

SUMMARY AND RECOMMENDATIONS



ISOLATED IN YUNNAN

Kachin Refugees from Burma in China's Yunnan Province

A Kachin boy outside an unrecognized refugee camp in Yunnan, China, in January 2012.
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“Most [of the Kachin from Burma] come to visit friends and relatives.... Through our channels, they have been able to be housed by their relatives. ... We have used a humanitarian approach based on the principle of good neighborliness. Our local government and border community have also provided necessary assistance.”

—YUNNAN PROVINCIAL SECURITY DEPARTMENT DIRECTOR
MENG SUTIE, REFERRING TO KACHIN REFUGEES AS
“BORDER RESIDENTS,” MARCH 10, 2012

“We were scared the Chinese authorities would chase us out. They didn’t provide us with anything at all.”

—KACHIN REFUGEE IN CHINA, AUGUST 2011

Since June 2011, renewed fighting between the Burmese military and the Kachin Independence Army (KIA) in northern Burma has driven an estimated 75,000 ethnic Kachin from their homes. Many have fled abuses by the Burmese army, including attacks on Kachin villages, killings and rape, and the use of abusive forced labor. About 65,000 have stayed inside Burma, where they remain at risk. At least another 7,000-10,000 have sought refuge across the border in Yunnan Province in southwestern China.



(above) Kachin refugee who gave birth in China’s Yunnan Province, after being forced back to Burma by the Chinese authorities. “When the fighting started my entire village ran to the China side,” she told Human Rights Watch. “I was pregnant and near giving birth. I fled on June 15 and on June 16 gave birth. There were around 10 Chinese soldiers that I saw [in the village]. They were patrolling everyday. They had guns.... One week after giving birth we heard from the villagers that we had to go back, so I came here [to a displaced persons’ camp in Burma].” © 2012 Human Rights Watch



(above) An industrial site in Yunnan where bricks are made, and where Kachin refugees now pay rent to live.
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A March 2012 Human Rights Watch report¹ addressed wartime abuses in Burma's Kachin State; this report examines the difficult and sometimes dire conditions facing the thousands of Kachin who have sought refuge in China. The report is based on more than 100 interviews with Kachin refugees in Yunnan Province and displaced persons in Kachin State.

In the months immediately following the June 2011 outbreak of renewed hostilities between the Burmese army and the Kachin Independence Army (KIA), some displaced Kachin were denied entry into China or forcibly returned to Burma, which put them at great risk and created a pervasive fear of forced return among the Kachin refugees who remain in Yunnan. Despite Chinese government claims to the contrary, refugees in Yunnan told

Human Rights Watch they had received no humanitarian assistance from the government and major humanitarian agencies have had no access to the refugees since they began arriving in June 2011. The refugees are scattered across more than a dozen makeshift settlements lacking adequate shelter, food, potable water, sanitation, and basic health care. Most children have no access to schools. Needing to work to provide for their families, they are vulnerable to abuses by local employers, and

¹ See Human Rights Watch, *Untold Miseries: Wartime Abuses and Forced Displacement in Burma's Kachin State*, <http://www.hrw.org/news/2012/03/20/burma-reforms-yet-reach-kachin-state> (accessed March 28, 2012).



(above) An improvised refugee site in Yunnan. Since the conflict began in June 2011, the Chinese authorities have not provided any aid for the 7,000 to 10,000 refugees known to have arrived in Yunnan. © 2012 Human Rights Watch

have been subject to arbitrary drug testing and prolonged detention by the Chinese authorities.

All of the Kachin refugees with whom Human Rights Watch spoke expressed a desire to eventually return to Kachin State, but not before the conflict ends. Human Rights Watch uses the term "refugee" for Kachin who have entered China since June 2011 because all have fled armed conflict and rights abuses in Kachin State and would face serious threats to their lives if returned to Kachin State.

China is a party to the 1951 Refugee Convention and its 1967 Protocol as well as other international human rights treaties that provide protections for refugees and asylum seekers. However, China has no law or procedure for determining refugee status and the United Nations High

Commissioner for Refugees (UNHCR) has not been given access to conduct refugee status determinations; under international law, the lack of a formal recognition mechanism does not negate the fact that someone is a refugee.

The Chinese government has permitted most Kachin refugees to enter and remain in Yunnan, and has allowed a number of small local nongovernmental organizations to provide assistance. Local authorities have interviewed the refugees about their reasons for leaving Burma and gathered their basic biographical information. But the Chinese government has not fulfilled its obligations either

to provide government assistance or to allow UNHCR and other humanitarian agencies to reach the refugees and provide them food and other necessities.

While thousands of refugees remain in Yunnan, not all have been allowed to cross the border or stay in China. Human Rights Watch documented two instances—on June 17 and November 13, 2011—in which groups of Kachin asylum seekers were turned away at the Chinese border. In two other incidents in June, Chinese soldiers ordered Chinese village headmen to send about 300 refugees back to Burma, claiming the order came from Beijing. The headmen reluctantly carried out these orders, and the refugees had no choice but to return to Burma—Chinese soldiers reportedly returned three days later to ensure the refugees had left. Both the rejection of asylum seekers at the border and the forcible return of refugees violate the principle of nonrefoulement (“non-return”), which prohibits the return of refugees to a place where their lives or freedom are at risk.

While these forcible returns could be isolated instances, they nevertheless have contributed to widespread anxiety among the Kachin refugees in Yunnan. China’s unwillingness to provide these refugees formal status causes many to believe they do not have a right to asylum and makes them more susceptible to pressures to return.

Some Kachin refugee families have returned to Burma from Yunnan because of pressure from Chinese authorities or the lack of adequate humanitarian aid. There they are exposed to ongoing fighting, hostile Burmese army forces, and landmines that have been widely laid by both the Burmese army and the KIA. Human Rights Watch previously documented Burmese soldiers threatening and shooting at Kachin civilians who had recently returned to their villages.²

² Human Rights Watch, *Untold Miseries*, pp. 10, 37-39, 65-66.



(above) Kachin refugee children in a camp in Yunnan, where they lack access to education. Refugees told Human Rights Watch that when their children are unable to attend school, they have to watch them throughout the day and cannot work to earn money to live. © 2012 Leah Viens-Gordon



“When we go for a bath in the river, the Chinese authorities always harass us ... There is a water well at the [camp] but there are many people and it’s very crowded, so we have to go to the river to take a bath, and when we go the Chinese authorities always stop us and ask us questions. And they always follow us. They follow behind us and they yell things at us. So we do not feel very secure.”

—KACHIN REFUGEE (ABOVE) IN A SECURE LOCATION IN YUNNAN



(above) Kachin refugees in Yunnan lack access to safe water and obtain water from wells and other sources that are not potable. “In the place we are staying now, some people drink from the well,” said a 50-year-old Kachin refugee. “I also drink from the well. Some went to get clean water from another well. We have had high fevers, coughing, and diarrhea.”
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Human Rights Watch urges the Chinese government to establish a temporary protection regime for the Kachin refugees that allows them to remain and enjoy basic human rights in Yunnan until they can return in safety and dignity to Burma in accordance with international standards. Under no circumstances should refugees in Yunnan or asylum seekers at the border be forced back to face serious risks arising from conditions of armed conflict or a well-founded fear of persecution. China should also allow unhindered access to refugees by local and international organizations, including UNHCR, to provide protection and humanitarian assistance to the refugees.

To date, private Kachin aid networks operating in Yunnan have taken the lead in providing humanitarian assistance for the refugees. They have been supported by the Bur-



“On the concrete floor we have no mattress. When we sleep it’s very cold and not good for our health. Sometimes the floor is wet so we use plastic sheets for a mattress, and there are many mosquitos.”

—KACHIN REFUGEE, 25, IN YUNNAN

mese and Kachin community in China and abroad, Christian Kachin churches in Yunnan and in Burma, local aid organizations, and a few international organizations. But the funding and resources of these groups are very limited. The Chinese government has not permitted international humanitarian agencies to operate in Yunnan, so they have focused on delivering aid to the internally displaced person (IDP) population in Burma.

The Chinese government has a poor track record in recognizing and addressing the needs of most refugee populations, such as North Koreans. Its treatment of some refugees from Burma, namely ethnic-Chinese Kokang refugees who fled northern Shan State in Burma in August 2009, was a partial exception. While the Yunnan authorities did not formally recognize the Kokang as refugees or allow international access to them in Yunnan, they assisted them with shelter, food, and medical care.

On three occasions—in early December 2011, late March 2012, and early June 2012—Burmese authorities granted UN agencies access to IDPs in Kachin State conflict zones. While the UN convoys were only able to deliver a limited amount of aid to a fraction of the IDP population, permitting this access was a step in the right direction. The Chinese government has not allowed comparable access to the refugees in Yunnan Province, and should do so immediately.

So long as the armed conflict in Kachin State continues, the Kachin refugees in China will be unable to return to their homes. The need for humanitarian assistance and temporary protection is urgent. As one 25-year-old refugee in Yunnan told Human Rights Watch, “I don’t feel secure here at all because we are still on the border and too close to the Burma side. I worry as the fighting continues, if the Chinese don’t accept us, where will we go? Where can we live?”



(above) A footbridge to Yunnan Province, China, located outside Laiza, Kachin State, used by Kachin refugees. © 2012 Human Rights Watch

RECOMMENDATIONS

To the Government of China

- Institute a temporary protection regime for Kachin refugees in view of ongoing armed conflict and widespread human rights violations in northern Burma. The temporary protection regime should grant Kachin refugees a time-bound but renewable status that protects them against refoulement, allows them to remain in China, and permits them to work and to receive humanitarian assistance as needed. Chinese authorities should conduct periodic and transparent assessments of conditions in Burma and renew the temporary protection regime until conditions in Burma allow the Kachin to return to their homes in safety and dignity.
- Institute a temporary protection regime that takes into account the special protection needs of women and of children in the refugee population.
- Provide humanitarian assistance to meet the basic needs of the Kachin refugee population in Yunnan Province, including adequate shelter, food, potable water, sanitation, basic health care, and education for children.
- Allow unhindered access to nongovernmental and community-based organizations to provide humanitarian assistance to the refugee population in Yunnan Province.
- Allow the United Nations High Commissioner for Refugees full and unfettered access to all refugees in Yunnan Province.
- Investigate allegations of refoulement of Kachin refugees from Chinese territory and at the border back to Burma.
- Ensure that border and provincial police, and national and regional security and immigration officials act in full accordance with China's international legal obligations toward refugees and asylum seekers in Chinese territory and at the border. Take appropriate disciplinary or legal action against any security force personnel who violate the rights of refugees under international law.

- Ensure that refugee children in Yunnan Province obtain free primary education as well as access to other education as provided in international law.
- Investigate allegations of labor abuses, arbitrary drug testing, arbitrary detention, and other violations of due process rights in Yunnan, and take appropriate action to end such practices.
- Investigate allegations that landlords and employers discriminate against refugees in Yunnan with regard to rents, wages, and conditions of housing and labor, and take necessary steps to end such practices.
- Ratify International Labour Organisation Convention No. 29 on forced or compulsory labor.
- Ensure that future returns of refugees to Burma take place in accordance with international standards on a voluntary basis with attention to the safety and dignity of the returning population.
- Regarding drug detention centers:
 - ▶ Immediately close all re-education through labor (RTL) centers.
 - ▶ Carry out prompt, independent, thorough investigations into allegations of cruel, inhuman, or degrading treatment or punishment and other human rights abuses and criminal acts in China's RTL centers. Take appropriate legal action against identified perpetrators of abuse.
 - ▶ Provide adequate compensation and medical care to current and former detainees for harm to their physical and mental health suffered while in detention.
 - ▶ Expand access to voluntary, community-based drug dependency treatment and ensure that such treatment is medically appropriate and comports with international standards.

To United Nations High Commissioner for Refugees

- Continue to press the Chinese government for access to the Kachin refugees in Yunnan and other refugee populations in China.
- Coordinate with relevant UN agencies in Burma with regard to humanitarian aid and protection for Kachin internally displaced persons (IDPs) in Burma and refugees in Yunnan, with special attention to the needs of women and children refugees and IDPs.

To United Nations Agencies and the Donor Community

- Continue to press the Chinese government to uphold its legal obligations to refugees under the 1951 Refugee Convention and its 1967 Protocol, including the creation of a temporary protection regime and humanitarian assistance for Kachin refugees, as detailed above.
- Support expanded assistance to Kachin IDPs and refugees via nongovernmental and local community-based organizations in China and Burma.
- Continue to press the Burmese and Chinese governments and ethnic armed groups to facilitate humanitarian access by impartial humanitarian agencies to the Kachin and other armed conflict-affected populations.
- Provide the necessary diplomatic and financial support for UNHCR to fulfill its mandate to assist Kachin refugees.
- Support the initiation of humanitarian mine clearance and mine risk education programs in Burma and provide expanded assistance to landmine survivors.
- Expand assistance via nongovernmental organizations to other refugees in need in China.