

Internally Displaced Persons (IPD) and Refugee Right to Land Position Paper

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INTRODUCTION

Since 2016 IDPs and refugees from different parts of the country, as well as the local frontline organizations that support them came together to discuss their land issues related to return and restitution in order to strengthen their advocacy on this issue.

Decades of war in Myanmar has resulted in the widespread displacement of ethnic nationality communities and undermining of their human rights including their right to land. Refugees and IDPs seeking justice, including the full and meaningful recognition of our right to land, face many challenges. With these challenges in mind, Internally Displaced Persons (IDP) and refugee communities from Mon, Karen, Karenni, Shan and Kachin States and from local civil society organisations(CSOs) that provide support to them, came together to share the challenges and experiences particularly regarding the IDP and refugee right to land and to deliberate on how to respond through a strategy of working together in the near future.

In this joint position paper, we first outline the similar and different situations we are facing, before proclaiming our basic principles and laying out our key demands. This position paper is a “living document”; with it, we do not claim to represent all IDPs and refugees, but rather we aspire to reach out, focus attention, generate discussion, and build political unity and momentum toward the full and meaningful recognition, restitution and protection of our IDP and refugee right to land.

GENERAL CONTEXT

Across Myanmar, people have deep attachments to ancestral lands on which for generations they have depended on for their lives, livelihoods, cultural practices and social identities. The country has a long history of diverse dynamics of displacement in different regions. This paper is about experiences in the northern and eastern part of the country, affecting communities in Kachin, Shan, Karenni, Karen, and Mon States since many decades.

In the 1970s the Four Cuts Campaign displaced many Karen, Mon and Karenni communities and destroyed their villages. By the 1980s some of these displaced people started seeking refuge in Thailand. Others continued to hide in the jungle while going back and forth to their fields.

The first Karen refugees arrived in Thailand in 1984. Over three decades later, after the Karen National Union (KNU) signed the ceasefire in 2012, most of the fighting in Karen State subsided. This created conditions for some (but not all) to return, while also increasing pressure on refugees to return due to decreasing funding for refugee camps. But there is still no political settlement, and full conditions for safe, voluntary and dignified return have never been met. After so many years, some Karen cannot trace anymore their original places and many original places are now occupied by others. Currently there is almost no support at all for IDPs and ration support for refugees is decreasing. Rather than removing military outposts, instead since 2012 we see more outposts, camps, troops; many business investments flocking in. After ceasefire in Kayah State, around 10000 new IDPs has been increased so far.

The situation of Karenni refugees is similar to that of Karen. The first wave of Karenni refugees started in 1987 with two camps of about 20,000 people in total. After repatriation to third countries, there are now about 11,000 left. With reductions of international support and rations, pressure is growing on these remaining people to return. Most say they will only go back with a program initiated by Karenni leaders. Most Karenni refugees feel the situation is not yet conducive for return and fear for our personal security and safety. For example, we are concerned about land mines and about poor living conditions in resettlement areas (e.g., poor basic infrastructure, lack of basic public services including health care). The current situation cannot be called peaceful. Many of us feel ourselves to be homeless and landless.

The Mon case is different. Several Mon refugee camps were established in Thailand, but after the New Mon State Party (NMSP) signed a ceasefire agreement in 1995 the people in these camps were forced to cross the border back into Myanmar and into resettlement areas established at that time, where most remain until today. After international support and rations were reduced and eventually stopped altogether in 2014, we had to stand on our own feet. We made shifting cultivation to fill the food gap and later started perennial crop orchards. Our access to land has improved because the NMSP redistributes 5-10 acres of land per individual and issues both individual and collective land ownership grants. But the Government of Myanmar does not recognize our land grant system or our land ownership certificates. We don't actually have vacant and fallow and virgin land, but the govt has the Vacant, Fallow and Virgin Lands Management Law (VFV Law) and so we must prepare resistance to the govt coming in and implementing VFV. We have our own rules and regulations, our own land grants, our own land grant system, and our own ways of working by conducting consultation meetings.

Turning to the situation in the north, it is clear that the threat to the IDP right to land is especially acute in Kachin and northern Shan State.

In northern Shan State, the displacements started in the 1960s when the Kachin Independence Organisation (KIO) launched armed struggle and when the Communist Party of Burma entered northern Myanmar. Ceasefires in the late 1980s-early 1990s stabilised the situation to some extent. But new displacements occurred starting in 2010 as a result of construction of a gas pipeline from Yunnan in China to the Bay of Bengal in Rakhine State. Further displacement came after the breakdown of the KIO ceasefire in 2011 and resumption of fighting between Thatmadaw and Ethnic Armed Organizations and among Ethnic Armed Organizations in northern Shan State.

When fighting first broke out, we hid while trying to go back to our farms and paddy land. But the skirmishes intensified and we got trapped. Our houses were burned down and many of our cattle stepped on landmines. Eventually we had to flee. We fear big projects coming into our lands, like the Chinese proposed highway and railway and crony companies involved in agriculture and livestock projects. We worry about the homes, farms and lands we left behind. War and displacement have affected many communities, including Shan, Kachin, Ta-ang and others.

In Kachin State, before the 1994 KIO ceasefire, we experienced two decades of displacement due to the fighting. After the ceasefire began efforts were made to resettle without international support. But with the ceasefire breakdown in 2011, large scale displacement started again. Previously (during the Four Cuts period), we used to hide in the jungle and go back to our villages. But since the resumption of fighting in 2011 we cannot do this anymore: our land is being taken for banana tissue culture and other industrial crop plantations. We don't want to lose our ancestral lands, we want to protect them, but people are now desperate. While the Myanmar government is blocking humanitarian aid by the UN to IDP camps in non-government-controlled areas, companies are coming and offering money to IPDs in exchange for using their land. The companies can extend their leases up to 30 years. Meanwhile, the government is establishing 10 mile-wide "Protected Forest

Areas” on both sides of the roads where many of our settlements and farm areas are located. Now, on top of all this, we are also getting pressure to leave the camps, including from the government. But what if the war resumes? During the unilateral ceasefire the government has been reinforcing their troops. So for IDPs there is no guarantee for our safety and security. How can we trust with these kinds of troop movements? We are in crisis, everything is unclear and confusing, and meanwhile the companies keep coming and doing business. The Myanmar government says they don’t issue licenses to the companies; and the same with KIO govt; but neither is taking real action to stop the expansion, so we feel we will lose our valuable land that we left behind.

CURRENT LAW AND POLICY FRAMEWORK

There is no single Myanmar government law that recognizes or protects the right to land of IDPs and refugees. In fact, several new land laws since 2012 have only made things worse for IDPs and refugees. These laws are being used by the military, government, armed groups, companies and their brokers to grab IDP and refugee lands. The National Land Use Policy (NLUP) of 2016 at least mentions that IDPs and refugees have land rights, but this document is not perfect and anyway so far has been ignored. Now some of the 2012 laws are being amended. But the amendments approved so far do not bode well for us. At the moment the most worrying one is the amended VFV Land Use Management Law.

Prior to being displaced, we had been living in our ancestral lands with our own customary systems without problems. Nobody will go and register within that 6 months period as stipulated in the amended VFV Law, as it does not recognize our customary tenure systems. We made a joint decision to stick with our customary system and not register. Now we plan to submit recommendations to develop position paper on our customary system.

In addition, we have heard that the government is developing a strategy to close all IDP camps in the country. They don’t have any clear mention of how this strategy will serve the IDPs. In our view this is not an ordinary strategy, but one that will destroy our autonomy and our rights and cause political problems for us. They can only close down the camps when there is total peace, and after we have returned to our place of origin voluntarily.

OUR BASIC PRINCIPLES

Our basic principles that we declare here are anchored in human rights. Human rights are principles that can guide the government and other authorities in taking steps to address injustice. In addition to the basic human rights and freedoms that all humans have by virtue of being human, there are some human rights that address the special situation of injustice described above that we as IDPs and refugees are facing in Myanmar. These rights are part of an extensive international human rights legal framework that exists today.

We have the right to what is called “restorative justice” or “restitution”. The meaning of this special right is enumerated in the Pinheiro Principles, the Deng Principles, the UN-CFS Tenure Guidelines (including paras 25.1, 25.4, and 25.5), International Refugee Law, and the Universal Declaration of Human Rights). This right is linked to other rights, such as the right to voluntary repatriation, the right to freedom of movement, and the right to non-discrimination.

They include whenever possible the right to return to our original lands and rebuild our lives there. It also includes the restoration of our liberty, the enjoyment of our human rights, of identity and family life and citizenship; the return to our place of residence, the restoration of employment and return of our property. In case some of us are not able to return to our places of origin, we still have the

right to restitution. For us human rights are not just about addressing the injustice of the past and present, but also about getting on the solid path to a better future for ourselves, our children and our communities.

- Land is our livelihood, life, dignity, security, protection, culture, history, inheritance for future generations and destiny which decide our future (For recognition of these values see UN-CFS Tenure Guidelines 9.1 and 9.7)
- IDPs and Refugees have the right to restitution including restoration of our housing, land and properties as before (See “UN Guidelines on Eviction and Displacement” and the establishment of a ‘right to return’ [Paras.64-67]; “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law”; and “Pinheiro Principles” [principle #2]).
- Concerned authorities shall develop relevant policies and laws to fulfill the rights of IDPs and Refugees to restore and restitute their housing, land and properties (UN-CFS Tenure Guidelines Chapter 25).
- Government shall provide full recognition and protection to the customary land of IDPs and Refugees and shall not consider or categorize these lands as “vacant, fallow and virgin land” (UN-CFS Tenure Guidelines Chapter 9 and Chapter 25).
- There shall be no investment projects on displaced land before IDPs and Refugees are able to return and the government should refrain from allocation of land concession as vacant, fallow and virgin land (UN-CFS Tenure Guidelines Paras. 12.4 and 12.6).
- The government should refrain from reducing humanitarian aid and blocking delivery of humanitarian assistance to IDPs and refugees.
- There should be no forceful return and resettlement of IDPs and refugees. Return and resettlement should be voluntary and should only take place when political and security conditions are stable.
- IDPs and Refugees have full decision-making power for the issues concerning their safety, dignity, access to humanitarian aids which are their fundamental rights.
- To establish a fair and just society through recognition and respect to the fundamental civil and political rights that guarantee freedom of movement, equity and self-autonomy.
- Men and women shall have equal rights to land.
- IDPs and Refugees have full rights to participate in the decision-making process of return and resettlement programs.

OUR DEMANDS

- A special law should be enacted with clear provisions to fully facilitate our safe and dignified return and to fulfil our right to restitution in our villages of origin, in line with existing international human rights principles and standards, and with our full and meaningful participation and our free, prior and informed consent.
- Any and all of our lands that were confiscated and/or lost for different reasons—whether because of war and militarization, or because of designation of government protected forests and/or reserved forests, as well as government allocations for investment without our free, prior and informed consent, shall be returned to us – the IDPs and Refugees who are the original owners of those lands.
- The VFV Law which has been threatening customary land tenure systems and land security of IDPs and Refugees should be completely and immediately abolished, and any and all land that has ever been designated and taken as such, should be returned to the original owners from whom it was taken.

- The Government should immediately and completely recognize the land policies and existing land management systems of ethnic armed organizations, including the land ownership rights that have been allocated to indigenous communities under their authority.
- All authorities (Government and EAOs) should prioritize the restitution of IDPs' and Refugees' displaced lands in their villages of origin and take any and all necessary steps to ensure their safe, dignified and voluntary return and meaningful restitution, including access to decent and sustainable livelihoods and the basic physical, social and economic conditions necessary for them to reconstruct dignified lives in peace and in safety. When it is determined through transparent and systematic investigation, and with the free, prior and informed consent of the affected IDPs and Refugees, that it is not possible to fulfil their right to return and restitution in their villages of origin, then an equal quantity and quality of land will be substituted as part of and along with the full restitution package.
- Return and resettlement programs for IDPs and Refugees shall be executed only after landmines and UXOs clearance.
- Return and resettlement programs for IDPs and Refugees shall be executed where preconditions such as political guarantees and a peace agreement have been reached.
- Immediate removal of armed troops camping in displaced villages of IDPs and Refugees is required prior to the any return and resettlement program.
- To ensure consistent humanitarian assistance is available before and after early period of return and resettlement and shall refrain from any means of deduction.
- To ensure free enjoyment in perusing their livelihoods without any constraints in their village of origins.

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