



DISPLACEMENT SOLUTIONS

# Housing, Land and Property Rights in Myanmar

Research, Analysis and  
Publications by  
Displacement Solutions

**2009-2018**

An Overview

May 2018

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## INTRODUCTION

Over the past decade, Displacement Solutions has undertaken extensive research aimed at shedding light on the numerous housing, land and property (HLP) rights issues facing the people of Myanmar. Through these efforts DS aims to build the capacity of the people of Myanmar to exercise and enforce their HLP rights. To this end, DS provides practical guidance to citizens and their governments through the development of institutional and policy frameworks, guiding principles and practical steps which seek to reduce, eliminate and redress HLP rights abuses.

The following eleven books and reports were published with the intent of informing and aiding the Myanmar government, key ethnic actors, humanitarian organisations and citizens on the importance of HLP rights within Myanmar. The documents outlined here are just a portion of DS' research efforts concerning the country. Many of our other papers and reports on more sensitive themes have intentionally been kept internal by the organisations and institutions for whom they were prepared.

These publications cover topics spanning national policy development on land grabbing and speculation, recommendations for the development of a comprehensive HLP rights framework within Myanmar, the manner in which HLP rights can be addressed during peace negotiations as well as land rights in relation to mine action. The most recent report outlines the need for the government of Myanmar to establish a Myanmar National Climate Land Bank to pre-emptively address the threats of climate displacement.

Throughout the past ten years, DS has had the privilege of working with an extraordinary group of legal experts, local groups and donors, and would like to thank them all once again for their collective efforts to make Myanmar a country where housing, land and property rights are enjoyed in full by everyone.

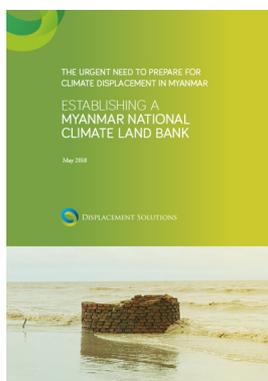
Finally, a special thanks to Hannah Crothers and Amy Pattle from Monash Law School for their assistance in preparing this overview.

Scott Leckie  
Director and Founder

# THE URGENT NEED TO PREPARE FOR CLIMATE DISPLACEMENT IN MYANMAR

## Establishing a Myanmar National Climate Land Bank (MNCLB)

May 2018



[https://issuu.com/displacementsolutions/docs/dis5757\\_myanmar\\_national\\_climate\\_la](https://issuu.com/displacementsolutions/docs/dis5757_myanmar_national_climate_la)

Climate displacement poses a significant challenge to the people and government of Myanmar, the country ranked second out of 187 countries on the Global Climate Risk Index. The authors of this report, DS and Ecodev, contend that the Myanmar government needs to initiate pro-active and preventative measures to meet its national and international obligations to protect the rights of climate displaced persons and communities. This report argues that without a framework in place to assist climate displaced persons, this group of potentially displaced persons will be considerably larger than the already massive IDP and refugee populations. The report's authors propose that the Myanmar government should address this pending crisis through the establishment of a Myanmar National Land Bank (MNCLB).

In the first section of the report, the authors outline how the establishment a land bank can prevent conflict and further displacement in Myanmar. Global experience suggests that planned community relocation in the face of climate threats is the preferred approach of many communities and stands a better change of a positive outcome than individual migration. As land disputes and displacement are already significant issues in Myanmar, it is imperative that appropriate polices and frameworks are put in place too counteract climate displacement so that it does not exacerbate existing property rights tensions.

The MNCLB would establish land set-aside programs for parcels of State land, with the aim of preventing conflict and resolving climate displacement in a rights-based manner. In effect, a MNCLB would be a central institution, a 'Land Bank', responsible for land which the state has formally set aside and which is held on trust exclusively for climate displaced communities needing to relocate. A MNCLB would also be responsible for identifying state land appropriate for allocation to the land bank and would, in accordance with agreed principles and procedures, consider claims from communities requiring land for planned relocation due to pending climate displacement.

The second section of the paper summarizes the comprehensive findings of two preliminary field missions to areas vulnerable to climate inundation; the Irrawaddy Delta area and part of Mon State. During these missions, a research team from DS and Ecodev sought input from communities highly vulnerable to climate displacement regarding their perspectives on future movement, their current livelihoods and opportunities, services in the area and land tenure arrangements. The team then attempted to assess the practicability of organized population movement through a future MNCLB.

Thirdly, the report provides an analysis of the thoughts and opinions of the communities in the Irrawaddy Delta and Mon State, coupled with an analysis of the geographical realities of the area and international human rights law. Key findings include the following: Vulnerable villages at risk of climate displacement are willing to move, but not until climate conditions force them to do so; there are a distinct set of criteria which would have to be met before consent to move would be obtainable; and, available arable land in the Irrawaddy Delta is likely insufficient to provide new land resources to all in need, thus implying the potential need for non-adjacent, distant relocation and new land sites.

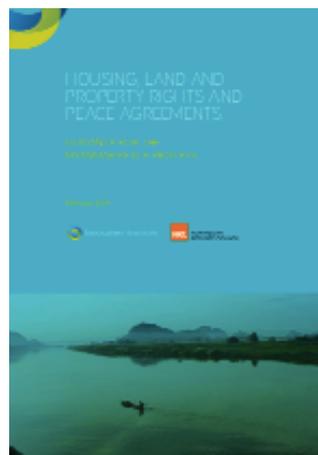
Lastly, the report provides a series of ten concrete and practical recommendations to the government of Myanmar designed to assist the government in tackling the massive climate threat which, if unaddressed, will result in millions of people losing their homes and lands and joining the already staggering numbers of displaced persons in Myanmar.

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## **HOUSING, LAND AND PROPERTY RIGHTS AND PEACE AGREEMENTS**

### **Guidance for the Myanmar Peace Process**

**(February 2018)**



<http://displacementsolutions.org/wp-content/uploads/2018/03/HLP-Rights-and-Peace-Agreements-Guidance-for-Peace-Negotiators-in-Myanmar-1.pdf>

This briefing paper, which was developed in collaboration with the Norwegian Refugee Council, is intended as a tool for training on HLP issues within the Myanmar Peace Process and to inform stakeholders on potential options for the restoration of HLP rights.

The paper begins by outlining the manner by which HLP issues are affected by armed conflict. All armed conflicts, including the current conflict in Myanmar today, involve some form of crisis within HLP sectors. In addition, the different stages of conflict; pre-conflict, mid-conflict, and post-conflict are usually associated with specific manifestations of HLP loss and abuse.

For example, HLP disputes can be a primary cause of internal conflict and localized instability and violence. This is because a lack of access to HLP rights and security of tenure as well as discrimination against ethnic groups and minorities in relation to HLP rights can contribute to the creation of conditions conducive to conflict. However, during conflict, HLP issues arise because many individuals are forced to leave their homes and land, are thus displaced. The expropriation and unlawful occupation of land that often occurs during this period also provides another layer of complexity to issues of forced displacement mid-conflict. Additionally, after periods of conflict, HLP issues remain a prominent aspect of nation-building efforts. This is due to reconstruction needs and the return of refugees and IDPs triggering the need for restitution and HLP recovery and reconstruction.

In light of the centrality of HLP issues to conflict resolution, it is increasingly understood that addressing HLP rights is imperative to the effective implementation of peace efforts and rights-based reconstruction strategies. However, despite HLP issues increasingly being understood as imperative to remedying conflict and nation-building attempts, addressing HLP concerns in peace processes is often viewed as potentially threatening to the success of such endeavours. The fact that HLP violators are often the peace negotiators themselves, and the ensuing power imbalance that follows detracts from the confidence held in negotiations surrounding HLP rights outcomes.

Despite these challenges, the paper goes on to contend that it is of the utmost importance that HLP rights and claims are not left unresolved, otherwise they may form the basis of renewed conflict and prevent lasting peace. Although HLP issues are a challenging aspect of many peace negotiations, peace negotiators need to understand how to effectively address these issues so that mutually satisfactory solutions for all actors can be achieved.

In the upcoming months and years, peace negotiators in Myanmar are likely to face a range of HLP challenges. Previous approaches taken to HLP questions within peace agreements show a positive pattern of placing these issues at the centre of broader peace constructions. The 2016 Nationwide Ceasefire Agreement Between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organisations importantly addresses a wide range of HLP issues whilst several of the ethnic actors with whom the government is currently engaging, have also addressed restitution in detail.

The growing recognition of the importance of land issues within the peace process also expanded due to the Panglong 2 Peace talks held in mid-2017, which resulted in the agreement of 10 basic principles for developing a progressive and just land policy. These principles provide a significant basis for building further agreement between participants in the peace process.

This paper suggests that peace negotiators within Myanmar can learn from a range of contemporary peace agreements that have been implemented in a number of countries. Several HLP issues appear with relative frequency in these peace agreements, including, HLP issues relating to refugee and IDP return; HLP restitution rights and the mechanisms often required to administer and process restitution claims; the reform of pertinent HLP legislation land reform measures; land tenure issues; the rights of women to equal treatment

with respect to HLP rights; customary law arrangements; and HLP questions of compensation.

The briefing paper then goes on to provide an overview of institutional approaches to HLP issues that have been used by a range of countries over the past three decades. These countries include; Colombia, Philippines, Nepal, Sudan, Liberia, Kosovo, Sierra Leone, Croatia, Bosnia and Herzegovina, Tajikistan, Mozambique, Rwanda, El Salvador and Guatemala.

The paper then concludes with a series of key lessons that Myanmar peace negotiators can take away from the approach to HLP rights various countries have already deployed. These include: to address HLP issues within the context of governance issues in peace agreements; to include HLP rights directly within peace agreements, voluntary repatriation agreements and other policy documents; to consider establishing a mass-claims mechanism for conflict-related property claims; to include HLP competencies within the institutional and administrative structure of peace operations and fund them adequately; to determine the applicable legal and policy framework during the planning process; to realise that ignoring HLP rights will not make the problems go away; that peace monitors are important HLP rights protectors; that a gender perspective should pervade all HLP sectors; to prepare for a long-term process; to convene national HLP rights consultations; to minimize residential disruption; to identify measures to ensure affordable housing and land to all; to identify and allocate affordable land for low-income housing settlements; to develop an emergency policy response to homelessness; to promote programs for groups with special housing needs; and to ensure registration for housing.

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## RESTITUTION IN MYANMAR

### **Building Lasting Peace, National Reconciliation and Economic Prosperity Through a Comprehensive Housing, Land and Property Restitution Program**

(March 2017)



<http://displacementsolutions.org/wp-content/uploads/2017/03/Restitution-in-Myanmar.pdf>

Developed in collaboration with the NRC, this report was produced by DS with the intention of providing the current Myanmar government with recommendations for the development of a HLP Restitution Program.

The report is divided into six chapters and begins with an introduction that outlines the importance of restitution mechanisms to peace, reconciliation and prosperity. The introduction then goes on to summarise the current international standards related to HLP rights, and specify why restitution is imperative to Myanmar before enumerating ten key points that should form the basis of a comprehensive restitution approach.

The report's chapters then go on to explore and analyse the current laws, policies, procedural mechanisms and practices relevant to restitution in Myanmar. In relation to Myanmar's current legislative framework, the report outlines how the 2008 *Constitution* does not explicitly recognise restitution or contain a comprehensive list of HLP rights. However, it does acknowledge a series of central HLP rights themes, therefore providing a useful foundation for pursuing a HLP rights restitution program in Myanmar. Specifically, Chapter VIII of the *Constitution* holds particular relevance.

At the statutory level, three laws are particularly important: The 1894 *Land Acquisition Act*, the 2012 *Farmland Act* and the 2012 *Vacant, Fallow and Virgin Land Act*. Unfortunately, none of these laws recognise HLP rights in a manner that is consistent with international standards. However, a number of land related policies in Myanmar are useful for the development of HLP rights and restitution methods. Of significance is the 2016 *National Land Use Policy* (NLUP), which was developed in collaboration with a large number of stakeholders in Myanmar. Although the NLUP is not legally binding, the report argues that it is a good framework for a future national land law. In addition, at least one of the ethnic actors has addressed restitution in detail in the 2015 *Land Policy of the Karen National Union* (KNU). Other ethnic actors are expected to follow suit.

Myanmar's procedural mechanisms have included non-judicial government committees including the 2012 *Parliamentary Land Confiscation Commission*, which was created to investigate abuses in the confiscation of land and make recommendations on specific cases. In 2013, a *Land Utilization Management Central Committee* was established and tasked with implementing the recommendations from the *Parliamentary Land Confiscation Commission*. The body currently responsible for examining land confiscation and restitution is the *Re-inspection Committee of Farm Land and Other Land Acquisition* which was formed in May 2016. In practice, a significant amount of land has been returned to the original owners with one source estimating that up to 400,000 acres had been returned. Although this progress is to be commended, many restitution claims still remain outstanding and unresolved.

After exploring the current HLP rights and restitution framework in Myanmar, the report goes on to outline existing hurdles for achieving compliance with international standards of HLP rights. As the 'Principles on Housing and Property Restitution for Refugees and Displaced Persons' (*Pinheiro Principles*) are the UN endorsed normative framework for HLP rights internationally, the report uses the Principles to identify a number of steps that Myanmar could take to bring its laws, policies and practices into alignment with international standards. After considerable research and analysis, the report identifies that Myanmar's laws, policies and practices are at a minimum not in compliance with principle 2, 2.2, 8, 12, 13, 15 and 20 of the *Pinheiro Principles*.

In light of this analysis, the report suggests a number of recommendations for the government of Myanmar. These include that a Myanmar Restitution Organisation be

established and that there be restitution provisions and mechanisms enumerated within the peace process and eventual peace agreements. Additionally, it is suggested that a multi-stakeholder ‘win-win-win’ Myanmar National Restitution Program be implemented, that technical assistance be granted to the *Re-inspection Committee* as an interim measure, and finally, that the technical aspect of the land law amendment process be strengthened.

If these recommendations are implemented the ensuing restitution process will not merely be a tool to promote justice and recovery of land within Myanmar but will also contribute to national development and stability generally.

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## A FRAMEWORK FOR RESOLVING DISPLACEMENT IN MYANMAR

### The United Nations ‘Pinheiro Principles’ on Housing and Property Restitution for Refugees and Displaced Persons

(March 2017)



<http://displacementsolutions.org/wp-content/uploads/2017/03/A-Framework-for-Resolving-Displacement-in-Myanmar.pdf>

In collaboration with the NRC, DS released this report in March 2017 which outlines a framework for the restoration of HLP rights to refugees and IDPs within Myanmar. This framework has been designed as a tool that can be utilized to enrich and inform the current negotiations.

The report begins with an introduction by the NRC Myanmar Country Director, contending that the restitution of HLP rights after periods of conflict are essential for durable solutions to forced displacement and the achievement of peace, reconciliation and economic prosperity generally. The introduction also briefly enumerates the approach the government of Myanmar has already taken to property rights. It identifies article 1(k) of the 15 October *Nationwide Ceasefire Agreement* which includes several references to property rights, and Chapter VI of the 2016 *National Land Use Policy* which provides general guidance on how a restitution process within Myanmar could take place. The introduction also notes that the *Committee for Confiscated Farmlands and Other Lands* has been established to address outstanding restitution claims.

This report then goes on to provide an introduction that reinforces the importance of HLP rights to peace and reconciliation efforts, before introducing the UN endorsed *Pinheiro Principles*. The *Pinheiro Principles* are a consolidated global minimum standard on the HLP rights of refugees and IDPs, and list the specific restitution rights of refugees and IDPs as well as the obligations of governments and the international community in relation to HLP rights.

The report notes that restitution rights have been recognised, and laws and procedures developed and enforced in post-conflict contexts including Colombia, Bosnia-Herzegovina, Georgia, Kosovo and Tajikistan; in post-authoritarian countries like South Africa or Iraq; and in post-communist countries including the Czech Republic, Estonia, Germany, Latvia and elsewhere. Thus restitution rights have allowed millions of formerly displaced persons to return and repossess land or, alternatively, receive adequate compensation.

The report then goes on to canvass how the *Pinheiro Principles* are designed to provide practical guidance to governing authorities on how to best address the complex legal and technical issues surrounding HLP rights restitution and how the Principles will be able to assist the government, military and ethnic actors to find viable and safe ways to address HLP rights issues.

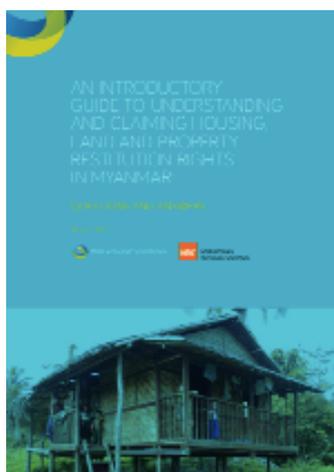
The report then outlines the *Pinheiro Principles* in full, including the preamble.

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## **AN INTRODUCTORY GUIDE TO UNDERSTANDING AND CLAIMING HOUSING, LAND AND PROPERTY RESTITUTION RIGHTS IN MYANMAR**

### **Questions and Answers**

**(March 2017)**



<http://displacementsolutions.org/wp-content/uploads/2017/03/An-Introductory-Guide-to-Claiming-HLP-Restitution-in-Myanmar.pdf>

Produced by DS and NRC, the Guide provides an overview of how restitution is approached in Myanmar, the position of restitution under international law and the critical differences between domestic restitution practices in Myanmar and international legal standards. The Guide is designed to provide refugees and IDPs with a simple and easy way to understand the basic principles of restitution, where these measures have occurred in other countries

and the various systems that have been established to enable claims processes for HLP losses. The Guide makes it clear that while at present there are no HLP remedies available to refugees, their informed engagement with HLP matters will be crucial to policy development of future restitution remedies.

The Guide is structured in a simple question and answer format. It begins by discussing the basis and nature of HLP rights generally before providing a definition and explanation of restitution; the restoration of rights over a certain piece of land or a home to those with recognised formal or customary rights over it. The Guide then examines the right to restitution in the context of international law and asserts that numerous international law standards and documents affirm the right to restitution. The Guide considers questions including when restitution rights begin to apply, whether restitution and return are the same thing and for how long restitution rights remain valid. Additionally, the Guide provides an overview of the *Pinheiro Principles* and specifically considers their application to Myanmar. These principles provide a consolidated blueprint of the legal, policy, procedural, institutional and technical mechanisms for implementing a housing and property restitution framework which meets international human rights and humanitarian standards.

Further questions posed and answered specifically consider restitution rights under domestic law and policy in Myanmar, as well as the availability of effective judicial remedies for people with restitution claims. These sections of the Guide consider relevant provisions in the Constitution of Myanmar as well as sections of national legislation and policy which are relevant to and may be used to support a restitution rights law. Importantly, the Guide provides a framework for refugees and IDPs in Myanmar to determine whether they have a valid restitution claim. The Guide sets out the four main international human rights norms that may give rise to a valid restitution claim: *The Right to Voluntary Return*; *The Right to Adequate Housing and Security of Tenure*; *The Right to be Protected Against Forced Evictions* and *The Right Not to be Arbitrarily Deprived of One's Property*. The Guide then considers the limited circumstances when States may expropriate property and criteria which must be met in order for a state to legally do so under international human rights law. Finally, the Guide sets out the ten main aspects of a successful restitution programme, how the peace process can contribute to restitution mechanisms and lastly, how refugees and displaced persons can advocate for greater protection of restitution rights.

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## LAND ACQUISITION LAW AND PRACTICE IN MYANMAR

(August 2015)



<http://displacementsolutions.org/wp-content/uploads/DS-Land-Acquisition-Study-Contents.docx>

This paper provides the International Finance Corporation (IFC) with an in depth study of the current environment and key stakeholders in relation to land acquisition and tenure systems in Myanmar. The study minutely analyses areas of Myanmar land acquisition laws against the comparatively strong provisions found in the IFC's Performance Standards 1 and 5, the latter of which outlines rules on Land Acquisition and Involuntary Resettlement when the IFC engages with client companies investing in locations potentially involving land acquisition measures.

In preparing this paper, DS carried out extensive legal and policy research on the land acquisition law and practice, including the review of more than 100 publications addressing these themes. DS also carried out numerous interviews with relevant actors in Myanmar, and undertook a mission to the country in late June 2014 during which time DS met with a large number of actors with practical expertise and knowledge of land acquisition measures in Myanmar.

The paper begins by outlining the current property rights context in Myanmar. In its present form, the law is unable to adequately protect the land rights of ordinary citizens and communities in Myanmar. Additionally, land registration and record keeping is extremely poor. Since the country gained independence in 1948, successive regimes have invoked powers under prevailing legislation to compulsorily acquire large areas of land all over the country. In the majority of these instances, there are few judicial remedies available to those wishing to challenge land acquisition or enforce compensation rights.

In its first section, the report considers the domestic legal basis for land acquisition in Myanmar. It outlines the key institutions engaged in land acquisition practices and the system of land classification. It then considers provisions of a number of pieces of domestic legislation including *The Constitution*, *The Land Acquisition Act (1894)*, *The Special Economic Zone Law (2011)* and *The Farmland Law (2012)* which concern procedures and processes relating to land acquisition and land rights.

Secondly, the paper considers the practical dynamics of land acquisition in Myanmar. The paper notes that while under intentional law, all States are generally permitted to compulsorily acquire land when certain preconditions are met, land acquisition in Myanmar has historically occurred in an arbitrary manner, without meeting these standards. In particular, the payment of market rate compensation is envisaged when land is acquired, under international standards and relevant domestic legislation. However, in practice compensation for land acquisition is frequently not paid, is inadequate and often falls far short of the market-value provisions found in the *Land Acquisition Act*.

Thirdly, through detailed comparative charts, the report systematically compares and contrasts the IFC performance standards with the relevant land acquisition laws and practices in Myanmar. This analysis reveals significant gaps between the performance standards and Myanmar's domestic laws and practices regarding land acquisition, both presently and historically.

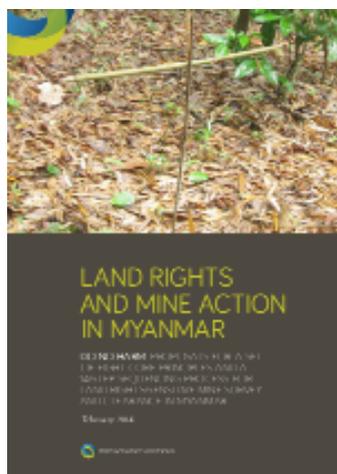
Lastly, the paper makes a number of recommendations to remedy the demonstrated gaps between IFC performance standards and current laws and practices in Myanmar. The report recognises that to achieve this the Myanmar government needs to make substantial and fundamental changes to its legislative framework governing land acquisition, as in its current form, it is applied to provide the state and military with comprehensive control over who owns land, how it is used and when it can be lawfully acquired.

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## LAND RIGHTS AND MINE ACTION IN MYANMAR

### **Do No Harm: Proposals for a Set of Eight Core Principles and a 14-Step Sequencing Process for Land Rights-Sensitive Mine Survey and Clearance in Myanmar**

(February 2014)



<http://displacementsolutions.org/ds-launches-new-myanmar-report-land-rights-and-mine-action-in-myanmar/>

Decades of armed conflict between the national government and the numerous ethnic armed groups have left vast areas of Myanmar contaminated by landmines and other explosive

remnants of war (ERW). Written in 2014 as the peace talks in Myanmar were moving forward and plans were being formulated to commence demining contaminated lands, *Land Rights and Mine Action in Myanmar* recognises that mine action is inextricably linked to broader land rights issues. Specifically, de-mining needs to take in to consideration land rights or else risk re-igniting or creating land conflicts, facilitating land grabbing and speculation, resulting in displacement and exacerbation of social and economic inequalities.

To prevent this outcome, DS, together with support from Norwegian People's Action (NPA), undertook extensive stakeholder consultations within Myanmar and Thailand during 2013 to understand sentiments and opinions regarding land rights, and the principles and processes that should be applied to a demining program. Based on this consultation, examination of demining programs undertaken in other countries and extensive additional research, the report sets out eight overarching human rights based, democratic and community-sensitive principles that should underpin Myanmar's demining program. Building on these principles, the report then proposes a sequence of 14 detailed steps which are intended to guide a land rights-based approach to mine action and which are drawn directly from the opinions and suggestions expressed by the wide range of stakeholders consulted. Underpinning all elements of the report is the principle that all landmine survey and clearance efforts *Do No Harm*.

The first section of the report examines the scope and scale of land contaminated by landmines in Myanmar and considers the lessons learned from the demining programs undertaken in Cambodia, Yemen and Sri Lanka. Although the full extent of contamination in Myanmar is unknown, estimates put the amount of land rendered unusable due to landmines as high 5 million acres. However, the report points out that according to all accounts, the amount of land actually contaminated is significantly less; strategic placement of landmines has blocked access to vast areas of land. Common themes which arise in the case studies considered included the need for community participation in the processes of determination and prioritisation of land for survey and clearance; the need to establish effective links between humanitarian and development agencies that deal with affected communities and national and international organisations dealing with land issues; and the need for a formal land handover processes and post-land clearance monitoring mechanisms.

Secondly, the report considers the HLP rights of communities to land previously contaminated by landmines. It points out that the relevant national land legislation is widely perceived as favouring government, military and business interests and fails to protect the rights of farming sectors and those members of ethnic groups whose land rights are regulated by customary laws. This section includes a detailed analysis of the shortcomings of the current national HLP law in Myanmar and considers HLP rights conveyed by customary law and prevailing international human rights law.

Thirdly, the report presents the themes and concerns raised by stakeholders regarding the principles and processes that should apply to protect land rights in the course of landmine clearing efforts. This discussion is based on the extensive consultation conducted by DS, including interviews and meetings with government officials and institutions, ethnic groups (political, ceasefire and armed), land experts, NGOs, international organisation and others. These interviews reveal a complex web of differing and often conflicting views about mine action in Myanmar. Issues raised include the availability of avenues for participation and consultation in the land clearing process, the likelihood that the government will prioritize mine action in areas favouring state development and military interests, opposition to land clearing altogether on the basis that landmines provide protection from government troops and concerns that cleared land will be confiscated by the private sector. It is evident that

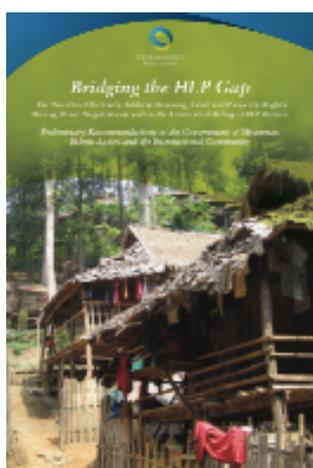
without stable peace and political settlements, mine action may mean little for affected communities.

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## **BRIDGING THE HLP GAP: THE NEED TO EFFECTIVELY ADDRESS HOUSING, LAND AND PROPERTY RIGHTS DURING PEACE NEGOTIATIONS AND IN THE CONTEXT OF REFUGEE/IDP RETURN**

**Preliminary Recommendations to the Government of Myanmar, Ethnic Actors and  
the International Community**

**(June 2013)**



<http://displacementsolutions.org/wp-content/uploads/DIS2383-Bridging-The-Gap-v13.pdf>

Released in June 2013, this report outlines the many HLP rights issues that may have arisen during the 2012 peace negotiations between the government of Myanmar and various ethnic actors, particularly in relation to the HLP rights of refugees and IDPs. The recognition and implementation of HLP rights are essential for any attempts at securing sustainable peace, and most commentators agree that without addressing HLP issues, states emerging from conflict may not be able to adequately facilitate the return of refugees and IDPs nor any restitution measures, thus stifling economic recovery and infringing upon human rights standards.

The report begins by outlining the five core HLP rights in situations of refugee and IDP return, thus providing a policy framework for Myanmar's approach to HLP issues. These rights include; the right to voluntary return, the right to HLP restitution, the right to adequate housing and security of tenure, the right to be protected against forced evictions and the right not to be arbitrarily deprived of one's property.

Given the complicated nature of Myanmar's conflict, and the number of actors involved, this report then proceeds to outline the findings of a series of interviews that DS conducted with various ethnic minority groups affected by and involved in this conflict. The interviews were conducted with representatives from the Karen, Karenni, Mon and Shan ethnic groups. The findings specified the various preliminary agreements that had been signed between the

Myanmar government and the various groups, the specific nature of the ethnic group's concerns in relation to the peace process and HLP rights, as well as the unique HLP problems that will affect each ethnic group, due to their geographic location and particular situation.

The report then outlines the government of Myanmar's perspective on HLP rights in the context of return. Due to the entrenched vested interest in many parcels of land subject to possible refugee and IDP claims, it is clear that the interests of the State are not consistent with the interests of Myanmar's minority ethnic groups, making it unlikely that the government will treat refugee and IDP claims in a fair and equitable manner.

Given the conflicting interests at play, it is clear that there were and continue to be a number of HLP rights issues likely to face peace negotiators in Myanmar. The issues outlined and explored in this paper include; fully understanding the de-facto HLP circumstance in Myanmar, the specifics of refugee and IDP returns as well as HLP restitution rights, the question of whether to implement HLP restitution or compensation in Myanmar, what to do about refugee and IDP land acquired during the military era, the nature of HLP disputes, and the need to create a HLP institutional framework for Myanmar as the current legal framework is insufficient.

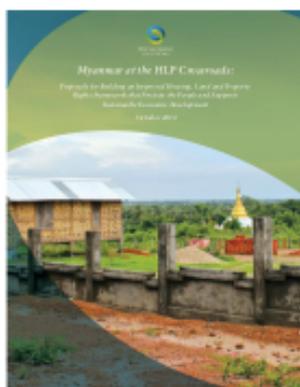
The report concludes by outlining a variety of preliminary recommendations for building a HLP rights environment that is conducive to sustainable peace in Myanmar, including recommendations for the government of Myanmar, ethnic actors and the international community. If these recommendations are adhered to, the implementation of HLP rights will strengthen the current Myanmar peace process and aid Myanmar's nation-building projects in a significant way.

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## MYANMAR AT THE HLP CROSSROADS

### **Proposals for Building an Improved Housing, Land and Property Rights Framework that Protects the People and Supports Sustainable Economic Development**

(October 2012)



<http://displacementsolutions.org/wp-content/uploads/Myanmar-at-the-HLP-Crossroads-Public.pdf>

Written in 2012 against a backdrop of hopefulness as the country strived for greater democracy and openness, 'Myanmar at the HLP Crossroads' contends that such political reforms often exacerbate land inequality and result in extensive breaches of HLP rights. It is therefore critical that Myanmar takes decisive steps, informed by the best practices of other countries, to ensure that HLP rights are protected.

The report begins by presenting the body of comprehensive international HLP law which the Myanmar government can and should use to construct a legal and political framework which supports the full enjoyment of HLP rights by all the people of Myanmar. It then considers the issues presented by the prevailing HLP legal framework, including, the fact that the State owns all land in the country and occupiers are afforded only leasehold or user rights which provide inadequate protection against dispossession. This lack of legal title leads to increased economic disadvantage as occupiers cannot use their land as collateral.

The report provides a commentary on the 2012 HLP legislation; the *Farmland Law* and the *Vacant Fallow, and Virgin Lands Management Law*. Although ostensibly designed to address HLP rights, in reality numerous deficits, discussed in detail within the report, demonstrate that the legislation fails to provide security of tenure and instead favours commercial interests. A recurrent issue identified within the 2012 legislation is the unfettered discretion conferred on government bodies tasked with overseeing different aspects of the legislative regime, and the lack of independent review mechanisms for handling complaints or disputes.

Despite the shortcomings of the 2012 legislative reforms, the report points out that there are signs of hope. Although Myanmar's 2008 *Constitution* does not explicitly recognise any HLP rights, it does recognise a series of themes foundational to the recognition of HLP rights. Furthermore, since 2011 the government of Myanmar has taken a number of steps which indicate concern for HLP rights. One such example provided is the State's decision to abandon the Chinese-backed Myitsone dam project which would have resulted in substantial displacement.

The final part of the report canvasses four specific recommendations which the government could utilise to improve HLP rights standards in Myanmar. The first is to convene a multi-stakeholder, national HLP summit, jointly presented by the Government, civil society and the UN. The second recommendation is the introduction of a new, national HLP law. The report provides comprehensive guidance on the HLP rights standards such a law should meet. Thirdly, the report proposes that additional steps should be taken to specifically address land grabbing and speculation, and details a number of policy and legislative measures which may be employed to do so. An example of one such measure is the implementation of a land value tax to prevent speculation. Lastly, the report recommends the facilitation of training and capacity building on HLP rights issues for government Ministers, Parliamentarians, relevant officials and political parties.

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## GUIDANCE NOTES ON DEVELOPING POLICY OPTIONS FOR ADDRESSING LAND GRABBING AND SPECULATION IN MYANMAR

(July 2012)

<http://displacementsolutions.org/ds-initiatives/burma-hlp-initiative/>

Land grabbing and speculation commonly occur in countries experiencing political transformation, such as Myanmar. If allowed to go unchecked these practices can undermine the democratic process, increase inequality and breach the human rights, specifically the HLP rights, of those affected.

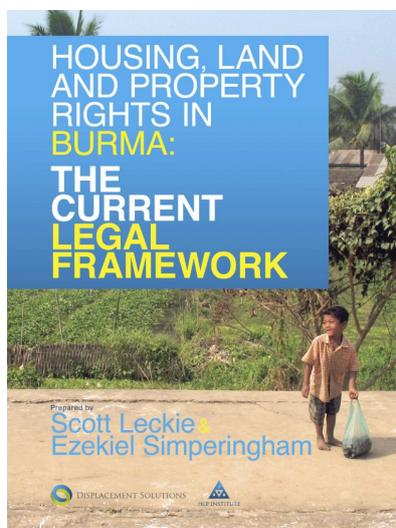
The 'Guidance Note' provides a framework, in the form of twelve possible approaches, that the government of Myanmar may employ to address land grabbing and speculation. Each approach is presented in light of the current situation in Myanmar and many are supported by concrete examples of the successful use of the approach in other countries.

A common theme within the list of options is the need for government regulation and condemnation of land grabbing and speculation. The suggested policy options are: imposition of a land value tax; temporary limits on the size of acceptable land acquisitions; establishment of a national independent land transfer oversight panel for all land parcels larger than 50 acres; strong and public political denunciation of the practices of land grabbing and speculation; expansion of security of tenure protections under current and future legislation; development of property oversight procedures to revoke rights over land acquired through land grabbing; requiring of long-term occupation of land prior to providing planning permission; taking forced displacement and dispossession seriously; strictly regulating foreign HLP ownership and leasing rights; beginning the land reform process urgently through the passage of a new HLP law; considering community land trusts as one of several viable alternatives to outright private property ownership; and jointly co-host a national HLP summit.

# HOUSING, LAND AND PROPERTY RIGHTS IN BURMA

## The Current Legal Framework

(2009)



The 1245-page book *Housing, Land and Property Rights in Burma: The Current Legal Code* was published in late 2009, well before the onset of the political reform process in 2011. This book is the first publication to consolidate all of the existing HLP laws in Burma and makes a vital contribution to understanding the impact that these legal structures have on communities across the country. Preparing a book of Burmese HLP laws was incredibly difficult with only a portion of the relevant laws available online and Burmese law books proving to be outdated and difficult to access. In fact, law in Burma today, irrespective of subject-matter, is uncertain, vague and used primarily as a means of controlling the population and entrenching the military junta's rule. When expedient, existing HLP laws in the country such as the *Land Acquisition Act* are used to justify and maintain this control, as evidenced by the destruction of approximately 3,300 villages in the country by the junta since 1994 and the displacement of millions. Further, Burmese law when applied, is often done so in an inconsistent and arbitrary manner.

This volume was put together through numerous trips to Rangoon, Mae Sot, Chiang Mai, Bangkok, London, Geneva and others over the course of a year and wouldn't have been possible without the assistance of a wide range of people and institutions. The purpose of this volume is to provide the foundations for greater understanding of the HLP framework as it exists in Burma today and instigate a process whereby the full HLP legislative framework in Burma can be comprehensively assessed, analysed and ultimately reformed so that Burmese citizens can enjoy the full protection of their HLP rights.

Although some may dispute the usefulness of this publication due to the military regime's demonstrated ambivalence to democracy, the rule of law, human rights and HLP rights, this volume anticipates that there will eventually be regime change. The contents of this book are predicated on this change and will be found useful for an emerging Government.

Although the current regime currently ignores and infringes upon the HLP rights owed to Burmese citizens, there is a body of HLP policies and laws which remain the legal and regulatory framework governing HLP relations between the State and its citizens and between the citizenry as a whole. Once the HLP law is known and displayed in total, informed discussion can then ensue seeking its improvement with international standards and global best practice.

This volume has included 73 laws, amendments, orders and regulations that are currently in force as well as 23 repealed laws, relevant to the questions of HLP rights in Burma. The volume also outlines a brief legal and political history of HLP rights in Burma as well as a blueprint for the effective protection of HLP rights in a future democratic Burma.

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