

Myanmar, Escalation of the Conflict

Fighting between the Myanmar Armed Forces and various non-state armed groups persists across much of the country and the clashes between the different actors have intensified since October 2023.

Acknowledgments

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. “MYANMAR: INTENSIFICATION OF CLASHES”, UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS.

[Source: OCHA, "Myanmar: Intensification of clashes", Flash Update 10, 15 December 2023, available at https://myanmar.un.org/sites/default/files/2023-12/Flash%20Update%2010_%20Intensification%20of%20Clashes%20in%20Myanmar_final.pdf]

[...]

Situation Overview

[1] Conflict between the MAF [Myanmar Armed Forces] and multiple armed groups, including EAOs [Ethnic Armed Organizations] and PDFs [People's Defence Forces] persists in many parts of the country involving armed clashes, airstrikes and artillery shelling and causing a surge in civilian casualties, displacement and destruction of civilian properties in numerous townships. Unverified field reports indicate that at least 378 civilians, including men, women, and children, have reportedly been killed and 505 others have been injured

since the escalation began in late October. Since the intensification, more than 660,000 people are estimated to have been newly displaced in northern and southern Shan, Kayah, Rakhine, Chin, Sagaing, Mandalay, eastern Bago, Kayin, Mon, and Tanintharyi. There have been reports of some displaced people returning home while others have moved multiple times for safety. Some are reportedly reluctant to leave current displacement sites in northern Shan due to the risk of forced recruitment. Total current displacement nationwide now stands at a record 2.6 million people.

[2] The movement of people and transportation of goods is being heavily curtailed, while interruptions to phone and internet services are impacting on the sharing of civilian safety information and humanitarian operations. The lack of humanitarian and commercial access to transport routes is creating a scarcity of food, shortages of essential household items, soaring commodity prices and a fuel crisis in affected areas. Partners have identified the most urgent humanitarian needs across conflict-affected areas as food, safe shelter, non-food items and hygiene kits, basic health services and protection support. Faith-based organizations and local responders, in collaboration with international organizations, continue to provide lifesaving assistance to displaced and affected communities wherever access is possible. Despite an extremely challenging operational context, including supply stockpiles that are heavily depleted due to underfunding, access constraints and the rapid and unpredictable escalation of needs, humanitarian partners are reaching growing numbers of affected people. The vast majority of displaced people in northern Shan (82,000) have now received assistance and work continues to expand the response in other impacted areas such as the Northwest where 50,000 people have already been reached. A rapid response allocation of US\$7 million from the UN Central Emergency Response Fund (CERF) will provide survival support to people most affected in the coming weeks.

Humanitarian Needs and Response

Northeast

[3] **In northern Shan**, the conflict remains persistent with fighting continuing across several townships, despite reports that discussions around a possible ceasefire have been held between parties to the conflict. Clashes intensified in some townships since the last update with heavy use of airstrikes and artillery shelling during the past week with unverified reports indicating that a total of 130 civilians have been killed, and another 210 injured since the fighting escalated. More than 430 houses and other public assets have been damaged or destroyed.

[4] Since 27 October, nearly 120,000 people have been forced to flee their homes to safer locations. About 20,000 people have since returned home leaving some 99,000 people displaced in 187 sites mostly within northern Shan, as well as in neighboring Kachin and Mandalay. The newly displaced people are predominantly being sheltered in religious compounds, host communities, or are staying in informal sites in forested areas or paddy fields near the China-Myanmar border.

[5] Humanitarian partners have had access to 139 sites (74 per cent), although urgent rapid needs assessments have been challenging due to ongoing fighting, access restrictions and bureaucratic impediments. Close to 82,000 IDPs (82 per cent of all those displaced) in northern Shan are estimated to have received essential humanitarian assistance, mostly in the form of multi-purpose cash assistance, food and essential relief items and services. An estimated 30,000 IDPs at the China-Myanmar border (down from 40,000 a week ago) remain in need with minimal humanitarian access.

[6] An inter-agency mission succeeded in reaching some locations in Wa last week to assess the situation but was not able to reach those on the border.

[...]

[7] Lashio Airport has been closed for seven weeks, while accessibility of major routes remains limited.

[8] **In Kachin**, the security situation remains unstable with random artillery fire, as well as troop movement and recruitment of civilians reported in several townships, including the state capital, Myitkyina, over recent weeks.

[9] Fighting between the MAF and the Kachin Independence Army (KIA) has been intense in Momauk Township on the major road between Bhamo and Myitkyina towns since 13 December. There have not been any reports of significant displacement.

[10] Two critical roads between Mandalay and Myitkyina are being frequently blocked by armed groups and the price of basic commodities including food and fuel has been surging for more than a month.

[11] Telecommunications and internet services in Kachin have been extremely unreliable, with limited or no access in some areas, hampering all communications, including between humanitarian partners.

Rakhine and southern Chin

[12] **In Rakhine and southern Chin**, armed clashes between the MAF and the Arakan Army (AA) remain intense in Maungdaw, Mrauk-U, Pauktaw and Paletwa townships during the past week. Almost all townships have seen frequent artillery fire, except for Sittwe and a few townships in southern Rakhine.

[13] The hostilities have caused a surge in civilian casualties; 37 fatalities and 121 injuries were reported between 13 November and 11 December. Since the ceasefire broke down, arbitrary arrests have escalated across Rakhine, with more than 190 people placed in detention for alleged affiliation to opposite party to the conflict.

[14] More than 111,000 people have been newly displaced due to the ongoing fighting. This is in addition to

more than 205,000 Rakhine and Rohingya IDPs, who have been displaced by previous AA-MAF conflict and violence across Rakhine and Paletwa township in southern Chin.

[15] The lack of security and ongoing access restrictions continue to severely impede humanitarian activities. A number of humanitarian personnel have themselves been affected, arrested, or displaced. Despite these significant access challenges and safety risks, some local responders and religious networks are managing to provide limited aid to some affected families.

[16] Humanitarians are deeply concerned about interruptions to services for vulnerable people who were already in need even before the current surge in fighting and facilitation of regular assistance is needed so that more lives are not lost.

[17] Roads and waterways into and within Rakhine remain closed, and both public and private transportation are still suspended, impacting the flow of commercial commodities such as fuel, food, medical supplies, and items intended for humanitarian assistance. Depleted fuel stocks are affecting a broad spectrum of activities, including transportation, telecommunications, agricultural, and industrial sectors.

[...]

Northwest and central Myanmar

[18] **In the Northwest and central Myanmar**, intense armed clashes and violence have taken place in multiple townships, including Ayadaw and Indaw in Sagaing; Pakokku and Pwintbyu in Magway; and Kyaukse, Natogyi and Taungtha in Mandalay over recent weeks. Indiscriminate shelling and airstrikes were reported in urban areas of Kawlin and Tigyaing townships in Sagaing during the first week of December.

[19] Despite small-scale returns, the number of people displaced since the escalation began has increased to more than 314,000 across the Northwest and central Myanmar. This includes the fresh displacement of approximately 130,000 people from Kawlin and Tigyaing townships and more than 7,000 people Khampat Town in Sagaing and Tilin and Yaw townships in Magway since early December.

[20] The ongoing conflict has reportedly resulted in the deaths of 118 civilians and injuries to an additional 73 people. An estimated 553 homes, religious buildings and schools have been destroyed. In addition, arbitrary arrests are continuing at checkpoints and during military operations; some 110 civilians have been reportedly arrested in Kale and Monya townships in Sagaing since early December.

[21] Humanitarian partners have provided emergency assistance, mostly multi-purpose cash, to nearly 50,000 IDPs in Chin, Mandalay, Magway and Sagaing, although needs continue to far outstrip response capacity. Humanitarian access to affected people remains extremely challenging due to ongoing fighting,

threats to safety and security of humanitarian workers, road closures, movement restrictions, lack of travel authorizations, further complicated by a fuel crisis and serious banking issues.

[22] An estimated 150,000 IDPs in Kawlin and Tigyaing townships in northern part of Sagaing have no access to humanitarian assistance and partners are exploring avenues for potential response in this area.

Southeast

[23] In the Southeast, intensified armed conflict has been seen in multiple townships across all states and regions since 11 November. Fighting has been intense in eastern Bago, Kayah and southern Shan, Mon, Kayin and Tanintharyi for more than a month, with heavy deployment of artillery shelling, aerial bombardment and shootings, as well as drone attacks. Since 11 November, the indiscriminate use of small and heavy weapons has resulted in the reported deaths of 93 civilians and injuries to an additional 101 people, many of them along the Shan-Kayah border.

[24] More than 136,000 people are verified to have been newly displaced between 31 October and 11 December.

[25] Amid growing needs, humanitarian agencies, in coordination with religious leaders and other stakeholders, are providing aid using a range of approaches.

[26] Humanitarian access remains heavily restricted in most parts of the Southeast.

[27] Movement of people and transportation of essential commodities remains heavily restricted, especially into Kayah.

[28] An inter-agency multi-sectoral distribution of humanitarian assistance to 11,000 IDPs has been approved in centers across six townships (Hopong, Hsihseng, Kalaw, Nyaungshwe, Pinlaung and Taunggyi).

DISCUSSION

I. Classification of the situation and applicable law

1.
 - a. How would you classify the situation in Myanmar? What is the applicable law? (GC I-IV, Art. 3; P II, Art. 1)
 - b. What are the criteria for the classification of a non-international armed conflict? May the level of intensity be evaluated through the aggregation of violence emanating from several armed groups? Or should it be an individual evaluation for each of the groups involved? How is it assessed that the organisation threshold has been met?
 - c. Is the applicable law the same throughout the entire territory? Even in the townships where there are no

hostilities?

d. Is the applicable law the same for all the non-state actors?

II. Conduct of hostilities

2. (*Para. 3*) Can a “public asset” be directly attacked? Under what conditions? (PI, Art. 52(2); CIHL, Rule 7 and Rule 8)

3. (*Para. 8*) Can “random artillery fire” be in conformity with the rules of IHL relating to the conduct of hostilities? Why?

4. If a military objective is in an urban area, can it be attacked? What rules should be respected? (PI, Art. 58; PII, Art. 13(1); CIHL, Rule 14 and Rule 15)

5. (*Para. 18*) In your opinion, are air strikes and shelling the best method in order to respect the rules of IHL relating the conduct of hostilities while operating in urban areas? (CIHL, Rule 17)

6. (*Para. 20*) Can a school be attacked? What about a religious building? Under what conditions? (CIHL, Rule 38)

7. (*Paras 17 and 26*) In your opinion, should the effects of an attack resulting in the cutting of roads leading, inter alia, to heavily restricted humanitarian access be taken into account in the evaluation of the proportionality rule? (P I, Art. 57(2)(b); CIHL, Rule 14)

III. Protected persons

8. (*Para. 13*) Can persons who do not take part in hostilities be arrested because of “alleged affiliation to opposite party”? On what ground can civilians be deprived of their liberty during a non-international armed conflict ? (PII, Art. 5; CIHL, Rule 100, Rule 101)

9. How should civilians be treated while detained during a non-international armed conflict? What obligations should the party to the conflict respect? (PII, Art. 4, Art. 5; CIHL, Rule 87, Rule 99)

10. Is the recruitment of civilians to join armed forces or non-state armed groups lawful under IHL? What about forced recruitment? (PII, Art. 5(1)(e))

11. (*Para. 16*) What do you think of the mention that there were some “interruptions to services for vulnerable people”? Does IHL recognize that certain persons are specially protected because they are considered more vulnerable? (PII, Art. 4(3); CIHL, Rule 135, Rule 138)

12. How should internally displaced persons be treated ? (PII, Art. 17(1), Art. 4(3)(b); CIHL, Rule 131)

IV. Humanitarian assistance

13. During a non-international armed conflict, are the obligations of the State related to humanitarian assistance the same as non-state armed groups? (PII, Art. 18)

14. What obligations do the parties have in case of curtailed access of humanitarian aid? In case of lack of

security impeding humanitarian activities? (PII, Art. 11) (*Para. 5*) May access restrictions and bureaucratic impediments be considered an arbitrary denial of consent to allow humanitarian assistance to get through?

What is the consequence of an arbitrary denial of consent? (Rome Statute, Art. 8(2)(b)(iii), Art. 8(2)(e)(iii)).

15. Can roads and waterways be closed if the result is impeding the flow of items intended for humanitarian assistance of the civilians? For security reasons? To facilitate military operations? (GC I-IV, Art. 3; PII, Art. 18(2); CIHL, Rule 55). What if this humanitarian aid is dedicated to fighters?

16. (*Para. 11*) On what basis should measures be taken to reestablish telecommunications and internet services to allow communications between humanitarian partners?

17. (*Para. 15*) May arrest or displacement of humanitarian personnel be lawful? Under what conditions?