

**Mandates of Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on the human rights of internally displaced persons.**

REFERENCE:  
AL MMR 5/2017

16 August 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 28/23 and 32/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **serious deterioration of the security situation of civilians living in and around mining areas in Tanai, Kachin State.**

According to the information received:

There has been a steady escalation in tensions and clashes between the Myanmar Armed Forces (Tatmadaw) and the Kachin Independence Army (KIA) in and around Tanai Township, Kachin State. Clashes between the Tatmadaw and the KIA have also affected a wider geographic area, incorporating Hpakant, areas south-west of Tanai, and Injayang to the east of Tanai. The increased tensions and clashes between the Tatmadaw and the KIA have affected local communities living in the vicinity of the mines and civilians working in the mines.

The KIA maintains a significant presence south-east of Tanai. Both the KIA and Tatmadaw reportedly benefit from revenue flows from mining operations in the area. The Tatmadaw imposed restrictions on the transportation of fuel and rice into Tanai to limit supplies to the armed group since the end of 2016. The increased food and fuel costs led local suppliers to petition Kachin State Government officials to revert it.

Since early February 2017, the Tatmadaw has maintained large troop numbers around Tanai Township; and intense fighting between the Tatmadaw and KIA began in the township on 3 June 2017. On 5 June 2017, the Tatmadaw dropped leaflets from helicopters warning the population living in ten mining areas in Tanai to leave the area before 15 June 2017, claiming that they would carry out clearance operations to crack down on illegal amber and gold mines in Tanai Township. The leaflets warned that those who did not relocate would be considered as cooperating with "the terrorist group KIA" as "insurgents". Allegedly, these military clearance operations are aimed at gaining control over lands in order to implement mining, agricultural and environmental projects which would result in the displacement of the local populations from their traditional lands and their exclusion from development projects.

The ten mining areas mentioned in the leaflets are thought to have a population between 100,000 and 200,000 people, including migrant workers. Following the leaflet drop, freedom of movement of civilians was heavily restricted and controlled, with exit routes from Tanai reduced from five down to one by the Tatmadaw. This has severely impacted the safe passage of people by restricting their freedom of movement and created fear for those trying to flee following the warning contained in the leaflet dropped by the Tatmadaw.

Civilians fleeing the area were reportedly subject to multiple screening processes by the Tatmadaw, the General Administration Department, and the Immigration and National Registration Department. In addition, the KIA reportedly issued warnings on 7 June 2017 against travel on several roads at night, including along the Myitkyina-Tanai-Ledo road, resulting in further restrictions on movement of civilians.

The number of persons displaced from Tanai Township is estimated to be 5,000; however the exact number of persons affected by fighting and subsequently internally displaced remains unknown as access to the area remains restricted. Furthermore, the establishment of formal camps for Internally Displaced Persons (IDPs) in Tanai Town is not permitted and reportedly the Government and Tatmadaw have refused to officially recognise those displaced as IDPs, removing Government responsibility to provide humanitarian assistance as required by international law.

According to further information received, an estimated 1,000 IDPs in Tanai Town are living in four religious building compounds since 6 June 2017 and in need of humanitarian assistance. Access to the Tanai area, for humanitarian organisations remains severely restricted. Allegedly, the Tatmadaw has pressured those supporting the IDPs to relocate the IDPs to an area of ongoing conflict, exposing the IDPs to further risks to their safety and security and lives.

On 22 June 2017, the Tatmadaw sent a letter to the leaders of four villages providing notice that clearance operations would be undertaken along both sides of the Ledo road for a radius of 5 kilometres. The letter stated that “[V]illagers are forbidden to enter the forest to hunt, fish, collect vegetables, collect firewood and cultivation because the land clearance will be undertaken between 23 June 2017 and 2 July 2017.” The letter further stated that the village level General Administration Department (which provides civilian administration) will be held responsible, and not the military if “something happens.”

Further armed clashes, involving the use of artillery weapons took place on 8 and 9 July 2017 in close proximity to Ting Kawk village around 31 km South of Tanai Town, with sporadic fighting continuing up to 14 July 2017. Reportedly, five civilians sustained injuries as a result of the clashes and a two and half year

old child died. Further details on the condition of those displaced and injured is unknown.

We express grave concern about the protection of civilians in Tanai Township, around Ledo road and surrounding areas, restrictions on the freedom of movement of civilians, full and unfettered access to humanitarian assistance, arbitrary detention and interrogation of those assumed to be associated with the KIA, and recognition of those displaced as IDP. We also express serious concern regarding the forced displacement of local populations and exclusion from development projects if as alleged, the clearance operations are aimed at gaining control over the mining areas. In addition, we express considerable concern regarding the military forbidding villagers to access their livelihood, without the government providing alternative means of access. We further express grave concern regarding the safety and security of civilians who have not been allowed to evacuate the conflict-affected areas and any attempt at forced relocation to areas on ongoing armed conflict. The Government of Myanmar is reminded of its obligations to ensure the protection and humanitarian access to internally displaced persons and other affected communities under international law standards and humanitarian principles.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Regarding the military operations in Tanai Township please provide information on measures taken to minimize the impact on civilian populations and civilian objects in particular:
  - a. Measures taken to protect the houses and other personal property of affected populations;
  - b. Measures taken to provide support to the populations leaving the area, including facilitating the safe passage of people and to guarantee their safety during security checks and passage through checkpoints.
  - c. Measures taken to ensure that civilians who stay in the area of operations are not treated as combatants and are afforded all due protection.
3. Please provide further information on the screening process of civilians fleeing the conflict area and if any arrests or detention occurred during this process.

4. Please explain the reasoning why four out of five passages leaving Tanai remained closed.
5. Please explain the reasoning why those displaced from Tanai Township have not been recognised as IDPs.
6. Please clarify what assistance and support the Government has provided to those displaced.
7. Please provide detailed information on the procedures in place to guarantee timely and un-restricted access of the humanitarian community to deliver humanitarian assistance, including to displaced persons arriving in Tanai or any other host community. Please detail the measures taken to ensure the safety of women displaced and specific support to female-headed households in IDPs settings.
8. Please clarify why IDPs were requested to relocate to areas where armed conflict was/is occurring.
9. Please provide information on the procedures in place by security forces to guarantee and facilitate freedom of movement for civilians without fear of arrest, intimidation, harassment, extortion, or any form of violence, including gender based violence.
10. Please inform in which detention facilities conflict-related suspects are held and the procedures in place to inform their families of their whereabouts and ensure family visits. Please also provide information on particular measures taken to ensure the protection of any detained children (any person under 18 years of age).
11. Please provide information on the status of the petition submitted to Kachin State government officials by local suppliers contesting the Tatmadaw-imposed permits to use key routes. Please provide information on how government inspections ensure that the necessary supplies reach the affected areas, taking into consideration the needs of both host and displaced communities.
12. Regarding the clearance operation in the area of Ledo road and the Tatmadaw instruction prohibiting villagers from entering the forests, please provide information on life-saving support provided to these communities during the operations and measures put in place to guarantee their safety and personal integrity.
13. Please provide detailed information on all non-military measures taken by the government to stop illegal mining and environmental degradations in these areas.

14. Please provide detailed information on all measures taken by the government with the local communities, including minorities, to discuss and agree on agricultural, mining and environmental development projects. In particular, please provide information on the steps taken to seek the free, prior and informed consent of local communities before implementing development projects that will affect their interests.
15. Please provide information on the measures taken to implement the Guiding Principles on Business and Human Rights, and in particular guiding principle 13 requesting business enterprises to avoid causing or contributing to adverse human rights impacts through their own activities; and guiding principle 17 calling on business enterprises to carry-out human rights due diligence, a process that should include assessing actual and potential human rights impacts.
16. Please provide information as to whether any civilians, including children, had sustained injuries as a result of the armed clashes that took place on 8 and 9 July 2017 near Ting Kawk village, including possible casualties, and what care they have received or are receiving?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to enable the full and unhindered humanitarian access by humanitarian actors to IDPs and civilian populations in both government and non-government controlled areas and to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Yanghee Lee  
Special Rapporteur on the situation of human rights in Myanmar

Cecilia Jimenez  
Special Rapporteur on the human rights of internally displaced persons

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to Article 12 of the International Covenant on Civil and Political Rights that guarantees everyone within the territory of a State to have the right to liberty of movement and freedom to choose their residence.

We also would like to draw your Excellency's Government attention to the report by the Special Rapporteur on minority issues on "minorities in situations of humanitarian crises" (A/71/254) and to the recommendations of the ninth session of the Forum on Minority Issues on the same topic (2016).

We would like to recall the international standards relevant to the protection and promotion of the rights of minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 of the Declaration refers to the obligation of States to protect the existence and identity of national or ethnic, cultural, religious and linguistic minorities within their territories and to adopt the appropriate measures to achieve this end. Furthermore, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1), and to consider appropriate measures so they may participate fully in the economic progress and development in their country (article 4.5). We recall article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In interpreting this provision, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing includes guarantees of: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

We further recall that the Guiding Principles on Internal Displacement establish the responsibilities of States relating to internally displaced persons. Principle 3(1) stipulates that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, without discrimination of any kind. Principle 18 requires that, at the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) essential food and potable water; (b) basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation. Principle 25 further stipulates that international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian

assistance. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced. Furthermore, we recall that Principle 10 of the Guiding Principles states that attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against: (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted; (b) Starvation as a method of combat; (c) Their use to shield military objectives from attack or to shield, favor or impede military operations; (d) Attacks against their camps or settlements; and (e) The use of anti-personnel landmines.

We further recall general comments No. 4, 7 and 20 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy of those that may be affected by eviction orders. Demolitions and destruction of property are strictly forbidden under international human rights law and standards. According to these general comments, Myanmar must have further explored all feasible alternatives to forced eviction in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of the evicted persons by ensuring there is provision of adequate alternative housing facilities, resettlement and compensation for lost property.

Without expressing an opinion on whether or not the detention of the individuals assumed to be associated with the KIA is arbitrary, we would finally like to appeal to your Excellency's Government to take all measures necessary to guarantee their rights to not be deprived arbitrarily of their liberty, as well as their right to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR.