

THE LAWYER

TITLE AND RIGHT

Scott Leckie interviewed by Timothy Moore

Name a conflict and most likely Scott Leckie has been there at some point: Georgia and South Ossetia, Kosovo, Sri Lanka, Burma, Timor Leste, Iraq, Palestine, Columbia. The common narrative that ties Leckie's foray to these far-flung lands is his adamant belief that peace can not be achieved without the deliverance of housing, land and property rights (HLP). He tackles this quest to establish HLP rights through creative legal strategies with his organization Displacement Solutions, including the pre-emption of the Burmese conflict by developing a book on current HLP laws to generate debate within the country. Why wait for peace, or indeed the architect? Call in the lawyer first.

Timothy Moore *There has been an increasing importance placed on housing, land and property (HLP) rights in global peace-building efforts since the mid-1990s. You were fundamental in preparing a policy for the UN on this matter at the time. Can you outline the basic rights that were instated?*

Scott Leckie The rights we are speaking about are very extensive and essentially deal with every pre-existing human right that touches upon one's residential reality – where people live. It includes security of tenure, the right not to be discriminated against, the right to return home if you are a refugee or an internally displaced person, the right to HLP restitution, and the vital right not to be arbitrarily displaced or evicted. Then there are other human rights that often do not get looked at in conflict situations, like the right to privacy, the right to the freedom of movement, the right to property, and of course, the overarching issue of the right to adequate housing. We came up with the term HLP (housing, land and property rights) to make sure that, among the pro-property bias which was piercingly evident – largely as a result of the United States trying to push its own agenda in certain conflicts it was deeply involved in or initiated like Iraq and Afghanistan – that housing and land dimensions were not neglected.

From the beginning of the UN in 1945 until the mid-1990s, in any sort of post-conflict context where the international community was involved, there was little or no attention paid to housing, land and property

rights issues. These were very much peripheral issues and not central to the various peace processes that led to eventual peace agreements. It was almost never looked at in the context of law, and certainly not from the perspective of human rights. This is despite the fact that every conflict in the world that has ever raged, and every conflict going on right now or and all future conflicts there will ever be, always result in large-scale HLP abuses, violations and outright destruction. HLP issues are at the core of conflict. It so central yet so ignored that people need to realize it is invariably at least one if not all three of what are called the three 'Cs' – the cause, the consequence and also the cure of conflicts everywhere.

TM *It is important, as you stress, to establish housing, land and property rights at the early stages of peace. But in Burma, your organization Displacement Solutions has published a book collecting all of the current HLP laws in place in Burma, which precedes actual peace and resolution.*

SL Yes, we spent over a year compiling for the first time all of the laws currently in place in Burma that touch in any way on the enjoyment of housing, land and property rights – all 1,245 pages of it. Had we carried out this exercise in virtually all other countries, it would have taken a matter of weeks. In Burma, however, where the military has ruled with an iron fist since 1962 (and which continues to do so following the internationally condemned sham election of Nov 7, 2010), even finding

copies of laws in force proved a very arduous task. The origin behind working pre-emptively on HLP issues – which we know are today and will be of increasing importance once the military is finally removed from power and democracy takes hold – derived from my experiences in Kosovo, Bosnia-Herzegovina, and to a certain extent, in Albania, Georgia, Tajikistan, East Timor, and a range of other countries, where huge amounts of time at the beginning of the peace operation were spent chasing around to try and find information on basic law in the country. It took several months in reasonably developed Kosovo to find and translate all the relevant laws in force there. In Burma, this reality, combined with the fact that every single Burmese citizen (including even the generals as well as the other 99% of the population) has HLP issues to deal with daily, whether it's energy shortages, or the fact that state owns all of the land, or the lack of basic services and protection against eviction. Our book, then, provides a legal foundation for a whole series of possible legal, judicial and popular actions inside the country that use the HLP crisis there as a basis for promoting positive change and social justice. We are already seeing several local groups in the country beginning to challenge the military regime's adherence to its own laws, and we are hopeful these efforts will expand in the future.

Beyond the legal reasons for our work in Burma, the eternal quest and still unanswered question is: what is the Achilles' heel of the regime? Everyone is always looking for it: the weak spot to bring it down. Our thinking is that at least it's worth a try, given the history of dispossession, eviction, land takeovers and demolition, to create a groundswell around the issue of HLP rights. Usually one acts reactively and after-the-fact, at the beginning of a new political reality. We are trying to beat them to it, in effect, to see if we can use this bad period of dictatorship as usefully as possible.

TM *Between South-East Asia, Africa and Europe, how do you respond to these different environments?*

SL The most fundamental difference between Africa and the rest of the world is that still in 2010, some 90% of Africa's territory is governed primarily or exclusively by customary law, so only 10% is titled, and this includes state and private land. Custom is the way, and by and large it works. In terms of post-conflict restitution and HLP rights, however, what works in Uganda, may be totally inappropriate for Bosnia. And what works in Bosnia does not work in Afghanistan, or Bougainville or East Timor. You have to bear all of the local conditions and realities in mind in determining the most appropriate response to the innumerable HLP challenges found in all post-conflict contexts. To simplify customary law, in some countries it's often more about use rather than private, title-based ownership. Whoever uses the land of the community concerned is generally treated as the person or family with a right to be there on the land, and this has implications for how restitution rights are addressed. If you plough five acres, and the community approves of that, then it's your land. If you get displaced for ten or fifteen years, then there's not the same expectation by yourself, the state or others that you will necessarily go back to that particular piece of land, unlike title-based systems.

TM *Then how does restitution occur in such a context?*

SL Well, for one, restitution to a place where there is no economy, no schools, and no infrastructure can actually

be much more harmful than providing people with a new start. And in much of Africa, it doesn't necessarily mean you will return to the place that you came from. There are incidences of peacekeeping, like in Mozambique and Rwanda, where people did have the right of return, and if they didn't want to do that they could be assisted in a new land with a new livelihood operation. A lot of people do not want to return home because they are afraid, but they do not want to lose rights to their land either. Given options and ways to utilize that property that benefits them – and not someone who stole it from them – such as in the form of compensation, leasehold rights, or exchanging it. None of that can be done with the absence of the principle that restitution.

In an entirely different context of restitution taking a form other than the direct recovery and re-occupation of one's home and land, that of Bhutan, Displacement Solutions has been working closely with Bhutanese refugees who have been displaced for over twenty years. Here we are talking about some 110,000 people that have been 'ethnically cleansed' from the otherwise often admired 'Shangri-la' kingdom which is now globally famous for their measurement of Gross National Happiness, in place of Gross National Product. Well, the thousands of refugees summarily forced from their land without justice or compensation are clearly not happy. Languishing in camps in eastern Nepal for more than fifteen years, they have now decided to resettle in other countries as they know they have no chance of returning to Bhutan because of the government's hard-line efforts to keep them from returning to their ancestral homes. We are working with them to encourage the government to pay them just and satisfactory compensation for the huge amount of land, houses, crops and forests that they were forced to leave behind. If you take the full value of all that land and houses that they owned at the time of fleeing, its in the hundreds of millions dollars, if not even more. We are developing a campaign with the newly formed Bhutanese Refugee Restitution Organisation to deliver residential justice.

TM *It seems that peace does not come without justice for you.*

SL Absolutely. The thing that really drives me is that you don't want these mofo land stealers to get away with it. It's outright theft – and almost always based on deep-seated racism and discrimination. The bottom-line is simply that ethnic-cleansers should not be allowed to get away with kicking people off their land and giving it to members of their own ethnic group as has happened so often in places such as Israel, Bosnia and elsewhere. That really pisses me off and drives me to work for HLP justice each and every day. Close your eyes and imagine it happening to yourself and your family – just imagine the sense of injustice and trauma you would feel for years, if not decades. That still motivates me every single day to keep trying even when the odds so often are stacked against those who were forced from their homes.

TM *In spite of the vast affliction in the world, there must be some success stories you can share.*

SL Well, there are no perfect examples, and sadly, the norm is probably places where people did not get justice. In East Timor, for instance, I worked with various movements long before independence came after the Indonesian occupation ended in 1999. Rather suddenly, they won. Who would have thought they would finally win? I went to Timor immediately, working for the UN



The Karenni Refugee Camp on the Burmese-Thai Border.

after independence was declared. I came pretty much straight from Kosovo where I designed a Housing and Property Directorate for the UN which eventually considered more than 29,000 HLP claims and gave solutions to over 150,000 people. In my mind, I thought, if it worked in Kosovo and similarly in Georgia where I did the same in 1998, then it should work in East Timor. One important minister from the East Timorese government hated the idea of such a process in Timor, however, because they thought their family could lose land that they had basically taken during the transition, and the minister wasn't going to open up that particular Pandora's box. As a result, the minister rejected the proposal despite widespread support for it from the UN and other sectors within the government, and the whole thing fell apart. As late as 2009, a full decade later, you basically could still not sell and buy a piece of land without a gigantic risk that the guy who sold it to you would come back to you the next night with a gun in his hand – even if he had your 10,000 dollars in his pocket. There was a golden opportunity in 1999 to try and remedy the displacement that took place during the Indonesian occupation, but because of one or two people at the beginning, they didn't want to push it because of vested interests. It led to a lot of discontent and tensions that burst out again in the 2006 riots and a new displacement of approximately 200,000 people. Without more action now on the HLP front, there's every likelihood that the hills surrounding Dili will become a giant favela.

But, yes, there are also a number of really important successes. The Kosovo case worked in many respects, and as I said, some 29,000 claims were settled. In Bosnia, hundreds of thousands of refugees were able to return to their original homes after the conflict ended there in 1995 due to strong legal protections of restitution rights. Although the process was less successful than originally intended, in South Africa many thousands of those displaced during the Apartheid regime were able to return to the lands from which they were dispossessed.

TM With your work in countless regions and conditions, is it possible to separate an approach to post-conflict from post-catastrophe or climate-crisis situations?

SL There are many differences but I always try to look at every challenge through the eyes of the people that are affected. They don't really care if it's a war, or an earthquake or rising sea levels that makes them leave their homes. They just need a just and durable solution. And they need to be treated as rights holders. You can apply the same principles to post-conflict or climate-displaced people. The odd thing about climate displacement though is that we are always trying to fight against displacement and resettlement; and now in some instances where remaining is not an option we are advocating for it. It flips everything on its head. Instead of telling governments to stop evicting people, we are asking governments to plan for moving people. There is the growing realization that positive, pre-emptive action needs to happen. But, on the other hand, we just came back from Kiribati, Fiji and Tuvalu, and in contrast, we found people really want to stay on their atolls as long as possible. They don't necessarily want the best deal to move to Australia, New Zealand, Europe or the US. People love their island countries so much they just want to stay, and in the best possible condition. Most people only want to move when it's absolutely necessary. So our aim now is to help them to fight to remain, instead of helping them to flee. This

may change over time as the climate crisis worsens, but for the moment we believe it is time to fight not to flee.

TM How can architects help? How do you see the role of architecture in strengthening housing, land and property rights?

SL Fortunately, many architects and organizations, such as Architects Without Frontiers and the Centre on Architecture and Human Rights (CAHR), realize that architecture is about the place where people live. I think, for one, a human rights and HLP rights course needs to be taught in all architecture schools so they understand the full dimensions of what they are not for the most part focusing on at present. Architects are also needed to visualize dreams, such as in a drawing, and to then make these dreams come true. One, big missing-link is that everyone thinks at some point that they have come up with the solution to house all of humanity. Everyone has that dream, and someone always seems to be coming up with a mass housing scheme to adequately house humanity, or the perfect flat pack housing system that can be shipped around the world, built in one hour, and be used by anybody. But, obviously, it hasn't worked – there's still a billion slum dwellers out there and probably some three billion or more people without security of tenure. That's the holy grail in social architecture. I wish that someone would come up with something that would truly work – although I already know they can't! I think you can't, because it comes down to the people and the place. That's the lesson: slums get built by people. That's the thing that the West has lost, the ability to build a home. If you ask the population of Amsterdam to build a house on their own, they wouldn't have the slightest clue how to do it. People still have that skill in the rest of the world. We should respect this resilience, and put the world's resources in directions that actually ensure adequate housing for all in the most appropriate way possible. Once that day comes, we will have a just world – at least in terms of housing.