



DISPLACEMENT SOLUTIONS

MYANMAR AT THE H.L.P. CROSSROADS

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*Understanding Housing, Land and Property Rights
Challenges in a Changing Myanmar*

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Thank you to everyone for coming and especially to UN Habitat for organising this important event at such short notice. I am here above all to learn, and I look forward to hearing everyone's insights on matters of great import to the people in this extraordinary land in which we find ourselves today. For my part, I would like to speak to you today about what I see as THE groups of issues that will – perhaps more than any other – determine the success or failure of the dramatic reforms that are rapidly transforming the country as it returns as an active player in the international community after so many decades of isolation. (And I can assure you that the entire world is delighted to have you back!)

The subjects I plan to speak about over the next twenty minutes are not always seen by governments, civil society or donors as the make-or-break issue in times of transition; though they should be.

From my personal experience dealing with more than 25 countries undergoing deep structural transition, it is beyond any doubt that no other issues than land, and more broadly, housing, land and property (HLP) issues will influence the shape of Myanmar society; its wealth, its levels of equality and its future prospects, more than how the vast myriad of HLP issues are addressed in the coming months.

Some of you may have seen the book that Zeke Simperingham and I prepared in 2009, well before the current reforms got underway, which analysed and compiled – for the first time – all of the laws in place at that time in Myanmar which in any way touched upon any aspect of HLP rights.

We found almost 100 such laws, and believe me, it wasn't easy! Our 1245 page doorstopper – HOUSING, LAND AND PROPERTY RIGHTS IN BURMA: THE CURRENT LEGAL FRAMEWORK – was conceived not because we necessarily saw political light at the end of the tunnel at that time, but more in response to our experiences throughout the world working on HLP issues in countries of transition as diverse as Timor Leste, Kosovo, the Republic of Georgia, South Africa, Albania, Bosnia & Herzegovina, Sri Lanka, Cambodia, Serbia and so many others, where we universally found change to be inevitable, as well as a complete lack of clarity about which HLP laws were in place, which were in need of reform or repeal and which new HLP laws and policies were needed to build the foundations of society in such a way that everyone could partake in securing their legitimate housing, land and property rights when the change finally took hold.

We believed that the time would come in Myanmar when people needed to know the complete lay of the legal land as far as HLP rights were concerned, and hence our book was brought to fruition in what turned out to be about two years prior to the reforms taking root.

As with all things, in the countries where we have worked on HLP issues during periods of transition, we engaged in many struggles, winning some, but losing more. In some countries discriminatory laws were repealed, new institutions and laws were created and people slowly but surely found a measure of what we call *residential justice* concurrent with larger-scale political and related transitions.

And yet while we may have won some battles for greater HLP justice, it is clear that virtually every country that has undergone deep structural political transition during the past two and a-half decades utterly failed to provide a legal, policy and residential reality that secures the full spectrum of HLP rights to everyone within those fragile societies. Indeed, far more commonplace than that have been horrendous acts of land grabbing (often accompanied by violence), mass dispossession and landlessness, forced evictions and displacement, growing land inequality, debilitating housing, land and property speculation (that always results in price bubbles and potentially severe economic chaos) and a broader series of lost opportunities, lost livelihoods and lost hopes that whatever new regime may have replaced a former one would yield real change in the daily lives of people struggling to live a full life.

Worryingly, fifteen months into the reforms here there is all too little evidence that I have seen thus far to indicate that Myanmar has comprehensively learned the extremely painful lessons of many of its immediate neighbours and from other countries in other regions which have sought quick fixes to dogged HLP questions, and not been willing to intervene in HLP questions in manners beneficial to the population as a whole.

Myanmar, thus, stands today at the HLP crossroads.

The HLP choices the nation makes in the coming months will largely determine whether this unbelievably beautiful land, and its proud and wonderful people, will face the tumult, inequities and tragic HLP outcomes of so many other nations of transition; or whether Myanmar can chart an entirely new HLP path, which ushers in a truly new HLP dawn, whereby every one of the country's 55 million citizens can – as rapidly as possible – enjoy growing security of tenure, improving housing and living conditions, ever greater access to clean water and regular supplies of electricity, and ultimately all of the HLP rights promised to citizens everywhere under human rights law and international best practice. Indeed, we need to dream of an HLP future that unfolds into sustainable cities and towns, where historical neighbourhoods are preserved, where HLP policy begins from a pro-poor perspective where justice follows and where the nations farmer's experience ever growing levels of HLP rights protections enabling them to restore this land's position as the world's rice bowl. Securing HLP rights for all and not just the few is the way to build a strong economy, a stable society and a prosperous future.

There is still every chance for the people of Myanmar to get it right and pursue a wholly original, forward-looking approach to these issues. But time is passing quickly and space for re-positioning legislative and policy initiatives on HLP issues is becoming ever smaller. And the HLP challenges facing Myanmar are nothing short of immense.

When it comes to HLP rights, few changes can be more dramatic than the shift from largely State-owned land resources towards more flexible methods of land ownership. Allowing or encouraging the HLP pendulum to swing from one extreme to another too quickly or haphazardly, however, will guarantee a dismal HLP future for just about everyone but the top one per cent of wealth holders in the country; of this we can be certain. Indeed, such processes need to be very carefully managed. The Government needs to proceed slowly and, ultimately, pursue an approach to HLP issues based on one of the most fundamental Buddhist principles, that of the Middle Way.

Land grabbing and speculation are unfortunate, yet common practices in countries undergoing structural political transition, and these appear to be taking hold in Myanmar as well. If unchecked, unregulated, or - even worse - encouraged by the very governments that replace former regimes, these two HLP realities can serve to undermine democratic reforms, entrench economic and political privilege and seriously harm the human rights prospects of those affected, in particular internationally recognised housing, land and property rights. Land grabbing and speculation can increase inequality, generate forced evictions, displacement and land dispossession, increase structural landlessness, harm economic prospects and create conditions where violence and social tensions become almost inevitable. Simply put, these processes are bad for society. Unless law and policy explicitly address the negative consequences of these practices, land grabbing and speculation can erode citizen confidence in government, reduce incomes and livelihoods and increase poverty and broad declines in a range of vital social indicators.

When nations turn a blind eye to mass land grabbing, growing HLP speculation, extreme housing price rises in urban areas, approve new HLP laws clearly biased in favour of the already propertied classes and fail to develop legislation, policies and,

just as importantly, institutions designed to protect and promote HLP rights for everyone, this will increasingly set in stone an HLP future which will be the envy of none, and one that will harm the national economy, increase levels of poverty and deprivation, worsen health and other social indicators, and ultimately, undermine the immense political progress that has been made in the previous year or so.

But, again, it is not too late. Myanmar can lead the way to better approaches to HLP rights, but this will not be easy. The country can be the first nation in the past quarter century to treat the HLP sector with the importance it needs to be accorded through concerted public interventions that reduce the worst HLP excesses and promote solution-oriented measures that best serve the majority of people. It can become a beacon of hope, a shining light for the rest of the world, and prove that getting it right on HLP rights can provide the legal and policy basis for a win-win approach where, indeed, everyone wins and no one loses; an approach where Middle Way approaches to ownership, control, use and transfer of land prevail; an approach where far from being a source of daily hardship, housing, land and property resources become the source of true economic and social justice, liberation and progressive change; an approach where equality and justice are the organising credos of policy-makers within the HLP domain; and an approach that is sufficiently backed at the highest levels that once in place, it simply cannot be reversed.

Myanmar can still get it right when it comes to HLP concerns, and there is nothing to indicate that this is impossibility; far from it. I believe this is what the vast majority of people and many within the ministries and government wish for. But how does the nation reach this brighter HLP future? What measures can be undertaken, starting today, to build the structures and perspectives required to ensure that the horrible HLP errors so commonplace in other countries are not repeated in Myanmar? While there are undoubtedly hundreds of things that can be done, let me conclude by suggesting ten steps that can be carried out that will at the very least push Myanmar's HLP future in a more positive direction:

1. Actively Control Land Grabbing and Speculation

There is nothing inevitable or inherent about the inequitable acquisition and control of ever-larger quantities of land in fewer and fewer hands. Indeed, governments wishing to protect the HLP rights of rural and urban dwellers and properly regulate the land acquisition process can succeed in reducing the prevalence of land grabbing and speculation, improve the human rights prospects of current landholders and ultimately strengthen both democratic processes and macro-economic perspectives. HLP rights need to be conferred as soon as possible on all dwellers as a means of protecting their land holdings and rights to remain where they are. Regulations can be developed to subject all development and land-based investment projects to proper oversight, with permission to acquire to be denied if land grabbing was involved in the procurement of the land concerned. Indeed, enforceable legal procedures for revoking unlawfully acquired land should be established in the near term. Ultimately, land grabbing needs to be treated as a form of corruption and prevented to the maximum possible extent. Another useful tool to prevent land grabbing and speculation could be to require forms of proof of occupation that show clear and long-term control over the land concerned. Furthermore, democratically-determined land zoning and planning measures can also protect against land grabbing and speculation, as well as helping to

guard against endless urban sprawl and what will otherwise be the guaranteed growth in new slums as ever larger numbers of people face displacement and the inability to access affordable and accessible housing within the formal sector.

2. Take Forced Displacement and Dispossession Seriously

When land grabbing and speculation are tolerated, these practices all too often result in human rights violations, including forced evictions and displacement, loss of housing rights, landlessness and dispossession. These practices are brutal, ruin lives and are very difficult to reverse in a fair and just manner. In a country based on the rule of law and guided by principles of equality and natural justice, these practices need to be prevented to the maximum possible extent, and laws and policies are needed to protect HLP ownership and user rights as a means of preventing new forms of displacement and dispossession. Proper forms of protecting HLP rights, increasing levels of security of tenure and developing the administrative and judicial remedies required to secure these rights are vital components in any effective HLP framework. Specific legislation and other measures should be taken to protect slum dwellers rights and those potentially affected by resource extraction projects in rural areas, and allow them all to enjoy, as is stipulated in the International Covenant on Economic, Social and Cultural Rights, the “continuous improvement in living conditions” and protection against forced evictions and loss of housing rights. Ratifying this Covenant as well as the many other human rights treaties that have not yet been ratified will further assist in creating conditions for a better HLP future for the people of Myanmar.

3. Encourage Strong Political Pronouncements Against HLP Misdeeds

Strong public statements against HLP misdeeds such as land grabbing, speculation, dispossession and displacement can go a long way to creating conditions within society where these practices will not be tolerated. Such pronouncements are a powerful way of signalling official distaste for practices that violate the basic rights of people, and can be an important means of clearly demonstrating the differences between a current and former government’s approaches to these matters. I will personally never forget speaking at length with then President Kim Dae Jung in Seoul, South Korea in 1998 about the eviction scourge that had been so commonplace during the governments that had preceded his administration, and then watching him – much to my delight – instructing four Ministers present to go on national TV that night and announce that forced evictions would no longer be carried out in the country. “Forced evictions violate human rights, and as a President who believes in human rights, I will not tolerate them, nor will my Government”, he said. Might something similar happen one day in Myanmar?

4. Strictly Regulate Foreign HLP Ownership and Leasing Rights

Once again, when addressing how to approach foreign HLP ownership and leasing rights, a Middle Way approach to HLP rights is required; the HLP rights of everyone in society and the needs of investors need to be carefully balanced. Myanmar clearly needs investment, but this should never be to the detriment of its people. When leases are provided to non-Myanmar entities, compliance with a model contract should be secured to ensure that if land is leased, labour requirements are met, adequate rent

payments are made, that a minimum certain number of local people are employed and so forth. In addition, such contracts could include provisions that prevent replacing food crops with other forms of agricultural production exclusively for purposes of export.

5. Consider a Land Value Tax to Prevent Speculation

Another tool at the Government's disposal to prevent speculation is the imposition of a land value tax. In addition to raising government revenue, land taxes can help induce investment in and use of land in a productive manner and serve to reduce or undermine speculatively driven land acquisition. Such a new tax should be levied on new land transfers and purchases (as well as acquisitions contrary to legal norms). Long-term occupiers and low-income households should be exempted from any new land tax. All new land transfers and purchases should be subject to strict monitoring and only approved once a series of criteria have been met.

6. Set Limits on Land Acquisition

Particularly during this tumultuous period of reform and transition, it may serve the people of Myanmar best if limits are set on the scale of land that can be legally acquired. Setting limits on the size of economic land concessions that can be acquired by individuals or business interests can help to reduce the likelihood of both land grabbing and speculative endeavours. Such limits may protect the rights of poorer households by limiting pressures exerted by those seeking ever-larger land holdings. In lieu of legislation to this effect, an executive order could be considered which puts in place special measures to examine all land deals over a certain size. One might consider setting a limit of 50 acres.

7. Establish a National Independent Land Transfer Oversight Panel for All Land Parcels Larger Than 50 acres

Another method that might be considered as a means of preventing land grabbing and speculation is the establishment of a national independent land transfer oversight panel for all land parcels larger than 50 acres. All land transfers larger than 50 acres would require the formal approval by this new body.

8. Consider Community Land Trusts as a Middle Way Option to Private Ownership

Community Land Trusts are forms of land ownership that can also help to prevent land grabbing and speculation by making legally possible the community ownership of land, while houses and related property is owned by individuals. Few measures will keep the market value of land under control than the development of community land trusts.

9. Create a National, Independent HLP Consultative Body Comprised of Government and Civil Society Members

A range of new institutions have been established in Myanmar in recent months. Given the importance of HLP issues, we would encourage the establishment of a

national consultative body that provided oversight to all major HLP decisions. The body would be democratic in nature, represent the broad spectrum of interests in society and provide a centralised means of overseeing HLP decision-making.

10. Legislate Specifically in Support of HLP Rights

Finally, we would urge the people and government of Myanmar to quickly convene a National HLP Trialogue which would create a venue for identifying national HLP priorities including new legislation in support of HLP Rights involving three partners – civil society, business and government. Such a process would facilitate the full and genuine consultation and participation of all sectors in helping to determine their HLP futures. New laws on housing, land rights, slum upgrading, access to services and others could be considered as appropriate means to balance the legislative processes that have already lead to two new HLP laws in recent months. More specifically, special consideration might be given to developing a law akin to the Urban Reform Law of Brazil (the ‘City Statute’), which has led to the extraordinary pro-people transformation of many of Brazil’s largest cities.

These are just ten of potentially hundreds of concrete ideas which, if implemented, could help Myanmar avoid the dangers of a failed HLP path, the likes of which have affected so many other countries that have made equally dramatic shifts in forms of governance. There are clearly many more measures that will also be required to increase the chances of Myanmar’s HLP future becoming a source of inspiration and hope for the people of this verdant land, and indeed for those deprived of their HLP rights the world over. The time to initiate such changes starts now.

Thank you very much.