- Political negotiations should determine whether ‘returning villages’ be required to register with the government, in the context of fragile ceasefires, while levels of trust in the state are still low. Governance and management of these villages could be negotiated in peace negotiations as part of ‘interim arrangements’. Ultimately, choice over such matters should lie with the communities themselves. Protection actors could play a role in enabling forced migrants to make these decisions without undue interference from government or EAGs.

Human Security, Land and Protection

- Protection actors should work to address forced migrants’ needs for livelihood security and access to farmland, while maintaining a focus on primary protection concerns.
- Forced migration in the context of armed conflict has primarily been a result of persistent threats to the security of civilians. It is crucial that efforts are made to consolidate improvements to the local security environment and guarantee the safety of all civilians. This will depend in part on the establishment of clear Codes of Conduct for armed actors, as well as monitoring mechanisms at different levels.
- Myanmar’s inequitable land laws (particularly the 2012 legislation) should be revised and remedied, as a matter of urgency. This issue could be addressed in principle in the NCA negotiations, and discussed in greater detail in any forthcoming political dialogue - including measures to respect and protect customary land tenure practices, such as up-land shifting cultivation. While land law reform has significance beyond the peace process, the NCCT and UPWC) could consider forming a joint committee to address land issues in the context of the peace process. It would be helpful to suspend application of the 2012 land laws in conflict-affected areas, while particular measures need to be taken by the defence services and other government bodies, to put an end to unlawful seizures of land. Negotiations should address the prospects for re-distributing land (for example, that currently held with questionable legality/equity by powerful

commercial actors) to displaced and other vulnerable populations, possibly as part of Disarmament Demobilisation and Reintegration activities.

- Landmine action (particularly landmine surveys and clearance) should be undertaken jointly between key stakeholders in the peace process, including forced migrants and other conflict-affected communities. A focus on Mine Risk Education is appropriate, and should prioritise partnerships with experienced local actors, in order to build community resilience and to synergise with efforts to collect more information and gain a better grasp on how landmine issues are viewed by communities.

Convergence and Interim Arrangements

- Ethnic Armed Groups' governance and service delivery systems should be supported by the international aid community during the transitional period between ceasefires and the negotiation of a comprehensive political settlement, in a manner that builds trust in the peace process by ensuring that locally owned and delivered regimes are not displaced by state actors (or international agencies).
- Political negotiations should address the relationship between land surveys and documentation undertaken and issued by EAGs, and those implemented and provided by the state. This issue could be addressed in principle in the NCA (or other multilateral or bilateral negotiations), and in more detail in subsequent political dialogue.
- International support should continue for aid networks with head offices in Thailand (including those linked to EAGs) which retain a critical role in the provision of assistance and protection to some of the most vulnerable populations in southeast Myanmar, and in certain cases are the only actors able to do so. More sustainable channels to provide such assistance should be sought in line with the peace process, as ceasefires become more stable. In areas where access is more logistically practical from 'inside Myanmar', and is not perceived by conflict-affected communities or other key stakeholders as threatening, this option could ultimately become more sustainable, if ceasefires hold.
- Political negotiations should address how civilians can be guaranteed immunity from punishment or further harassment for suspected connections with EAGs, particularly those who are returning or resettling after periods of displacement under the domain of EAGs or from refugee camps.

Development and Protection

- It is important that international aid actors ensure a continued focus on the protection and assistance needs of IDPs and other forced migrants in southeast Myanmar, while acknowledging also the needs for economic development and jobs, in transitional/post-conflict environments.
- The humanitarian and protection needs of IDPs, refugees and returnees in southeast Myanmar should be addressed in a conflict-sensitive and context-sensitive manner, until existing forced migrants can achieve rehabilitation, and there is greater assurance and confidence that current ceasefires will hold. In this context, it is important to support

the existing capacity of the affected communities through close consultations. Top-down planning and assistance should be avoided.

- While state (and some donor) conceptions of ‘durable solutions’ for forced migrants include the desire to make conflict-affected communities and areas legible, and suitable for the expansion of state-centric governance together with ‘economic development’, greater efforts need to be made to understand locally preferred forms of governance, and threat perceptions. It is crucial that government, EAGs and development partners prioritize the peaceful resolution of conflicts and the maintenance of confidence in ceasefires.

Assessment and Analysis

- Surveys and analyses of forced migration should be locally owned, and where possible implemented, including up-stream discussion with local actors (EAGs and CBOs, and forced migrants themselves). In carrying out assessments, partnerships should be utilized to maximize the relative strengths of CBOs and international actors, whilst minimizing potential bias. The former possess strong local knowledge and networks; the latter may bring technical competence and a degree of political impartiality.

Annex 1: Research Questions

- To what extent (if at all) have IDPs and/or refugees been consulted or informed about key developments in the current peace process?
- To what extent (if at all) are issues explicitly related to refugees/IDPs and the resolution of displacement (such as return/resettlement pilot projects) featuring in current discussions related to the peace process or other related initiatives?
- To what extent (if at all) are issues of particular concern/relevance for refugees and IDPs (such as access to land) featuring in such discussions or initiatives?
- What key concerns, aspirations and plans are emerging on the part of displaced populations in relation to the peace process?
- What steps might be undertaken at this point to promote the engagement of displaced populations in the peace process, and to ensure that their rights and interests are reflected in peace negotiations and the peace-building process?

Annex 2: Breakdown of population by state, from preliminary census data

State/Region	Total	Male	Female
<i>Union</i>	<i>51,419,420</i>	<i>24,821,176</i>	<i>26,598,244</i>
Union (enumerated)	50,213,067	24,225,304	25,987,763
Union (not enumerated)	1,206,353	595,872	610,481
<i>Kachin</i>	<i>1,689,654</i>	<i>877,664</i>	<i>811,990</i>
Kachin (enumerated)	1,643,054	854,633	788,421
Kachin (not enumerated)	46,600	23,031	23,569
Kayah	286,738	143,461	143,277
<i>Kayin</i>	<i>1,572,657</i>	<i>775,375</i>	<i>797,282</i>
Kayin (enumerated)	1,502,904	739,234	763,670
Kayin (not enumerated)	69,753	36,141	33,612
Chin	478,690	230,005	248,685
Sagaing	5,320,299	2,518,155	2,802,144
Tanintharyi	1,406,434	700,403	706,031
Bago	4,863,455	2,324,214	2,539,241
Magway	3,912,711	1,814,993	2,097,718
Mandalay	6,145,588	2,919,725	3,225,863
Mon	2,050,282	986,454	1,063,828
<i>Rakhine</i>	<i>3,188,963</i>	<i>1,529,606</i>	<i>1,659,357</i>
Rakhine (enumerated)	2,098,963	992,906	1,106,057
Rakhine (not enumerated)	1,090,000	536,700	553,300
Yangon	7,355,075	3,517,486	3,837,589
Shan	5,815,384	2,908,259	2,907,125
Ayeyawady	6,175,123	3,010,195	3,164,928
Nay Pyi Taw	1,158,367	565,181	593,186

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