****

**Durable Solutions to displacement in and from South-East Myanmar: looking ahead**

**UN High Commissioner for Refugees**

**Yangon/Hpa-an, Myanmar**

**South-East Consultations, 19 May 2014**

**1.** **Objective**

The Report of the UN Secretary-General on Peace-Building in the Immediate Aftermath of Conflict identifies key actions to be taken in an immediate post-conflict period, including in the reintegration of returnees[[1]](#footnote-1). In addition, the SG Policy Committee Decision of 4 October 2011 on Durable Solutions calls on the Resident/Humanitarian Coordinator to lead the development of a Strategy for Durable Solutions for displaced people in consultation with national authorities and partners. UNHCR Executive Committee Resolution No.101 (LV)-2004 sets out a number of considerations in the repatriation of refugees as does the IASC Framework on Durable Solutions for Internally Displaced Persons[[2]](#footnote-2). The purpose of this document is to:

1. Describe the current context for durable solutions for refugees from and IDPs in South-East Myanmar and lay out some possible scenarios;
2. Set out the conditions and principles under which durable solutions can be attained in the South-East;
3. Identify the benchmarks and conditions to be met before durable solutions for refugees and IDPs can be facilitated, promoted and organised.
4. Identify key elements that will guide the planning of support for the spontaneous and organised movement of refugees and IDPs to and in the South-East. This does not replace the need for a full-fledged and comprehensive inter-agency needs assessment to inform planning for support for durable solutions and early recovery.

This document is intended to build upon the UNHCR discussion paper of June 2013, which outlined a framework for UNHCR engagement in supporting durable solutions. There are three main changes: (i) there is more information available about the intentions and movements of refugees, IDPs and migrants now, (ii) the assumptions about the nature of refugee and IDP return may need to be re-examined in light of newly available information, and (iii) it is timely to engage in an inter-agency discussion of support to durable solutions in the context of transition and more closely align planning across Myanmar.

**2. Key Concepts**

**Refugees:**

A refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of nationality or former habitual residence and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country or return there[[3]](#footnote-3). A refugee is also someone who is displaced to a third country owing to conflict, events seriously disturbing peace and public order or natural disaster.

Article 33 of the Refugee Convention provides that no state shall “expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. This is the principle of “non-*refoulement*”, to which no reservation is permitted by signatories to the Refugee Convention. The principle of non-*refoulement* has been identified as a principle of customary international law[[4]](#footnote-4).

**Internally displaced persons:**

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, who have not crossed an internationally recognised state border.[[5]](#footnote-5)

The definition of an IDP is a factual description as opposed to a legal definition. Internally displaced persons retain the same rights and privileges as other persons with the same established rights and privileges of Myanmar.

Some people among the displaced population, based on their vulnerability, have special needs to be met. Such people would include, for example, women without support, single-headed households, disabled people and the elderly.

**Durable solutions to displacement:**

Finding a durable solution to displacement is a gradual and often long-term process of reducing displacement-specific needs, not an event. A durable solution can be achieved through:

|  |  |
| --- | --- |
| Internally Displaced Persons | Refugees |
| Return and sustainable reintegration to place of origin or habitual residence | Repatriation to the country of origin or habitual residence and sustainable re-integrationRe-establishment of national protection |
| Relocation to another area of the country and sustainable integration | Resettlement to a third country |
| Local integration in the area of displacement | Local integration in the country of asylum |

In international law, everyone has the right to return to his/her own country[[6]](#footnote-6). The right to return is at the core of voluntary repatriation. The Statute of the Office of the High Commissioner for Refugees commits him to seek “permanent solutions for the problems of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organisations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities”[[7]](#footnote-7).

The Guiding Principles on Internal Displacement stipulate that ‘displacement shall last no longer than required by the circumstances’[[8]](#footnote-8). Drawing on existing international law, the right of internally displaced persons to a durable solution is articulated in Guiding Principles 28-30. This has been further spelled out in the IASC Framework on Durable Solutions for Internally Displaced Persons[[9]](#footnote-9). Everyone lawfully within the territory of a State has the right to freedom of movement and residence[[10]](#footnote-10).

A combination of the three options can also lead to a durable solution. Therefore, an initial local integration should not affect a right to return or movement to another place. It is also recognised that any durable solutions will have to go hand in hand with early recovery efforts, therefore close coordination and joint assessments and planning is recommended.

Support of durable solutions for refugees and IDPs is impacted by the peace-building effort in the South-East and Myanmar as a whole and is dependent on comprehensive and effective recovery and development strategies and programmes. The complexity of Myanmar’s transition to a peaceful society, more pluralistic political system and open economy is immense[[11]](#footnote-11).

**When is a durable solution achieved?:**

A durable solution is achieved when former refugees achieve the protection of a state and former IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their rights without discrimination[[12]](#footnote-12). This does not mean that they may not continue to have a need for protection and assistance, but their needs would be no different from other similarly situated citizens.

**Early recovery:**

Early recovery begins early in a humanitarian setting. It is a multi-dimensional process, guided by development principles. It aims to generate self-sustaining, nationally-owned and resilient processes for post-crisis recovery. It encompasses the restoration of basic services, livelihoods, shelter, governance, security and the rule of law, environment and social dimensions, including the reintegration of displaced populations[[13]](#footnote-13).

**3. Principles**

Host states have the responsibility of protecting refugees, with the assistance and guidance of the High Commissioner[[14]](#footnote-14). The protection of IDPs, including providing them with a durable solution and ensuring effective recovery and reintegration into communities, is first and foremost the responsibility of the Government of Myanmar at all levels[[15]](#footnote-15).

The international humanitarian and development community has a complementary role to support the Government and other local actors in its efforts[[16]](#footnote-16). This requires continuous and unimpeded access to areas where refugees and IDPs have sought refuge as well as to areas where they intend to return or otherwise seek a durable solution. International agencies should respond with appropriate humility, recognising the self-agency of displaced people and the capacity of local organisations as well as the leadership role of the authorities.

Duty-bearers must give primary consideration to the needs, rights and legitimate interests of the displaced persons themselves, taking into account age, gender, diversity and environmental considerations[[17]](#footnote-17).

Any durable solution for refugees and internally displaced persons must be based on a voluntary and informed decision and occur in safety and dignity[[18]](#footnote-18).

A voluntary decision implies that a decision to return, settle elsewhere or integrate locally is self-determined from a number of viable options. There should be no coercion or persuasion, including by creating conditions which could push or pull people in different directions[[19]](#footnote-19).

The right to freedom of expression includes the giving and receiving of information[[20]](#footnote-20). An informed decision implies that a decision to return, settle elsewhere or integrate locally is self-determined bases on reliable, accurate information from a trusted source. The Governments of Thailand and Myanmar and agencies must make every effort to ensure that refugees and IDPs have the information they need to make an informed and voluntary decision, including through the facilitation of “go-and-see” visits and ensuring UNHCR has the access it needs to assess and report on conditions in return areas.

Adopting a human-rights based approach, the notion of safety includes physical, material and legal safety. Physical safety includes ensuring mine-free return routes and areas of settlement, security, respect for physical integrity. Material safety includes access to land or livelihoods and assistance, if needed. Legal safety includes amnesty, freedom from prosecution for illegal departure, access to restitution or compensation mechanisms for lost property.

The notion of dignity implies that refugees and IDPs are not manhandled, can make decisions at their own pace and are not arbitrarily separated from family members. Being treated without discrimination, a concept fundamental to the protection of human rights[[21]](#footnote-21), is also implied in the notion of return in dignity.

**4. Current context**

The “South-East” is not a single operating environment. It is a large area with a population of about 10,000,000 people in four (even, six) quite different areas with varying degrees of good governance and different prospects for peace and development. While there are common issues, upon which it is possible to talk in general, efforts in each area require different input and approaches[[22]](#footnote-22).

One striking common issue across all of the areas of the South-East is the self-sufficiency of affected communities, particularly as regards protection coping mechanisms. In addition, communities have been served by strong, local, faith-based and community-based organisations[[23]](#footnote-23).

A description of the internal turmoil of Myanmar is beyond the scope of this background paper and has been described elsewhere[[24]](#footnote-24). That this turmoil has produced significant internal and external displacement, continuing until today in some areas, is obvious[[25]](#footnote-25). The needs arising from decades of conflict and under-investment are profound[[26]](#footnote-26) and have been described as a human security crisis[[27]](#footnote-27).

A series of ceasefires negotiated between the Government of Myanmar and ethnic armed groups in the course of 2011 and 2012 and work towards a national ceasefire agreement in 2013 and 2014 have given rise to hopes that prospects for durable solutions may emerge for refugees and internally displaced people who fled their homes as a result of the protracted conflict in south east Myanmar. There are currently indications that in certain areas, IDPs are beginning to return spontaneously to villages of origin (or locations nearby), and that refugees are engaging in informal, often extended, ‘go and see’ visits[[28]](#footnote-28).

Peace process

Myanmar has been affected by conflict, especially in its peripheral areas, almost since independence in 1948. There have been several attempts before to negotiate cease-fires between the Government and ethnic armed groups but these have never led to a permanent cease-fire or peace agreement[[29]](#footnote-29). Since late 2011, the Government has initiated a peace process with all remaining ethnic armed groups, with the intention of a national cease-fire and eventual peace agreement. A national cease-fire agreement is envisaged in 2014, leading to a “Panglong Conference” before the elections scheduled for October 2015. On a realistic view, the peace process is seen as extending beyond the 2015 elections, perhaps as long as 2020.

While the peace process goes on, on the ground the absence of active conflict is transforming the lives of people in the South-East. As noted below, UNHCR has observed return to abandoned villages and areas of origin by both IDPs and refugees. At the same time, a reduction in the most egregious forms of abuse and of predatory taxation is improving livelihoods, including through greater freedom of movement.

Human security

The misery of decades of conflict in South-East Myanmar has been described elsewhere. The legacy of this conflict can be seen in the extreme distrust of the Government by refugees, the heavy presence of the *Tatmadaw* in the South-East, the disconnexion of ethnic armed groups from conflict-affected people and the absence of the views of the displaced in the negotiations around ceasefire arrangements. Insecurity is cited by refugees as a key obstacle to return: while the number of incidents affecting civilians has decreased markedly there have been small-scale clashes[[30]](#footnote-30) and an upswing in land-mine related incidents[[31]](#footnote-31). Combined with slow progress in cease-fire negotiations and a lack of security sector reform even small-scale clashes become magnified and are well reported in the diaspora.

Access to many areas of the South-East by humanitarian agencies is still tightly controlled and difficult. A lack of access by humanitarian agencies does not inspire confidence that refugees and IDPs can safely return to their homes.

While the number of reported cases of Sexual and Gender-Based Violence is low, the South-East is associated with several factors commonly considered as drivers of SGBV globally, including (i) a history of protracted armed conflict, (ii) forced displacement, (iii) back-and-forth migration, (iv) trafficking, (v) pervasive and unchallenged patriarchal norms, and (vi) wide-spread impunity for perpetrators of sexual violence.

Decades of armed conflict have resulted in extensive landmine contamination across the South-East, primarily from anti-personnel mines. According to the International Campaign to Ban Landmines, Kayin and Bago states are particularly affected. Mine maps are not available and there is accordingly no comprehensive overview of affected areas. Interviews in the field and information from demining agencies indicate all infrastructure installations, from dam installations to individual electric poles, are potentially rigged. There is as of yet no formal agreement that prohibits the laying of new mines, although the practice has likely decreased during ceasefire talks. In the first quarter of 2014, however, there was a spike in the number of landmine incidents in East Bago.

A common problem in countries emerging from conflict is that both organised forces and non-state actors are tested to exercise effective command and control over idle soldiers and fighters. Without restricting access to weapons, armed opportunism may prove a successful coping strategy in a region characterized by uneven development and widespread rural poverty[[32]](#footnote-32). Regular reports of so-called splinter groups, small armed groups operating independently in non-state actor and mixed-control areas, continue to be a cause of concern. These groups cannot be distinguished from their established counterparts and engage routinely in intimidation, harassment, and physical violence against the civilian population, often in pursuit of ransom money. Their presence is particularly problematic in mixed-control areas as it draws the attention of the military, which villagers are just as eager to avoid.

The South-East is relatively safe from natural disasters, however with elevated risks for flooding in Hpa-An and Hlainbwe townships. Climate change will likely also affect coastal residents in Mon and Tanintharyi[[33]](#footnote-33). In Kayah and Kayin states, cash crops destroyed by flooding in mid-2013 had significant effects on food security well into 2014.

The exercise of authority in the South-East is largely fragmented between Union and state/regional governments, the military and non-state actors. This fragmentation presents significant challenges to rule of law, and by extension, to returns. For one, it raises questions on the potential for conflict of ‘laws’ that may affect beneficiaries’ ability to claim rights outside their ‘jurisdiction’, i.e. across non-state actor and government boundaries, for example relating to land tenure.

The 1982 Myanmar Citizenship Law lacks safeguards against statelessness and grants the competent authority far-reaching discretion in deciding who is and who is not a national. Individual civil servants are mandated to deprive anyone of citizenship whom they believe to have left the state permanently or to have acquired another nationality. The Myanmar Government has not publicly declared that they recognize the citizenships of refugees in Thailand and refugees have expressed corresponding concern over their citizenship status. It appears that the process of regaining citizenship by former exiles is long, complex and politically negotiable[[34]](#footnote-34).

Significant investment in creating the socio-economic conditions in the areas of refugee and IDP return is required. The majority of the refugees and IDPs come from an agriculture-based subsistence economy, characterised by relevant skills and a dependence on farm income with a limited market and few cash transactions and savings. Many villages have been destroyed and their productive assets lost. The infrastructure in these places of origin will need rehabilitation[[35]](#footnote-35). During returnee assessments, returnees have identified shelter, livelihoods, kitchen sets, food, schools, water points and health facilities as needed inputs. Water, health facilities and schools are identified as essential missing services by both returnees and host communities.

Conditions in potential areas of return present a series of challenges to sustainable repatriation or return. The areas from where most of the refugees and IDPs originate were abandoned and it appears that these locations offer limited life-sustaining activities. Some refugees, who had land prior to their flight to Thailand, have expressed the desire of going back to their places of origin. Others, including political leaders, may favour a return to designated resettlement sites. The younger generation may favour going to urban centres where they can pursue education and employment. There is also the possibility that refugees and IDPs would want to move to economically developed areas. Who controls the areas is an important determinant in the decision-making process. Additionally, it is suggested that UNHCR and the non-governmental organizations (NGOs) should also be present in the areas of return in order to assist with community-based assistance projects and also to monitor the reintegration process.

Land access is emerging as an important issue generally in Myanmar but its importance for refugee and IDP return cannot be overstated[[36]](#footnote-36). Land registration documents are held by township authorities in Myanmar. However, land tenure documents and deeds are not always recorded or respected and there are frequent reports of land expropriation (or “land grabbing”) by the Government, the *Tatmadaw*, non-state armed groups, and private companies, often resulting in internal displacement without appropriate guarantees of compensation. Although the reforms introduced by the Government in 2008 provide some additional security of land tenure, they still fail to adequately recognise widely used customary rights. The fact that many refugees and IDPs originate from areas under the influence/control of armed groups, where government systems for regulating land tenure have never been applied, is an additional complicating factor.

The sustainability of IDP (and potentially, refugee) returns is also still hampered by limited access to livelihood opportunities. At present, access to livelihood resources and training opportunities are scarce. Returning IDPs and refugees may have lost the productive assets needed to restart agriculture, while homes have been destroyed by the conflict or have fallen into disrepair.

Additionally, distances are often substantial between the Temporary Shelters in Thailand and potential return areas. Many of the places of origin of registered refugees in Thailand are particularly isolated and have received little investment in infrastructure. Investment in repatriation infrastructure, including transit centres or way stations, will be required in case of an organized repatriation movement.

The health infrastructure in the South-East remains substantially underserved with a lack of skilled personnel, facilities, basic equipment and supplies, including in terms of potentially life-saving reproductive health, malaria prevention and control and HIV services.

Public health issues need to be considered in repatriation of refugees. Malaria is endemic in prospective return areas, while malaria transmission has almost disappeared inside the Temporary Shelters. Without having developed immunity to the parasite, returnees will be particularly vulnerable to developing the most severe forms of the disease. Securing returnees’ access to medical diagnosis and effective treatment will be critical to avoiding increased mortality. Health services should be readily available to ensure the range of care, support and treatment to people with specific medical needs, such as tuberculosis patients or persons living with HIV (PLHIV).

The education sector is also substantially underserved and not of adequate standard, with a shortage of teachers and an inadequate number of primary schools within reasonable distance of many communities. Regular school attendance is hampered by education costs, distances, illness, work requirements, insecurity in conflict-affected areas and, for ethnic minority children, “language barrier”. Most children have limited opportunity to continue their education beyond primary school.

Access to safe drinking water, particularly in rural areas and during the dry season is uneven and in many locations insufficient, with those water sources available during the dry season located far away from human dwellings. Standards of sanitation are very low, with open defecation common and household latrines less than international standards.

While annual rainfall in the area is high, access to safe and clean water is limited. Water dries up in summer (March to May) in almost all hand-dug wells in areas of potential return. Shallow tube wells installed by the Government or by communities with very limited expertise and equipment are often dry within a short period. Field observations indicate that most rural areas depend on surface water such as rivers, ponds and unprotected open wells. Water is mostly collected by women and children who walk long distances to do so. Many schools and rural medical facilities are without running water. Sea-water intrusion in coastal areas and arsenic traces in a few areas are an issue. Most villages have hand-dug wells for water supply to the population but these wells are usually very shallow. Thus, during the hot and dry season, a large part of the population is forced to collect water from the same few functioning wells involving walking and carrying water over long distances. It also puts great pressure on the remaining water sources, in particular in villages that host additional - IDP - populations, and increases the risk of contamination.

Refugees

As of December 2013, The Border Consortium estimates the refugee population in the Temporary Shelters along the Thai/Myanmar border to number 119,156 people. This represents a decrease of 17,905 people over December 2012 or a net decrease of 8,861 people (7.1%). The long-term population trend is downwards. The majority of departures during 2013 were to third countries under a UNHCR resettlement programme (7,649 people), although significant numbers were said to have returned to Myanmar (4,389 people). This broadly corresponds with UNHCR estimates of 3,000 – 4,000 spontaneous refugee returns in 2013, based on monitoring on both sides of the border.

Of this number of 119,156, some 80,321 people (51.71%) are registered refugees, the remainder being unregistered since the Thai authorities closed registration of refugees in 2006[[37]](#footnote-37). While the registered refugees come from 122 townships throughout Myanmar, the majority (70,572 (of whom 52,276 are registered), or 2/3) originate from Karen/Kayin state, notably Hlaingbwe (16,841) and Hpapun (12,955). A profiling exercise to determine the intentions of the refugees in Thailand has been commissioned by UNHCR Thailand and has been carried out by the Mae Fah Luang Foundation under Royal Patronage since July 2013. Preliminary results show that very few respondents indicate a current intention to return to Myanmar, citing a lack of trust in the ceasefires and insecurity in conflict-affected areas, as well as concerns over livelihoods and basic services.

The importance of a UNHCR presence in countries of origin during voluntary repatriations has been recognised since the Algerian repatriation in 1961[[38]](#footnote-38). UNHCR has been present in South-East Myanmar since 2004, a time when discussions around a potential ceasefire agreement between the KNU and the Government opened a “window of opportunity” for voluntary repatriation of refugees[[39]](#footnote-39). Since 2013, UNHCR has increased its information gathering and dissemination on conditions in the South-East[[40]](#footnote-40) and has been monitoring spontaneous returns since mid-2013. By April 2014, UNHCR has identified 20 villages seeing refugee returns, from a total of 176 assessments across the South-East. The number of returnees verified does not represent the total number of returns for a number of reasons, including the desire of returnees to maintain a low profile, the large area to be covered combined with logistical problems, difficulties of access to non-state actor controlled areas and “do no harm” principles, whereby UNHCR will not conduct individual interviews with returnees in the presence of accompanying officials. Nonetheless, it is possible to detect greater back-and-forth movement between areas of origin and Thailand to the extent that it appears some people have “parallel lives” in both Myanmar and Thailand, spending considerable time in home areas while remaining anxious to keep a foot in the Thai camps.

The position of both the Government of Myanmar and the Royal Thai Government on refugee returns is that it is premature to contemplate organised refugee returns but that it is timely to lay the groundwork for future returns[[41]](#footnote-41).

The Karenni and Karen Refugee Committees have issued positions on the necessary pre-conditions for voluntary repatriation, including achievement of human rights-related benchmarks, a political settlement, security guarantees, land mine clearance, and voluntariness of return. The KRC statement makes reference to ‘relocated areas’, but not to freedom of choice as to destination of return. The KNRC statement makes reference to freedom of choice as to destination. Discussions between the refugee committees and the authorities in Myanmar have taken place or are planned and so far have focussed on the prospects for peace and security and access to basic services. Both the RTG and the refugee committees advocate UNHCR involvement in repatriations through a tri-partite agreement with the Government of Myanmar.

In the context of at least some earlier ceasefire arrangements, measures were undertaken (either at the time or subsequently) for the repatriation of refugees and/or the development of ‘resettlement’ schemes for IDPs and/or others linked to armed groups, involving the allocation of land and targeted humanitarian/development assistance[[42]](#footnote-42). It is important to look at past experience of ceasefire negotiations and how issues of displacement have been addressed. The very useful analysis contained in UNHCR Research Paper No.271 of how the government and armed groups have approached the issue of durable solutions in the past has implications for why broader coordination efforts and collaborative strategies become extremely complex and illustrates the limits of international assistance and protection efforts. Recent ceasefire agreements have begun to contain references to relocation sites for IDPs and refugees[[43]](#footnote-43) and some non-state actors have begun to request humanitarian agencies to register with them and/or seek approval of activities in areas controlled by them[[44]](#footnote-44).

A small but significant proportion of the refugees in the Temporary Shelters in Thailand come from ethnic or religious minorities who may face particular obstacles in returning to Myanmar[[45]](#footnote-45).

Group resettlement of refugees from Thailand has now closed but significant numbers remain in the resettlement “pipeline” and will depart this year and next to third countries. In addition, individual resettlement will continue to remain an important protection tool. Local integration into Thailand, while formally resisted, looks likely to play an increasing role in a situation where 1,500 people cross every second day from Myanmar into Thailand through Myawaddy alone in search of work.

While the MFL profiling exercise reveals only several thousand intend to return to Myanmar in the near future, that narrative is belied by the TBC figures for the number of those returning already and UNHCR’s returnee monitoring. The back-and-forth movement detected by UNHCR is likely to solidify and accelerate as stability returns to the South-East. Within the refugee population, a group of about 77,000 registered refugees have not chosen resettlement as a durable solution and it is assumed that they want to return to Myanmar. At the same time, it is assumed that the disappearance of unregistered refugees from the camp deeper into Thailand will accelerate this year. Finally, another important assumption about returns to Myanmar is that the majority will take place in a spontaneous, self-organised manner without outside assistance and the areas of return are likely to be mainly within non-state actor controlled areas.

IDPs

A Peace, Development and Conflict-Sensitivity Analysis for the Myanmar UN Country Team[[46]](#footnote-46) described population mobility, including the return of refugees and IDPs, as one of the issues holding the greatest risk for violent conflict in Myanmar. The magnitude of this mobility is hard to gauge. A Refugee Studies Centre Working Paper by Ashley South[[47]](#footnote-47) notes that “the subject of IDP numbers is problematic”. The paper says that counting only people forcibly displaced since 2004, the number of IDPs in eastern Burma (by 2007) would be no more than 100,000 people, although the number of people previously displaced for whom no durable solution has been found must be calculated in the millions. The last Internal Displacement Monitoring Centre (IDMC) report on Myanmar[[48]](#footnote-48) observes that there are no comprehensive figures of the numbers of IDPs due to armed conflict or human rights violations and it is very difficult to assess the scale of internal displacement in Myanmar. The report says that available figures only cover IDPs living in rural areas of South-East Myanmar in NSA-controlled areas and there is no way of independently verifying the numbers.

The number of IDPs said to remain in South-East Myanmar at the end of 2012 is 400,000 people, including Shan and Bago. In Kayah, Kayin, Mon and Tanintharyi, the number was put at 230,700 people[[49]](#footnote-49). The Border Consortium, which provided these figures, does not intend to update them, placing an emphasis now not on displaced persons but on the broader category of “conflict-affected” people. Based on its monitoring of spontaneous returns, and previous return patterns, UNHCR estimates that around 10% of these IDPs are likely to have returned in 2013.

The IDMC gives a figure for the South-East (including Shan) of 250,000 as at December 2013, significantly lower than the TBC figure, although it is unclear from where that figure is derived.

Even the highest given numbers for IDPs reveal that in absolute and relative terms the figures are low. Nonetheless, a focus on numbers does not give an accurate picture of the current situation or help with an understanding of the historical situation and the needs of IDPs or former IDPs. Based on 2011 Ministry of Health data, which puts the population in the South-East at 10 million, the proportion of internally displaced people in general based on the TBC figures is less than 3%. Using the TBC figures, the percentage of people internally displaced in each state ranges from nearly 10% in Kayah, 6.2% in Kayin, 4.5% in Tanintharyi to 1.6% in Mon. Nonetheless, in light of the history of the conflict it would be safe to assume that greater numbers of people have been displaced at some point[[50]](#footnote-50).

UNHCR convened a series of meetings with partners between January-March 2014 in Yangon, Mon, Kayin, Kayah and Tanintharyi to look at the numbers, condition and location of IDPs in those areas. General conclusions drawn[[51]](#footnote-51) are:

* There are significant deficiencies in understanding the definition of IDP, refugee, returnee and host community, magnified by a conceptual struggle in applying these international definitions to the mixed, cyclical, repeated and diverse patterns of displacement and movement seen in the South-East, which are quite difficult to explain in clear terms. The lack of understanding and consistent application of definitions is so significant as to render discussion of numbers, locations and condition of IDPs almost meaningless.
* Some attempt has been made to describe IDPs at national level, as follows:
	+ Ashley South suggests the following typology of IDPs[[52]](#footnote-52):
		- Type 1: armed conflict-induced displacement
		- Type 2: state-society conflict induced displacement, e.g. because of occupation or “development” activities
		- Type 3: livelihood/vulnerability induced displacement, e.g. because of economic mismanagement
	+ The Karen Baptist Convention categorise IDPs as follows:
		- IDPs staying in relocation sites and cultivating their farms/gardens at home
		- Split families, where younger members are in the relocation sites and older members in the original village
		- IDPs staying in relocation sites, without access to farms/gardens because they have been sold or occupied by others, e.g. plantations, or the land has been taken over by new settlement
		- IDPs staying in relocation sites who do not farm or garden for other reasons
		- IDPs in “hidden sites”
* Most organisations would appear to view people as IDPs if they were displaced by armed conflict or state-society conflict. A minority (e.g. HURFOM) are also now including recent development-induced displaced. There appears to be a consensus among local agencies of the categories of IDPs as described by the KBC.
* The history of the conflict in South-East Myanmar is of displacement as a coping mechanism, with people often being repeatedly displaced for short periods[[53]](#footnote-53), with no clear place of origin to which they may return. Nonetheless, the history of displacement also reveals movement to more stable areas and new settlement as consistent patterns and while there is a clear attachment to “the land” it is unclear how much this translates into “a place”.
* However, there is still a strong tendency to describe someone as an “IDP” if they had been displaced, even if they had “returned” or moved elsewhere. This raises a suggestion both that numbers are flow data rather than stock data and they are very outdated.
* A lack of consistent and meaningful access to IDP populations in NSA-controlled areas inhibits data collection. This problem has not been overcome by the creation of networks bridging the divide or information-sharing among partners.
* There is no consistent view of the condition of IDPs. Research tends to suggest the *Tatmadaw* counter-insurgency strategy (the “Four Cuts”) was particularly brutal in its impact on civilians but there was a consensus of a steadily improving situation in the South-East since 2011 owing to greater freedom of movement, much-reduced military operations and a reduction in the most egregious forms of human rights violations. A caveat to that description is that economic development is both causing displacement (e.g. gold-mining in Mon state) or is an obstacle to return (e.g. the growth of plantations in Tanintharyi).
* Most organisations do not have a displacement focus and do not collect data on IDPs because it is not important for their programmes, given the relative size of displaced populations. Even those organisations, like TBC, that do work with displaced persons have shifted emphasis from IDPs to conflict-affected communities because they see no difference between the needs of protracted IDPs and non-displaced people in the same area. As the April 2013 Desktop Review of Needs in Conflict-Affected Areas of Myanmar, UNHCR village profiles and the EU-funded Socio-Economic Analysis of Kayah make clear, the needs of people in the South-East are extensive.
* Most discussions of IDPs and durable solutions are based on a static view of society as unchanging and livelihoods as immutable, disregarding forces of modernization and economic development, such as rural flight[[54]](#footnote-54). In this view, it is assumed without question that IDPs will “return” home to subsistence farming activites, although there may be no real basis for this point of view[[55]](#footnote-55). Newspaper reports of labour shortages in agriculture and high levels of out-migration suggest the reality is of a growing detachment from farming livelihoods, which will only accelerate as industries establish themselves here[[56]](#footnote-56).

Migrants

ASEAN estimates GDP per capita in Thailand as $5,679 compared to $848 in Myanmar. An important and recent survey of migrants in Thailand[[57]](#footnote-57) reveals that 76.5% of the 2.3m Myanmar people working there are from the South-East, with a high percentage of Bamar among them. Among Shan people surveyed, 22.6% said that security factors had motivated their migration, with 7.2% of Kayin people surveyed saying that.

Out-migration accounts for 36% of people in some areas of the South-East- some 68.7% of migrants come from just 30 townships. As migrants are working-age people, this means that in some areas a large proportion of working-age people are missing and their places are being taken by people from other areas of Myanmar.

The flow of remittances from migrants to the South-East and Shan is estimated at $1.4bn annually, an average of $962 a year[[58]](#footnote-58). The major part of remittances (83%) goes through unofficial channels.

The demand for migrant labour in Thailand is expected to increase to 5.36m workers by 2025 while, at the same time, economic reforms in Myanmar are expected to deliver 10m new non-agricultural jobs by 2030. While these are strong factors pushing and pulling in different directions it should be noted that migrant workers from Myanmar see working in Thailand as a temporary phenomenon and indicate a high willingness to return home (79.9%). The length of stay in Thailand is an important factor in determining willingness to return home, with those staying longer in Thailand being less willing to return to Myanmar.

In general, the population of the South-East can be seen as highly mobile. With the factors identified in the IOM/Chulalongkorn Survey it can be expected that migration will only accelerate in the near future. There are clear implications flowing from this for the planning of durable solutions in the South-East, not least because of the sums being remitted from Thailand and the high levels of out-migration from some areas.

1. A/63/881-S/2009/304 [↑](#footnote-ref-1)
2. The Brookings Institution-University of Berne Project on Internal Displacement, April 2010 [↑](#footnote-ref-2)
3. Article 1A(2) of the Convention Relating to the Status of Refugees 1950, UNTS No.2545, vol.189, p.137 [↑](#footnote-ref-3)
4. The Scope and Content of the Principle of Non-*refoulement*, Opinion of Sir Eliahu Lauterpacht, CBE QC and Daniel Bethlehem, University of Cambridge, 20 June 2001, para.193 et seq [↑](#footnote-ref-4)
5. Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 (11 February 1998) [↑](#footnote-ref-5)
6. Art.12 International Covenant on Civil and Political Rights 1966, UNTS vo.999, p.171 [↑](#footnote-ref-6)
7. Ch.1, art.1 UN General Assembly Resolution 428 (V) of 14 December 1950 [↑](#footnote-ref-7)
8. Principle 6.3 [↑](#footnote-ref-8)
9. UN Doc. A/HRC/13/21/Add.4 (2010). [↑](#footnote-ref-9)
10. Art.12, ICCPR [↑](#footnote-ref-10)
11. Speech of President Thein Sein to the Royal Institute of International Affairs, Chatham House, London, 15 July 2013; Sustaining Myanmar’s Transition: Ten Critical Challenges, The Asia Society, 24 June 2013 [↑](#footnote-ref-11)
12. IASC Framework on Durable Solutions, p. 6, para. 8. [↑](#footnote-ref-12)
13. Global Cluster Working Group on Early Recovery [↑](#footnote-ref-13)
14. Ch.II, Statute of the Office of the High Commissioner for Refugees; Executive Committee Conclusion No.36 (XXXVI)-1985, para. (b); No.79 (XLVII)- 1996, para.(b) [↑](#footnote-ref-14)
15. Principle 3, Guiding Principles on Internal Displacement [↑](#footnote-ref-15)
16. Principle 25, Guiding Principles on Internal Displacement [↑](#footnote-ref-16)
17. Principle 27, Guiding Principles on Internal Displacement [↑](#footnote-ref-17)
18. Executive Committee Conclusion No. 18 (XXXI)-1980; Principle 28.1, Guiding Principles on Internal Displacement; UNHCR Handbook on Voluntary Repatriation, Geneva, 1996 [↑](#footnote-ref-18)
19. References to “voluntary repatriation” can be found in the Statute of the Office of the High Commissioner for Refugees and is a corollary of the principle of non-*refoulement*: see “Back to where you once belonged: an historical review of UNHCR policy and practice on refugee repatriation”, UNHCR/PDES/2013/14, September 2013 [↑](#footnote-ref-19)
20. Art.19(2) International Covenant on Civil and Political Rights 1966, UNTS vol.999, p.171 [↑](#footnote-ref-20)
21. Article 2, Universal Declaration of Human Rights 1948, UN General Assembly Res.217A(III) of 10 December 1948 [↑](#footnote-ref-21)
22. Desktop Review of Needs and Gaps in Conflict-Affected Parts of Myanmar, Myanmar Peace Centre, 22 April 2013 [↑](#footnote-ref-22)
23. Local to Global Protection in Myanmar (Burma), Sudan, South Sudan and Zimbabwe (Humanitarian Practice Network Paper No.72, February 2012). [↑](#footnote-ref-23)
24. See Burma/Myanmar: what everyone needs to know, David I. Steinberg, Oxford University Press, 2010 [↑](#footnote-ref-24)
25. Ceasefires and durable solutions in Myanmar: a lessons learned review, Research Paper No.271, Kim Joliffe and Ashley South, UNHCR/PDES, Geneva, March 2014 [↑](#footnote-ref-25)
26. Desktop Review of Needs and Gaps in Conflict-Affected Parts of Myanmar, Myanmar Peace Centre, 22 April 2013 [↑](#footnote-ref-26)
27. See Steinberg, above [↑](#footnote-ref-27)
28. UNHCR Return Assessments Dashboard, April 2014 [↑](#footnote-ref-28)
29. The Current Status of the Ceasefires in Myanmar, Richard Horsey, SSRC Conflict Prevention & Peace Forum, 19 June 2013 [↑](#footnote-ref-29)
30. Truce or Transition? Trends in human rights abuse and local response in Southeast Myanmar since the 2012 ceasefire, Karen Human Rights Group, May 2014 [↑](#footnote-ref-30)
31. Internal UNHCR monitoring, April 2014 [↑](#footnote-ref-31)
32. The Transnational Institute has already written extensively about existing “conflict entrepreneurship” [↑](#footnote-ref-32)
33. Myanmar Department of Meteorology and Hydrology, in DR 2013, p. 7 [↑](#footnote-ref-33)
34. Burmese Govt Reviews Citizenship Applications for Former Exiles, The Irrawaddy, 12 May 2014 [↑](#footnote-ref-34)
35. South-East Myanmar: a report on village profiles, UNHCR, September 2013 [↑](#footnote-ref-35)
36. Bridging the HLP Gap: the need to effectively address Housing, Land and Property rights during peace negotiations and in the context of refugee/IDP return, Displacement Solutions, June 2013 [↑](#footnote-ref-36)
37. UNHCR ProGres data by township, 31 August 2013 [↑](#footnote-ref-37)
38. General Assembly Res.1672 (XVI) 18 December 1961 [↑](#footnote-ref-38)
39. Durable Solutions for Myanmar Refugees in Thailand, Report of the UNHCR-NGO Consultations Process, October 2004 [↑](#footnote-ref-39)
40. See [www.commonservices.info](http://www.commonservices.info) [↑](#footnote-ref-40)
41. Statement of HE Mr Thani Thongphakdi, Ambassador and Permanent Representative of Thailand to the United Nations and Other International Organisations at Geneva at the High Level Segment of the Executive Committee of the High Commissioner’s Programme, Geneva, 30 September-4 October 2013 [↑](#footnote-ref-41)
42. Ceasefires and durable solutions in Myanmar: a lessons learned review, Research Paper No.271, Kim Joliffe and Ashley South, UNHCR/PDES, Geneva, March 2014 [↑](#footnote-ref-42)
43. See the seven-point agreement between the KNPP and the Government of Myanmar, June 2013 [↑](#footnote-ref-43)
44. KNU Policy on Humanitarian Operation in Ceasefire Zone, March 2013; KNPP discussions with humanitarian coordination group, Loikaw, 2013 [↑](#footnote-ref-44)
45. Three Sides to Every Story: a profile of Muslim Communities in the Refugee Camps on the Thailand Burma Border, Thailand Burma Border Consortium, July 2010 [↑](#footnote-ref-45)
46. March 2013 [↑](#footnote-ref-46)
47. No.39, February 2007 [↑](#footnote-ref-47)
48. 19 July 2011 [↑](#footnote-ref-48)
49. Poverty and Displacement in South-Eastern Myanmar, The Border Consortium, 2012 [↑](#footnote-ref-49)
50. RSC Working Paper No.39 [↑](#footnote-ref-50)
51. Synthesis Report on IDP meetings in the field, April 2014 [↑](#footnote-ref-51)
52. RSC Working Paper No.39 [↑](#footnote-ref-52)
53. RSC Working Paper No.39 [↑](#footnote-ref-53)
54. Press reports in 2013 referred to farmers’ complaints that they could not find sufficient labour for cultivation of paddy [↑](#footnote-ref-54)
55. RSC Working Paper No.39 [↑](#footnote-ref-55)
56. see 12 March 2014 press reports of 30,000 jobs to be created by the relocation of Hong Kong-based garment industries to Thilawa SEZ [↑](#footnote-ref-56)
57. Changes in the Migration Patterns of Myanmar Migrants and their Impacts on Thailand, International Organisation for Migration Thailand and the Asian Research Centre for Migration, Chulalongkorn University, December 2013 [↑](#footnote-ref-57)
58. Migration, Livelihoods and the Impacts on Myanmar: analysis of assessment findings, IOM, 24 February 2014 [↑](#footnote-ref-58)