Re–Asserting Control:
Voluntary Return, Restitution and the Right to Land for IDPs and Refugees in Myanmar

KEY POINTS TOWARDS A PRO-POOR LAND POLICY

- Due to more than six decades of internal war and ethnic conflict, over 1.1 million civilians are currently displaced in Myanmar, especially from homes and farms in ethnic nationality areas where most of the fighting has taken place. The civil war has ebbed and flowed and shifted geographically over the years. As a result of this, the IDP and refugee crisis, and the response to it, has also varied in different areas over time. Local organisations have played a central role in responding to the needs of internally displaced persons (IDPs).

- Land and related natural resources, like waterways and forests, provide communities with food and livelihoods. Their attachment to the land is multi-dimensional and includes spiritual, cultural and social values and relations. Land is also linked to ideas of autonomy and self-determination, and control of the land has a crucial political importance.

- The particular significance of a plot of land is not easily replaceable or exchangeable. Being able to return to one's original place is a deeply felt aspiration about restoring the various social relations that constitute one's very identity.

- Waves of displacement mean that there can be competing claims on the same land even amongst poor, marginalized and vulnerable people as well as between groups of people. Solutions that pit poor people against each other will serve the interests of more powerful actors who want the land for commercial or military purposes.

- Restitution must go together with recognition and redistribution. Political strategies should pro-actively create the time and political space for people at the grassroots to engage in 'poor-to-poor' discussion and negotiation to produce solutions that are integrated and inclusive to enable those most affected to live lives with dignity and with each other.

- Solutions need to take on board some crucial features. This includes a minimum amount of guaranteed land per user for dwelling and farming that is sufficient for livelihood (land size 'floor') as well as a limit on the maximum amount of land allowed to any user or owner (land size 'ceiling'). Respect and support of customary practices in land control are crucial, including allocating land reserves for future new families in the village and prohibiting outsiders from purchasing village or villages' lands.

- Policies should support smallholder agriculture and ensure that beneficiaries of land policies of redistribution, recognition and restitution are poor people working the land. Solutions must be ethnic-sensitive, and recognise and protect the distinct rights of different ethnic nationalities in relation to land control and in a way that addresses inter-ethnic tensions from a social justice perspective. They must also be gender sensitive and ecologically sustainable.

ideas into movement

After decades of civil war and ethnic conflict, large numbers of nationality people in Myanmar have been displaced. In the ethnic states bordering Thailand, Laos, China, India and Bangladesh, hundreds of thousands of people have fled fighting between the Tatmadaw (national armed forces) and various ethnic armed groups. Military campaigns by the Tatmadaw directly targeting civilians have especially contributed to this. While some fleeing conflict have found refuge in camps in neighbouring countries, the majority have become internally displaced inside the country. In the western part of Myanmar adjoining Bangladesh, a large number of Muslims, many of who self-identify as 'Rohingya', have also fled religious persecution, communal violence and, more recently, heavy-handed responses by the Myanmar security apparatus to a new Islamic insurgency. Although exact numbers are not available, and these also change regularly as the conflict is dynamic, currently at least 1.1 million people from Myanmar are either internally displaced or live in refugee camps in neighbouring countries.[1] This figure does not include the many other inhabitants from the border regions who have become migrant workers in Thailand, Malaysia and other countries, due to a combination of war, oppression and related lack of opportunities to live a life in dignity.

Throughout human history, the unwanted displacement of people from their lands, waters, forests, fisheries and from their homes has been a fact of life befalling many communities. Apart from natural disaster, causes of displacement include war, strife, 'development' and other types of 'improvement' or 'protection' schemes. Too often, what starts out as temporary situation, ends up as a permanent one.

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With the elaboration of universal human rights principles and a human rights framework, displacement is increasingly approached around the world as a condition that states are obliged to remedy alongside other undesirable yet remediable conditions related to access and control of land and other natural resources (see box: Summary of Key Terms and Concepts). The just solution to involuntary displacement is *voluntary return and restitution*. But the web of principles that constitute restitution is continuing to be elaborated. The main United Nations guidelines on housing and property restitution are known as the 'Pinheiro Principles'. According to a handbook put together by international agencies working to implement these goals: 'In recent years, the ideas of voluntary repatriation and return have expanded into concepts involving not simply the return to one's country for refugees or one's city or region for IDPs, but the return to and re-assertion of control over one's original home, land or property.'[2]

In Myanmar, as political transition slowly moves forward from military rule towards a more democratic system and a shaky peace process evolves, return and restitution are rising on the national political agenda. More actors and initiatives now refer to displaced people's 'Housing, Land and Property' or 'HLP' rights and are engaged in a search for 'durable solutions'.[3] One reason for this rising prominence is the sheer weight of the problem in the light of an ongoing push to clean up the country to clear the way for new foreign investments. Another reason is that anticipation of an end to civil war is increasing now that a political transition is underway.

Clearly, there are many challenges to be addressed. What will return and restitution look like and who will organise it? Which people and lands will be

included; which people and lands will not? How can it be ensured that return processes are 'voluntary, safe and dignified'? What guarantees are there of the principle that 'whenever possible, restore the victim to the original situation'? What about landmines? What about secondary occupants? What about the farms and homes that were destroyed or became derelict in the owners' absence? Important questions and serious concerns abound. Many lives and many futures are at stake.

This briefing looks at the particular situation of people displaced by armed conflict. It will do so from the perspective that displacement is complicated in its own right, but any proposed solutions to displacement must also be understood in a *wider context of rapid land polarization.* Failure to take this perspective may risk doing more harm than good. The discussion builds on points raised during a series of workshops with local civil society organisations (CSOs) working with IDP and refugees in eastern and northern Myanmar due to armed conflict, held in Yangon and in Myitkyina in 2016.[4] The briefing then concludes with recommendations for useful steps to take actions and understanding forward in a transitional landscape in Myanmar where ethnic peace and political reform processes are now delicately poised.

What the Numbers Say: Displacement Due to Armed Conflict

Numbers are frequently changing, but in 2016 a total of 479,000 refugees from Myanmar were recorded in neighbouring countries.[5] Out of these, as of April 2016 an estimated 120,000 refugees were in camps along the border in Thailand, the large majority of them from ethnic Karen communities, followed by Karenni and Mon.[6]

The numbers of internally-displaced are also subject to change. At the time when new ceasefires began between the incoming Thein Sein government and ethnic armed groups in 2011, there were some 400,000 IDPs in southeast Myanmar.[7] As of March 2015, over 660,000 people were recorded as internally displaced due to armed conflict in the south and southeast regions of the country.[8]

In northeast and northwest Myanmar, regions that were previously at relative peace, IDP numbers have significantly increased since the advent of the Thein Sein government. The resumption of armed conflict in Kachin State and northern Shan State displaced some 100,000 ethnic nationality civilians during the 2011-16 period, and communal violence in Rakhine State displaced another 120,000 mostly from the Muslim population, the majority of whom self-identify as Rohingya.[9] In February 2015, a further 70,000 ethnic Kokang villagers fled when clashes broke out between the Tatmadaw and the Myanmar National Democratic Alliance Army (MNDAA: a Kokang nationality force) in the northern Shan State. By April 2016, some 27,000 of them still remained in camps across the border in China.[10]

IDP numbers have also continued to increase in both northeast and northwest Myanmar since the advent of the NLD government in March 2016. In May 2016, some 4,000 people in northern Shan State fled when Tatmadaw units fired into their villages during an offensive against the Shan State Progress Party/Shan State Army–North (SSPP/SSA-North).[11] After September 2016, another 36,000 civilians were displaced in Kachin and northern Shan States by renewed armed conflict between the Tatmadaw and a coalition of ethnic armed organisations in the area. In March 2017 fighting especially flared up between the Tatmadaw and Kokang MNDAA, forcing another 20,000 civilians to flee to China, and some 1,600 to

Lashio.[12] Operations by Myanmar security forces in Rakhine State from October 2016 also forced some 20,000 Muslims, known as Rohingya, to become internally displaced and another 74,000 to seek refuge in Bangladesh following a military crackdown after an attack by Islamic militants.[13]

Outside of refugee and IDP numbers, there are substantially more people from Myanmar living in neighbouring countries, including Thailand, India, Bangladesh and Malaysia. For example, as the Thai government has not allowed the creation of refugee camps for ethnic Shan refugees, tens of thousands have instead become migrant workers in Thailand. Here they have joined the routes abroad by other migrants (legal and illegal) from Myanmar, in excess of two million, many of whom have also fled conflict, but there is no reliable data on their backgrounds or circumstances.

Civil War and Displacement

More than six decades of civil war and militarization has led to the large-scale displacement of people from homes and farms in the ethnic nationality borderlands where most of the fighting has taken place. Many of the displaced are small family-farmers engaged in the cultivation of a wide range of crops on land that has been tilled by their ancestors for generations. This encompasses lowland as well as upland cultivation, including shifting cultivation (*shway pyaung taungya*[14]), often in customary arrangements to manage land, water and natural resources. These customary arrangements have been practised for generations, involve communal systems and often govern relationships between neighbouring communities, but they have not been formally recognised by central governments in Myanmar.

It is also crucial to realise that, while the land and related natural resources like waterways and forests provide communities with food and livelihoods, their attachment to the land is multi-dimensional and includes spiritual, cultural and social values and relations.[15] In addition, where it is linked to ideas of autonomy and self-determination, control of the land has a crucial political importance as well. In this light, displacement from their homes not only deprives people of the livelihoods they are accustomed to and throws them into economic straits, it also deprives them of other key relationships to the land and to each other. The particular significance of a plot of land is not easily replaceable or exchangeable. For some, if not all displaced peoples, being able to return to one's original place is a deeply felt aspiration about restoring the social relations that constitute one's very identity.

Historically, people in Myanmar were forced to flee internally as well as across international borders for multiple reasons. The outbreak of active fighting in the immediate vicinity was one reason. Another reason was to escape forced relocation as part of the Tatmadaw's counter-insurgency strategy known as the 'Four Cuts'.[16] Still another reason people fled was to escape extra-judicial executions, forced labour, forced portering, sexual violence, extortion and other practices commonly used primarily by the Tatmadaw but also by other armed groups.

Some people hide in the forests and try to stay in the vicinity of their farms and fields as long as possible. For many communities displacement has thus become a way of life, moving back and forth between their villages and the surrounding mountains and forests. Such behaviour can take place in response to the temporary presence and/or demands from Tatmadaw units – sometimes seasonally (such as during the dry season). But for others, this is not an option, as the day-to-day pressures are too high or the security situation too dangerous, and they are forced to flee across the borders to seek refuge in neighbouring countries. The decision to leave especially happens to communities fleeing fighting in or near their villages, as well as to communities subject to long-term abuses and excessive demands from Tatmadaw troops stationed in their area.

The civil war has ebbed and flowed and shifted geographically for nearly seven decades. Soon after independence in 1948, several newly-formed nationalist organisations took up arms to press their demands for ethnic rights and more autonomy. The Communist Party of Burma (CPB) also went underground and launched an armed struggle. In 1962 the army staged a military coup against the democratically-elected government, and since then the Tatmadaw has played a dominant role in national politics. Against this backdrop of conflict, the fighting, which has lasted until the present day, has caused great suffering for the peoples of Myanmar, displacing millions in different eras and parts of the country since independence.

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Since the late 1970s, conflict has largely ended in Bamar (Burman) majority regions in the centre of the country, but a very different situation exists in the ethnic nationality borderlands where fighting still continues. Here the Tatmadaw's strategy of 'managing conflict' rather than 'solving it' has resulted in the increasing militarization of the social and political landscape.[17] To occupy territory and try to weaken ethnic opposition forces, successive military-dominated governments have relied on such tactics as: the build-up of large numbers of Tatmadaw units in the ethnic states and regions; an ongoing increase in Tatmadaw-backed militias (*pyithusit*) and ethnic armed organisations transformed into Border Guard Forces (BGFs) under nominal Tatmadaw control;[18] and a policy of shifting alliances, consisting of concluding ceasefire agreements with some ethnic armed groups while continuing to pursue military offensives against others – and then reversing these relationships when it is politically convenient. These policies continue until today and, for many nationality parties, reflect the lack of sincere efforts to find a political solution to address ethnic conflict in the country at the negotiating table.

As a result of such policies, the IDP and refugee crisis, and the response to it, has also varied in different parts of the borderlands over time. In the southeast of the country, large numbers of villagers, mostly Karen, Karenni and Mon, started fleeing to Thailand when active fighting began moving closer to the Thai-Myanmar border in the mid-1980s. Here, they were housed in camps and provided with humanitarian assistance, including food, shelter and basic medical care, by a consortium of non-governmental organisations (NGOs) that developed into the Thailand Burma Border Consortium (TBBC) – renamed The Border Consortium [TBC] in 2012 – and supported by international donors.[19] However, despite the existence of ceasefires in most Thailand border regions since 2012, there has been little change in the refugee or IDP situation. Until the present day, the refugee

camps are administered by local camp committees, which are elected by the camp residents. The Karen Refugee Committee and the Karenni Refugee Committee are the overall representatives of the refugees living in the camps, and oversee all activities conducted through the camp committees and liaise with international agencies and local authorities.

In the Mon region around Three Pagodas Pass, the displacement situation is rather different. Following a 1995 ceasefire between the then military government of the State Law and Order Restoration Council (SLORC) and the New Mon State Party (NMSP), over 10,000 Mon refugees housed in camps in Thailand were forced to move back across the border into Myanmar. Most of them remain in IDP camps in NMSP-controlled territory and have not been able to return to their places of origin.[20] The Mon National Relief Committee, later renamed Mon Relief and Development Committee, has provided some support to this displaced population. A small number of Mon refugees also remain on the Thai side of the border where they are supported by international agencies.

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Similarly, the Thai government does not want to allow Shan refugee camps on its soil. Until the mid-1990s, the Shan State border region with Thailand was largely controlled by Khun Sa's Mong Tai Army (MTA). Although formally in opposition to the Tatmadaw, very little fighting between the two armies took place, and the relatively small number of IDPs in Shan State fleeing fighting from other areas could find a safe haven in MTA territory. The situation changed dramatically when the MTA concluded a surrender-ceasefire with the SLORC government in 1995. Subsequently, some units that refused to surrender were reformed into what is now known as the Restoration Council of Shan State/Shan State Army–South (RCSS/SSA-South). With the Tatmadaw launching village clearance operations, the resumed fighting in Shan State with the RCSS/SSA-South displaced tens of thousands of Shan civilians from the mid-1990s, amidst reports of widespread human rights abuses by the Tatmadaw.[21] Some of them later found sanctuary in IDP camps in territory adjacent to the Thai border under control of the RCSS/SSA-South. Others crossed the frontier where they merged with civilians from other nationality backgrounds in Shan State, including Pa-O, Ta'ang and Kachin, who have fled war and oppression and become migrant workers in Thailand.

Meanwhile, in the northeast of the country, decades of heavy fighting have displaced many ethnic nationality communities in Kachin and northern Shan States over the decades. As China did not allow civilians fleeing fighting in Myanmar to cross the border and seek refuge on its territory, many of them were housed in border regions in territory administered by ethnic armed groups, such as the Kachin Independence Organisation (KIO). In 1989, however, in the aftermath of the 1988 democracy protests that swept the country, the then SLORC government initiated a policy of concluding ceasefire agreements with ethnic armed groups along the China border. The timing of the strategy was also helped by the collapse, due to ethnic mutinies, of the China-backed CPB, which had previously been a significant military force along the border. In the following years, truces were agreed with the Tatmadaw by a diversity of ethnic forces in the area, including Kokang, Kachin, Shan, Ta'ang (Palaung) and Wa.

Initially, the ceasefires did bring about some relief for the local population, including reducing the worst human rights violations, improved

communications and travel, and a resettlement of IDPs. However, the truces were merely military agreements, and over the following years there was no successful follow-up to find a political solution by negotiation to address the root causes of conflict and find a sustainable peace. Furthermore, unsustainable development and resource extraction led to environmental degradation, land dispossession and deepening poverty among local communities.[22] Despite these challenges, a beginning was made to repatriate IDPs following the ceasefire agreements. In Kachin State, for instance, local church-related networks, such as the Kachin Baptist Convention and Karuna Myanmar Social Services (the development branch of the Catholic Church) as well as newly-established NGOs like the Metta Development Foundation, played a crucial role in supporting the resettlement and rehabilitation of those displaced and affected by decades of war and destruction. They did so in cooperation with the KIO, in whose territory most IDPs had sought refuge. With Western governments largely pursuing an aid and development boycott inside Myanmar, very little international support was provided to support these efforts, which were all led and carried out by local actors.

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It needs to be stressed, then, that the patterns of ceasefires and conflict in Myanmar were not even during the era of the SLORC government and its 1997 successor, the State Peace and Development Council (SPDC). For while the SLORC government initiated ceasefires in the north of the country, the Tatmadaw continued military campaigns against ethnic armed groups in the southeast of the country based along the Thai border. These groups allied with pro-democracy groups among Bamar-majority opposition groups and exiles, arguing that they wanted to have political discussions first before agreeing to a ceasefire. It was only in 2011 that a dramatic policy change came, following the advent of the quasi-civilian Thein Sein government, which concluded new ceasefires with ethnic armed groups in the southeast, including the Karen National Union (KNU), Karenni National Progressive Party (KNPP) and RCSS/SSA-South. With the Thein Sein government also pursuing accommodation with the National League for Democracy (NLD) led by Daw Aung San Suu Kyi, this was generally hailed as a breakthrough success, raising hopes at home and abroad that finally a solution could be found to end the civil war and for displaced communities to return home.

Once again, however, a new round of ceasefires in the country – this time in the southeast – was to have broader impact in national politics and economics, with consequences that often do not benefit the local communities. Following the 2012 ceasefires with the KNU, KNPP and RCSS, the Tatmadaw and government-sponsored militias that engaged in business directly – or in alliance with corporate business elites – began to confiscate large areas of farm and forest land from local villagers.[23] The Thein Sein government also aimed to end the international isolation of the country, seeking to attract foreign investment to develop the economy which was in a shambles after decades of war and economic mismanagement. In order to do so, in 2012 the government enacted new land laws that are meant to facilitate agrarian transformation from subsistence rural-farm livelihoods to an industrial cash-crop economy. These laws, however, are widely seen as favouring local business and international investors. The new laws do not recognise ethnic customary land rights or communal land tenure at all.[24] Coupled with the new ceasefires, the 2012 land laws also facilitated a new wave of land-grabbing in ethnic nationality regions that had previously been closed off from outside investors seeking to open up business. Without any

legal documents, and without mechanisms to address problems resulting from the new ceasefires, villagers became an easy prey.[25] As a Karen participant at a TNI land workshop said: 'For us, peace is very dangerous'.

However, while the Thein Sein government was signing new bilateral ceasefires in the southeast of the country, the Tatmadaw reversed its conflict strategy in the northeast which had previously been at relative peace. From June 2011, the Myanmar army began attacking positions of the KIO in Kachin State, breaking a 17-year old ceasefire.[26] Subsequently, the fighting spread to Kachin-inhabited areas in northern Shan State, and continues until the present day, including the use of attack aircraft and helicopters that have fired on military targets and human settlements below. Apart from displacing many civilians, the renewed conflict and heavy-handed behaviour of the Tatmadaw have greatly angered local Kachin communities, eroding trust in the reform process of the new government, damaging inter-community relations, and stimulating loss of hope in the possibility of forming a true union of Myanmar with the equal inclusion of all its peoples.[27]

Apart from displacing many civilians, the renewed conflict and heavy-handed behaviour of the Tatmadaw have greatly angered local Kachin communities, eroding trust in the reform process.

This was not the end, however, in the spread of conflict in Myanmar's northeast. Subsequently, the Tatmadaw also broke the ceasefire with the SSPP/SSA-North, and violated the new ceasefire with the RCSS/SSA-South in Shan State. As unrest continued, armed struggle also resumed among other ethnic nationality peoples with the revival of the Ta'ang National Liberation Army (TNLA) and Kokang MNDAA, the latter of which had refused to transform into a BGF under Tatmadaw authority in 2009. After over two decades of ceasefires and relative peace, many districts of the Kachin and northern Shan States have again become war-zones, with clashes a daily occurrence around major roads and several towns. There have been periodic efforts at peace talks and new ceasefires, but, to date, there has been no breakthrough that includes all areas and groups.[28] Into 2017, fighting continued, with local ethnic nationality forces forming a new 'Northern Alliance' to coordinate actions together.[29]

The consequence of this return to fighting between the Tatmadaw and ethnic armed organisations in Myanmar's northeast has been profound, leading to an upsurge in displacement and a deepening humanitarian crisis in the Kachin and Shan States (see box: What the Numbers Say: Displacement Due to Armed Conflict). The majority of the IDPs have been housed in camps in KIO-controlled areas along the China border, while others sought relief and shelter in northern Shan State. In one of the most isolated border regions of Asia, a major humanitarian emergency is now underway, with international relief initially largely confined to organisations operating from the government side, and the government has allowed only a few UN convoys to access IDPs in KIO territory. With rare exceptions, China has also refused to allow those fleeing the fighting to seek refuge on its soil. In this vacuum, local community-based organisations have played a crucial role in providing aid to IDPs in both government- and KIO-controlled areas. A key player in the relief effort for IDPs in Kachin and northern Shan State is the Joint Strategic Team (JST), a coalition of nine local humanitarian agencies.[30]

Apart from actions by the Tatmadaw, some ethnic armed groups have also been responsible for displacement. Most notably, between 1999 and

2002 the ceasefire United Wa State Army (UWSA), the most powerful of the breakaway groups from the CPB, forcibly relocated thousands of ethnic Wa ex-poppy farmers from the mountains in the Wa region to the more fertile valleys of southern Shan State along the Thai border. In doing so, they also displaced thousands of ethnic Lahu, Akha and Shan villagers.[31] At the same time, civilians have also been displaced in fighting that has broken out between ethnic armed groups on occasion. In early 2016, for instance, clashes broke out between the TNLA and the RCSS/SSA-South in northern Shan State, displacing more than 3,000 ethnic Shan and over 2,000 Ta'ang civilians. Clashes continued throughout the year, displacing more people from both population groups.[32] Local organisations, such as the Tai Youth Network and the Ta-ang Students and Youth Union, were among the agencies to provide support to displaced civilians in their respective communities. But there continue to be many displaced peoples in the hills and forests who are beyond access to needed aid.

Finally, a major humanitarian emergency, caused by displacement, also continues in Myanmar's northern and northwest borders with Bangladesh and India, primarily among the Muslim population in northern Rakhine State who self-identify as Rohingya (see box: Muslim Displacement in Myanmar). Conflict in these borderlands also dates back to Myanmar's independence in 1948, and there continue to be local ethnic armed movements among such nationalities as the Chin, Naga and Rakhine. Most presently have ceasefires with the Myanmar government, and in recent decades the main inter-communal tensions and conflicts with the Tatmadaw, as well as Rakhine majority population, have been amongst the Rohingya and other local Muslim communities.

It has therefore been the Rohingya crisis that has received most international human rights attention in recent years and, because of Myanmar's strict citizenship laws, it may prove to be the most intractable ethno-political crisis in the country. During the time of the Thein Sein government, over 250 people (mostly Muslims) lost their lives in violence and another 140,000 civilians (also mostly Muslims) were displaced from their homes, while up to one million (mostly those of perceived 'Indian' ancestry) disenfranchised from voting and full citizenship rights.[33] Then, following a fatal attack last year by a new Islamic force on police near the Rakhine State border, hundreds of Muslims were reportedly killed in operations by the Myanmar security forces, another 20,000 internally displaced from their homes and over 70,000 sought refuge in Bangladesh.[34] Meanwhile, although ceasefires exist in most northern frontier areas, armed opposition has also revived on small scale among the Buddhist Rakhine community with the surfacing of the Arakan Army (founded 2009) in the Rakhine and Chin State borderlands, leading to local displacement during Tatmadaw operations.[35]

In summary, although the causes and patterns of displacement have changed locally and nationally over time, the crises in landlessness and internal displacement continue to exist on large scale in Myanmar today, especially in conflict areas of the ethnic nationality borderlands and among many of the country's most marginalised peoples. There is a long legacy of challenges caused by such displacement, and the priority of restitution and the right to land for IDPs and returning refugees will need to be a central pillar of any inclusive peace and reform settlement.

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Muslim Displacement in Myanmar

Myanmar's Muslim population, especially in Rakhine State (historically known as Arakan), has probably suffered the most from religious and ethnic discrimination in the country since independence in 1948. Anti-Muslim protests or riots have also taken place on numerous occasions in several towns in other parts of Myanmar. Muslim community leaders claim that these attacks were instigated, or at least tolerated, by successive military governments. Tensions continue to be especially high in Rakhine State, where the Muslim minority, many of whom self-identify as 'Rohingya', face ethnic and religious discrimination, and are not accepted as citizens of Myanmar.

Armed opposition had continued in the northwest borderlands by both Buddhist Rakhine and Muslim groups since independence in 1948, but the crisis only attracted wider international attention in 1978 when a census campaign to 'check identity cards' and to register all citizens in the northern Rakhine State first took place. The campaign resulted in thousands of arrests, widespread reports of brutality and the flight of some 200,000 Muslims across the border into Bangladesh. The UNHCR negotiated the resettlement of most back in Myanmar, but the returnees were only given 'Foreign Registration Certificates' that did not provide full citizenship. A second mass displacement then took place during 1991-92 under the SLORC government, when an estimated 260,000 Muslims fled to Bangladesh following a new Tatmadaw campaign 'to check identity cards'. Many of those fleeing were again repatriated to Rakhine State by the UNHCR, but they faced limited freedom of movement, forced labour and administrative barriers to marriage, and they were still not recognised as Myanmar citizens.

The crisis then flared again into public view in June 2012 when, under the quasi-civilian government of President Thein Sein, communal violence broke out between the Buddhist Rakhine and minority Muslim populations, including both Rohingya and Kaman, with mobs burning down Muslim houses and property and molesting many people. According to the government, this resulted in 167 dead, 223 injured, over 10,000 houses destroyed and the displacement of over 110,000 people who moved into displacement camps.[36] All communities suffered during this violence, including the majority Rakhines, but most of those displaced or fleeing into exile were minority Muslims.

There were hopes of a change in government policies when the NLD assumed office in March 2016. But in October 2016 a hitherto unknown armed Islamic group, mostly consisting of local villagers but apparently foreign funded, attacked three police stations in northern Rakhine State, killing nine police officers and taking away several weapons. The Myanmar security forces responded with force, burning down houses and villages in the vicinity of the attacks, targeting local villagers whom it suspected were connected to the attackers or supported them. As a result, another 25,000 Rohingya Muslims became internally displaced and more than 70,000 fled to Bangladesh.[37] The NLD government has appointed an advisory commission, headed by former UN General-Secretary Kofi Annan, to investigate the wider crisis issues. But with international media and human rights observers largely barred, it has been impossible to establish an independent picture of displacement and the security clampdown taking place.

The current plight of Muslim inhabitants in and from the northern Rakhine State is bleak. Over 200,000 presently live in displacement camps in Rakhine State or in refugee camps in Bangladesh, and the continuing security operations and tensions have prevented many of them from access to urgently needed humanitarian aid. Local Rakhine groups also accuse

international agencies of favouring the Muslim population, and have hindered them from providing relief to Muslim communities, with local aid workers on occasion facing threats and intimidation. At the same time, many government officials and the local Rakhine population – as well as nationality groups in other parts of the country – increasingly refer to the Muslims of Rakhine State as 'Bengalis' or 'Kalas' (a derogative term for Indians) to stress that they see them as foreigners and not as proper citizens of Myanmar.

Many Rakhines also regard themselves as a marginalized nationality people in the country, and small-scale armed opposition against the central government still continues in a few districts in the tri-border region with India and Bangladesh, most recently led by the Arakan Army. But the main focus of Tatmadaw security operations has been directed against Muslim communities and, by comparison, relatively few of the Rakhine Buddhist population have been displaced.

Understanding Needs and Displacement: The Wider Context is Crucial

The complexity of conflict, displacement and landlessness in Myanmar presents special challenges in political resolution. A long legacy of unaddressed crises has built up over seven decades. Different people who are displaced today have been displaced for varying lengths of time, and may have suffered different kinds of displacement. Some displacements are linked to periods of active armed conflict (as in the contemporary Kachin and northern Shan States). Others are linked to relatively militarized conditions that may persist in some places in between periods of active fighting (such as in Karen State and Mon State).

All of this complicates the challenges of putting in place durable solutions. For example, among refugees their own calculations of safety and security may carry greater weight than the status of an official ceasefire. Ceasefires can exist on paper but not in reality, while past experiences with ceasefires in the 1990s have shown that the signing of an agreement is no guarantee against other forms of displacement, such as land confiscation.[38] Furthermore, as recent events in Myanmar have shown, as long as ceasefires do not transform into lasting political solutions and sustainable peace, the risk of a return to fighting will always remain a serious concern.

Recent decades have seen the interplay of both 'armed conflict' and 'ceasefire with displacement' in the country. During this time, displacement has been normalized as something that can occur in periods of either relative war (e.g., active armed conflict) or relative peace (e.g., ceasefire). This means that the large 'grey area' in between full-blown peace and all-out war makes the challenge of understanding and remedying displacement in the Myanmar context largely speculative and experimental. For this reason, the analytical tools and frameworks that are brought to bear matter a great deal. Analytically, it is difficult to say whether Myanmar's recent displacements are a product of war or peace for at least two reasons. First, peace, conflict and militarization are all matters of degree: i.e., there is a significant 'grey

area' in between full-blown peace and all-out war. Second, peace, conflict and militarization tend to be distributed unevenly across historical time and geographical space: i.e., there can be active armed conflict in one part of the country, a 'militarized peace' in another part, and a 'demilitarizing peace' elsewhere. All can happen at the same time, and this variation can also occur within regions of the country as well.

In this context, a further advantage of distinguishing between different kinds of displacement is that it creates a more manageable frame of reference for planning and organising responses. For example, seeing a situation as one of 'displacement due to armed conflict' helps to quickly highlight the immediate humanitarian situation and enables responses to focus on the most urgent basic needs of safety, shelter, food, water and medical attention. In an emergency, this is clearly important and necessary.

Return and restitution, even if handled well, will not escape or address fundamental problems plaguing the Myanmar countryside.

However, by making too hard distinctions in understanding forms of displacement, there is a real danger that this will lead to a de-linking of the issue of armed conflict from the wider land problems within the country. In reality, the displacement of people due to armed conflict does not take place in a vacuum and neither does time stand still when it occurs. As such, return and restitution, even if handled well, will not escape or address fundamental problems plaguing the Myanmar countryside. If not resolved, these problems could easily overturn or reverse any gains that might be made in return and restitution. This suggests that the needs and aspirations of displaced people – including those displaced by armed conflict – must be addressed in the wider context of the rapid, land-based political polarization that grips Myanmar today.

Contemporary Patterns of Displacement

The unevenness of armed conflict and national trends in the country means that the precise character of displacement can vary significantly from one region to another. Even within a region, there may be this kind of unevenness. The situation in northern Shan State is a prime example. Parts of northern Shan State may be under outright war conditions, while other parts may not. However, displacements can still be happening in both types of locations, but at different times and for different reasons. At the same time, there are parts of northern Shan State where armed conflict may be absent and where land confiscation is not happening, and yet a significant portion of the rural working population is still landless or near-landless. In reality, different kinds of situations – within and between different regions of the country – may closely co-exist and be tightly intermingled. This fact deeply complicates the task and prospects of return and restitution.

The overall displacement and land rights situation is moving in a direction that is deeply unfavourable for rural working people.

At present, the overall displacement and land rights situation is moving in a direction that is deeply unfavourable for rural working people, which is why it is important to refer to the wider context as one of 'land polarization'. Land polarization has been fuelled by more than sixty years of civil war. It has been propelled further by dubious government interventions, including the enactment of laws, policies, programmes and large-scale, business-oriented investment initiatives, which are designed to move land out of the hands of

rural working people and into the hands of corporate and 'modern' business actors. Extractive industries (such as logging, mining and quarrying) uproot forests and forest habitats, leaving vast, deep scars in the earth; concrete dams alter natural water flows and water life cycles, undermining ecological customary practices; militarized zones and military encampments bring land mines and new inhabitants into village lands and ethnic nationality territories; and monoculture plantations sprout and spread, flattening landscapes, squeezing biodiversity and disrupting water cycles. In some places, different causes of displacement intertwine at different times. The surge in big nature conservation projects that either expel villagers from their land or limit their access to non-timber forest products in the forests has also aggravated the situation. A similar dynamic is developing with regard to the establishment of 'marine protected areas' as well.[39]

The cumulative result of these pressures is a growing land and natural resource control problem that adversely affects an ethnically diverse population made up largely of rural working people. Whether in the Delta, the central dry zone, ethnic borderlands, north or south – few communities emerge unscathed. The land problem can manifest in either a rise or fall in people's relative socio-economic position and well-being within the household and more generally. Indeed, different working people, families, communities and nationalities in different corners of the country are being affected differently.

Different working people, families, communities and nationalities in different corners of the country are being affected differently.

A snapshot of news reports during a recent week in May reveals the diversity of the present land crisis in the country: pressure on refugees in camps in Thailand to resettle in Myanmar, even though there have been no discussions or safeguards about their return;[40] clashes in the conflict-torn Kachin State between farmers and members of the Yuzana Company over contested land in the Hukawng Valley[41] in an area where other business groups and conservation interests also make claims on land; complaints lodged by farmers in the Inle Lake region of southern Shan State over land taken by the government and sold to business groups;[42] demonstrations over land loss and damage to fisheries through the development of the oil pipeline from Kyaukphyu, Rakhine State, to China;[43] the shooting dead of four 'illegal' prospectors by police during a protest over land access in the jade mining region in Hkamti township, upper Sagaing Region;[44] and the enforced cancelling of the screening of a documentary film in Yangon examining the exploitative role of powerful Tatmadaw families and companies in the jade trade and giving voice to Kachin refugees and community leaders calling for peace and reform.[45]

As such experiences in Myanmar highlight, three broadly distinct types of 'land crisis' situations are possible, each with a distinct type of 'hazard' that some people are especially vulnerable to. 'Vulnerability by definition is the social precarity found on the ground when hazards arrive', Jesse Ribot has written, and is therefore 'produced by and in society' and can vary within and across societies.[46] But if 'produced by and in society', then such vulnerability can and should also be remedied by society, and thus each of the three types of undesirable situations also suggests what needs to be done to achieve solutions (see box: Summary of Key Terms and Concepts).

The first type (Type 1) involves displaced people. Many people are driven off the land through (i) armed conflict; (ii) authoritarian business investments,

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development projects, conservation and environmental protection schemes or climate change mitigation projects; or (iii) natural disasters. Although distinct, each of the three scenarios shares a fundamental feature: not everyone is necessarily or automatically displaced by them, but rather some are more vulnerable than others to being displaced. What makes a cyclone into a 'disaster' is not the cyclone itself but how, and to what extent, people are exposed and vulnerable to it. Meanwhile, some people have a higher risk of being maimed or killed by a landmine than others because militarization around their homes and farms exposes them to such risk.

Similarly, not everyone is equally vulnerable to displacement by a big project: official designation of certain areas as 'vacant, fallow, virgin' exposes some people (or groups of people) more than others to the risk of confiscation, and renders them more vulnerable to 'development-related' displacement than others. Likewise, dubious portrayals of certain areas as 'biodiversity hotspots' and certain practices as 'environmentally destructive' depicts some people as 'forest destroyers' and makes them more vulnerable to 'big conservation' driven displacement than others. But whatever the local situation, in the case of Type 1, *truly pro-poor and durable land restitution is the remedy for displacement.* Here, 'restitution' means: (i) 'whenever possible, restor[ing] the victim to the original situation before gross violations of human rights law or serious violations of international humanitarian law occurred",[47] *and* (ii) setting in place guarantees for full respect for their right to the land that include supportive public policies that enable them to stay on the land in the long-run.[48]

National laws may not recognise customary or informal occupants, while their land is targeted for allocation to business investors.

The second type of situation (Type 2) involves what might be called 'unrecognised' people. These are people who, despite adverse conditions, manage to hold onto their lands, but full and meaningful recognition, respect and protection of such people and their rights are still lacking. On the one hand, this situation often involves people and places under customary systems threatened by land grabbing, whether legalized or not. National laws may not recognise customary or informal occupants, while their land is targeted for allocation to business investors. On the other hand, just getting legal recognition of their right to the land will never be enough. The concept of recognition goes much deeper than the legal sphere and, in this case, is not limited to simply official land registries. It is rather a political concept about all human beings having an equal right to have rights by virtue of their being human, and regardless of differences among them with regard to race, religion, ethnicity, class, gender, sex, age or ability. Lack of recognition in this deeper sense is linked to unrepresentative, discriminatory and undemocratic political and economic decision-making in national capitals that fails to be accountable to the expressed needs and real aspirations of rural working people.

Such marginalization undermines the natural resource base that rural working people depend on, while also devaluing their practices and fruits of their labours. This results in the 'slow squeeze' of increasing indebtedness, economic distress and precarity, which eventually leaves people with no choice but to give up long-term rights to the land in exchange for short-term coping and survival – a scenario that some analysts see positively as a sign of 'development'. But for those who reject the idea that development requires emptying the countryside of rural working people, another way is possible that involves valuing rural working people and enabling them to

build a dignified life and livelihood on the land. Thus, in the case of Type 2, *full and meaningful recognition, respect and protection are the remedy for non-recognition*. Here, full respect for their right to the land is guaranteed (i.e., both de jure and de facto*) and is combined with supportive public policies* that enable them to live well on the land in the long-run.

The third type of situation (Type 3) is where a few empowered elites control too much land while, at the same time, many landless working people are unable to construct a viable and dignified livelihood. The ranks of the landless may include women in rural households whose distinct rights to land goes unrecognised; children and siblings in rural households who are excluded from inheritance; people who work as wage labourers in other peoples' farms or fisheries, agribusiness plantations, large-scale aquaculture enterprises, or other rural industries; and 'surplus people' who have given up their land or never had land but were never absorbed by new economic arrangements either.[49]

Rural working people who have no land or no prospects of getting land frequently migrate in search of viable work, but all too often end up in extremely precarious work under slave labour conditions.

The rest of Asia today offers a cautionary tale for Myanmar. As Tania Li points out, 'For billions of rural people, the promise that modernization would provide a pathway from country to city, and from farm to factory, has proven to be a mirage.' [50] Rural working people who have no land or no prospects of getting land frequently migrate in search of viable work, but all too often end up in extremely precarious and/or dangerous work under slave labour conditions. This includes many landless people who have migrated in search of paid work and educational opportunities but end up living precariously in urban slums, and would want to leave the cities to (re)build a life and livelihood in the countryside. It also includes those who may end up in informal and often dangerous and dehumanizing work in mainly unregulated rural extraction outposts, such as the Hpakant jade mines. In the case of Type 3, therefore, *real redistribution is the remedy for landlessness and land inequality.* Here*,* redistribution means actually rolling back land inequality and taking clear measures to prevent it from returning in the future. Among other safeguards, this would mean setting a 'land size floor' (e.g., minimum amount of land allowed for dwelling and farming) and a 'land size ceiling' (e.g., maximum amount of land allowed) for land control.

Two further points are crucial in this context. First, where land inequality exists, 'formalization' of land rights without redistributive measures will reinforce elite land claims. The result will be deeper formalization of land inequality. Second, where land inequality exists, 'restitution' of land rights without redistributive measures will also reinforce elite land claims, again formalizing land inequality. This is because displacement (Type 1) is part of the wider land problem today that is rooted in increasing land inequality, while displacement also exists alongside lack of full recognition (Type 2) and landlessness (Type 3). As a result, seeking to address one issue without the others will merely feed land inequality and thus land polarization (this point is taken up again later in the section 'Experiences from Elsewhere').

In summary, in Myanmar today the return and restitution of people who have been displaced by armed conflict is undoubtedly an urgent issue, but this requires focused – not isolated – attention. Sustainable solutions can only be developed with understanding of the wider context of displacement. Taking the three elements of Myanmar's land problem today – displacement, non-recognition and landlessness – how each of these is handled *separately*

and together will determine who can *and cannot* live where, and what can *and cannot* be done with the land. The handling of the land problem will establish who will – and will not – have what rights to which land, for how long, and for what purposes now and for many years to come. This, in turn, will decide whether real peace and inclusive democracy will be possible. In all of this, there is potential for 'poor-on-poor conflict' to be unleashed and for the 'poor, marginalized and vulnerable' to lose out. Allowing this to happen would only further land inequality and land polarization. It is the worst-case scenario unless steps are taken to prevent it, and it is essential that constructive measures against such eventualities are started upon now.

Core Features of a Pro–Poor Programme of Integrated Redistribution, Recognition and Restitution

(a) Minimum size of land for dwelling and farming that is sufficient for livelihood and to prevent losing the land immediately

(b) Maximum ceiling for award of land to beneficiaries, and a cap on corporate and big conservation land/forest concessions

(c) Respect and support of customary practices in land control, including the practice of allocating land reserves for future new families in the village and the prohibition for outsiders to purchase villagers' and village lands

(d) Policies that are supportive of smallholder agriculture, local food systems and food sovereignty; otherwise, however egalitarian a land policy is, villagers would immediately lose the land if they are to lose in the market for their livelihood

(e) Class-conscious: ensure that beneficiaries of redistribution, recognition and restitution are poor people working the land

(f) Ethnic-sensitive: ensure the distinct rights of different ethnic nationalities, but in a way that addresses inter-ethnic tensions from a social justice perspective

(d) Gender sensitive: ensure the distinct rights of women to control land

(e) Ecologically sustainable: ensure ecological sustainability from a territorial perspective by prohibiting land uses and practices that destroy the environment, including future and downstream effects.

Views from the ground

Seventy years of armed conflict between the Tatmadaw and ethnic armed groups have spawned waves of displacement, as well as increased precarity among rural working people in war-affected zones. In the case of ethnic nationality groups, it has also increased vulnerability to the political-ecological and social-economic hazards associated with non-recognition, or lack of *full and meaningful* recognition, of their right to have rights, *including the right to land and related natural resources* (see box: Core Features of a Pro-Poor Programme of Integrated Redistribution, Recognition and Restitution). The direct causes of displacement are active fighting or forced relocation or the threat of these. The rapid approach or sudden blaze of armed conflict

compels people to flee with what they can carry in their hands or on their heads and with just the clothes on their backs.

The options of where the displaced may go to are limited. Some people who cross international borders seek sanctuary in refugee camps or work as migrant labourers, such as in Thailand, or seek to move on to third countries such as Malaysia, Australia or further countries in the West. Others have remained inside the country within IDP camps or outside of camps but are nonetheless internally displaced. However, wherever people move, the experiences of displacement can be very individual, and differentiated impacts can result in special needs or concerns according to socio-economic status, ethnicity, gender and generation, as well as other factors such as the presence of mental trauma or physical disability. Such human cost is immeasurable.

For those who find their way to an emergency shelter, humanitarian assistance is more likely to be possible. But such assistance may not be enough to cover needs and can dry up or be subject to political biases and pressures and then later withdrawn. Other people may not reach to a place where assistance is available, and thus seek refuge deeper in forests or end up along roadsides sheltering under bits of plastic. But wherever they flee, many displaced people face increased vulnerability to the elements, to hunger and disease, to further armed conflict, and to discriminatory or predatory practices by unscrupulous people.

Uneven access to humanitarian aid and basic social and economic rights compounds the difficulties of those displaced and policy planning to alleviate their suffering.

Uneven access to humanitarian aid and basic social and economic rights then compounds the difficulties of those displaced and policy planning to alleviate their suffering. In Myanmar, this problem is reinforced because the impact of displacement that is conflict related has mostly been concentrated in the ethnic nationality borderlands. In the main, these areas and what happens in them are 'invisible' to the wider public, the mainstream national and international media, and policymakers and administrators in national capitals around the world. But it is precisely in these 'invisible' spaces that the government's various policies, programmes and projects tend to converge, laying the conditions for all three aspects of the land problem – displacement, non-recognition and landlessness – to come together as well.

As evidence of this, families fleeing armed conflict might be taken in by communities located in safe zones, but this host community's natural resource base is already under pressure due to prior confiscation of portions of community forest land by military elites or their allies. The prior enclosure of portions of host village land may have already expelled some families from their land and pushed them into a neighbouring village's reserve land, where they eek out a living while dreaming of returning to their original farms and homes. Later, the armed conflict may spread to engulf the host community's land and forest tracts as well, pushing both sets of people off. The fates of these different sets of people thus becomes intertwined and entangled.

A new set of problems then face all those who are seeking to return. One obstacle is the often degraded or destroyed condition of the natural resource base in their original homelands; war inflicts a great deal of environmental damage. Another challenge is when farms have become overgrown or homes have fallen into disrepair while the owners have been away and unable to care for them. Yet another challenge has to do with the collapsed

or destroyed state of key social institutions and infrastructure, such as indigenous health clinics, local sources of credit, communal grazing areas and local markets. These include what may appear to outsiders to be very informal versions of these, such as access to traditional forests for medicinal and food supplies, as well as more obvious physical infrastructures such as roads and bridges.

Return, too, may also be far from safe. Conflict can be very unpredictable, as it ebbs and flows. Related to this, displacement can have deep psycho-social impacts that increase a person's sense of victimization and affect the agency of the displaced persons themselves, making it very difficult to imagine overcoming the obstacles to return or imagining return at all. In this context, land mines are an especial problem that can complicate return and restitution, most obviously in relation to safety but also in relation to rights to land and land control. The subject therefore deserves focused attention, and some possible principles that could guide actions warrant a closer look (see box: Eight Core Principles for Land Rights and Sensitive Mine Action).

Eight Core Principles for Land Rights and Sensitive Mine Action*

- Land rights must be incorporated in mine action and reflected in peace agreements; mine action is not just a technical issue; land rights help to identify the priorities of mine action.
- Land rights must be clarified prior to commencing de-mining operations; land claims should be investigated and clarified, and agreement reached between different parties involved first.
- Community participation in mine action is critical; areas for de-mining should not be prioritized without free, prior and informed consent (FPIC) of those communities; mine action requires representation, consultation within the communities beyond just the leaders, and communities should have authority to refuse offers of de-mining.
- Priorities for demining should be based on community needs and human rights principles; priorities for demining should be supportive of land restitution of displaced persons; this means priority for such needs as smallholder agricultural fields and schools – not for industrial estates or commercial agriculture.
- Land claims must be determined in a fair and equitable manner; people claiming land should be made aware of their rights and opportunities to present evidence of their land claims; and if administrative procedures are not satisfactory, there should be mechanisms for complaints and judicial redress; duties and rights should also be available in local languages.
- All forms of rights must be considered; legal, customary and informal rights with regards land tenure are all relevant; national and international obligations on land tenure are relevant, not just in government areas but also in ethnic armed opposition-controlled areas.
- Documentation of land rights must be created and maintained; this needs to be coordinated between demining organisations and relevant land tenure departments of government and ethnic armed organisations; documentation should be in the hands of the landless people.
- There should be post-demining monitoring and assessment; it is essential to make sure that land demined is handed over at its release to the legitimate land user claimants and that their rights are not ignored.

* Displacement Solutions, "Land Rights and Mine Action in Myanmar", 2014

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For many displaced persons seeking to return, their places of origin will have been marked by both changes and continuities. An especially difficult challenge is when the places of origin have been occupied and taken over by others after the original inhabitants were forced to leave. Such incomers are termed as 'secondary occupants', who can be poor or non-poor, including elites who may already have access to land elsewhere. In Myanmar, this problem is especially acute, because the failure of past governments to create meaningful conditions for building real peace means that layer upon layer of displacements over time, combined with resettlement and internal migration, have led to overlapping land claims in many parts of the country.

Resolution of these complexities will not be easy. Overlapping land claims may pit displaced people against government or military elites as well as wealthy business actors and companies. Some overlapping land claims may also pit displaced people against environmental conservation organisations. However some overlapping claims can also pit displaced people against other marginalized and vulnerable peoples, creating the risk of inflaming inter-community or inter-ethnic tensions, which unscrupulous actors may try to exploit and capitalize on to grab even more land. As a result, implementing measures to address conflict – or potential conflict – due to competing land claims is one of the most challenging aspects of return and restitution in Myanmar today.

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The realities of long-term displacement raise some additional concerns amongst displaced people and the local organisations that work to support them. One concern is for people living in urban slums. Many of the displaced migrate to urban areas in search of work, while many may have already lost their social connections to the land. A growing number of people end up living in 'informal' situations in key urban areas, such as Yangon and Mandalay, under precarious living and working conditions. They are effectively landless people and their insecure situation needs to be addressed, yet it is rarely reflected in wider debates and discussions about the social function of land and the country's future. Instead, they are often treated as squatters and lack organisations to stand up for them. Another concern is for displaced people who were forced into bigger relocation villages. The situation in many such big relocation sites is often unstable, and there is a high potential for new pressures or further strains on the people living in these camps to inadvertently spark secondary 'poor-on-poor conflict' (e.g. in Kayah/Karenni State). In both cases, the three aspects of the land problem have become deeply intertwined: prolonged displacement leads to landlessness with extreme precarity and vulnerability, alongside non-recognition of the right to have rights, including the right to land.

Related to this, yet another concern is that, even within the rule of law, there are contradictions between different regulatory systems (i.e., Government of Myanmar [GOM] laws vs. National Land Use Policy [NLUP] vs. Ethnic Armed Organisation [EAO] policies) and their implications for responding to people's needs. This is especially unhelpful in very urgent or pressing situations, such as an outbreak of armed conflict, a rise in tensions between armed groups or an impending land confiscation.

At the moment, the question of which land law/ land policy prevails is still very far from being a universally settled matter across the Myanmar national polity and territory. First, the application of GOM laws is uneven.

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For example, many small farmers – even those who may be eligible by the new 2012 Farmland Law to register their land – still find themselves unable to do so for various reasons, including endemic corruption and demand for briberies. At the same time, unscrupulous land entrepreneurs, by virtue of cash and connections, are able to swoop in and register as their own lands that do not in fact belong to them. Farmers from ethnic nationality regions often complain that government officials allocate lands to businessmen and various outsiders just by looking on the map, without ever having been there, claiming that these are virgin, vacant and fallow lands. In addition, according to research carried out by Land in Our Hands (LIOH), a multi-ethnic network of local land activists, 'the possession of legal documents did not provide any significant defence or protection against land grabbing for farmers' in the LIOH network.[51]

Second, the political legitimacy of the recently adopted National Land Use Policy is uneven, with a dubious new effort under a parliamentary law review committee (led by ex-Gen. Shwe Mann) to revise it again. This potentially includes removing popular provisions that were added through public consultation, such as recognising women's distinct right to land and recognising ethnic land rights, including the right to land for IDPs and refugees. Moreover, although the NLUP was officially adopted by the previous Thein Sein government in January 2016, as long as the 2012 land laws are in place it has no formal legal status and farmers cannot claim any rights from it.

Third, the status of ethnic armed group land policies in relation to Myanmar government land policies is unclear, especially in mixed control and still-contested areas where neither the Tatmadaw nor the EAOs are fully in control. As peace and reform talks continue, many difficulties are looming. The larger ethnic armed organisations continue to control and/or influence significant territories, and have set up civilian administrative structures to administer these and provide meaningful services to marginalised populations in their respective areas. Among them, the Karen National Union has the most elaborate land policy, which has been revised to closer reflect customary and communal land law and practices on the ground as well as international standards and best practices (see box: Summary of Key Terms and Concepts). Other EAOs, including the KNPP, KIO and NMSP, have also adopted land policy principles or are in the process of doing so. In particular, the KNU's latest land policy, published in December 2015, recognises, restores, protects and supports informal and formal land use rights, and recognises the right to land for displaced communities.[52] However, implementation on the ground in areas with both KNU and government access is complicated and, although the KNU land policy is aligned with the NLUP, it is in contradiction with the current 2012 land laws. Furthermore, the KNU sees its land policy not only as an implementation instrument but also as a vision for a federal land policy that respects, protects and promotes ethnic land rights, as well as a key element in political dialogue.

Land rights and reform therefore need to be central to peace-building, inclusive discussion and national reform in Myanmar. There are positive ways forward, as long as the conflict challenges in the country are faced up to. Both the NLUP and the KNU land policy reflect important international standards, including the FAO-sponsored Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. These

Farmers from ethnic nationality regions often complain that government officials allocate lands to businessmen and various outsiders just by looking on the map, without ever having been there.

guidelines, adopted by the UN Committee on World Food Security in 2012, represent the outcome of a negotiation process between government and civil society groups, and have important pro-poor and human rights based provisions.[53] It is thus vital that both are used as examples of reflecting and respecting realities on the ground and adhering to international standards.

Experiences from Elsewhere

Experiences from elsewhere can provide insight into potential problems and pitfalls in undertaking return and restitution for displaced people. They can also help to visualize and learn from positive ways forward that may be relevant for Myanmar. The cases of Guatemala, South Africa and Colombia are relevant. They all come from a particular historical juncture. Post-conflict restitution programmes were enacted in Guatemala and South Africa in the 1990s during the height of a global World Bank-led push for 'market-assisted land reform' (MALR), based on the neoliberal economic principle of 'willing seller-willing buyer'. World Bank land policies are moored in ideological foundations established long ago. But the World Bank's aggressive advocacy of MALR throughout the 1990s was also reacting to redistributive land policies that hit the ground in the 1980s in places like Brazil and the Philippines.[54] The goal of the World Bank's MALR advocacy was to overturn and replace redistributive policies where they existed, and to prevent them from emerging where they did not yet exist, leading some to refer to them as 'anti-poor'.[55] The Bank's influence was notably felt in Guatemala, South Africa and Colombia.

Guatemala

Guatemala is a majority ethnic Mayan country in Central America that was consumed by protracted civil war for nearly four decades from 1962 to 1996. The massive displacement of people from land that occurred and the very unequal distribution of land that arose due to the war meant that land would have to be a central issue in any peace settlement. The negotiated Peace Accords of 1996 brought the civil war to an end. The central issue of land was addressed in the accords, but was framed by the Guatemalan army's political dictates in combination with the World Bank's pro-market orientation. Land left behind by villagers fleeing the genocidal violence of the Guatemalan military during the 1980s was in effect treated as 'vacant' and given by the army directly to landless or land-scarce cultivators supportive of their regime (or allegedly so).[56] This policy, in effect, removed these lands from being 'available' for the original owners to return to in the future.

Land restitution for IDPs was then organised as part of a land distribution policy formalized after the 1996 peace agreements in a Market-Led Agrarian Reform (MLAR) programme.[57] Although exempted from land payments, IDP land beneficiaries under the MLAR programme were grouped regardless of ethnicity and kinship, and assigned to land in agro-ecological settings that were strange to them (e.g. highlanders in the lowlands and vice-versa). This resulted in weak community bonds and mismatched farming knowledge among IDP beneficiaries.[58] State – or any other – support was also lacking in

agricultural research, extension, credit and other services that could have enhanced their abilities to farm the foreign and usually rocky or exhausted soils of the old estates which they were assigned to.[59] As a result, many IDPs ended up leaving their 'restituted' land in search of a livelihood elsewhere.

South Africa

South Africa is a multi-ethnic, black-majority country at the southern tip of the African continent that was ruled by a white minority for most of the 20th century. The country was partitioned, with prime areas reserved for whites only and other areas reserved for black people. Enacting this system involved forced removals of black people from so-called 'black spots' in areas designated as white-only. According to Cherryl Walker, an 'estimated 3.5 million black South Africans had been uprooted from their homes and relocated in furtherance of various aspects of the apartheid agenda between 1960 and 1982'.[60] This system called 'apartheid' began to be repealed in the early 1990s and land was a central issue in regime transition. But, as Edward Lahiff has noted, '[t]he negotiated transition to democracy in South Africa (1990-1994) left much of the power and wealth of the white minority, including land ownership, intact'.[61] The new constitution reflected this in 'guarantee[ing] the rights of existing property owners but also grant[ing] specific rights of redress to victims of past dispossession and set the legal basis for a potentially far-reaching land reform program'.[62]

The redistribution pillar of the post–apartheid land reform fell far short of its own targets, as did the restitution pillar which, in some cases, came to resemble a transaction similar to 'disturbance compensation' rather than real restitution.

The World Bank then came into the picture and introduced its 'market-based' approach to land policy, which appealed to empowered conservative elites across racial lines. Between 1993 and 1996, the 'willing buyer-willing seller' logic gradually came to dominate the shape of all aspects of land reform programming, and by 1997 was the undisputed cornerstone of policy. For example, an income ceiling for applicants that had been put in place initially was removed, enabling black business people to take advantage of the programme to acquire land. The consequences were dramatic. The redistribution pillar of the post-apartheid land reform fell far short of even its own targets, as did the restitution pillar which, in some cases, came to resemble a transaction similar to 'disturbance compensation' paid to affected people, rather than real restitution. Equally important, large numbers of people were displaced during the first decade of the programme, including farm dwellers (workers, tenants and their dependents) who lost access to white-owned commercial farms (see Table below).

Colombia

Protracted rural violence in Colombia since the mid-20th century has resulted in the world's largest IDP population of 5 million. Much land was grabbed during this very long war. In 1994, the World Bank introduced a market-based land policy that remains in place up to now, but it is as problematic as in Guatemala and South Africa. Until recently, there has been a complete failure to enact social justice policies or measures to deal with the long-standing land crisis. A Victims and Land Restitution Law was ratified in 2011 and began implementation in 2012. Progress, however, has been painstakingly slow. Land remains a serious problem and was a key issue in the Havana peace process that led to an accord in 2016. The original accord was narrowly

South Africa's Failed Experiment*

'In terms of overall achievements, land reform in South Africa has consistently fallen far behind the targets set by the state and behind popular expectations. In 1994 virtually all commercial farmland in the country was owned by white people, and the incoming ANC government set a target for the entire land reform programme to redistribute 30% of this within a five-year period. The target date was subsequently extended to 20 years (i.e. to 2014), but, at current rates, this target is most unlikely to be met – by 2006 only 4.1% of agricultural land has been transferred under all aspects of the programme. Government tended to attribute this slow progress to resistance from landowners and the high prices being demanded for land, but independent studies point to a wider range of factors, including complex application procedures, budgetary limitations and bureaucratic inefficiency.

By July 2006 a total of 3.4 million hectares had been transferred through the various branches of the land reform programme, benefitting an estimated 1.2 million people. The greatest amount of land (43.8%) was transferred under the redistribution programme, with lesser amounts being transferred through restitution (29.9%), state land disposal (22.6%) and tenure reform (3.7%). The total area of land transferred is equivalent to 4.1% of the agricultural land in white ownership in 1994 but because much of the land transferred under restitution and tenure reform, as well as some of the land under redistribution and all the land under state land disposal, was land that was formerly under state ownership, the actual impact on white-owned land is considerably less.

Missing from these statistics is the amount of 'pure' market-based redistribution (i.e. land sales unconnected with the official land reform programme) and, more significantly, the vast number of farm dwellers (workers, tenants and their dependents) who have lost access to land on white-owned commercial farms since 1994. A recent study by Wegerif, Russell and Grundling[63] found that over two million farm dwellers – including some tenant farmers engaged in independent production – had been displaced between 1994 and 2004, more than had been displaced in the past decade of apartheid (1984-94) and more than the total number of people who had benefited under all aspects of the official land reform programme since it began.'

* Source: Edward Lahiff, "South Africa's Failed Experiment", in, Third World Quarterly, 2007, Vol.28, No.8, p.1581-82.

defeated in a referendum a few months later, and has since been revised. Beyond the land restitution law and programme, there is a new land reform bill from the parliament, but its fate remains to be seen. Recognition of land rights is a serious problem, especially for 'Afro-Colombians'. Land grabbing continues to be widespread and anti-reform resistance by elites remains very strong. In short, truly pro-poor land policies are still not very present in Colombia, although they are of partial relevance and potential in the land restitution process.

From these experiences, land restitution programmes in Colombia are generally perceived by a large portion of the rural population as a prevailing mechanism to achieve access to land. Furthermore, in some specific rural settings, land restitution claims are the only way to achieve access to land, which tends to generate disparities and inequalities between land rights holders, regardless of whether they have suffered land deprivation or not.

Therefore, a lesson learned from the land restitution policy enforcement in Colombia is to maintain and enhance other programmes and policies to promote access to land to the rural poor so that they do not need to demand access to land through land restitution programmes.

Another lesson is derived from a broad analysis of possible collisions between land restitution rights and other economic activities that are being enforced in a given territory, particularly those related to agribusiness and natural resource extraction. In the Colombian experience, many peasants granted with land restitution titles are currently facing problems in performing material possession of their land plots because of the presence of private investors, mining and oil companies, and other actors claiming rights over the use of land that were restituted to peasants. A critical recommendation to overcome such conflict is to advance the enforcement of land restitution programmes and simultaneously promote transformations or adaptations of the schemes of territorial planning on which the land uses are commonly defined at the local level. To achieve prevalence of the rights of victims, other relevant transformations must be carried out in legal frameworks (particularly local), development plans and other land instruments. Participation of beneficiaries of land restitution programmes in such transformation processes is critical.

To overcome dependency, land restitution beneficiaries must achieve full citizenship, and their participation in the land restitution process is an outstanding opportunity to do so.

A third lesson learned from the Colombia experience addresses the importance of a full realisation of social rights. To overcome dependency, land restitution beneficiaries must achieve full citizenship, and their participation in the land restitution process is an outstanding opportunity to do so. Nevertheless, State authorities tend to compare their obligation in terms of reparation to the victims with their obligations in terms of fulfilment of social rights. Usually, government officials solve this through the prioritization of victims as beneficiaries to existing programmes to have access to social rights, but the results are generally inadequate. To avoid such a common misunderstanding, the State must encourage the creation of new programmes to provide victims full access and realisation of their rights to health, education, housing and food.

Summary of Lessons Learned

The key features of a truly pro-poor programme of integrated restitution, recognition and redistribution were generally absent in Guatemala and South Africa and were very weak in the case of Colombia. The experiences of Guatemala, South Africa and Colombia show that it is vitally important to link displaced peoples' rights and claims with the democratic land rights and claims of other marginalized, vulnerable and poor people. Displaced people are not the only people with rights to, and demands for, building a dignified and decent life on the land. And sometimes – especially in complex situations like Myanmar – people's democratic demands for land and life with dignity are overlapping. For this reason, it becomes imperative that advocacy for restitution, recognition and redistribution is never formulated and addressed individually or alone, but always together. The key to doing this is embracing political strategies geared toward pro-actively creating the time and space that people at the grassroots need, and deserve, to engage in 'poor-to-poor' dialogue and negotiation that is aimed at producing tailored, self-organised 'pro-poor' solutions. This necessarily means solutions that are integrated and

inclusive enough that all those most affected can actually and meaningfully live decent lives with dignity and with each other.

Envisioning Return and Restitution in a Complicated Landscape: Towards an Alternative Approach

Displaced people's land rights are relational and embedded

The differing causes and contexts of displacement mean that some people are more marginalized, vulnerable or poor than others. The implications and impacts of restoring land control therefore may vary quite widely across and between different people. Meanwhile, displaced people's land claims can be one among many competing claims over the same land, and thus pursuing displaced people's land claims can lead to conflict. There are four possible types of conflict: (i) displaced people's land claims vs. rich people/entities, including companies, foreign and domestic; (ii) displaced people's land claims vs. big conservation organisations; (iii) displaced people's land claims vs. government and different levels of government; and (iv) displaced people's land claims vs. other marginalized, vulnerable or poor people facing non-recognition or landlessness – or 'poor-on-poor' conflict.

The last type is the worst-case scenario and ought to be avoided. 'Poor-on-poor' conflict is not inevitable. Steps can and should be taken and safeguards created to avoid creating or enflaming tensions and conflict, especially between and amongst the poor, marginalized and vulnerable. In particular, special care must be taken to ensure democratic and inclusive negotiation processes in which the diverse voices, needs and aspirations of all segments of the poor, marginalized and vulnerable populations can be recognised and prioritized over non-poor sectors.

Displaced people's land rights are individual and collective

Experiences of displacement around the world demonstrate that claiming land rights by displaced people will not be helped by 'either/or' kinds of political strategies to restore those rights. Strategies that focus on claiming only individual rights can easily be captured by elites, as has been the experience in Colombia. Yet strategies that focus on claiming only community group rights can also be easily captured by elites, as has happened in South Africa. Wide consultation is therefore essential. How to make an approach to claiming rights to land that combines collective and individual claims is something that must be debated and decided upon with meaningful participation of all those who will be most affected, with priority given to the most marginalized, vulnerable and poor.

Displaced people's land rights do not stand alone nor are they detached from wider social-economic dynamics

The case of South Africa highlights the insufficiency of land restitution alone as a basis for addressing contemporary challenges in the modern

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world of 'living off the land', 'rural development' or 'urban development'. As Cherryl Walker has written, a successful programme of land restitution 'will at best provide only some of the material conditions for emancipation from oppression and poverty'.[64] Therefore effective social and economic policies should be explicitly geared to support facilitation of livelihoods in the short term, as well as the long term, to enable returned people to develop sustainable communities. This includes addressing basic livelihood, health and education needs as well as related infrastructure and development budgets. It also means more immediate support to enable returnees to face the challenge of renovating derelict homes and re-clearing overgrown original farms, if not occupied by others. The scale of rebuilding needed is often a major disincentive to displaced people going back and should not be underestimated.

Need a solid starting point that is grounded, inclusive, integrated and supported

Top-down approaches will not work and are likely to cause more trouble than they resolve. What is needed are approaches that take steps to create spaces for inter and intra-community dialogue.

An important hindsight lesson in previous experiences of land restitution is that the 'measures of success' circulating in national political debate are not always the same at regional or local levels, where the impacts on land-use, economies and communities may be urgent.[65] The answer is 'forging case specific settlements', but how to do this is not always obvious. One thing is for sure, however: top-down approaches will not work and are likely to cause more trouble than they resolve. Instead, what is needed are approaches that actively and pro-actively take steps to create spaces and processes for inter- and intra-community dialogue and negotiation about aspirations, institutions, investments, practices, knowledge, needs and priorities.

Examples of such efforts taking place inside Myanmar include the processes that have been linked to revising the Land Policy of the ceasefire Karen National Union and the extensive and inclusive process of revising and updating that it went through.[66] Examples of initiatives elsewhere include the enactment of 'peasant reserve zones' in Colombia. According to those who have been directly involved in such efforts, peasant reserve zones (PRZs) are a social-political and territorial project or construction where organised peasant communities come together to claim power to use, allocate and administer resources in that territory. They are also typically the result of an accumulated process of struggle by social movements for land and which, along the way, have resulted in relevant legal reforms.

The size and spread of PRZs depends on the organisational capacity, character, scale and will of the peasant communities themselves. As of 2013, there were six such zones in Colombia, with the smallest being 22 hectares and the largest half a million hectares. All were based on 'agricultural family units' and framed by land floor-land ceilings that allocate land on the basis of what a family needs to live a decent life with consideration of local agro-ecological conditions. This organising principle is in direct contrast to the 'latifundio' model (i.e., 'large unproductive estate'[67]), and it grew out of the realisation of a need to resist and roll back land polarization that was resulting in more than 5 million people being displaced and enclosing more than 8 million hectares of land. As implementation proceeds, PRZs attempt to concretely link economic justice and conservation and to gain recognition

by official government processes and polices. PRZs thus involve a very different set of priorities, logic and starting points based upon actualizing the vital notion of 'good living' (buen vivir).

IDP land rights need institutional support

National policies and prescriptions do not automatically, always and everywhere, mesh with local case-based particularities and aspirations. But at the same time, national institutions do need to be created that can facilitate constructive efforts to undertake return and restitution as part of a democratic and inclusive land policy-making and implementation. Regarding the institutions tasked with administering restitution programmes and policies, there are important political questions that need asking. Regarding institutional mandates, how limited or how integrated are they? Regarding accountability, to what extent is the architecture of accountability pro-business or pro-poor? Regarding the policy framework for processing claims, to what extent is it pro-market or pro-people? And are the staffing and budget resources that may be allocated adequate for the task?

National institutions need to be created that can facilitate constructive efforts to undertake return and restitution as part of a democratic and inclusive land policy-making and implementation.

Finding inspiration and guidance in international human rights

There is a lot of normative inspiration and practical guidance to be found in existing international human rights instruments in the contemporary world. The need is to look closely. Some of the most commonly cited international instruments by those working on return and restitution issues include: the Universal Declaration of Human Rights (UDHR): the International Covenant on Economic, Social and Cultural Rights (ICESCR); the 1998 Guiding Principles on Internal Displacement (called the 'Deng Principles'); the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (called the 'Pinheiro Principles'); the 2007 Basic Principles and Guidelines on Development-Based Evictions and Displacement; and the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP). These and other human rights instruments have come about in response to the need to address the growing numbers of displaced persons globally, particularly in the context of conflicts within agrarian and unequal economies.[68]

However, while international human rights law has been making strides in addressing the particularities of displacement and seeking remedies, it has been delayed in addressing restitution in relation to the wider context of land issues that are closely connected and cannot be ignored. Here, there is special inspiration to be found in another recent instrument: the 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (called the 'Tenure Guidelines'). While providing direction, the Tenure Guidelines are comprehensive enough to address specific land restitution concerns in a wider frame. As result, by employing the Tenure Guidelines and other associated human rights instruments, it is possible to assess gaps and weaknesses in analysis, policies and legal frameworks that need addressing when it comes to return and restitution in terms of recognition and redistribution for those displaced.

Summary of Key Terms and Concepts

	Return	Restitution (Type 1)	Recognition (Type 2)	Redistribution (Type 3)
What	Conditions on return after displacement has occurred Minimum of 'Voluntary, safe and dignified' Establishes indicators of security and non-discrimination	Remedy to displacement Whenever possible restore people to their original situation before the gross violations of human rights occurred.	Remedy to land insecurity and non-recognition Extend legal recognition of rural working people's right to land, including recognition of customary tenure systems • **AND** – Back this recognition up with other supportive pro-poor public policies to enable them to stay on the land and make a dignified life in the long term	Remedy to landlessness and land inequality Enact an across-the-board maximum land size ceiling to reverse land concentration and prevent it from re-emerging • **AND** – Enact a minimum land size floor for all rural working households to ensure a decent living
International sources	UDHR (Art.13) Deng Principles (No.28) Pinheiro Principles (No.10) Tenure Guidelines (24.5, 25.5)	UNDRIP (Art.26 [1-2]) Pinheiro Principles (No.2) Tenure Guidelines (4.9, 14.1-4, 24.2, 25.2	UDHR (Art.17) UNDRIP Right to Housing Right to Food UN Guidelines on Development Related Displacement and Eviction Tenure Guidelines	UDHR (Art.22, Art.25) Right to Food ('right to feed oneself') FAO Guidelines to Support the Progressive Realization of the Right to Adequate Food (No.8) ILO[69] Convention 169 UNDRIP (right to land for indigenous peoples) ICESCR General Comment No.4 (8e) Tenure Guidelines (15.1, 15.2, 15.3)
Domestic sources		KNU Land Policy 2015 (1.1.8, 1.2.1-2, 1.2.5-6, 1.4.14, 4.2 entire) NLUP January 2016 (Ch.III Basic Principles, 8.a, 8.d., 8.h, Part V 38)	KNU Land Policy (2.3.3, 3.9.4, and 3.9.5) NLUP January 2016 (6c, 7c, 8a, 29d, 29e)	KNU Land Policy (4.3.1, 3.7.3)

Ultimately, what is most important in addressing the return and restitution needs of IDPs and refugees is to go beyond technical information, formal-legal procedures and international standards on paper. Although they can obstruct and obfuscate, such international elements can also be useful. Yet they cannot replace actual and dynamic political processes of negotiation. What is needed most now is political space for rural working people to engage directly in the co-construction of processes that enable them to address specific localized situations, to dream, debate, envision and plan together, and then to negotiate real settlements that real people can live with, based on local definitions and conditions that strive for socially just, democratic and inclusive outcomes. IDP return and restitution should never

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be driven by a technical-procedural logic. Rather, it must employ a wider transformative logic that includes and involves displaced people in a larger social-economic-political project of building new 'peoples territories' together. After seven decades of internal conflict, this is the challenge that faces the peoples of Myanmar today.

Public Forum on 'Fulfilling the Right to Land Restitution for Displaced Communities'

Yangon, 8 June 2016

Thirty-five delegates from twenty-five Civil Society Organisations and community leaders working with conflict-induced displaced communities joined together for a workshop on 'Fulfilling the Right to Land Restitution for Displaced Communities' on 6-7 of June 2016, followed by a public forum on 8 June in Yangon.

The workshop aimed to create a space to advocate for the restoration of housing, land and property rights of communities displaced by conflict. Delegates discussed key principles and priorities related to customary land use practices and tenure systems as well as international human rights standards, including issues related to the return and resettlement for communities displaced by conflict across the country.

The delegates developed and agreed the key common principles and recommendations:

1. Internally displaced people and refugees have the right to return voluntarily in safety and with dignity.

2. Sustainable return and resettlement of displaced communities are key to national reconciliation and the peace process in the country.

3. Displaced communities are entitled to restore their housing, land and property rights in their place of origin.

4. All arbitrarily confiscated land must be returned to the original holders to ensure the realisation of restitution rights of displaced communities.

5. All levels of decision-making processes in relation to return and resettlement must be based on free, prior and informed consent of displaced communities and local people.

6. Removal of military bases, demarcation and immediate clearance of landmines in and around the village of origin is key to the safe and dignified return of displaced communities.

7. Land confiscation and 'green grabbing' by the Tatmadaw, armed groups and the private sector must stop immediately as they threaten the peace process and national reconciliation.

8. All development projects, as well as domestic and foreign direct investments, should be halted in conflict-affected areas.

9. All land related policies, regulations and procedures must reflect the restitution rights of displaced communities and must align with customary land use practices and tenure systems in ethnic nationality areas.

Conclusion

Nearly seven decades of internal war and ethnic conflict have had a devastating impact on lives and livelihoods in Myanmar, with consequences still felt today. There are presently over 1.1 million civilians displaced in the country, especially in ethnic borderland areas where most of the fighting has taken place. Over the years, the patterns of civil war have fluctuated, changing geographically during different government eras. As a result, the IDP and refugee crisis, and the different responses to it, has also varied in different areas over time. Throughout these struggles, local organisations have played an integral role in responding to the needs of internally displaced persons.

For people affected by displacement, non-recognition and landlessness, land is much more than just an economic asset...what happens today with the land is inextricably tied to the country's prospects for peace and democracy.

Land is intertwined and intimately connected with other natural resources, including waterways, watersheds, fisheries, forests, pasturelands, housing, education and health facilities. Control of land is thus the crucial entry point in understanding local realities and lives. Land, however, means different things to different people. For people affected by displacement, non-recognition and landlessness, land is much more than just an economic asset. But today, many traditional uses and meanings of land are under serious threat from powerful economic and political forces. Not just in Myanmar, struggles are happening all over the world for access to and control of land. More than ever, the key questions have to be asked: who should have what rights, to which land, for how long, and for what purposes? How these struggles go will determine the future for many states and peoples around the world.

In Myanmar, what happens today with the land is inextricably tied to the country's prospects for peace and democracy. Discourse and dynamics around IDP return and restitution are not taking place in a vacuum. Rather, during a period of national transition, they are taking place in a wider context marked by destabilising pressures and gathering momentum that is dramatically redrawing the countryside and specific rural landscapes. Although especially aggrieved, people who have been displaced due to armed conflict are not the only ones who have suffered or need land in the country today. Thus separating land restitution from wider land questions in order to solve them would prove disastrous. In the context of land polarization, one problem cannot be effectively addressed without addressing other challenges in national politics and local communities. Any attempt to undertake return and restitution that fails to take into account this larger context risks doing more harm than good. The worst case scenario for Myanmar today is any land or natural resource-related law, policy, programme or initiative that would put the most marginalized and vulnerable people in competition with each other and make 'poor on poor' conflict more likely.

What, then, is needed is an integrated, ground-up approach to the IDP land issue that links with ground-up people's initiatives to address wider land problems. In light of the deepening land polarization pushed by powerful forces, the key to any durable solution in Myanmar is linking return and restitution to wider, pro-people's 'right to land' democratisation initiatives at the grassroots levels: that is, initiatives by local communities and peoples that express and embody core human rights principles including, but not

only, a right to land for all working people, the landless and those displaced by armed conflict. Unfortunately, many existing and new laws, policies and programmes in Myanmar are presently geared towards reallocating land and natural resources for an economic development model that either needs the land but not the people or needs the land and the people but only under certain conditions.

Yet there is cause for hope. Around the country, there are today an array of efforts and initiatives, although often small and in early stages, to bring together different groups of affected peoples and communities. However difficult and challenging, such efforts and initiatives can, and must, be supported and encouraged to persevere and flourish at the grassroots level of societies. Momentum is building among concerned leaders and affected people in different parts of the country. To ensure long-needed progress, different government actors and non-governmental organisations should support but not suffocate, should encourage but not dictate, and should help to amplify but not brand these efforts as their own.

Endnotes

1.   See box: 'What the Numbers Say: Displacement Due to Armed Conflict'. In a changing landscape, estimates of refugee numbers and displacement are continuing to fluctuate. TNI's figures are based upon recent calculations by such organisations as the Internal Displacement Monitoring Centre, The Border Consortium (TBC) and United Nations Office for Coordination of Humanitarian Affairs (UNOCHA). For current websites, see, http://www.internal-displacement.org; http://www.tbbc.org; http://www.unocha.org/myanmar

2.   "Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'", March 2007, p.10. The Handbook is a joint publication of the Food and Agriculture Organisation (FAO) of the United Nations (UN), Internal Displacement Monitoring Centre of the Norwegian Refugee Council, Office of the UN High Commissioner for Human Rights (OHCHR), UN-HABITAT, UNOCHA and UN High Commissioner for Refugees. Available at: http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf. Downloaded on 10 May 2017.

3.   See e.g., Scott Leckie and Ezekiel Simperingham (eds.), "Housing Land and Property Rights in Burma; The Current Legal Framework", Displacement Solutions, HLP Institute, 2009; "An Introductory Guide to Understanding and Claiming Housing, Land and Property Rights in Myanmar: Questions and Answers", Displacement Solutions and Norwegian Refugee Council, March 2017; and "Durable Solutions, Preliminary Operational Guide", UNDP and UNHCR Global Cluster for Early Recovery, (Technical Working Group on Durable Solutions) with the Global Protection Cluster, January 2016.

4.   These workshops focused on land issues in relation to displacement due to armed conflict specifically. The first two workshops held in Yangon were co-organised by The Border Consortium and the Transnational Institute in 2016. An additional workshop co-organised by TNI and the Joint Strategy Team (JST) was held in Myitkyina.

5.   Internal Displacement Monitoring Centre, 2016, "Myanmar": http://www.internal-displacement.org/database/country/?iso3=MMR.

6.   TBC, "Refugee and IDP Camp Populations", Bangkok, April 2016.

7.   TBC, "Protection and Security Concerns in South East Burma/Myanmar", Bangkok, November 2014.

8.   Internal Displacement Monitoring Centre, 2016, "Myanmar", http://www.internal-displacement.org/south-and-south-east-asia/myanmar

9.   UNOCHA, "Myanmar: IDP sites in Kachin and northern Shan states", November 2016, and UNOCHA, "Myanmar: IDP sites in Rakhine State", September 2016.

10.   Ann Wang, "Kokang Refugees in China: Having fled from the ethnic conflict in Myanmar, the refugees face an uncertain future", The Diplomat, 4 April 2016.

11.   UNOCHA, "Myanmar: New Displacement in Northern Shan State", 31 May 2016.

12.   Radio Free Asia, "20,000 Refugees Flee Myanmar's Kokang Conflict Across The Border Into China", 8 March 2017.

13.   See, http://www.sbs.com.au/news/article/2017/03/10/almost-140000-displaced-myanmar, accessed on 13 April 2017.

14.   'Taungya' means 'upland cultivation' but is often translated into English as 'shifting cultivation'. The Myanmar government also uses the term 'permanent taungya'.

15.   See TNI, "The Meaning of Land in Myanmar", Amsterdam, January 2016.

16.   The Tatmadaw's infamous 'Four Cuts' (Pya Lay Pay) campaign was first launched against the Communist Party of Burma (CPB) and the Karen National Union (KNU) in the Irrawaddy Delta and the Pegu Yoma highlands in the 1970s. It sought to turn so-called 'black areas' controlled by ethnic armed opposition groups into 'brown areas', still under opposition control but with a degree of Tatmadaw authority, and thereafter into 'white areas' under control of the central government. Achieving this involved cutting the purported four crucial links between ethnic armed groups and the civilian population: food, finance, intelligence and recruits. Villagers in 'black' and 'brown' areas had to leave their places of origin, often at very short notice, and move to resettlement areas near government-controlled towns or military encampments, or risk getting caught in 'free-fire zones'. See e.g., Martin Smith, *Burma: Insurgency and the Politics of Ethnicity* (Zed Books, London, 1991), pp.258-62 and passim.

17.   See, Martin Smith, *State of Strife: The Dynamics of Ethnic Conflict in Burma* (East West Center, Washington, 2007).

18.   See, John Buchanan, "Militias in Myanmar", The Asia Foundation, July 2016.

19.   The Border Consortium, "Brief History", http://www.thebordorconsortium.org/about-us/history/

20.   Ashley South, *Mon Nationalism and Civil War in Burma; The Golden Sheldrake* (Routledge, London 2003), pp.232-44.

21.   Amnesty International, "Myanmar: Atrocities Worsen in Shan State", Press Release, 15 April 1998, AI Index: ASA 16/07/98.

22.   See e.g., TNI and Burma Center Netherlands, "Developing Disparity; Regional Investment in Burma's Borderlands", Amsterdam, February 2013.

23.   See, Land in Our Hands, "Destroying People's Lives: The Impact of Land Grabbing on Communities in Myanmar", December 2015; and TNI, "Developing Disparity".

24.   TNI, "Access Denied: Land Rights and Ethnic Conflict in Burma", Burma Policy Briefing No.11, 8 May 2013.

25.   Karen Human Rights Group, "Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar", 5 March 2013.

26.   TNI, "The Kachin Crisis: Peace Must Prevail", Burma Policy Briefing No.10, March 2013.

27.   Ibid.

28.   See e.g., TNI, "   Military Confrontation or Political Dialogue: Consequences of the Kokang Crisis for Peace and Democracy in Myanmar", Myanmar Policy Briefing No.15, July 2015.

29.   See e.g., Anthony Davis, "Myanmar's army struggles against a strong new rebel alliance", Nikkei Asian Review, 6 April 2017.

30.   The Joint Strategy Team consists of Bridging Rural Integrated Development and Grassroots Empowerment, Kachin Baptist Convention, Kachin Development Group, Kachin Relief and Development Committee, Kachin Women Association, Karuna Mission Social Solidarity, Metta Development Foundation, Nyein (Shalom) Foundation, and Wunpawng Ninghtoi. JST, "Protection and Humanitarian Needs Assessment Recent Conflict-Affected Areas in Kachin State", April 2017.

31.   The exact number of people that were relocated by the UWSA remains unknown, but estimates by UWSA leaders vary from 50,000 to 100,000 people. According to the Lahu National Development Organisation (LNDO), some 4,000 Lahu, Akha and Shan villagers fled to Thailand and another 4,500 were displaced to other parts of Shan State as a result of the UWSA relocation programme. LNDO, "Unsettling Moves: The Wa Forced Resettlement Program in Eastern Shan State", Chiang Mai, 2002; and Tom Kramer, *The United Wa State Party: Narco-Army of Ethnic Nationalist Party* (East-West Center, Washington, 2007), pp.41-3.

32.   Maung Zaw, "Shan IDPs fear wider communal conflict", Myanmar Times, 16 February 2016; Thu Thu Aung, "Hundreds flee renewed fighting between Shan, Ta'ang ethnic armed groups", Myanmar Times, 21 December 2016.

33.   See e.g., International Crisis Group (ICG), "The Dark Side of Transition: Violence Against Muslims in Myanmar", Asia Report No.251, 2013; ICG, "Myanmar: The Politics of Rakhine State", Asia Report No.261, 2014; ICG, "Myanmar's Electoral Landscape", Asia Report No.266, 2015.

34.   ICG, "Myanmar: A New Muslim Insurgency in Rakhine State", Asia Report No.283, 2016; see also, http://www.sbs.com.au/news/article/2017/03/10/almost-140000-displaced-

myanmar, accessed on 13 April 2017; "Foreign Officials 'Deeply Troubled' by Findings of UN Report", Reuters, 6 February 2017; "More than 1,000 feared killed in Myanmar army crackdown on Rohingya - U.N. officials", Reuters, 6 February 2017.

35. See e.g., Thu Thu Aung, "Chin State civilians flee Arakan Army, Tatmadaw fighting", Myanmar Times, 15 December 2016; "Homecoming proves difficult for displaced Kyaukse Hill families", Narinjara, 3 May 2017. Arakan Army troops have also trained and been active in Kachin and northern Shan States.

36. "Local People in Rakhine State should not pursue their own interests only", New Light of Myanmar, 17 November 2012.

37. Laignee Barron, "What's Next for Myanmar's Rakhine State?", The Diplomat, 9 March 2017; see also notes 33 and 34.

38. There is a close relationship historically between armed conflict and business – with the arrow going both ways. Armed conflict has cleared the way for new business arrangements (e.g., the Border Areas Development Programme of the SLORC-SPDC government initiated in the early 1990s), while new business investments have also invited armed conflict (e.g., Hat Gyi dam in Karen State). Situations of 'neither war nor peace' enable opportunistic actors to take advantage of the huge grey area between full-blown peace and full-on war to obtain protection and other benefits, bringing their own sets of problems with the potential to trigger new forms of displacement. See e.g., Tom Kramer, "Neither War nor Peace, The Future the Ceasefire Agreements in Burma", TNI, Amsterdam, July 2009.

39. TNI, "Myanmar's Next Great Transformation: Enclosing the oceans and our aquatic resources", Amsterdam, March 2017.

40. Saw Yan Naing, "Refugees Asked To Visit Repatriation Center For Interviews", The Irrawaddy, 15 May 2017.

41. Lawi Weng, "Yuzana Reps and Farmers Clash in Kachin State", The Irrawaddy, 19 May 2017; Land in Our Hands, "Destroying People's Lives", p.32.

42. Khin Oo Tha, "Farmers Fight 'Official Ownership' Application of Confiscated Lands Near Inle Lake", The Irrawaddy, 17 May 2017.

43. "Maday Island residents demand China fund area development projects", Narinjara, 14 May 2017; "Rakhine residents to launch a motorboat protest against China's oil tankers", Narinjara, 20 May 2017.

44. Zarni Mann, "Four Dead and Several Injured in Clash at Sagaing Jade Mine", The Irrawaddy, 17 May 2017.

45. "Screening Cancelled of Film Showing Army's Role in Jade Trade", The Irrawaddy, 17 May 2017. For the Global Witness documentary, "Jade and the Generals", see: https://www.globalwitness.org/en/campaigns/myanmar/jade-and-generals/

46. Jesse Ribot, "Cause and response: vulnerability and climate in the Anthropocene", Journal of Peasant Studies, Vol.41, No.5, November 2014, pp.667-705.

47. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx

48. There is always a risk tied to the dual fact that some people do not want to or cannot return, while others may be willing to give up or are unable to resist giving up their claims in exchange for cash compensation. The dilemma is that no one should be forced to return or to take cash compensation. Yet, at the same time, it must be recognised that monetizing restitution can easily come to compensate displacement. This can end up legitimising earlier waves of displacement where armed conflict runs in parallel with and accompanies land grabbing, which essentially means maintaining the status quo. People end up having to stay in and around the camps or go somewhere else, while there are others having similar problems and are likewise stuck with nowhere to go. The danger is that both of these scenarios can inadvertently open up opportunities for elites and other unscrupulous actors to exploit by grabbing land and control not just of the land and related natural resources but the very life and future direction of the landscape and territory and everyone in it.

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66. Karen National Union, "Land Policy".

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69. International Labour Organization.

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TRANSNATIONAL INSTITUTE (TNI)

De Wittenstraat 25, 1052 AK Amsterdam, The Netherlands
Tel: +31-20-6626608, Fax: +31-20-6757176
E-mail: burma@tni.org
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