



MYANMAR NATIONAL LAW AND POLICY REPORT

CONSULTATION DRAFT 2020

Displacement in the Context of Disasters and Climate Change

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1 INTRODUCTION

As reflected in the *Sendai Framework for Disaster Risk Reduction (SFDRR)*¹ and the *Paris Agreement*,² and recent statements and declarations at the Global Platform on Disaster Risk Reduction (GPDRR)³ and the Asia Ministerial Conference on Disaster Risk Reduction (AMCDRR),⁴ displacement in the context of disasters and climate change is increasingly being seen by actors concerned with disaster risk management at international, regional and national levels as a phenomenon requiring concerted attention. The series of country reports of which this document is a part address the policy objective of further integrating displacement considerations into wider disaster risk management and climate change adaptation measures at the sub-national level.⁵ The reports present the results of a mapping exercise in which national law and policy was reviewed in order to identify existing references to different aspects of displacement, including prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and facilitation of durable solutions. Setting out the extent to which sub-national law and policy presently addresses these different aspects of displacement provides a helpful starting point for future engagement with relevant actors on ways of further integrating displacement considerations.

Only documents that are expressly related to disasters, climate change and displacement are considered in this report. Due to the cross-cutting, whole-of-society impact of many disasters, a wide range of other legal and policy frameworks may well have relevance for specific kinds of engagements relating to disaster displacement or disaster risk management and climate change adaptation more generally. However, in order to retain the clear focus on addressing the extent to which displacement is already integrated into sub-national law and policy, a restrictive approach was taken in the review.

1.1. A human rights-based approach

In line with Paragraph 19(c) of the SFDRR,⁶ Paragraph 28 of the *Co-Chairs' Summary* of the GPDRR 2019, and Paragraph 11 of the *Ulaanbaatar Declaration* at the AMCDRR, the reports embrace a human rights-based approach to disaster displacement. In brief, this approach sees states as having the primary responsibility for protecting persons from harm associated with displacement in the context of disasters and climate change. It recognises the 1998 Guiding Principles on Internal Displacement, as well as the wider body of international human rights law underpinning those Principles, as foundational. Having a legal and policy framework in place that incorporates core principles and defines roles and

1 *Sendai Framework for Disaster Risk Reduction (SFDRR)*, see for example paras. 28(d), 30(l), 33(h, j, m).

2 *Paris Agreement*, see Article 8, which references the Warsaw International Mechanism, under which a Taskforce on Displacement was created <unfccc.int/wim-excom/sub-groups/TFD>, visited on 1 April 2019

3 *Global Platform on Disaster Risk Reduction 2019, Co-Chairs' Summary (GPDRR)*, see paras. 6, 12 and 28, <https://www.preventionweb.net/files/58809_chairsummary.pdf>, visited on 1 April 2019

4 Para. 1 of the *Ulaanbaatar Declaration* at the 2018 Asian Ministerial Conference on Disaster Risk Reduction (AMCDRR) expresses "deep concern at the continuing impact of disasters in the region, resulting in recurrent loss of human lives and livelihoods, displacement of people, and environmental, economic, social and material damages", <www.preventionweb.net/files/56219_ulaanbaatardeclarationfinal.pdf>, visited on 1 April 2019

5 GPDRR, *supra* note 3, para. 28: "Governments and the international community must do more to reduce the risk of disaster displacement before disasters strike. Disaster risk reduction strategies and policies should address the drivers and consequences of disaster displacement and contribute to durable solutions."

6 SFDRR, *supra* note 1, para. 19(c) reads: "[m]anaging the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development".

responsibilities of responsible actors also contributes to transparency and accountability. Further, a human rights-based approach recognises that disasters do not affect all persons in the same way, and highlights the differential exposure and vulnerability that manifests along intersecting gender, ethnicity, age, disability and other lines. The gendered nature of displacement is emphasised, as is the need to tackle structural barriers to equality in order to strengthen resilience to disaster risk. It follows that consultation, participation and equal access to information are cornerstones of the approach. The approach can be condensed into four elements, namely:

- governance: transparency and accountability
- procedural: participation, consultation and access to information
- substantive: express focus on fundamental rights
- non-discrimination and equality: focus on the particular situation of traditionally marginalised groups

More details on the international standards and guidelines that reflect this approach are contained in the Background Brief on Key International Standards and Guidelines Relating to Displacement in the Context of Disasters and Climate Change, which accompanies this series of country policy reports.⁷

The report has four substantive sections. First, a snapshot of the numerical scale of disaster displacement in the country is presented, drawing on data from the Internal Displacement Monitoring Centre (IDMC) and the EM-DAT database. Next, in the interests of connecting the analysis to the relevant wider human rights law context, disaster-specific observations from human rights monitoring bodies and mandate holders under the UN system are highlighted. Then, the domestic law and policy framework is presented and analysed against a set of core principles concerning prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and the facilitation of durable solutions. Finally, reflecting on this material, a concluding section summarises strengths and areas inviting closer engagement by relevant actors.

The intended audience of this report series includes domestic actors with responsibility for disaster risk reduction (DRR) and management (DRRM), climate change adaptation (CCA), and protection of persons in situations of climate- and disaster-related displacement at the national and sub-national level. It is hoped that these actors will find value in a consolidated overview of the domestic legal and policy framework from a human rights-based approach, read alongside the Background Brief on international standards and guidelines, not least in light of the imperative under the SFDRR to address disaster risk through “promoting and protecting all human rights”.

It is also hoped that civil society, UN, and intergovernmental and academic actors at (sub) national, (sub)regional and international levels will find the series of country reports of interest and value. The compendium of which this report is a part provides a depth of insight into how different countries across the region are working to address the pressing challenge of displacement in the context of disasters and climate change. It is hoped that the compendium of reports will provide material that contributes to an enhanced appreciation of the relevance of human rights to addressing disaster displacement, the exchange of good

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Available at: rwi.lu.se/disaster-displacement/.

practices, and the further integration of displacement into existing disaster risk reduction and climate change adaptation initiatives.

2 Displacement in Numbers

Number of disasters and people affected in the last ten years (2009–2018)

Hazard	Number	People affected ⁸
Earthquakes	3	23,915
Epidemic	1	0
Floods	14	2,987,014
Landslides	8	147,611
Storms	5	467,525
TOTAL	31	3,626,065
Source: < public.emdat.be >.		

Flooding and storms are the hazards that affect the greatest number of people in Myanmar, followed by landslides. Widespread flooding and landslides across 12 of Myanmar's 14 states and regions in 2015, caused by Cyclone Komen, resulted in the country's highest number of new disaster displacements between 2009 and 2018, totalling 1.6 million people (three per cent of Myanmar's total population in 2015).⁹ Almost all of the displaced had reportedly returned to their villages of origin by the end of September, leaving around 10,000 people in evacuation centres, predominantly in Sagaing Region and Chin state, awaiting relocation.¹⁰ Flooding continued to be a driver of disaster displacement in 2016, temporarily displacing around half a million people – the second highest in a ten-year period.¹¹ In 2017, monsoon-induced flooding was once again a main driver of disaster displacement, displacing over 300,000 people between 1 July and 12 September.¹²

8 'Affected' means "[p]eople requiring immediate assistance during a period of emergency, i.e. requiring basic survival needs such as food, water, shelter, sanitation and immediate medical assistance", source: *ibid*.

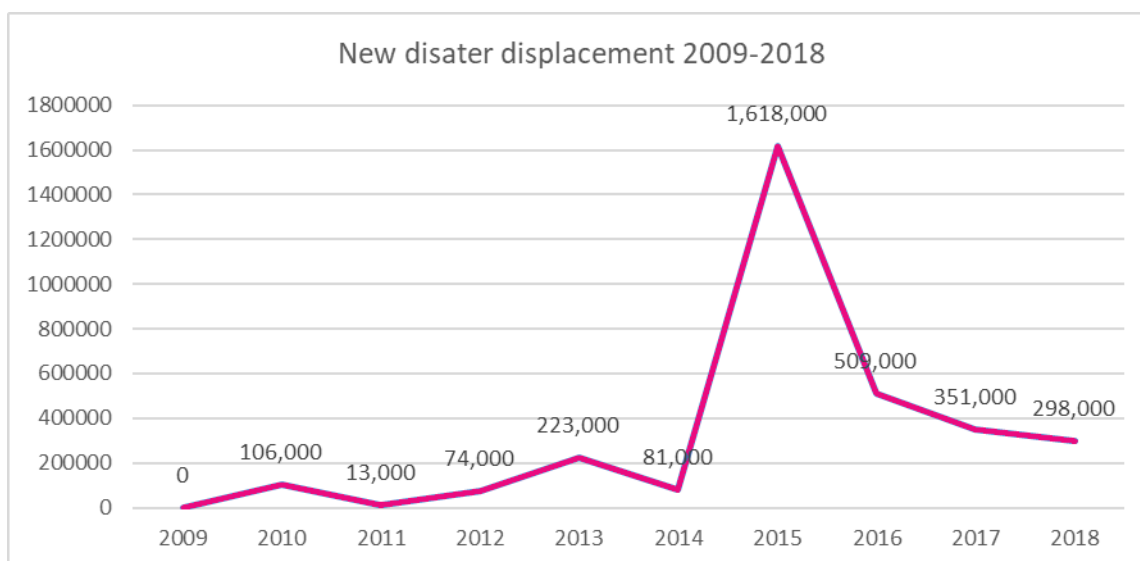
9 Sources: Internal Displacement Monitoring Centre (IDMC), Global Internal Displacement Database (IDMC, 2018) <www.internal-displacement.org/countries/myanmar>, visited on 1 April 2019; The World Bank, *World Bank Open Data: Population, Total: Myanmar* (The World Bank, 2015), <data.worldbank.org/indicator/SP.POP.TOTL?end=2017&locations=MM&name_desc=false&start=2015&view=chart>, visited on 1 April 2019; International Committee of the Red Cross (ICRC), International Federation of Red Cross and Red Crescent Societies (IFRC) and Myanmar Red Cross Society, 'Six months after the Myanmar floods, hundreds of thousands assisted as Red Cross continues to support affected communities' (ICRC, IFRC and Myanmar Red Cross Society, 2016), <reliefweb.int/report/myanmar/six-months-after-myanmar-floods-hundreds-thousands-assisted-red-cross-continues-0>, visited on 18 July 2019.

10 Sources: IDMC and The World Bank, *supra* note 10.

11 UN Office for the Coordination of Humanitarian Affairs, 'Humanitarian Bulletin: Myanmar' (UNOCHA, 2016), pp. 3–4, <reliefweb.int/sites/reliefweb.int/files/resources/Myanmar%20Humanitarian%20Bulletin%20Issue%203%20-%20July-Sep%202016.pdf>, visited on 18 July 2019.

12 UN Office for the Coordination of Humanitarian Affairs, 'Humanitarian Bulletin: Myanmar' (UNOCHA, 2017), p. 10, <reliefweb.int/sites/reliefweb.int/files/resources/Myanmar%20Humanitarian%20Bulletin%20June-Sept_220917_FINAL.pdf>, visited on 18 July 2019.

The annual number of new displacements over the last ten years is reflected below.



Source: <www.internal-displacement.org/database/displacement-data>.



Myanmar floods, August 2015. Photo by save the children floodlist. Source : articlebio.co

With substantial displacements triggered by a variety of hazards, especially by flooding and droughts that will only worsen with climate change, how Myanmar approaches the protection of persons from displacement, during evacuation, and throughout displacement and the facilitation of durable solutions has implications for the enjoyment of a range of human rights, including the rights to life, shelter, property, food, health, physical security, livelihoods and many more. Section 3 considers what human rights treaty monitoring bodies and mandate holders have recommended in terms of Myanmar's approach to disaster risk reduction and climate change adaptation generally. Section 4 then considers in closer detail

the legal and policy framework currently in force in the country, with a focus on measures that address all phases of the displacement cycle.

3 Recommendations from Human Rights Monitoring Bodies

A human rights and gender-equal approach to law, policy and practice on displacement in the context of disasters and climate change may benefit from a grounding in existing recommendations from human rights monitoring bodies. Based on a review of Concluding Observations from the most recent periodic review before treaty monitoring bodies and other mechanisms within the UN system, coupled with the reports of various Special Rapporteurs, a series of country-specific recommendations relating to climate change adaptation and disaster risk reduction and management has been consolidated.

Myanmar is party¹³ to the following international human rights treaties of relevance to displacement in the context of disasters and climate change:

- International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)
- Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)
- Convention on the Rights of the Child 1989 (CRC)
- Convention on the Rights of Persons with Disabilities 2006 (CRPD).

The ICESCR has not yet reported on Myanmar, and the Universal Periodic Review (UPR)¹⁴ working group's report does not mention disaster or climate change. The report makes brief references to displaced persons, albeit mainly in relation to the Rohingya crisis.¹⁵ The next UPR cycle for Myanmar is scheduled to begin in 2020. The CEDAW, CRC and CRPD committees comprehensively address displacement, albeit mainly in the context of Myanmar's conflict rather than in disaster and climate change contexts. Nevertheless, disaster and climate change are briefly covered in the reports. These reports are addressed in turn below.

The CEDAW Committee, in its Concluding Observations, expresses concerns about the lack of

“comprehensive law guaranteeing protection against forced displacement or programmes focusing on women who are vulnerable to forced evictions ...”¹⁶

13 United Nations Human Rights Office of the High Commissioner, Ratification of 13 Treaties: Myanmar (OHCHR, 2019), <indicators.ohchr.org/>, visited on 1 April 2019

14 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar* (23 December 2015), A/HRC/31/13, <documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>, visited on 1 April 2019.

15 UN Human Rights Council, *supra* note 15, paras. 133–134, 143.121–143.122, 144.30, 145.68–145.69.

16 See CEDAW, Concluding Observations, CEDAW/C/MMR/CO/4-5 (25 July 2016), para. 14(e), <tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FMMR%2FCO%2F4-5&Lang=en>, visited on 1 April 2019

In response the CEDAW Committee recommends the State party to:

“[e]nact comprehensive legislation that protects women, in particular women belonging to various ethnic minority groups ... from forced displacement”.¹⁷

The Committee also argues that the protracted displacement of women and girls, mainly of Kaman and Rohingya background, has led to their living under oppressive conditions with limited access to basic services, including education, employment and health care, and restricted their ability to move freely.¹⁸

Taking stock of the protracted displacement of Rohingya women and girls, the CEDAW Committee, in its Concluding Observations, focuses extensively on internally displaced people, specifically displaced Rohingya women and their families. The Committee initially reiterates its regret over:

“the continuous absence of a comprehensive law guaranteeing protection against forced displacement and programmes focusing on women who are vulnerable to forced evictions, in particular those belonging to ethnic minority groups”.¹⁹

The Committee further echoes its past recommendation that the State party

“enact comprehensive legislation that protects women from forced displacement, in particular women belonging to various ethnic minority groups”.²⁰

Moreover, the Committee also notes the information provided by the State party about the construction of reception centres in Taung Pyo Let We and Nga Khu Ya and the transit camp at Hla Phoe Khaung, and its readiness since January 2019 to receive ‘verified returnees’. The Committee expresses concern that:

“[t]he Memorandum of Understanding (MoU) of June 2018 between the State party, United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees for the safety, reception and reintegration of returnees for the safety, reception and reintegration of returnees and the arrangement on return of displaced person from Rakhine State signed between the State party and Bangladesh on 23 November 2017, and aimed at guiding the coordination and implementation of the repatriation process are not publicly available documents, and it is unclear to what degree they comply with international human rights and refugee law, in particular the principles of voluntary return in safety and dignity”.²¹

“The construction of resident centres and transit camps enclosed by high barbed-wire perimeter fencing, resemble internment camps, and Rohingya may be at risk of remaining there indefinitely, in a situation reminiscent of the 2012 IDP camps in and around Sittwe where Rohingya women and girls have remained for years; and the ones who remained may be forced into confined or segregated communities”.²²

17 *Ibid.*, para. 15(c).

18 *Ibid.*, para. 44(a).

19 CEDAW, Concluding Observations, CEDAW/C/MMR/EP/CO/1 (8 March 2019), para. 19, <http://internet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMMR%2fEP%2fCO%2f1&Lang=en>, visited on 1 April 2019

20 *Ibid.*, para. 20.

21 *Ibid.*, para. 49(a).

22 *Ibid.*, para. 49(c).

The Committee recommends that the State party:

“[e]nsure that refugee and displaced Rohingya women and girls are not forced into segregated camps, which could result in the forcible internment of the Rohingya population in the longer term, and that they may freely choose where they are resettled, ensuring that special efforts are made to ensure the full participation of returned Rohingya women and their families in the planning and management of resettlement programmes”.²³

The Committee also notes the particular difficulties that may be encountered by Rohingya women and girls attempting to return to their places of origin, as the government intends to confiscate their land under the *Naturall Disaster Management Law 2013*. It states that:

“refugee and internally displaced Rohingya women and girls may not be able to return to their places of origin if they wish to, following the security “clearance operations”, which resulted in the burning of an estimated 300 Rohingya villages, as the government announced it would confiscate the land in Rohingya villages under the Natural Disaster Management Law of 2013 which defines in article 2 (b) natural disaster as “natural or man-made accidents or negligence such as fire”, and provides that “burnt lands become ... government managed lands”.²⁴

The Committee recommends:

“that the State party protect Rohingya land from confiscation by any government entity or private actor; and ensure that affected Rohingya women and girls may return and resettle, on a voluntary basis, to their previously inhabited lands; and further refrain from implementing the Natural Disaster Management Law of 2013 in a way that dispossesses Rohingya women and girls of their property”.²⁵

Furthermore, the Committee underscores the difficulties in providing adequate protection to returnees and displaced persons without access to Northern Rakhine State by the UN’s human rights and humanitarian personnel²⁶. In response, the Committee recommends that:

“the State party grants unrestricted access to Northern Rakhine State to UN human rights mechanisms and humanitarian agencies, funds and programmes to conduct needs assessments and seeks their cooperation in the planning and implementation of the safe, voluntary and dignified return and resettlement of refugee and internally displaced Rohingya women and their families, in order to create a climate free from want and fear”.²⁷

The Committee states that:

“historical discrimination of the Rohingya community prevents the empowerment of Rohingya women and girls and is deeply concerned about the short, medium and long-term consequences of the violence and displacement endured by Rohingya women and girls and in particular the impact on the enjoyment of their human rights to health, education, property, participation in community life and

23 CEDAW, *supra* note 20, para. 50(c).

24 *Ibid.*, para. 51.

25 *Ibid.*, para. 52.

26 *Ibid.*, para. 53.

27 CEDAW, *supra* note 20, para. 54.

access to economic opportunities, and about the lack of information on measures taken to assist their rehabilitation, including adequate compensation”.²⁸

Additionally, the Committee notes that:

“the implementation of the Maternal and Child Cash Transfer Programme in Rakhine State, the establishment of the Case Management System and provision of cash assistance to survivors and the opening of the One Stop Women Support Centres for providing social, including psychological, support to survivors in all states and regions, but regrets the lack of information about how these social programmes will specifically benefit Rohingya women and girls, including refugees, internally displaced and those living in Northern Rakhine State”.²⁹

The Committee recommends that:

“the State party, as part of its rehabilitation and economic reintegration efforts, ensure the full and meaningful participation of Rohingya women and girls in the planning and management of development and investment projects. It further recommends that the State party ensure that Rohingya women and girls, including those who took refuge in Bangladesh or were displaced from their places of residence and remain living in Northern Rakhine State have full access to the social programmes mentioned above, without discrimination”.³⁰

While the CEDAW Committee mainly addresses displacement in relation to the Rohingya crisis, many observations and recommendations concerning non-discrimination, right to participation, forced displacement, voluntary return and access to social services can be applied to displaced persons in the disaster and climate change contexts.

Noting the heightened vulnerabilities of children related to displacement in Myanmar in 2004, the CRC Committee, in its Concluding Observations, expresses concern at:

“the lack of adequate social policies that enable families to be in charge of protecting their children’s rights, and the disintegration and displacement of families and communities of ethnic minority groups”.³¹

The Committee recommends that the State party:

“introduce programmes to support families and, in particular, parents in the performance of their parental responsibilities, especially with respect to ethnic minorities and other vulnerable groups, and refrain from activities that may lead to the disintegration or displacement of families”.³²

In relation to internally displaced children, the Committee notes that

“a large number of returnees from Bangladesh to northern Rakhine State have gone back to their villages of origin”, but is concerned that “some 850,000

28 *Ibid.*, para. 55.

29 *Ibid.*, para. 58.

30 CEDAW, *supra* note 20, para. 59.

31 See CRC, Concluding Observations, CRC/C/15/Add.237 (30 June 2004), para. 42, <www.refworld.org/docid/42d3c0b24.html>, visited on 1 April 2019

32 *Ibid.*, para. 43.

Muslim residents of northern Rakhine State and large numbers of persons of Chinese or Indian descent throughout the country remain stateless, making it impossible for children of these families to benefit from the provisions and principles of the Convention”.³³

The Committee is further concerned at the very high number of children and their families who were internally displaced in Myanmar, and that many were forced to seek asylum in neighbouring countries owing to the armed insurgencies taking place in various parts of Myanmar³⁴. The Committee recommends that the state party:

“[s]trengthen its efforts to provide adequate assistance to internally displaced children, including their access to food, education and health, and to support the return home of internally displaced populations and their reintegration into their communities”;³⁵ and

“[d]evelop, in collaboration with NGOs and international organizations, a comprehensive system of psychosocial support and assistance for children affected by the conflict, in particular child combatants, unaccompanied internally displaced persons and refugees, returnees and landmine survivors, while ensuring their privacy”.³⁶

The subsequent CRC Committee, in its Concluding Observations, expresses concerns about the extremely low level of resources allocated to the social sectors for the protection and promotion of children’s rights, including in disaster contexts. In response the Committee urges the State Party to

“[d]efine strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures, especially children from ethnic and religious minority groups, children from remote and border areas, internally displaced children, children in street situations, children affected by HIV/AIDS, children with disabilities, orphans and children in situation of poverty, and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies”.³⁷

Furthermore, the CRC Committee calls on the Myanmar Government to ensure non-discrimination towards internally displaced children, especially those who belong to one of Myanmar’s ethnic minorities, street children, children infected with HIV/AIDS, children with disabilities reference to displaced children in the context of disasters. Additionally, it recommends that the State party implement special measures to ensure that displaced children are duly registered at birth and provided with birth certificates and identity cards.³⁸

33 CRC, *supra* note 33, para 64

34 CRC, *supra* note 33, para. 43.

35 *Ibid.*, para. 64.

36 *Ibid.*, para. 65(b).

37 See CRC, Concluding Observations, CRC/C/MMR/CO/3-4 (14 March 2012), para. 18(c), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/MMR/CO/3-4&Lang=En, visited on 1 April 2019

38 CRC, *supra* note 38, paras. 35 and 44(b).

The concluding observations also urge the State party to address issues of internally displaced persons, including children, as well as preventing situations which force children and their families to be displaced, albeit only in conflict and forced evictions situations.³⁹ The Committee further impels the State party to

“[t]ake all measures to guarantee the rights and wellbeing of internally displaced children, including by providing access to clean water, adequate sanitation, food and shelter to the internally displaced population, and paying due attention to their needs in terms of health and education”.⁴⁰

Contributing to the advancement of the rights of persons with disabilities in both disaster and conflict situations, the CPRD in its Concluding Observations underscores the lack of consideration for the rights of persons with disabilities in Myanmar’s Natural Disaster Management Plan and the Action Plan on Disaster Risk Reduction. It states that:

“[t]he rights and the specific requirements of persons with disabilities in situations of risk and humanitarian emergencies are not sufficiently taken into account in the Natural Disaster Management Law or the Action Plan on Disaster Risk Reduction, and there is a lack of protocols, plans and measures with respect to persons with disabilities in these situations”.⁴¹

It also raises concerns about persons with disabilities’ heightened risks in areas affected by conflict or humanitarian emergencies, including areas where internally displaced and returned populations are being hosted. The report contends that:

“[p]ersons with disabilities, especially women and girls with disabilities and those belonging to ethnic and religious minorities, face heightened risks in areas affected by conflict and humanitarian emergencies, including where stateless, internally displaced and returnee populations are resident or hosted in northern Rakhine, Shan and Kachin States”.⁴²

The committee is also concerned that

“the Child Rights Law of 2019 does not guarantee the right to a nationality to children belonging to ethnic minority groups and those who are internally displaced, including children with disabilities, which hinders their access to education, health care and other public services. The Committee is also concerned about barriers in gaining access to administrative facilities and proceedings for birth registration, civil documentation and citizenship, including the inaccessibility of buildings, official and unofficial fees, and communication barriers for persons with disabilities from ethnic minority groups”.⁴³

The Committee on the Convention of the Rights of Persons with Disabilities also criticises Myanmar’s DM Law for its limited considerations of the rights and specific requirements of persons with disabilities.

39 *Ibid.*, para. 77(a–c).

40 *Ibid.*, para. 77(d).

41 Committee on the Convention on the Rights of Persons with Disabilities (CRPD), Concluding Observations, CRPD/C/MMR/CO/1 (22 October 2019), para. 21(a).

42 CRPD, *supra* note 42, para. 21(b).

43 *Ibid.*, para. 35.

In the most recent Report of the Special Rapporteur on the Situation of Human Rights in Myanmar A/72/382 (8 September 2017), the special rapporteur expresses her concern about seasonal floods which have led to at least three deaths and caused the temporary evacuation of over 200,000 people. She also reiterates her concern at the impact of Cyclone Mora in May, causing destruction in particular in Rakhine and Chin States and Ayeyarwaddy Region. She encourages all stakeholders to work together, with the Government in the lead, to ensure that all individuals can access sufficient assistance and to further strengthen flood mitigation and disaster response efforts.⁴⁴

The Special Rapporteur also calls for the government to immediately seek durable solutions for persons who have been displaced since 2012, ensuring that all solutions are identified in consultation with the affected communities and that any relocation is entirely voluntary.⁴⁵ However, this call predominantly appertains to persons displaced by conflict rather than disaster or climate change.

In 2015, in the Report of the Special Rapporteur on the Situation of Human Rights in Myanmar A/70/41 (6 October 2015), the Special Rapporteur underscores the problems caused by the Government disenfranchising some 760,000 individuals in 2015 who previously held temporary registration cards, including those newly or repeatedly displaced as a result of natural disasters or conflict. She recommends that more proactive measures be taken, in consultation with the affected communities, to restore their universal suffrage and right to participate in public affairs.⁴⁶

The Special Rapporteur also reports that her request to visit Rakhine State, in relation to recent flooding there, was denied by the Government, despite her proposed visit being disaster related. She urges continued assistance and support be provided as a priority, and predicts that the floods would most likely exacerbate the longstanding social and economic development challenges in Rakhine State.⁴⁷

A report of the Human Rights Council Advisory Committee concerning Human Rights in Post-Disaster and Post-Conflict Situations⁴⁸ presents the results of a questionnaire survey in which Myanmar acknowledges its responsibility to focus on diversity and non-discrimination in a post-disaster setting. The country acknowledges that one of the main challenges to providing a human-rights based approach in a post-disaster situation is the need for resources to fulfil the needs of the community.

While references to displacement were made in relation to the conflict in Myanmar, the treaty monitoring bodies made relevant observations and recommendations that apply to displacement in disaster and climate change contexts. Therefore, a human rights-based approach to displacement in disaster and climate change contexts in Myanmar should consider the relevant recommendations from treaty monitoring bodies and other

44 UN Special Rapporteur on the Situation of Human Rights in Myanmar, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar (8 September 2017), A/72/382, para. 26 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/279/73/PDF/N1727973.pdf?OpenElement>, visited on 1 April 2019

45 UN Special Rapporteur, *supra* note 45, para. 85(e).

46 UN Special Rapporteur on the Situation of Human Rights in Myanmar, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar (6 October 2015), A/70/41, paras. 13–14, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/301/10/PDF/N1530110.pdf?OpenElement>>, visited on 1 April 2019

47 *Ibid.*, paras. 34–35.

48 Human Rights Council Advisory Committee concerning Human Rights in Post-Disaster and Post-Conflict Situations, A/HRC/RES/22/16 (10 April 2013), <www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/AdvisoryCom/PostDisaster/Myanmar.docx&action=default&DefaultItemOpen=1>, visited on 1 April 2019

mechanisms. These recommendations are summarised as:

- Strengthen human rights protections for displaced persons in relation to their rights to: participate in decisions that affect their lives; freedom of movement; choose their place of residence; freedom from discrimination; house and property restitution; health, education and access to economic opportunities.
- Adopt an express gender-equality approach to displacement, involving special safeguards against separation of women and girls during displacement and ensuring displaced women's full participation in decision making regarding planning and implementation of their safe, voluntary and dignified return and/or resettlement and planning and management of development and investment projects.
- Enhance a child- and disability-sensitive approach to displacement, encompassing child-friendly psychosocial support for displaced children and the removal of barriers in gaining access to administrative facilities and proceedings for birth registration, civil documentation and citizenship, including the inaccessibility of buildings, official and unofficial fees, and communication barriers for persons with disabilities and returning children.
- Address challenges relating to displacement, including the forced displacement and evictions as a result of the violence in Myanmar and the misuse of the DM Law to confiscate land. The government confiscated burning land caused by the government's security clearance operations, which dispossessed Rohingya women and girls of their property.

Some of these recommendations appear to be partly addressed in the domestic legal and policy documents addressed below.

4 Legal and Policy Framework

Myanmar is one of the most disaster-prone countries in the world and is vulnerable to a wide range of hazards, most prominently earthquakes, tsunamis, droughts, fires, floods and tropical cyclones. The OCHA 2018 Regional Focus Model places Myanmar as the second most vulnerable country within the Asia Pacific region based on potential hazards, vulnerability and capacity to cope in the event of a disaster.⁴⁹ To put this into closer focus, on a scale of one to five (one being 'negligible' and five being 'critical', taking into consideration factors of estimated likelihood, impact and scale of a disaster), Myanmar is at a five (critical) level for earthquakes, floods, conflict and civil unrest, and cyclones.⁵⁰

There has been significant loss of life and property in recent times, in an almost cyclical and seasonal pattern of disasters. Most notable is Cyclone Nargis (2008), which resulted in widespread devastation and destruction, with adverse impacts on agriculture-reliant communities' livelihoods. For instance, only 25 per cent of the arable land had recovered

49 UN Office for the Coordination of Humanitarian Affairs (UNOCHA), Asia and the Pacific: 2018 Regional Focus Model, <reliefweb.int/sites/reliefweb.int/files/resources/RFM_2018_020318.pdf>, visited on 1 April 2019

50 Humanitarian Country Team, Emergency Response Preparedness Plan (ERPP): Myanmar, <www.sheltercluster.org/sites/default/files/docs/Myanmar%20Emergency%20Response%20Preparedness%20Plan_0.pdf>, visited on 1 April 2019

and was usable five years after the cyclone.⁵¹ Likewise, Cyclone Komen (2015) left 1.7 million people temporarily displaced and 450,000 hectares of farmland inundated.⁵² The poverty rate in Myanmar is between 25 and 38 per cent, with almost 70 per cent of Myanmar living under \$2 a day, and 85 per cent in rural areas.⁵³ Rural poor and those reliant on subsistence agriculture are disproportionately affected by disasters and climate change. Compounding these risk factors is the occurrence of disasters within areas of conflict, where housing, infrastructure and living conditions provide limited capacity to cope with disasters. The World Risk Index ranked Myanmar as 15th, with the worst coping capacities.⁵⁴



Myanmar woman walking in the flood. Photo by Altruvistas.com. Source: Yandex

The Constitution of the Republic of the Union of Myanmar – the supreme law with which all other laws and policies must be consistent – is relatively new, promulgated in 2008. The Constitution establishes a unitary parliamentary republic, comprising of an executive branch headed by the President which possesses all of the Union Government's executive powers; the bicameral legislature (Pyidaungsu Hluttaw – Assembly of the Union) made up of the upper house (Amyotha Hluttaw – the House of Nationalities) and the lower house (Pyithu Hluttaw – the House of Representatives); and the judiciary, headed by the Supreme Court.⁵⁵ Further, the power of the three branches are shared among the Union, Regions, States and

51 Source: World Bank (Global Facility for Disaster Reduction and Recovery), 'Another Nargis Strikes Every Day: Post-Nargis Social Impacts Monitoring Five Years On' (GFDRR, 2014), <https://www.gfdrr.org/sites/default/files/publication/Another-Nargis-Strikes-Every-Day.pdf>, visited on 1 April 2019

52 International Federation of Red Cross and Red Crescent Societies (IFRC), <media.ifrc.org/ifrc/where-we-work/asia-pacific/myanmar-red-cross-society/>, visited on 1 April 2019

53 Myanmar National Framework for Community Disaster Resilience 2017, p. 21.

54 'Coping capacity' encompasses measures and abilities that are available to reduce harm and damages in the occurrence of an event. Source: Institute for Environment and Human Security 'World Risk Report' (2016), pp. 45, 48, 63, <collections.unu.edu/eserv/UNU:5763/WorldRiskReport2016_small_meta.pdf>, visited on 1 April 2019

55 Sources: The Constitution, para. 11(a-b); J. Jowell 'Bingham Centre Myanmar Project: Executive Power in Myanmar (Bingham Centre for The Rule of Law, 2014), <www.biicl.org/documents/471_symposium_paper_-_sir_jeffrey_jowell_executive_power_in_myanmar_nov_2014_english.pdf?showdocument=1> Constitution Art. 199(a),(b).

Self-Administered Areas. At the Union level, the Pyidaungsu Hluttaw has the right to initiate and pass bills.⁵⁶ Once passed, the bills must be signed by the President 14 days after they have been approved in order to be promulgated as laws.⁵⁷ Additionally, the President can declare a state of emergency and, in turn, put into effect an urgent law when the legislature is not assembled.⁵⁸

The Constitution provides for equal rights before the law and non-discrimination based on race, birth, religion, official position, status, culture, sex and wealth.⁵⁹ The Constitution also stipulates that:

“[e]very citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality:

- a. to express and publish freely their convictions and opinions; [Freedom of expression and Freedom of the press]
- b. to assemble peacefully without arms and holding procession; [Freedom of assembly]
- c. to form associations and organizations; [Freedom of association]
- d. to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths. [Right to culture, freedom of religion and protection of language use]⁶⁰

Further, the Constitution enshrines the right to “settle and reside in any place” within Myanmar, and the Government’s duty to protect the “movable and immovable properties of every citizen”.⁶¹ The constitutional protection provisions of fundamental human rights indicate a commitment by the state to the protection of human rights. Notably, the Constitution does not directly address economic and social rights, such as the right to shelter and the highest attainable standard of health, and food, although it enshrines the state’s duty to “protect and conserve the natural environment”.⁶²

The Constitution creates 14 states and regions, each with their own individual executives, legislatures and judiciaries. The executive branch is led by a chief minister, and the legislative branch consists of a unicameral, partially elected parliament, the state/region Hluttaw. State and regional legislature can legislate in finance and planning, economy, agriculture and livestock breeding, energy, electricity and mining, industry, transport, communication and construction, social, and management sectors. However, some of the responsibilities are impinged by a future definition clause “in accord with the law enacted by the Union”.⁶³

56 The Constitution, paras. 80(c), 95(a).

57 *Ibid.*, para. 105(a).

58 *Ibid.*, Chapter XI and Art. 212.

59 *Ibid.*, paras. 347–348.

60 The Constitution, *supra* note 56, para. 354.

61 *Ibid.*, paras. 355–356.

62 *Ibid.*, para. 45.

63 *Ibid.*, Arts. 188 and 249, R. Batcheler, *State and Region Governments in Myanmar* (The Asia Foundation, 2018) <asiafoundation.org/wp-content/uploads/2018/10/State-and-Region-Governments-in-Myanmar-New-Edition-2018_Eng.pdf> pp.12–13.

The principal sources of law in Myanmar are English common law, legislation, judicial decisions and customary law dealing with personal law issues. The courts are organised into four levels:

- 1.) the supreme court of the Union
- 2.) State/Regional Courts
- 3.) District and Self-Administered Area courts
- 4.) Township courts.⁶⁴

Despite the numerous efforts of both the Myanmar Union Government, states and regions and Ethnic Armed Organisations (EAO) to instate reforms to apply formal laws to everyone in their jurisdiction, many villages are dominated by customary laws. Formal laws are instead treated like suggestions at the village level, where disputes and minor crimes are resolved through customary forms of negotiation and arbitration.⁶⁵



A Tourist cycling over the flooding village in Myanmar. Photo by Grebollo. Source: Pixabay

These laws formed the National Disaster Management Committee (NDMC) – the main authority and high-level policy body – and its subnational disaster management counterparts.⁶⁶ The subnational institutions include the Natural Disaster Management Body of the Region or State, Self-administered Division or Self-administered Zone, District, Township and Ward or Village Tract, which is responsible for the disaster management within the designated

64 N. Kham, An Introduction to the Law and Judicial System of Myanmar, NUS Centre for Asian Legal Studies Working Paper 14/02 (National University of Singapore, Centre for Asian Legal Studies, Faculty of Law, 2014), <law.nus.edu.sg/cals/pdfs/wps/CALS-WPS-1402.pdf>, pp. 1, 5.

65 B. McCartan and K. Jolliffe, 'Ethnic Armed Actors and Justice Provision in Myanmar' (The Asia Foundation, 2016) <asiafoundation.org/wp-content/uploads/2016/10/Ethnic-Armed-Actors-and-Justice-Provision-in-Myanmar_EN.pdf>, p. 14.

66 *Ibid.*

67 *Ibid.*, pp. 14–15.

68 Sources: *Natural Disaster Management Law 2013* (DM Law) – The Pyidaungsu Hluttaw Law No. 21/2013, The 9th Waning of Waso, 1375, M.E. (31 July 2013). Arts. 2(f), 3(a); *National Disaster Management Rules 2015* – The Pyidaungsu Hluttaw Law No. 23/2014 (7 April 2015).

area.⁶⁹ The DM Rules also create the Ministry of Social Welfare, Relief and Resettlement, which provides secretariat services to the NDMC in the implementation of the DM Law and Rules, as well as accommodating the National Disaster Management Centre (NDMC), which is assigned to generate and disseminate early warnings and disaster information.⁷⁰ The NDMC manages the formal expenditure mechanism, namely the Natural Disaster Management Fund allocated from the Union Budget, contributions from foreign states, and contributions from local organisations and individuals to finance the disaster management activities.⁷¹

Over the last decade, the Myanmar Government has taken proactive measures to advance the country's disaster management and climate change law and policy frameworks, beyond the DM Law and Rules, by adopting the:

- Standing Order on Natural Disaster Management in Myanmar 2011 (SO) (to be revised)
- National Social Protection Strategic Plan 2014 (NSPSP)
- National Framework for Community Disaster Resilience 2016 (NFCDR)
- National Land Use Policy 2016 (NLUP)
- Myanmar Climate Strategy and Action Plan 2016–2030 (MCCSAP)
- Myanmar Action Plan on Disaster Risk Reduction 2017–2020 (MAPDRR)
- Myanmar Emergency Response Preparedness Plan 2017 (ERPP)
- Capacity Development Strategy for Disaster Risk Management in Myanmar 2017–2030
- National Earthquake Preparedness and Response Plan 2019 (NEPRP)
- Land Acquisition, Resettlement and Rehabilitation Law 2019 (LARRL).

These documents were systematically reviewed using the RWI's human rights-based legal and policy analysis tool. The detailed results of this review are found at Annex 1 of this report, which is available at rwi.lu.se/disaster-displacement/. Key insights relating to each of the four elements of the human rights-based approach adopted for this study are set out briefly below.

Overall, Myanmar's national legal and policy framework reflects key elements of a human rights-based approach, addressing to some extent governance, procedural, substantive, non-discrimination and equality elements. Key strengths of Myanmar's law and policy framework include the promulgation of the DM Law and the DM Rules, which confer an authoritative legislative mandate on disaster management. These laws assign legally binding roles and responsibilities, establish institutions, and ensure allocation of resources and mechanisms for coordination covering prevention, emergency response and recovery.

The *governance* element focuses on the extent to which human rights is expressly invoked in the national legal and policy framework, and the extent to which displacement is mainstreamed across DRRM and CCA documents. The framework in Myanmar does not

69 DM Law, *supra* note 69, Art. 8(a).

70 Sources: *ibid.*, Arts. 3–7; International Federation of Red Cross and Red Crescent Societies (IFRC), 'ASEAN Disaster Law Mapping: Implementing AADMER: ASEAN Country Profiles' (IFRC, 2017), p. 20, www.rcrc-resilience-southeastasia.org/wp-content/uploads/2018/01/AADMER-Implementation-Country-Profiles-FINAL.pdf.pdf, visited on 18 April 2020; DM Rules, *supra* note 68.

71 DM Law, *supra* note 69, Arts. 5 & 19.

expressly invoke a human rights-based approach, and does not mainstream displacement considerations. Although human rights principles are reflected across the legal and policy framework, including for displaced persons in relation to land ownership, responsible actors are not directed towards key standards and guidelines. Consequently, to safeguard displaced persons' land rights, ensure their inclusion – especially of vulnerable groups – in decision making, address gender inequality, or undertake the complex process of planned relocation, responsible actors must rely on their own tools, expertise and ingenuity, or independently seek out and digest the key standards and guidelines referred to in the Background Brief.

Brief references were made to resettlement in relation to preventing protracted displacement, restitution of land rights for displaced persons and the relocation strategy in the event of a disaster, which, according to the MAPDRR, will be further elaborated in the forthcoming Disaster Risk Reduction Policy.

The *procedural* element is reflected to a limited extent. The principle of free, prior and informed consent is not addressed. Multiple documents provide for participation, but the approach appears more focused on raising awareness than on active and meaningful participation of different groups, including in decision making. Multiple provisions across multiple legal and policy documents address access to information, with a particular focus on early warning and awareness raising. There is less focus on the measures authorities should take to ensure the accessibility of information, should an individual or group wish to examine DRRM and CCA materials more closely, of their own initiative. Further, the documents do not appear to include provision for access to information specifically in the context of displacement.

The *substantive* element of the human rights-based approach is partially reflected in the national legal and policy framework.

As with many legal and policy frameworks, specific measures to prevent displacement were not identified in the Myanmar review. The emphasis here is on risk and needs assessment and early warning systems, as well as mechanisms for learning from past experiences. The framework also indirectly helps to address root causes of displacement, such as incorporating DRR into various programmes to develop disaster resilience; linking social protection with DRR; prioritising infrastructure and assets to enhance recovery efforts; and prioritising funding for agriculture, land development and health at the local level, in line with the SFDRR.

Protection during evacuation and throughout displacement is, in part, dealt with in Myanmar's legal and policy framework, especially in the extensive inclusion of evacuation and shelter. Concerning evacuation, a number of provisions address the roles of various actors in coordinating and executing evacuation orders, and the powers of, particularly the regional/state level disaster management bodies, to oversee evacuation orders and prohibit unauthorised access to specified buildings and areas '*apportioned to disaster management*'. The NEPRP prescribes that each ministry at the union level has a disaster preparedness and evacuation plan and conducts drills. However, none of the provisions related to evacuation references key international standards, or ensures that evacuations, whether forced or voluntary, are carried out in a manner that respects right to life, dignity, liberty and property, and are conducted in a non-discriminatory way, in accordance with the Mass Evacuation in Natural Disaster (MEND) Guide and the IASC Operational Guidelines.

Further, the law and policy documents lack both safeguards against forced evacuations and frameworks on planned relocation. There are few, if any, guidelines for planning relocation to adhere to, which could result in problems such as:

- *ad hoc* and arbitrary relocation
- insufficient information on the relocation process
- lack of available sites for relocation
- limited support for rebuilding homes
- limited support for physical relocation
- smaller and less durable homes
- challenges accessing basic services and education
- limited livelihood opportunities at relocation sites
- short-term nature of assistance to relocated communities.

Whereas shelters are prominently featured in the DM Law, DM Rules, SO, MAPDRR and NEPRP – with solid considerations for vulnerable groups and references to substantial rights related to health, WASH, security and food – these law and policy documents are silent on protection during evacuation. There is a dearth of provisions on planning, communication and administrative guidelines relating to evacuation in line with the IASC, and clarification of roles, resource implications and timeframes for evacuation pursuant to the MEND guide.

Additionally, shelter is prominently featured in Myanmar's legal framework, especially in identifying areas appropriate to build shelters, purchasing privately-owned land and buildings to be used as shelters, building the various shelters, which are disaster-resilient, and displaying route maps to these shelters. A number of the documents, such as the SO and the MAPDRR, contain provisions on safeguarding sheltered displaced persons' access to food, health care and security services, as well as on considering the particular needs of vulnerable groups – such as persons with disabilities, children and the elderly – when setting up and managing shelters.

With resettlement and return addressed in several documents, it is fair to say that there is an awareness of the need to resolve displacement in a manner that does not lead to further displacement. However, the concept of a durable solution was not reflected in the documents reviewed. The SOP contains a provision on the resettlement of displaced persons to their homes and providing them with necessary assistance to rebuild their homes; and the NLUP on the development and implementation of fair procedures relating to land acquisition, compensation, relocation, rehabilitation, restitution and reclaiming land tenure rights of internally displaced persons and returning refugees caused by civil war, land confiscation, natural disasters and others. More details are required on the conditions to ensure that the return, resettlement and relocation of the displaced are genuinely voluntary, with measures on guaranteeing their participation in decision making and implementation, and are conducted in safety and with dignity.

It is well established that the failure to safeguard the rights of displaced persons in the long term often exacerbates vulnerabilities that contributed to the initial displacement. Without clear provisions that cover all aspects of durable solutions to displacement, people who are displaced will be more likely to end up living in hazard-prone areas, and risk being

displaced again. In this regard, a concerted policy approach or legal framework on durable solutions can provide some helpful tools for addressing this issue. Nonetheless, these laws and policies cover provisions on access to effective remedies and justice, and effective accessible mechanisms to restore housing, land and property rights, which can be applied to displaced persons.

Myanmar's legal and policy framework provides a clear commitment to *non-discrimination* by prominently featuring special attention and consideration for vulnerable groups in several documents. This, combined with other elements of a rights-based approach, including both substantive and procedural rights for addressing disaster management and climate change generally, as well as a clear commitment to gender equality, sets a solid foundation for a rights-based approach to address displacement. Incorporation of regional guidelines such as the Sendai Framework, and global legal instruments such the Paris Agreement, the United Nations Framework Convention on Climate Change (UNFCCC), the CEDAW and the Sustainable Development Goals further boost the rights-based approach.

Displacement in the context of disasters and climate change is a recurrent phenomenon in Myanmar, with numbers of displaced persons regularly exceeding 250,000 per year in the last five years. As the adverse impacts of climate change increase the exposure and vulnerability of the population, and particularly people already at risk, displacement is unlikely to disappear as a policy challenge. Taking steps to further integrate both awareness of, and guidelines relating to, displacement into disaster risk reduction and climate change adaptation law and policy would represent an important step towards adapting to climate change and reducing disaster risk in a manner that leaves no one behind.



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