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| Title  | Internal Displacement caused by Environmental Degradations in Myanmar   |
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| Publication Type   | Local Publication   |
| Publisher<br><br>(Journal name,<br>issue no., page no<br>etc.) | Mandalay University Research Journal, Vol.11  |
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| Citation   |   |
| Issue Date   | 2017  |

## **Internal Displacement caused by Environmental Degradations in Myanmar\***

### **Abstract**

The environmental problems of climate change and natural disaster are projected to increase the internal displacement around the world. People who are displaced within their countries are legally protected by international and national humanitarian and human rights laws, as reflected in the UN Guiding Principles on Internal Displacement 1998. The internally displaced persons are persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence as a result of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters. In Myanmar, people who suffered the environmental problems have experiences on internal displacement in recent years. Focusing on the rights of internally displaced persons, sustainable human rights development shall be considered by the policy, laws and regulations.

*Key words: climate change, natural disaster, internally displaced persons*

### **Introduction**

Myanmar is a coastal region where exposed to a number of natural hazards, some of which have caused devastating damage in the recent past. According to the UN Risk Model of Global Assessment Report 2015, Myanmar ranks as the ‘most at risk’ country for natural disasters. Coastal regions, particularly Rakhine State and the Ayeyarwady Delta Region, are at high risk for cyclones, storm surges and tsunamis. Much places of the country are exposed to flooding and landslides during rainy season in addition to drought and fire during dry season. As Myanmar falls on one of the two main earthquake belts in the world, much of the country is prone to earthquake. Among 60 millions of Myanmar population, an estimated 70 percent of the population resides in rural areas, most engaging in agricultural activities.

### **Materials and Methods**

This research based on the analytical study of national legislation and international framework on the environmental degradations, internal displacement and human rights impact. As the research paper is focused on the legal issues of the internally displaced persons’ rights concerning on environmental issues, the paper is based on the case studies, observation of international agreements and survey results.

### **Research Objective:**

This research aims to recognize the rights of internally displaced persons by the environmental degradation with the approach of free, prior, informed consents in accordance with International standards.

### **Environment: Natural and Human Environment**

The Cambridge Advanced Learner’s Dictionary defines the term “environment” as “the conditions you live or work in and the way they influence how you feel or how effectively you can work”, the environment consisting of “the air, water and land in or on which people, animals and plants live”<sup>1</sup>. The term has gained increasing prominence in scholarship and policy circles since the United Nations Conference on the Human Environment (UNCHE) convened in Stockholm, Sweden in June 1972, subsequently leading to establishment of the United Nations Environment Programme (UNEP), based in Nairobi, Kenya. Simply defined, environment is “the sum of all external factors, both biotic and non-biotic, to which an organism is exposed. While biotic factors include influences by members of the same and other

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<sup>1</sup> Cambridge Advanced Learner’s Dictionary, Cambridge University Press, 4<sup>th</sup> edition, 2003, P- 409.

species on the development and survival of the individual, primary abiotic factors are light, temperature, water, atmospheric gases.”

Among other things, the UNCHE at Stockholm proclaimed that: Man is both [a] creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.<sup>2</sup>

Recent years have seen an appreciable growth in the level of understanding of the dangers facing the international environment and an extensive range of environmental problems is now the subject of serious international concern. These include atmospheric pollution, marine pollution, global warming and ozone depletion, the dangers of nuclear and other extra-hazardous substances and threatened wildlife species. While the North has typically focused on global environmental problems (such as ozone depletion, climate change, and biodiversity loss), the South has often pressed for action on environmental problems with more immediate impacts on vulnerable local populations, including desertification, food security, the hazardous waste trade, access to safe drinking water.

Perhaps the earliest perceived form of pollution relates to the pollution of the air. The burning of fossil fuels releases into the atmosphere sulphur dioxide and nitrogen oxides which change into acids and are carried by natural elements and fall as rain or snow or solid particles. While the airspace above the territorial domain of a state forms part of that state, the imprecise notion of the atmosphere would combine elements of this territorial sovereignty with areas not so defined<sup>3</sup>. In 1990, the Joint Group of Experts on the Scientific Aspects of the Marine Environment (GESAMP) reported that **coastal pollution** was increasing and more widespread globally than in 1982. Moreover, although the open ocean was relatively clean, the margins of the seas were affected by human activity, primarily from land-based activities including intensive human settlement of coastal zones. GESAMP reported that ‘if unchecked, these trends will lead to global deterioration in the quality and productivity of the marine environment’<sup>4</sup>.

Atmospheric **nuclear testing** was one of the first environmental issues to be addressed by the UN General Assembly in the 1950s. In the *Trail Smelter* case is frequently cited to support the view that general principles of international law impose obligations on states to prevent **transboundary air pollution**. This dispute arose out of damage done to crops, pasture land, trees and agriculture in the United States from sulphur dioxide emissions from a smelting plant at the Consolidated Mining and Smelting Company of Canada at Trail, in British Columbia. The issues underlying the *Trail Smelter* and *Nuclear Tests* cases raise the question of whether rules of customary law exist specifically in relation to transboundary or other air pollution<sup>5</sup>.

**Climate change** is a global problem, requiring a global solution. It is the cumulative impact of all greenhouse gas emissions by the developed states as well as developing states in the international community. However, just as each state's contribution varies, its consequences will similarly impact societies and communities disproportionately. Climate

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<sup>2</sup> Article 2 of the Stockholm Declaration on Human Environment 1972.

<sup>3</sup> Malcolm N Shawl, *International Law*, sixth edition, 2008, P-871.

<sup>4</sup> Phillippe Sands, *International Environmental Law*, 2<sup>nd</sup> Edition,P.394.

<sup>5</sup> Ibid, P.320.

change was considered, until recently, a purely environmental issue. In 2008, the International Human Rights Council requested the Office of the High Commissioner for Human Rights to prepare a report on the link between climate change and human rights. In its resolution, the Human Rights Council noted that “climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights” and that “that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change”<sup>6</sup>.

The problem of **global warming** and the expected increase in the temperature of the earth in the decades to come has focused attention on the issues particularly of the consumption of fossil fuels and deforestation. In addition, the depletion of the stratospheric ozone layer, which has the effect of letting excessive ultraviolet radiation through to the surface of the earth, is a source of considerable concern. The problem of the legal characterization of the ozone layer is a significant one. Article 1(1) of the Vienna Convention for the Protection of the Ozone Layer, 1985 defines this area as ‘the layer of atmospheric ozone above the planetary boundary layer’. This area would thus appear, particularly in the light of the global challenge posed by ozone depletion and climate change, to constitute a distinct unit with an identity of its own irrespective of national sovereignty or shared resources claims<sup>7</sup>.

It has been argued that **ultra-hazardous activities** form a distinct category in the field of international environmental law and one in which the principle of strict or absolute liability operates. The definition of what constitutes such activity, of course, is somewhat uncertain, but the characterization can be taken to revolve around the serious consequences that are likely to flow from any damage that result, rather than upon the likelihood of pollution occurring from the activity in question. The focus therefore is upon the significant or exceptional risk of severe transnational damage. States shall, whenever it comes to their knowledge, ensure that in the case of an accident occurring during the transboundary movement of hazardous wastes which are likely to present risks to human health and the environment in other states, those states are immediately informed<sup>8</sup>.

A natural disaster is defined by the UN as: “the consequences of events triggered by natural hazards that overwhelm local response capacity and seriously affect the social and economic development of a region.” In other words, a cyclone that strikes only an uninhabited island is not a natural disaster. Nor is it a natural disaster when municipal authorities are able to respond effectively to flooding in their community<sup>9</sup>. So, natural disaster is the event that would be accidentally come to any places. When the environmental problems happened, internal displacements are occurred to local people.

### **Concept of Internal Displacement**

Climate change, global warming and natural disaster are major drivers for internal displacement. Focus on the generalized potential of climate change is obscuring evidence from

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<sup>6</sup> Human Rights Council (2008) Resolution 7/23 on climate change and human rights, A/HRC/RES/7/23, United Nations. Online. Available HTTP: <[http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_23.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf)>.

<sup>7</sup> Malcolm N Shawl, *International Law*, sixth edition, 2008, P-875.

<sup>8</sup> Article 13 of the Basle Convention on the Control of Transboundary Movement of Hazardous Wastes, 1989.

<sup>9</sup> InterAgency Standing Committee, *Operational Guidelines on Human Rights and Natural Disasters*. Washington: Brookings-Bern Project on Internal Displacement, June 2006.

the developing world of adaptability and livelihoods resilience in the face of environmental change. This experience suggests that development policies should be predicated on proactive reduction of vulnerability rather than automatic assumptions of mass forced migration. Climate change poses risk to human security, principally through its potentially negative effects on people's livelihoods. However, caution is needed in linking environmental change to conflict and forced migration. There is need for substantially more research on the environment change-conflict-migration nexus and the ways it may undermine human security.

It has been accepted indelibly the issue of internal displacement since fifteen years ago on the international agenda and recognized as international concern. Since that time, awareness of the global crisis of internal displacement and of the plight of affected populations has grown. A necessary framework for addressing the problem has been developed and widely promoted at the different levels such as national, regional and international levels. Non-governmental Organizations such as international humanitarian, human rights and development agencies have become increasingly engaged with the internally displaced. UN office has been established to coordinate their efforts and ensure an effective international response. In a sign of the wide recognition it has attained, the issue of internal displacement now features regularly in international discourse, and not only in human rights and humanitarian circles but also in the debates of the UN Security Council<sup>10</sup>.

Despite being firmly embedded in the international lexicon, there is question as to whether the meaning of “internal displacement” has become enough or not. In fact, there exist different ideas as to what is meant by “internal displacement” and “internally displaced persons”. For some, the term “internally displaced persons” refers only to people uprooted by conflict, violence and persecution, that is, people who would be considered refugees if they crossed a border or within border. Global statistics on internally displaced persons generally reinforce this view by counting only those displaced by conflict. Others, however, consider internal displacement to be a much broader concept and to encompass the millions more persons uprooted by natural disasters and development projects. Still others question whether it is useful to single out internally displaced persons, who commonly are referred to as “IDPs”, as a category at all. There also is no consensus on “when internal displacement ends”, that is, when an IDP should no longer be considered as such. Confounding matters further is that in common parlance the internally displaced often are referred to as “refugees”, which tends to be a catch-all phrase to describe all uprooted peoples without regard to whether they have left the country, as the legal definition of “refugee”<sup>11</sup>.

“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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”<sup>12</sup>. Particularly when IDPs seek to reestablish their lives in their places of origin, the causes for displacement will need to be understood and addressed. In a context of armed conflict, this may require the re-establishment of sustainable safety and security, and a peace process or peace building measures. When this is not feasible in the short -term and a majority of IDPs wish to integrate locally, it is important that durable solution policies duly recognize this choice of a solution as a priority. In a context of natural

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<sup>10</sup> Erin Mooney, *The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern*, 2005, P- 10.

<sup>11</sup> Ibid, P-12.

<sup>12</sup> Para 2 of the *Introduction to the UN Guiding Principles on Internally Displaced Persons*, UNDP, 2008.

disasters where the area of origin is permanently at risk, national authorities may legitimately consider sustainable settlement in other areas of the country as the preferred solution<sup>13</sup>.

In cases of protracted displacement, particular efforts may be needed for the reintegration of displaced communities, including for instance the IDPs' acquisition of new skills to help them access labour markets. Camps and collective centres are not ideal settings, and only very rarely will they represent a durable shelter solution. However, progress toward the identification of a durable solution may already be made by ensuring freedom of movement and access to livelihoods from an early stage for IDPs. Particularly (but not exclusively) for indigenous peoples and other persons with a special attachment to their land, displacement may represent a serious breakdown of culture, productivity modes and social structures. Durable solution strategies should seek to preserve and re-establish these as much as possible. At the same time, displacement may also create particularly serious risks for disabled persons or persons who are traditionally disenfranchised, such as women, children and minority groups. Durable solution strategies and programmes will need to address these differences and may even represent opportunities to reduce discrimination and foster empowerment of particular population groups. In general terms, durable solution plans and programmes need to be sensitive to the particular needs of persons according to their gender, age and factors of diversity, such as ethnic background or religious faith<sup>14</sup>.

### **Definitions and taxonomies of displaced persons by different analysts<sup>15</sup>**

| Taxonomy   | Thrust of definition  | Author  |
|--|---|---|
| Displaced people   | Generic term employed for refugees and IDP fleeing their usual place of residence due to persecution, armed conflict or violence  | Crisp (2000)  |
| Refugee  | Fleeing fear and persecution from home country<br><br>Emphasis on crossing an international boundary and consequently protection not provided by country of origin  | UNHCR (2006)<br><br>McGregor (1993)   |
| Environmental refugees<br><br>Note: Critics (Saunders, 2000; Kibreab, 1994) question separation of overlapping and interrelated categories | Initial applicant of the term which he popularized in the 1970s and gained prominence at a 1984 IIED workshop.<br><br>People fleeing traditional habitat because of a marked environmental disruption jeopardizing their existence and/or seriously affecting the quality of their life<br><br>Invention by policy-makers in the North to restrict asylum laws and procedures to depoliticize the causes of displacement; originated by UNEP (i.e. El-Hinnawi's work) | Brown (1970s);<br>IIED (1984)<br><br>El-Hinnawi (1985), Jacobson (1988)<br><br>Kibreab(1997:21) |

<sup>13</sup> Handbook for the Protection of Internally Displaced Persons, *Global Protection Cluster Working Group*, Part VI, 2010, P-452.

<sup>14</sup> Handbook for the Protection of Internally Displaced Persons, *Global Protection Cluster Working Group*, Part VI, 2010, P-453.

<sup>15</sup> Prof. John O. Ocho, *Environmental Impact of Refugees and Internally Displaced Persons in Sub-Saharan Africa*, 2007, P.7.

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|  | <p>to place the burden in the UN agency located in the South with primary service to Africa, not the North</p> <p>Victims of environmental catastrophe resulting from climate change, deforestation and desertification</p>   | Myers (1993abc)               |
| Environmental migrants                 | <p>Voluntary migrants leaving because of an environmental problem</p> <p>Used to define those <i>environmentally motivated</i> and pre-empting the worst; those <i>environmentally forced</i> to avoid the worst; and <i>environmental refugees</i> fleeing the worst</p> | King (2006)<br>Borgadi (2007) |
| Environmental refugees versus migrants | Abundant typologies of each with little agreement on what each category really means  | Black (2001)                  |
| Environmentally displaced persons      | Forced by adverse environmental conditions to move out  | King (2006)                   |
| Event-induced migrants                 | Disaster-induced and development-induced migrants   | Crisp (2000)                  |
| Internally displaced persons (IDPs)    | Persons forced to flee or leave their homes or habitual residence but who have not crossed an internationally recognized State border   | OHCHR (1998)                  |

The main difference between IDPs and refugees is that the internally displaced remain within the borders of their own country. Refugee status entitles individuals to certain rights and international protection, while being an IDP is not a legal status because IDPs are still under the jurisdiction of their own government and may not claim any rights additional to those shared by their compatriots. However, IDPs are often in need of special protection, not least because the government responsible for protecting them is sometimes unwilling or unable to do so, or may itself be the cause of displacement.

### Causes of Internal Displacement in Myanmar

In Myanmar, people are displaced internally by the main causes of armed conflicts, large scale business projects, natural disasters and collective punishments. Myanmar has warmly welcomed the large scale production of foreign investment in Myanmar mining sector by the Investment Law 2016. As most of the mines use the open-pit mining method, it automatically makes use of much more land than underground mining. As a result, a large number of people have been impacted and they were internally displaced. 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border<sup>16</sup>.

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<sup>16</sup> UN Guiding Principles on Internal Displacement, UN.Doc.E/CN.4/1998/53/Add2(1998).

Myanmar has over 16 large-scale coal deposits in the regions of Sagaing, Tanintharyi and in the states of Kachin and Shan. The Tigyit coal mine in south eastern Shan state, just 13 km from Inle Lake, is open pit coal mine, producing 2,000 tons of coal daily. There is also a coal fired power plant in Tigit which is slated for use at the Iron mining factory in Taunggyi. Implementation of the mine and power plant began in 2002 by China National Heavy Machinery Corporation and Burmese companies Eden Group and Shan Yoma Nagar. A 250-mile pipeline transferring natural gas to the iron factory has destroyed villagers' farmlands along the route. Hundreds of farmers have lost their land for the Kehsi Mansam coal mine and coal power plant in Tigyit, both in Shan State, which, alongside the natural gas pipeline and a hydropower plant in Keng Tawng will provide energy to operate the factory. Two villages were forced to relocate, and over 500 acres of farmland was confiscated. Mining in Shan State has brought about the many environmental and human rights transgressions including forced uncompensated relocation of ethnic communities and the forced sale of land<sup>17</sup>. In rare cases, local communities are able to halt or avoid destructive mining activities on their lands through collective action<sup>18</sup>. In **Letpadaung copper mine, Myanmar** 1996, the copper mine had already displaced around 26 villages and up to 2,500 people, though this number is disputed by villagers, the mine owner, and the Government. Many villagers claimed they were not adequately compensated and their land was polluted from the mine. Although protests had been going on for many years, they were harshly put down by State officials in 2012, resulting in 100 people being hospitalized. More recently, a protestor was shot and killed in 2014. The protests did cause the Government to initiate a parliamentary investigation but this found in favour of the mine<sup>19</sup>.

2004 tsunami did displace people in Burma. Heavy rains periodically cause widespread flooding across Burma, inundating villages and farmland. In October 2006, for instance, more than 3,000 homes and farmland were inundated, with Rangoon, Magwe, Mandalay, Sagaing and Shan State particularly hard hit. A cyclone in Arakan in May 2004 killed 200 and made 20,000 homeless. The December 2004 tsunami killed about 80 people and displaced several thousand, mainly in the Irrawaddy Delta.

Fires, whether started deliberately or accidentally, have been one of the major reasons that people have moved out of Burmese cities. The successive military regimes have rarely allowed people to return to re-build their houses. Instead, the victims have been dumped in satellite towns or the pre-satellite rice fields. In February 2005, a major fire in Mandalay destroyed more than 70 homes and left over 200 families homeless. In November 2005, a fire in Hlaing Township, Rangoon Division destroyed a large residential. In Sagaing, there were reports in 2003 and 2005 of shortages of food, including rice, due to the fail-ure of the rains in central Burma. The farmers were unable to plough their fields or grow seedlings, and their animals were in danger of starving as traditional grazing pastures had shrunk<sup>20</sup>.

Late-arriving monsoon downpours and frosts have frequently caused severe damages to cold season bean and lentil crops grown along the Irrawaddy River and the farmers are in serious danger of losing their capital, investments and accumulating massive debts. Bur-mese fishermen from Kha Pyat Thaung Village, Laputa Township in the delta region of Irrawaddy Division who were hardest hit by recent tsunamis, are still too scared to return to sea for fishing and their family members are in danger of starving as they have no other way to make a living. A large number of people in the Irrawaddy Delta were killed or rendered homeless by

<sup>17</sup> Lahu National Development Organization, Personal Interview, February 2011.

<sup>18</sup> BURMA'S ENVIRONMENT: PEOPLE, PROBLEMS, POLICIES, *The Burma Environmental Working Group (BEWG)*: [www.bewg.org](http://www.bewg.org), June, 2011.

<sup>19</sup> Myanmar Ahlin Newspaper, Volume 52, Number 163, 12<sup>th</sup> March, 2013.

<sup>20</sup> UNDP- Myanmar Annual Report, 2014.

the December 2004 tsunami. In August 2004 there was severe flooding in Irrawaddy Division due to heavy monsoon rains which caused dams to col-lapse and canals to break through their banks.

Severe floods in July 2004 and again in October 2006 made thousands of people homeless in central Burma, including Mandalay Division. In February 2005, a major fire in Mandalay destroyed more than 70 homes and left over 200 families homeless. Recent late monsoon downpours at Thone Gwa Township in Rangoon Division, com-bined with the inconsiderate and reckless actions of the irrigation authorities, destroyed nearly one thousand acres of ready to harvest paddy fields of the Burmese farmers, ac-cording to local residents, who said that the authorities did nothing to help alleviate the pains of the farmers who have been under great pressure to pay back their loans and agri-cultural taxes. On 28 November 2005, a fire in Hlaing Township, Rangoon Division destroyed a large residential area. Those made homeless by the fire were initially trans-ferred to provisional shelters at sports stadiums, interrogation centers and guest houses. Subsequently, many were moved without warning to a place 20 miles from their original homes<sup>21</sup>.

In the natural disaster of **Cyclone Nargis in Myanmar** 2008, it is the worst natural disaster in Myanmar history. On 2<sup>nd</sup> May of 2008, the Cyclone Nargis made land fall in Myanmar. It affected the Ayarwaddy delta region especially Bogale, Labutta and some towns mysteriously. On 8<sup>th</sup> May 2008, there was nation-wide referendum for the newest constitution. Then, the government did not issue the exact number of death tolls and catastrophic destruction. The United Nations estimated that 1.5 millions of people were affected by this Cyclone. On 6 May 2008, the Myanmar government representation in New York City formally asked the United Nations for help, and asked for other international assistance. Government stated that they were, "willing to accept international assistance, preferably bilateral, government to government." The relief efforts could not do quickly and the government did not have the disaster risk reduction plan by the political reasons<sup>22</sup>.

### **Rights of Internally Displaced Persons**

Forced displacement has serious consequences for the lives, health and well-being of individuals and communities. It must be provided for by law and be necessary and proportionate to achieve a legitimate aim, such as to protect national security or public order, public health or morals or the rights and freedoms of others. It must be non-discriminatory and consistent with other human rights and international legal obligations of the State. International and regional human rights law guarantees several rights which provide safeguards against forced displacement. Myanmar national laws provide the rights of life, security and dignity which are of particular relevance to IDPs.

### **Rights under Domestic Laws**

The Republic of the Union of Myanmar guarantees any person to enjoy equal rights before the law and equally provides legal protection<sup>23</sup>. Every citizen has the right to settle and reside in any place within the territory according to law<sup>24</sup>. The Union shall protect according to law movable and immovable properties of every citizen that are lawfully acquired<sup>25</sup>. Every citizen has, in accord with the law, the right to conduct business freely in the Union, for

<sup>21</sup> UNDP- Myanmar Annual Report, 2014.

<sup>22</sup> Joint Typhoon Warning Center (2008). "Cyclone Nargis Warning NR 023". Retrieved 2 May 2008.

<sup>23</sup> S.347 of the Constitution of the Republic of the Union of Myanmar, 2008.

<sup>24</sup> S.355, Ibid.

<sup>25</sup> S.356 of the Constitution of the Republic of the Union of Myanmar, 2008.

national economic development<sup>26</sup>. As the Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union and it shall enact necessary law to supervise extraction and utilization of State owned natural resources by economic forces and it shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law<sup>27</sup>.

Myanmar people enjoy the environmental rights under the specific laws such as Environmental Conservation Law, Natural Disaster Management Law and Forestry Laws. Environmental Conservation Law forms the Environmental Conservation Committee with the Union Minister for the Union Ministry assigned by the Union Government<sup>28</sup>. If the Committee is aware that an event of environmental emergency has occurred or may occur in the entire Myanmar or any Region or State or any area, it shall immediately report to the Union Government and carry out necessary measures relating to the environmental emergency<sup>29</sup>. In this law, there is no provision about the displacement for environmental problems though there are provisions on preventive measures, precautionary measures and polluter pay principle,

In the Natural Disaster Management Law, Natural Disaster Management Committee is the most responsible body for resettlement, relocation and displacement<sup>30</sup>. Under it, there are region and state bodies for effective implementation of natural disaster management in Self-administered Division or Self-administered Zone, district, township, ward and village tract within the Region or State, form Natural Disaster Management Bodies comprising suitable persons and assign duties and powers<sup>31</sup>. These bodies will do the preventive and preparatory measures<sup>32</sup>, emergency response plan<sup>33</sup>, rehabilitation and reconstruction activities<sup>34</sup>

### **Rights under Regional Law**

In concern with the land rights, civil and political rights and economic and social rights of IDPs, there are ASEAN regional declarations, statements and AICHR guided by ASEAN Charter.

ASEAN Declaration of Human Rights was adopted on 19 November 2012 to take efforts in promoting the human rights in ASEAN region. Every person has the right to freedom of movement and to leave any country including his or her own, and to return to his or her country. Every person has the right to be free from arbitrary interference with his or her privacy. Every person has the right to the protection of the law against such interference or attacks. Every person has the right to an adequate standard of living such as the right to adequate and affordable food, freedom from hunger and access to safe and nutritious food; the right to clothing; the right to adequate and affordable housing; the right to medical care and necessary social services; the right to safe drinking water and sanitation; the right to a safe, clean and sustainable environment.<sup>35</sup>

After the ASEAN Declaration of Human Rights, the heads of ASEAN member countries announced the Phnom Penh statement on 21<sup>st</sup> ASEAN Summit of 28<sup>th</sup> November in Cambodia. This statement reaffirmed the human rights provisions of UDHR and ADHR to

<sup>26</sup> S.370, Ibid.

<sup>27</sup> S.37, Ibid.

<sup>28</sup> S.4 of the Environmental Conservation Law 2012.

<sup>29</sup> S.9, Ibid.

<sup>30</sup> S.4 of the Natural Disaster Management Law 2013.

<sup>31</sup> S.7, Ibid.

<sup>32</sup> S.16, Ibid.

<sup>33</sup> S.17, Ibid.

<sup>34</sup> S.18, Ibid.

<sup>35</sup> ASEAN Declaration on Human Rights, November 19, 2012.

establish the framework for human rights cooperation in the region. There are so many rights such as rights to development, rights to peace, civil rights, political rights, social rights and cultural rights in both the Phnom Penh statement and ADHR. Although some of the ASEAN members including Myanmar don't ratify the ICCPR and ICESCR, ASEAN people can enjoy these rights and can contribute to the ASEAN community building process<sup>36</sup>.

The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN was adopted on June 30, 2014. Member States have to strengthen a holistic, multi-disciplinary approach to promote the rights of women and children in the region which includes effective laws, legislations, policies and measures to: provide victims/survivors with access to justice, legal assistance, protection, social welfare services, education, and health services, including counseling and peer-to-peer support mechanisms, rehabilitation, recovery, and reintegration into the community; promote family support services, parenting education, education and public awareness on the rights of women and children and the nature and causes of violence against women and violence against children to encourage active public participation in the prevention and elimination of violence<sup>37</sup>.

As the overarching institution responsible for the promotion and protection of Human Rights in ASEAN, the ASEAN Intergovernmental Commission on Human Rights (hereinafter shall be referred to as "the AICHR") which was established on October 2009 will discharge its duties pursuant to Article 14 of the ASEAN Charter and the AICHR's Terms of Reference (TOR). Parallel to this development, there is also a growing recognition given to the corporate social responsibility (CSR) as a relevant concept and tool for business entities to promote and protect human rights. The Blueprint's section on 'Social Justice and Rights' calls for CSR principles to be incorporated into the corporate agenda of businesses in the region and contribute towards the sustainable socio-economic development in ASEAN Member States (AMS). The AICHR desires that the ASEAN community shall be free from fear, war, aggression and poverty. AICHR has five years action plan 20110-2014 and 2015-2020 to aim at realizing the aspiration of the people of ASEAN on human rights, strengthening AICHR, promoting and protecting human rights in ASEAN and thereby contributing to the successful building of an ASEAN Community and beyond<sup>38</sup>.

In ASEAN region, ASEAN people including Myanmar have equal rights without discrimination as the overarching institution with overall responsibility for the promotion and protection on human rights in ASEAN. Myanmar government is now being collaborated with ASEAN member states by signing up to new ASEAN framework such as Hyogo framework for action (HFA), ASEAN Committee on Disaster Management, ADPC Consultative Committee on Disaster Management, ASEAN Ministerial Conferences, and ASEAN Agreement on Disaster Management and Emergency Response (AADMER).

## **Rights under International Law**

International Human Rights system is based on the State duties to respect, protect and fulfill human rights. Everyone has the right to life, liberty and security of person<sup>39</sup>. Everyone has the right to an effective remedy by the competent national tribunals for acts

<sup>36</sup> Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration, 19 November 2012.

<sup>37</sup> ASEAN Declaration on the Elimination of Violence against Women and Elimination of Violence against Children, 2014.

<sup>38</sup> Five Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2016 – 2020), 48th ASEAN Ministerial Meeting, 3 August 2015.

<sup>39</sup> Art.3 of Universal Declaration of Human Rights, 1948.

violating the fundamental rights granted him by the constitution or by law<sup>40</sup>. Everyone has the right to freedom of movement and residence within the borders of each state<sup>41</sup>.

It is important to protect and respect the rights of the child<sup>42</sup> without the discrimination of race, sex, religion and disabilities in the events of internal displacement<sup>43</sup>. State parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity and make educational and vocational information and guidance available and accessible to all children. States Parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential<sup>44</sup>. The Convention on the Rights of the Child provides that States parties shall take appropriate measures to combat disease and malnutrition "through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution"<sup>45</sup>.

Internally displaced women can face a range of serious threats resulting from the breakdown of law and order, and as a result of communal or intra-group tension for example a result of competition for scarce resources, such as land, water or firewood. States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men<sup>46</sup>. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile<sup>47</sup>.

States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: To have access to adequate health care facilities, including information, counseling and services in family planning; To benefit directly from social security programmes; To participate in all community activities; To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications<sup>48</sup>.

Internally displaced persons have the right to request and to receive protection and humanitarian assistance from the authorities who have the primary duty and responsibility.<sup>49</sup> Every human being shall have the right to be protected against being arbitrarily

<sup>40</sup> Art.8 of Universal Declaration of Human Rights, 1948.

<sup>41</sup> Art.13(1), Ibid.

<sup>42</sup> Art.1 of the UN Convention on the Rights of the Child, 1989 states that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

<sup>43</sup> Art.2 of the UN Convention on the Rights of the Child, 1989.

<sup>44</sup> Art.22, Ibid.

<sup>45</sup> Articles 28 and 29, Ibid.

<sup>46</sup> Art.3 of UN Convention on the Elimination of all forms of Discrimination against Women.

<sup>47</sup> Art.15(4), Ibid.

<sup>48</sup> Art.14, Ibid.

<sup>49</sup> Principle 3 of the UN Guiding Principles of IDPs.

displaced from his or her home or place of habitual residence in cases of large-scale development projects. Displacement shall last no longer than required by the circumstances<sup>50</sup>. Internally displaced persons shall be protected, in particular, against: Direct or indiscriminate attacks or other acts of violence; Starvation as a method of combat; impede military operations; Attacks against their camps or settlements; and the use of anti-personnel landmines<sup>51</sup>.

Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement<sup>52</sup>. When necessary, internally displaced persons shall have access to psychological and social services. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses<sup>53</sup>. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced<sup>54</sup>. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration<sup>55</sup>.

As Myanmar signed the core International Human Rights Treaty of ICESCR on 16 July, 2015, Myanmar people can enjoy the economic, social and cultural rights derived from it accordingly. The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance<sup>56</sup>. The States Parties to the present Covenant recognize that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children<sup>57</sup>. The States Parties to the present Covenant recognize 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent<sup>58</sup>. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace<sup>59</sup>.

<sup>50</sup> Principle 6, Ibid.

<sup>51</sup> Principle 10, Ibid.

<sup>52</sup> Principle 12, Ibid.

<sup>53</sup> Principle 19 of the UN Guiding Principles of IDPs.

<sup>54</sup> Principle 25, Ibid.

<sup>55</sup> Principle 28, Ibid.

<sup>56</sup> Article 9 of the International Covenant on the Economic, Social and Cultural Rights 1966.

<sup>57</sup> Article 10, Ibid.

<sup>58</sup> Article 11(1), Ibid.

<sup>59</sup> Article 13(1) of the International Covenant on the Economic, Social and Cultural Rights 1966.

In taking into account the rights of IDPs at both the national and international levels, it is found that Myanmar people have so many rights. In order to fulfill the rights, States have a responsibility to ensure the full and equal enjoyment of human rights of all individuals within the territory. This duty extends to all of the stakeholders, including military personnel, police force, local authorities, enterprises and also government whether at the national, regional or international level. Business is the major source of investment and job creation, and markets can be highly efficient means for allocating scarce resources, capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights. The idea of human rights is as simple as it is powerful: treating people with dignity. In this regard, the duty to protect, respect and remedy obliges the State to take all necessary measures to prevent any violations of human rights.

### **State's Duty to Protect the Internal Displaced Persons**

The State's duty to protect the IDPs lies, at the very core of the international human rights regime, an independent corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and access to remedy because even the most concerted efforts cannot prevent all abuse. In the case of responsibility to protect, there are three branches which are the responsibility to prevent, react and rebuild. If the international community finds that a population of citizens is suffering one of the identified types of harm, and the state in question is either unable or unwilling to protect the population, then the international community is obligated to commence with protective measures.

While governments have the primary duty to protect, respect and fulfill human rights, other organizations and individuals have important complementary roles to play in respecting and supporting human rights. All businesses everywhere, regardless of size or sector and whether or not they are participants in the UN Global Compact, have the baseline responsibility to respect human rights. UN Global Compact is a platform for companies, NGOs and governments for the development, implementation and disclosure of responsible and sustainable corporate policies and practices. The network has been launched in 2000 and since then companies oblige themselves to implement and comply with the ten principles out of four areas, being human rights, labour, environment and anti-corruption. In the first two principles which concern human rights, Principle 1 states that businesses should support and respect the protection of internationally proclaimed human rights and Principle 2 requests them to make sure that they are not complicit in human rights abuses<sup>60</sup>.

CSR activities today are also complemented with a range of global corporate governance tools and measurements that could potentially enhance firms' commitments to high business practices and standards. Myanmar is now facing the human rights impact of the Letpadaungtaung mining project. CSR activities are very weak because of the lack of CSR policy. Firstly, Myanmar government needs to fulfill the national laws and policy and then, to consider how to perform the CSR with due diligence what are the key factors for leading to the land issues in dealing with the internally displaced persons. In addition to this, government must take into account the judicial mechanisms when addressing business-related human rights abuses. Amongst some of these initiatives include, *inter alia*, ISO 26000, the United Nations Global Compact (UNGCG), Global Reporting Initiative (GRI) and Extractive Industries Transparency Initiative (EITI).

In 2001, the European Commission produced a green paper, entitled: 'Promoting a European Framework for Corporate Social Responsibility' which outlined not only the

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<sup>60</sup> UN Global Compact Office, United Nations Global Compact: Corporate Sustainability in the World Economy, (2014), <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-1/2>.

grouping's CSR principles, but also introduced some tools, and set out numerous questions for relevant EU institutions to address in relation to CSR promotion in the region. In its 2008 European Competitiveness Report, the Commission also dedicated one whole chapter on the nexus between CSR and competitiveness. The Report specifically argues that CSR not only has a social, moral, and ethical imperative, but is also good business (The European Commission, 2009).

### **Research Finding**

Internal displacements were recently occurred in Myanmar due to the natural disasters and human-made disasters. The local people faced not only the environmental problems but also the social and economic problems. According to UN Guiding Principles on Internally Displaced Persons 1998, the Myanmar government needs to fulfill the national laws and policy and then, to consider how to perform the Corporate Social Responsibilities (CSR) with due diligence what are the key factors for leading to the land issues in dealing with the internally displaced persons. In addition to this, government must take into account the judicial mechanisms when addressing business-related matters such as man-made disasters for internal displacement.

### **Conclusion**

The tragedy of displacement can be compounded by environmental degradation. Environmental management is an urgent concern for Myanmar as it directly impacts on the well-being and livelihoods of internally displaced persons. It is also relevant in all phases of our work, from emergencies to rehabilitating the environment when a camp or settlement is closed. Effective environment management can increase the resilience, rehabilitation, resettlement, reunion and human rights suffering. People who displaced internally caused by the environmental problems shall protect the equal rights with other peoples. Then, they shall participate in the environmental decision making processes which need to be ensured the community consultation. Rights to education for the children and disabled persons shall be accessible. Government and local authority need to provide the data information very timely through the printed media, radio broadcasting, social media and TV channels. Beyond village and ward level, township and state/region shall seek to work with the GOs and NGOs for cooperate social responsibilities to fill the needs of IDPs.

### **Acknowledgement**

First and foremost, the author would like to express my deep gratitude to Dr. Thidar Win, Rector of the University of Mandalay, for her encouragement to take part in this journal. And then, she would like to pay her special thanks to Dr. Thwin Pa Pa, Professor (Head) of the Department of Law, for her supervision throughout the period for preparing of this paper.

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