

## A vision for restitution in Myanmar

José Arraiza and Scott Leckie

**People displaced in Myanmar during decades of civil conflict, as well as more recently displaced persons, need accessible legal pathways and assistance to regain access to their land and properties. Myanmar needs a clear vision on restitution to end its civil wars and displacement.**

The sun sets over a village in rural Myanmar, where a group of men and women discuss a recent announcement they have seen posted in the distant Township Office. The notice refers to a company's claims on certain parcels of land that the villagers' families have been cultivating for decades. According to the notice, such land is now officially classified as vacant; some of the land has already been fenced off and used to cultivate rubber. The deadline for objections mentioned in the letter had passed long before any of the affected farmers realised what was going on. Some of the villagers, who used to cultivate this land but were displaced, live elsewhere and are unaware of the situation. What is to be done?

### The need for HLP restitution

Ten years after the enactment of Myanmar's new Constitution in 2008 and the start of the period of government transition, the quest for peace and for real and effective remedies for past and present land grabbing and displacement continues despite some positive – albeit tentative – steps being taken by the government. During the civil wars, entire villages were forcibly displaced, with people also suffering forced labour and gender-based violence.<sup>1</sup> The legal framework continues to be a complicated mix of colonial-era legislation and newer laws, with the latter clearly designed to favour private investment and widespread land acquisition without adequate safeguards to protect the rights of farmers and their families.<sup>2</sup> Laws governing land acquisition disproportionately favour the State, the military and companies which have close relationships with or are otherwise favoured by these entities, and pay less attention to the rights of affected people and communities.

Some steps have been taken towards the restitution of confiscated land, including the establishment of governmental bodies to consider land claims. A new National Land Use Policy was approved in January 2016, which includes innovative and highly progressive features (in the Myanmar context) concerning the recognition of customary land rights, restitution and the inclusion of women in land governance, although it was not until 2018 that the government established a National Land Use Council to implement the policy. This is a promising development which could set the basis for restitution procedures concerning forced displacement and irregular land grabs in line with international standards; however, in general, these measures have fallen far short of expectations.

Myanmar has recently ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which includes a set of clear legal obligations to protect housing, land and property (HLP) rights. Standards such as the ICESCR and related norms like the 2005 United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the 'Pinheiro Principles'<sup>3</sup>) should guide land governance in the country.

In the north-east, in Kachin and Shan States, more than a hundred thousand displaced persons live in host communities or in bamboo huts in the outskirts of cities like Myitkyina or Bhamo and along the border with China. They have been uprooted since conflict reignited in 2011 and have sought solutions through settling elsewhere in the absence of real opportunities to return home. IDP women have been particularly affected by the loss of land as they often depended solely on growing subsistence crops. Having

lost the means for an independent livelihood they now have to rely on humanitarian assistance. Moreover, the increased stress of displacement and lost livelihoods results in higher occurrence of domestic violence.<sup>4</sup>

The HLP rights of the displaced communities, however, are not high on the agenda of the government-led peace process, which struggles to find common ground with the Ethnic Armed Organisations (EAOs), some of which have signed either bilateral or nationwide ceasefires. Formally including HLP restitution rights and procedures within the peace process could, in this sense, have a positive impact in promoting inclusion and participation.<sup>5</sup> Currently, land governance mechanisms of the government and those of EAOs run in parallel without a clear roadmap to integrate them through the peace process. Neither system offers effective remedies against violations of HLP rights, nor do they have a clear plan to establish a land governance system or a restitution mechanism as part of the peace process. A well-informed discussion on HLP restitution could, for example, feed into the government's thematic committee on land or other related mechanisms.

Indeed, providing for legal security of tenure is a basic requirement if communities are to enjoy better protection of their rights in conflict-affected areas. These issues were acknowledged at the Panglong Peace Conference in May 2017 through an interim agreement which acknowledged the importance of land rights and of having a people-centred, rights-respecting and gender-sensitive land policy as well as the right to return for IDPs and refugees.

The importance of HLP rights within the peace-building process cannot be underestimated. The restoration of these rights supports peace building by promoting justice and equality, reconciliation, a permanent end to land grabbing, land reform and re-distribution, and proper land management. Without restitution, community members affected by land issues will forever feel aggrieved. Restitution enables a sense of equality and fairness, and provides a framework for protecting

the rights of individuals so that they do not become homeless. And with continued restitution processes, there will be mounting public pressure on actors involved in land-grabbing to end those practices.

### Crisis in Rakhine

The prospects of putting a national restitution process in motion was shaken further in August 2017 by the forcible displacement of 650,000 persons from the northern part of Rakhine State across the border into Bangladesh. These events followed a longer-term trend of mass displacement since the early 1960s which took place alongside progressively more restrictive citizenship legislation.<sup>6</sup> Meanwhile, in central Rakhine, more than a hundred thousand persons displaced during inter-communal riots in 2012 continue to reside in desolate camps with no freedom of movement or access to basic services. In many cases, their former land has been occupied, and they have little hope of recovering what they had.

In response to the question of the eventual return to Rakhine State of those refugees currently in Bangladesh, the Government of Myanmar has stated that repatriation to Myanmar may be allowed for those possessing identity documents. However, because – according to the government – ‘burnt’ lands revert to the State, the right to restitution of one's original home and lands will not be allowed; those returning will be ‘rehabilitated’ and forced to reside in new camps or model villages.<sup>7</sup> Of course, the idea of taking the land of forcibly displaced persons on the basis that this has been ‘abandoned’ goes against international standards, including the ICESCR, and against some of the provisions on due process, property rights and non-discrimination as set out in the country's constitution of 2008. Moreover, indications that returnees will be placed in temporary camps suggests a replication of the situation of the central Rakhine IDP camps. The government's intention to ‘scrutinize’ the citizenship status of those returning using the opaque mechanisms of the 1982 Citizenship Law is also worrying.

## Conclusion

The sun has set and the villagers are about to head back to their wooden homes. They have agreed to write a collective letter to the township administrator and to give a copy to the company planning the land grab and to a journalist. Will this stop the process?

The reality is that collective action at ground level has indeed stopped or at least slowed down some of the land grabs in the recent years. However, this is clearly not enough.

Myanmar needs a comprehensive HLP restitution programme, establishing a clear and accessible remedy for past and present land grabs and creating a framework for peace between the EAOs, the government and the army. Such a programme needs to be clearly based on the human rights recognised by Myanmar through international treaties such as the ICESCR and other relevant standards. Standards need to be translated into effective laws and procedures from government to village level. The steps undertaken by the Myanmar authorities through initiatives such as the National Land Use Council are highly welcome; however, a lot more needs to be done to ensure that

restitution in Myanmar benefits everyone, even in the most remote areas of the country.

**José Arraiza** [carraiza@hotmail.com](mailto:carraiza@hotmail.com)

Information, Counselling and Legal Assistance Specialist, Norwegian Refugee Council Myanmar  
[www.nrc.no](http://www.nrc.no)

**Scott Leckie** [scott@displacementsolutions.org](mailto:scott@displacementsolutions.org)

Director, Displacement Solutions  
<http://displacementsolutions.org>

The views in this article are personal and do not represent the official position of any organisation.

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3. <http://bit.ly/Pinheiro-Principles>
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