



HOUSING, LAND AND PROPERTY RIGHTS AND PEACE AGREEMENTS:

GUIDANCE FOR THE MYANMAR PEACE PROCESS

February 2018



DISPLACEMENT SOLUTIONS



NORWEGIAN
REFUGEE COUNCIL



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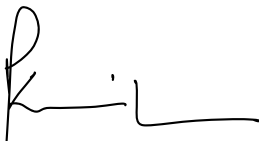
INTRODUCTION FROM THE NRC MYANMAR COUNTRY DIRECTOR

Housing, land and property rights are fundamental human rights, an essential component of peace processes and a global advocacy priority for the Norwegian Refugee Council. The restitution of housing, land and property rights after conflicts and periods of non-democratic governance, including gender considerations, is essential for the achievement of durable solutions to forced displacement. The NRC Country Office in Myanmar supports specific post-conflict restitution mechanisms that would enable everyone with a restitution claim to have access to an appropriate remedial mechanism.

NRC supports dialogue and the inclusion and participation of women and vulnerable groups within the peace process. Hence, NRC aims to strengthen two key aspects of the process HLP rights and access to civil documents. By supporting conflict affected communities, including women, to access civil documents and HLP rights NRC helps them to benefit from the gains of the peace dividend in full cooperation with the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organisations.

For these reasons, in partnership with Displacement Solutions, the NRC has supported the drafting of this Guidance for the Myanmar Peace Process which will serve as a tool for training on HLP issues within the peace process and inform stakeholders on potential options for the restoration of Housing, Land and Property Rights. It is meant as an instrument to enrich, build capacities and inform an already ongoing important debate that will benefit Myanmar.

I wish to acknowledge the contribution of the Information, Counselling and Legal Assistance (ICLA) core team (José Arraiza, Sadia Rani, Yi Soe & Phyu Zin Aye) as well as our ICLA field staff (Ei Ei Aung, Flora Ju, Naw Khin Thu, Saw Tar Lay Pwe, Saw Tun Naing and Khin Myat Thu), our programme team in Yangon (Laura Marshall and Kendra Hughbanks) and advisers in Oslo (Hege Mørk) for their support.



Prasant Naik
Country Director
February 2018

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EXECUTIVE SUMMARY

1. Any successful outcome to the peace process in Myanmar will invariably need to address the wide range of housing, land and property (HLP) rights issues that are central components in all of the unresolved conflicts in the country. At least superficially, there is growing evidence that various actors engaged in the peace process are increasingly recognising that the resolution of HLP rights issues will be critical towards building the foundations needed for the long-term peace and stability of the country. The agreement of ten key land and environment principles at the May 2017 *Panglong 2* Summit by the government and ethnic negotiating armed ethnic groups provides an important basis for further agreement on HLP issues as the process unfolds. This paper aims to bolster this process by providing a brief overview of how HLP matters have been addressed in other peace processes throughout the world over the past 25 years, some of which may prove inspirational to peace negotiators in Myanmar. There is a wide range of experience about how and in which manner HLP issues have been included in peace agreements, and HLP issues are increasingly recognized for their multi-dimensional impacts upon conflict. Indeed, HLP issues can be the cause of conflict, a consequence of conflict, and an important means for securing a sustainable peace following conflict.¹ HLP concerns and the human rights and other considerations attached to them are now widely agreed to form vital ingredients in the quest for long-term economic vitality and social stability following conflict. As a result, HLP issues are growing in prominence and are now viewed as key considerations in conflict prevention and peacebuilding initiatives.

2. Despite the fact that virtually all recent major peace processes and post-conflict periods of reconstruction in other countries have sought to structurally address the severe HLP consequences of the conflict concerned, there is a significant risk in Myanmar that because of the deep vested interests attached to so many of them, HLP issues will be perceived as too sensitive or complex to be properly addressed in any eventual agreement. It is important, therefore, to foster awareness about HLP issues among those engaged in, or supporting, negotiations and planning for the post-conflict period. Without adequate preparation of all stakeholders involved in, or supporting, the negotiation process, a national level settlement may be undermined by local level HLP grievances and conflicts. In the alternative scenario, in which there is no national level agreement, an alternative strategy for sensitizing actors to HLP risks and opportunities will nonetheless be required.

¹ See for example Leckie and Huggins (2011) *Conflict and Housing, Land and Property Rights: A Handbook of Issues, Frameworks and Solutions*, Cambridge University Press.

3. This briefing paper is designed to assist and build the capacities of those engaged in formulating an eventual peace agreement concerning the ongoing conflicts in Myanmar with options on how best to address the myriad HLP issues in the country based on similar experiences in other countries.² It explores some of the fundamental HLP issues common to most conflicts, how these have played out in the Myanmar context, and how other countries have addressed these in various peace agreements and negotiated settlements. It aims to facilitate discussions between stakeholders about which types of mechanisms may be most appropriate for Myanmar, as the quest for peace continues.

² For overviews of key aspects of the Myanmar peace process, see, for instance: International Crisis Group, Myanmar's Peace Process: Getting to a Political Dialogue, Crisis Group Asia Briefing No. 149, Yangon/Brussels, 19 October 2016 and The National Ceasefire Agreement Between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organisations (2015).



I. HOUSING, LAND AND PROPERTY ISSUES AND CONFLICT: CAUSE, CONSEQUENCE AND CURE

4. In one way or another, all armed conflicts involve some form of crisis within HLP sectors. This can relate to struggles over access to land and resources, 'ethnic cleansing', mass displacement and forced eviction leading to large-scale movements of refugees and internally displaced persons (IDPs), the destruction and damage of homes and property, the loss of productive lands due to the presence of land mines and unexploded ordinance, ethnic or minority discrimination within the HLP sector, the secondary occupation of refugee or IDP homes by members of opposing groups and the weakening or decimation of State institutions designed to manage and administer HLP rights. HLP abuses are so ubiquitous within conflict contexts, in fact, that it would be difficult to identify any internal or international conflict in recent years where HLP challenges did not figure prominently; both during the conflict itself, as well as in the process of building sustainable peace. And this is very much the case in Myanmar today.

5. The different stages of conflict – pre-conflict, mid-conflict and post-conflict – are each generally associated with different manifestations of HLP loss and abuse. In terms of *pre-conflict HLP issues*, the traditional two main generators of conflict – greed and grievance – both play themselves out in often-dramatic fashion within the HLP sectors. Various types of HLP disputes can be a primary source of internal conflict particularly when simmering HLP grievances remain unresolved, with those perceived as victims unable to access any form of remedial justice or redress. HLP crises, many of which are key causes of the localized instability and violence that can eventually mutate into full-scale conflict – land grabbing and illegal expropriation, forced evictions, mass resettlement and relocation schemes, discrimination against ethnic groups and minorities within the HLP sectors, the growing inability of these groups to access HLP rights, the lack of access to affordable services such as water and electricity, the growth of slums and declining housing conditions, the growing unaffordability of housing and land and the lack of security of tenure – can all contribute to the creation of conditions that are ripe for conflict.

6. As is widely known, *during conflict* itself, the forced displacement of refugees and IDPs, the destruction of housing resources, arbitrary land expropriation (grabbing) and land confiscations and unlawful occupation of housing and property, the enactment of discriminatory HLP laws and the enforcement of unjust HLP abandonment laws and many others are also commonplace.

7. While *post-conflict HLP issues* and challenges such as refugee and IDP return, HLP restitution initiatives, HLP recovery, reconstruction and re-building, land administration and registration, tenure security, determining inheritance rights for women and others frequently face peace mediators and policy- and law-makers in the territories concerned. HLP issues are now increasingly viewed as central peace facilitators and as crucial attributes of an effective and rights-based post-conflict reconstruction strategy. Commentators now agree that without appropriately addressing HLP issues, States emerging from conflict may not be able to facilitate refugee and IDP return and restitution processes, economic recovery will be stifled, and the protection of human rights will remain incomplete.³ These understandings are percolating throughout the international community and within a range of international peacemaking bodies. Within the office of the UN Secretary General, for instance, his 2004 report on *The rule of law and transitional justice in conflict and post-conflict societies*⁴ and his 2007 report on *The protection of civilians in armed conflict*⁵, both of which were considered by the Security Council, each recognize the centrality of HLP concerns in the development of the rule of law within such societies and the need for improved international coordinated attention to these issues. The 2007 report suggests that a more consistent, systematic and comprehensive approach to HLP issues be developed, that includes: (a) *Preventive and deterrent actions*, such as the strategic deployment of peacekeeping troops to prevent evictions and the illegal appropriation of land and property, and the identification and prosecution by national courts or the International Criminal Court of those criminally responsible for the illegal appropriation or destruction of land and property; (b) *Preparatory actions*, such as the early identification and registration of land and property abandoned by internally displaced persons and refugees to facilitate restitution or, where necessary, compensation, and the issuance of ownership documentation where this has been lost or destroyed; and (c) *Restorative actions*, such as the inclusion of the right to return and restitution of housing, land or property in all future peace agreements and all relevant Council resolutions, and the inclusion of housing, land and property issues as an integral part of future peacekeeping and other relevant missions, with provisions for dedicated, expert capacity to address these issues.⁶

³ See, for instance, Scott Leckie (ed) *Housing, Land and Property Rights in Post-Conflict United Nations and Other Peace Operations: A Comparative Survey and Proposal for Reform*, Cambridge University Press, 2009.

⁴ UN Secretary General, *The rule of law and transitional justice in conflict and post-conflict societies*, UN Security Council, S/2004/616, 3 August 2004.

⁵ UN Secretary General, *Report on the protection of civilians in armed conflict*, UN Security Council, S/2007/643, 28 October 2007.

⁶ Id, para. 59. The report also recommends the following concrete steps towards generating renewed attention to HLP rights by the Security Council: Action four - Housing, land and property rights: (i) Systematically including language in all relevant resolutions on the right of displaced persons and refugees to return to their homes and places of origin and on non-acceptance of the results of ethnic cleansing or sectarian violence; (j) Promoting the establishment of effective and appropriate mechanisms at the national level for addressing housing, land and property issues; (k) Mandating United Nations peacekeeping and other relevant missions to prevent the illegal appropriation or confiscation of land and property, to identify and register land and property abandoned by refugees and displaced persons and to issue ownership documentation where this has been lost or destroyed; (l) Convening an Arria-formula meeting with relevant actors to further explore the content of a more consistent, systematic and comprehensive United Nations-wide approach to housing, land and property issues.

8. And yet, although HLP issues are now increasingly understood at all levels to constitute some of the fundamental causes, effects and remedies for conflict, those facilitating the quest for peace often find the prospect of addressing the full spectrum of HLP concerns as potentially threatening to the successful conclusion of sensitive, often lengthy and tense negotiating sessions seeking viable recipes for peace. For many mediators, the inclusion of HLP rights into what are already perceived to be their overflowing array of responsibilities, may seem overly daunting and possibly obstructive of eventual agreement. There may be feelings that addressing HLP issues may attract unwelcome international attention to private negotiation processes, or conversely that because there is effectively no lead agency managing or monitoring these issues under UN auspices, they will invariably fall through the cracks and not be considered important priorities in peacebuilding. Because HLP rights violators themselves are often the very people negotiating peace agreements, there can be additional walls of resistance by the parties that may need to be slowly broken down before these issues can be addressed. Local political players often have considerable vested interests in housing, land or property unlawfully acquired during the conflict in question, and as a result, peacemakers may find themselves in an uphill battle to achieve recognition of HLP issues during these undertakings and may consequently choose paths of lesser resistance.

*IDP housing in Palaw,
Tanintharyi Region
(José Arraiza/NRC)*



9. Whatever balance of power that may exist at the time of negotiations can also determine how and to what extent HLP rights are eventually formulated within final agreements. Questions of timing and sequencing within the negotiation process, and what are perceived to be issues that are too long-term in nature to warrant the immediate attention of peace mediators more familiar with questions of ceasefires, land mine clearance and outlining future forms of governance, can also be contributing factors in determining whether HLP issues are considered central or peripheral issues during peace talks. The real or perceived lack of large-scale donor support for helping to resolve HLP disputes and other challenges may also assist in keeping these issues off the negotiating table. Added to this, peace mediators may simply view HLP issues as too complex, too technical, and too controversial to justify their inclusion within peace processes or peace agreements. And finally, these issues are still seen by some peacemakers as effectively discretionary and political in nature, and ultimately as bargaining chips that can be negotiated away if need be to allow compromises to take shape.

10. Despite these perceived disincentives, however, there is growing awareness throughout the international peacebuilding community that although often difficult and time-consuming, the price to be paid of not addressing HLP issues and seeking their resolution, can prove a far too heavy one. If the rights of refugees or internally displaced persons to return to their original homes after conflict are not fully recognized, the residual impacts of the conflict concerned may never entirely dissipate, with unresolved HLP rights and claims forming the basis for renewed conflict. On the other hand, when double-standards demand that some refugee groups be entitled to return home, while other refugee groups (perhaps from a different ethnic or religious group with less political influence) are not accorded these same rights, this may also threaten the prospects of long-term peace. When governments sanction the allocation of land to those who arbitrarily acquired it and this is not addressed during peace initiatives, while millions of rural and urban poor citizens continue to exist without land or housing rights, this does little to build the basis for sustainable peace or prosperity. If long-term, pre-conflict grievances relating to HLP abuses are not addressed, this too can lead to growing tensions and the outbreak of new conflict. When members of a certain ethnic group are encouraged to enter the area of rival ethnic groups with the intention of confiscating land and resources, once again, the path to conflict has been laid. When UN or other inter-governmental peace operations come to a country to build peace and all but ignore the HLP crises that invariably exist in any post-conflict country, peacebuilding is likely to only ever be partially successful.

11. HLP issues are an important and challenging subject of many peace negotiation processes of the recent past, and are set to be perhaps even more prominent in Myanmar. In Myanmar, many distinct HLP issues are at the core of both the causes and effects of the conflicts, and will be equally central in finding a viable long-term peace. Peace negotiators from all sides need to know how to most effectively address these issues and how mutually satisfactory solutions can be found. They require thorough analyses of these generators of conflict and options from which to shape an appropriate program of practical and concrete responses. They need to know what they are up against and how to best promote agreement on often very sensitive HLP issues. To do so, they can begin by building on what has already been achieved in this regard, and seek guidance from past peace agreements in other countries as to how HLP rights have been enshrined.

II. HLP ISSUES IN THE MYANMAR PEACE PROCESS AND HOW BEST TO ADDRESS THEM

12. In coming months and years, peace negotiators in Myanmar are increasingly likely to face a range of HLP challenges in pursuing their objectives. Some of these issues will be relatively straight-forward, but others are almost certain to form some of the most arduous aspects of the process. Some issues are likely to be resolved rather quickly without considerable give and take, but others may prove to be the most difficult of all issues on the negotiating table to successfully resolve. In each negotiation the prominence of HLP issues may vary, their centrality to overall peace attempts may alter and their emotive nature may depend on a range of factors such as length of the conflict, resource availability and the economic prospects of the countries concerned. What is ubiquitous about HLP issues, however, is that there has never been, nor will there ever be, a conflict in which HLP concerns did not constitute either a core cause, consequence or cure of the conflict in question, and Myanmar is certainly no different.

13. Overall, approaches taken to HLP questions within peace agreements during past decades show a growing tendency to address HLP concerns, and within some agreements, placing these issues at the centre of broader peace constructions. While some peace processes may have ignored or under-played HLP concerns, this may be the result of individual peace mediators who were either reluctant or unaware of the importance of addressing HLP issues, rather than HLP issues being somehow irrelevant within a given conflict. To improve the prospects of peace and to ensure that peace agreements respect and protect the rights of people within the territories concerned, the international legal framework governing HLP concerns may be one useful source of guidance for mediators wishing to ensure that agreements they negotiate are not only going to succeed, but that they are also a direct reflection of the important contents of these various legal regimes.

14. Though still far from constituting a formal peace agreement, the 2016 *Nationwide Ceasefire Agreement Between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organisations* importantly addresses a wide range of HLP issues, revealing that agreement may not be as difficult as many may presume. Article 1(k) commits the parties to “Undertake efforts to protect lives and property and improve the livelihoods of all persons living within the Republic of the Union of Myanmar.” Article 5 commits the national military (Tatmadaw) and the more than one dozen Ethnic Armed Organizations to cease ‘destruction of property’, while under Article 9 the parties agree to provide necessary support in coordination with each other to improve livelihoods, health, education, and regional development for the people, and avoid forcible displacement or relocation of local populations, forcible confiscation and transfer of land from local population, and the destruction of public property, looting, theft, or the taking of property without permission. Article 10 aims to ensure the safety and dignity of the IDPs

when undertaking a prioritized voluntary return of IDPs to their places of origin or resettlement of IDPs into new villages in suitable areas and to promote collaboration on the resettlement process including verification of IDPs and refugees. Section 23 requires the Union to enact the laws needed to protect the rights of peasants and to help them obtain equitable value for farm products, while section 45 requires the Union to protect and conserve the natural environment.

15. Several of the ethnic actors with whom the government is currently engaged in peace talks have also addressed restitution in detail, with others expected to do the same. The Karen-ni National Progressive Party (KNPP) has addressed land issues within an emerging land policy, while the December 2015 *Land Policy of the Karen National Union* (KNU) notes that “internally displaced persons have the right to reoccupy their land, which they owned previously, and to receive compensation” (1.1.7); “1.2.5 – To recognize, prioritize and promote the rights of restitution of refugees and displaced persons who have been forced from their lands, livelihoods and homes”; and “1.2.9 – To establish an appropriate, accessible and effective system for addressing and remedying tenure-related grievances and disputes”. Article 4.2 of the KNU Policy specifically mentions their intent to comply with the UN’s *Pinheiro Principles on Housing Property Restitution for Refugees and Displaced Persons* and to work closely with government bodies including the Central Land Committee to address restitution demands.⁷ This growing recognition of the importance of land issues within the peace process expanded within the context of the *Panglong 2* peace talks held in mid-2017 resulted in agreement of ten basic principles developing a people-centred, progressive land policy based on justice and fairness. Endorsed on 29 May 2017 by the government and

⁷ Article 4.2 Restitution: 4.2.1 It is recognized that many people in Kawthoolei have against their will been displaced by war and other factors and have become refugees and internally displaced persons (collectively, “IDPs”). In certain situations their homes and land have been occupied by migrants and other newcomers. 4.2.2 Occupation and use rights made or permitted under this policy will be administered in a manner that complies with the internationally recognized Pinheiro Principles, taking into account the primacy of the right of IDPs to have their lands be restored to them. The definitions in this policy shall be applied in a manner consistent with the Pinheiro Principles. 4.2.3 Where possible, the original parcels or holdings will be returned to those who suffered the loss, or their heirs. Where the original parcel or holding cannot be returned, the KAD, in close consultation with the Central Land Committee, will decide on an appropriate alternative with consensus from local authorities and village community of those impacted. 4.2.4 The KNU Authorities will set aside other land in townships to use for the purpose of providing alternative land plots for those that are not able to return to their original land plot, for whatever reason. This consensual process will be facilitated by the KAD and the Central Land Committee at the township level, in consultation with local customary authority and the returning IDPs and refugees being restituted. 4.2.5 The KNU Authorities has the authority to temporarily transfer use rights to currently unoccupied but previously used land while the original occupants are gone in order to maintain agricultural productivity and offer use rights to those that are in need in the area, in this case returning IDPs and refugees. If the original occupant returns before the temporary use rights holder’s use rights have expired (maximum 20 years), then KAD, in consultation with Central Land Committee and with consensus from customary authorities and the original occupants, will find a suitable alternative land plot for the original occupants until the use rights holders’ use rights have expired for the original occupants land plot. Meanwhile, the original occupant will qualify to receive the land taxes paid by the new use rights holder, instead of to the KAD as done before the original occupant returned. 4.2.6 KNU Authorities will develop gender-sensitive, clear, transparent processes for restitution. Information on restitution procedures will be widely disseminated in applicable languages. Claimants will be provided with adequate assistance, including through legal and paralegal aid, throughout the process. Progress of implementation should be widely publicized. 4.2.7 KNU Authorities will provide mechanisms for input by customary authorities and civil society organizations, in order to ensure the restitution process best reflects the will and needs of the people.

various ethnic negotiating partners (albeit not all such groups), the ten principles on land and the natural environment are as follows:

1. A countrywide land policy that is balanced, gender inclusive, and support people-centred long-term durable development.
2. Based on justice and appropriateness
3. A policy that reduces central control
4. Include human rights, international, democracy and federal system norms in drawing up land policy.
5. Policy on land matters should be transparent and clear.
6. In setting up policy for land development, the desire of the local people is a priority and the main requirements of the farmers must be facilitated.
7. All nationals have a right to own and manage a land in accordance with the land law. Women and men have equal rights.
8. Both women and men have equal rights to manage the land ownership matters in accordance with the land law.
9. If the land right granted for an original reason is not worked on in a specified period, the nation can withdraw the granted right and concede it to a person who will actually do the work.
10. To aim toward protecting and maintaining the natural environment and preventing damage and destruction of lands that were social, cultural, historical heritages and treasured by ethnic nationals.⁸

16. These principles provide a significant basis for building further agreement between participants in the peace process to thoroughly address HLP concerns. Peace mediators in Myanmar deserve commendation for finding common ground on these issues, and will continue to have an immensely important role to play in guiding deliberations on HLP issues and in assisting in the formulation of agreements that fairly, equitably and sustainably address the many diverse HLP themes that invariably require attention by the negotiating parties. In general terms, the most likely themes to confront mediators will centre around understanding the *de facto* HLP circumstances in a conflict area, displacement and return, legal and human rights frameworks, land administration and governance institutions, the housing sector, the question of tenure security and how to balance sometimes competing HLP systems practiced by the government on the one hand, and ethnic actors on the other.

⁸ <http://www.statecounsellor.gov.mm/en/node/904>.

III. PEACE AND POST-CONFLICT AGREEMENTS AND HLP ISSUES: A COUNTRY-BY-COUNTRY OVERVIEW

17. A range of contemporary peace agreements – Colombia, Nepal, the Dayton Accords (Bosnia-Herzegovina)⁹, the Arusha Accords (Burundi), and agreements concerning Guatemala¹⁰, El Salvador, Kosovo, Liberia, Mozambique¹¹, Sierra Leone, Sudan, Tajikistan¹², and others – explicitly address HLP issues and, increasingly HLP *rights*. (See Box 1 overleaf) Although not all recent peace agreements include explicit reference to housing, land and property issues or treat these issues in a comprehensive manner, the clear trend over time leans toward the *inclusion* of these issues, and these issues clearly must be addressed within any such agreement concerning Myanmar.

18. Several HLP issues appear with relative frequency within peace agreements. These include HLP issues relating to refugee and IDP return, HLP restitution rights and the mechanisms often required to administer and process restitution claims, the reform of pertinent HLP legislation, land reform measures, land tenure issues, the rights of women to equal treatment with respect to HLP rights, customary law arrangements and HLP issues questions of compensation. Box 1 provides a list of countries that have concluded peace/post-conflict/ceasefire agreements in the recent past, and indicates which of these six HLP issues were or were not recognised in the final agreements listed.

⁹ “[A]ll refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them”. General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7 Agreement on Refugees and Displaced Persons (1995). See also: Williams, R., ‘Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice’ in NYU Journal of International Law and Politics, vol. 37, no. 3., 441, 2006.

¹⁰ The 1995 Guatemala Agreement on Identity and Rights of Indigenous Peoples, for instance, elaborated rights relating to land of the indigenous peoples in the following terms: “The rights relating to land of the indigenous peoples include both the communal or collective and the individual tenure of land, rights of ownership and possession and other real rights, and the use of natural resources for the benefit of the communities without detriment to their habitat. Legislative and administrative measures must be developed to ensure recognition, the awarding of title, protection, recovery, restitution and compensation for those rights.”

¹¹ Section IV of Protocol III to the 1992 General Peace Agreement ending the lengthy civil war in Mozambique, included explicit restitution rights for returning refugees: “Mozambican refugees and displaced persons shall not forfeit any of the rights and freedoms of citizens for having left their original places of residence; Mozambican refugees and displaced persons shall be registered and included in the electoral rolls together with other citizens in their places of residence; and Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.”

¹² The General Agreement on the Establishment of Peace and National Accord in Tajikistan (1997) – Protocol on Refugee Issues stipulates that the “The Government of the Republic of Tajikistan assumes the obligation to reintegrate returning refugees and displaced persons into the social and economic life of the country, which includes the provision to them of humanitarian and financial aid, assistance in finding employment and housing and the restoration of all their rights as citizens of the Republic of Tajikistan (including the return to them of dwellings and property and guaranteed uninterrupted service), and not to institute criminal proceedings against returning refugees or displaced persons for their participation in the political confrontation and the civil war, in accordance with the legislative acts in force in the Republic.”

BOX 1: HLP CONCERNS WITHIN SELECTED PEACE/POST-CONFLICT /CEASEFIRE AGREEMENTS

	Refugee and IDP Return/Repatriation	HLP Restitution Rights	Land Reform Measures	Secondary Occupation of HLP	Legislative Repeal and Reform	Specialized Bodies on HLP Issues
Colombia (2016)	✓	✓	✓	✓	✓	✓
Myanmar Ceasefire Agreement (2016)	✓	✓	✓	✓	✓	✓
Philippines (Bangsamoro) (2012)	✓	✓			✓	
Great Lakes Protocol (2007)	✓	✓	✓	✓	✓	✓
Nepal (2006)	✓	✓	✓		✓	
Sudan (2004 & 1997)	✓		✓	✓	✓	✓
Liberia (2003)	✓	✓				
Kosovo (1999)	✓	✓		✓	✓	✓
Sierra Leone (1999)	✓					
Croatia (1998)	✓	✓				
Bosnia-Herzegovina (1995)	✓	✓		✓	✓	✓
Tajikistan (1994)	✓	✓			✓	✓
Mozambique (1992)	✓	✓				
Rwanda (1993)	✓	✓				
El Salvador (1992)	✓		✓	✓	✓	✓
Guatemala (1995)	✓	✓	✓	✓	✓	

19. The people of Myanmar have suffered extremely large-scale losses concerning the housing, land and property resources that they own or otherwise hold rights over as a consequence of the multi-decade conflicts they have endured in all corners of the country. Notwithstanding the eventual outcome of the conflicts and the terms of any eventual peace agreements that may emerge, everyone in Myanmar with legitimate HLP claims must have available to them viable pathways, enshrined in any peace agreement(s), through which they can be assured of HLP justice. As elsewhere, the violent ethnic conflicts in Myanmar cannot completely end without consideration being given to how to resolve the millions of outstanding HLP claims that have emerged as a direct consequence of the conflict. It is the central nature of HLP concerns that has led so many other countries to address these issues through the establishment of particular laws, policies and procedures designed to repair the damage done to the HLP sector. History has shown that these processes, while often imperfect and complex, nevertheless provide a vital basis for reconstructing societies in the aftermath of conflict in a manner that does not simply sow the seeds for future conflict because of the lingering sense of injustice felt by people without pathways to residential justice.

20. A range of diverse countries have courageously sought to provide residential justice to populations who suffered HLP losses for various reasons through a recognition that these losses must be reversed and addressed in the interests of building the rule of law and the foundations for peace and prosperity in the countries concerned. As such, the remainder of this section will provide a brief overview of a cross-section institutional approaches to HLP issues by a range of countries over the past two decades, aspects of which may be useful for finding ways to secure a lasting peace in Myanmar.

*Karen New Year celebrations in
Mye Kan Baw / Kor Por village,
Thanintaryi Region
(José Arraiza/NRC)*



21. **Colombia (2016)** - The recent *2016 Peace Accord between the Government of Colombia and the rebel group FARC (Revolutionary Armed Forces of Colombia)*, following more than fifty years of violent conflict, is an important milestone in addressing various HLP issues. The Peace Accord follows decades of fighting in a war which originally began to force land redistribution in the country, but which ended with more than seven million people displaced, eight million hectares of land illegally acquired, and more than 200,000 people killed. During the peace negotiations that led to the Accord, in 2011 the government of Colombia approved the Victims and Land Restitution Law (Law 1448) which was designed to assist in the return of illegally acquired land. Some 90,000 claims have been filed under the law, but to date less than one-quarter of the cases have been successfully resolved.¹³

22. **Philippines (2012)** - The *Framework Agreement on the Bangsamoro of 15 October 2012 in the Philippines* addresses a range of relevant issues including human rights, displacement and return, as well as revenue generation and wealth sharing, all of which are also pertinent to Myanmar. The agreement recognises a wide range of human rights in section VI, including a specific provision on the rights of indigenous peoples', as well as a separate provision recognising and respecting property rights. This provision notes that: "With respect to the legitimate grievances of the Bangsamoro people arising from any unjust dispossession of their territorial and proprietary rights, customary land tenure or their marginalisation shall be acknowledged. Whenever restoration is no longer possible, the Central Government and the Government of the Bangsamoro shall take effective measures for adequate reparation collectively beneficial to the Bangsamoro people in such quality, quantity and status to be determined mutually". In terms of wealth sharing, the agreement affirms that the "Bangsamoro shall have a just and equitable share in the revenues generated through the exploration, development or utilization of natural resources obtaining in all the areas/ territories, land and water...".

23. **Nepal (2006)** - The *Comprehensive Peace Accord between the government of Nepal and the Communist Party of Nepal (Maoist)* of 22 November 2006, again dealing with the resolution of longstanding internal armed conflict, provides a series of potentially useful measures for the consideration of the negotiating parties in Myanmar. Indeed, this agreement contains a combination of provisions on human rights, HLP and restitution rights and land reform measures. Chapter 7 of the Accord outlines a range of human rights provisions including that there will be respect for "the citizens' right to free mobility and the freedom to choose within legal norms the location of one's residence and express the commitment to respect the right of the people displaced by the conflict and their families to return back to their homes or to settle in any other location of their choice" (Article 7.3.3). The agreement then notes in Article 7.5.5 that both sides agree that "the private property of any individual will not be seized or usurped, except when permitted by law". Of particular relevance to Myanmar, the 2006 Accord several measures on land rights and land reform. Article 3.7 indicates the need 'to adopt a policy of implementing a scientific land reforms program by ending feudal land ownership' and in Article 3.10 that commits the parties to adopt a policy of "providing land and other economic protection to socially and economically backward classes including landless squatters, bonded labourers and pastoral farmers". Similarly, the agreement commits to the need to establish the rights of all citizens to education, health, housing, employment and food

¹³ Stephan Gill, 'How Colombia's praised land restitution process is failing displaced', in Colombia Reports, 20 April 2016. See also, Amnesty International, A land title is not enough: Ensuring sustainable land restitution in Colombia, November 2014.

security in Article 3.9. Article 3.11 outlines the need to adopt a policy on “severely punishing people amassing limitless wealth through corruption while remaining in a government position”.

24. **Sudan (2004 & 1997)** - The *Sudan Peace Agreement (1997) and the Protocol between the Government of Sudan and the Sudan People's Liberation Movement on Power Sharing (2004)* recognise the full spectrum of internationally recognised fundamental rights and freedoms including the right to property and freedom of movement, and all basic rights and freedoms recognised by and guaranteed under International human rights conventions. The 1997 Agreement also includes a wide range of provisions on wealth sharing in Section 4 that should also be considered by the parties engaged in the peace process in Myanmar.

25. **Liberia (2003)** - The *Comprehensive Peace Agreement* signed on 18 August 2003 following years of brutal civil war also addresses a range of human rights and HLP rights issues. Direct reference is made in Article XII to the protection of a range of human rights, including the rights found in the Universal Declaration on Human Rights. Article XXX in turn outlines the specific rights of refugees and displaced persons that explicitly notes that “refugees and internally displaced persons, desirous of returning to their original counties or permanent residences, shall be assisted to do so”. The agreement commits the parties to the peaceful co-existence amongst returnees and non-returnees in all counties.

26. **Kosovo (1999)** - UN Mission in Kosovo (UNMIK), in close collaboration with the UN Habitat established an independent Housing and Property Directorate (HPD) to co-ordinate housing law and policy and settle outstanding housing and property disputes, and promote restitution following the 1999 conflict in Kosovo.¹⁴ The creation of this institution took place shortly after the conclusion of the conflict in Kosovo, and was accomplished with such speed due to the direct involvement of the international community and its insistence on resolving housing and property disputes before these eventually became responsible for renewed conflict. One of the first acts of the UNMIK authorities was to repeal several Yugoslav laws that systematically discriminated against the ethnic Albanian population in Kosovo. As a result, even before the establishment of the HPD, the UNMIK issued Regulation 1999/10 ‘On the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property’, which repealed two Yugoslav laws deemed to discriminate against the Albanian population in Kosovo.¹⁵ The HPD was comprised of an Executive Secretariat, an Administrative Branch and a Housing and Property Claims Commission

¹⁴ See: UNMIK Regulation No. 1999/23 On the Establishing of the Housing and Property Directorate and the Housing and Property Claims Commission (15 November 1999). Section 1 of Regulation 1999/23 provides that: “1.1 The Housing and property Directorate (the “Directorate”) shall provide overall direction on property rights in Kosovo until the Special Representative of the Secretary-General determines that local governmental institutions are able to carry out the functions entrusted to the Directorate. In particular, the Directorate shall: (a) Conduct an inventory of abandoned private, state and socially owned housing; (b) Supervise the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to deduction of relevant expenses; (c) Provide guidance to UNMIK, including CIVPOL and UNHCR, as well as KFOR, on specific issues related to property rights; and (d) Conduct research leading to recommended policies and legislation concerning property rights.” See also: UNCHS (Habitat) Kosovo Programme (22 September 1999) Establishing the UNMIK Housing and Property Directorate (HPD).

¹⁵ The Regulation repealed the Law on Changes and Supplements on the Limitation of Real Estate Transactions and the Law on the Conditions, Ways and Procedures of Granting Farming Land to Citizens Who Wish to Work and Live in the Territory of the Autonomous Province of Kosovo and Metohija.

(HPCC).¹⁶ The HPCC played a role similar to that of the Commission on Real Property Claims (CRPC) in Bosnia and Herzegovina, collecting, deciding on and resolving housing and property claims. More than 40,000 claims were eventually addressed and resolved by these bodies. The HPD had a variety of functions, and acts both as an overall coordinating institution for housing and property questions, as well as providing the judicial structures required to resolve housing and property disputes.¹⁷ The HPD was entrusted to resolve HLP problems through a variety of remedies, including ordering restitution in kind or cash compensation, if it found that claimants lost property rights as a result of discrimination; ordering the appropriate administrative body to register the claimants property transaction in the appropriate registers; or ordering the eviction of an illegal occupant and allow the re-possession of claimants property. The HPD offered assistance to people with various housing and property problems¹⁸, but did not deal with commercial property, claims for the return of movable property such as cars, furniture or equipment, or the provision of compensation for the damage or destruction of housing and property. A new entity, the Kosovo Property Agency was eventually established to address outstanding commercial property claims.¹⁹ Housing and property claims could be submitted to any HPD office throughout Kosovo and in Serbia, and once registered claims are processed by a claim processing team. The HPD then investigated the claim and attempted to resolve it by mediating between the parties. If this is not possible, the claim was then decided by the HPCC. Claimants were allowed to submit a wide cross-section of evidence in support of their claims.²⁰ The HPD has also temporarily prohibited the sale or transfer of socially-owned apartments given the scale of unauthorized secondary occupation of such housing. All properties subject to specific claims at the HPD were made public in the HPD Property Gazette and placed on the internet for public review.

¹⁶ The HPD is based on designs included in: *Housing And Property In Kosovo: Rights, Law And Justice - Proposals For A Comprehensive Plan Of Action For The Promotion And Protection Of Housing And Property Rights In Kosovo*, (Scott Leckie for UNCHS (Habitat), 30 August 1999).

¹⁷ Under UNMIK Regulation 1999/23, which created the Housing and Property Directorate, the HPD: [S]hall provide overall direction on property rights in Kosovo until the Special Representative of the Secretary-General determines that local governmental institutions are able to carry out the functions entrusted to the Directorate. In particular, the Directorate shall: (a) Conduct an inventory of abandoned private, state and socially owned housing; (b) Supervise the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to deduction of relevant expenses; (c) Provide guidance to UNMIK, including CIVPOL and UNHCR, as well as KFOR on specific issues related to property rights; and (d) Conduct research leading to recommended policies and legislation concerning property rights.

¹⁸ The HPD provided services to people whose property problem falls into one of the following scenarios: You were an occupancy right holder, lawful possessor or owner of an apartment or house before 24 March 1989 and you lost the right because you were discriminated against. You have received notification from HPD that a claim has been lodged against your property; You entered into a property transaction between 24 March 1989 and 13 October 1999 and could not validate the transaction and register it because the law prohibited the transaction; You have received notification from HPD that a claim has been lodged against your property; You were an occupancy right holder, lawful possessor or owner of a house or an apartment before 24 March 1999 and someone else is living in your apartment or house illegally; You have received notification from HPD that a claim has been lodged against your property; Additionally, if you are in need of temporary housing on humanitarian grounds, HPD may be able to help you under the programme it is setting up with the municipalities (Source: www.unchs.org).

¹⁹ See UNMIK Reg 2006/10.

²⁰ Evidence that could be submitted includes: Cadastral documents including possession list, Tapia, Court records and decisions, Contracts on use or maintenance of an apartment, Contracts on sale/transfer (verified or unverified), Public Housing Enterprise records, Allocation right holder's records on allocations, Building and Use Permits, Real Property taxation records, Utility Bills, Evidence of Acquisition through inheritance, Decisions issued by administrative organs, Identification documents, Any other written document, which provides evidence of possession of property, of habitual residence, of an informal property transaction, or any other matter relevant to a claim, Outdated official documents as proof of a property right at the time period relevant to the claim if supporting documents prove uncontested occupation of the property at or around the relevant time, and Identity documents (e.g., passport, UNMIK ID card, birth certificate etc).

27. **Sierra Leone (1999)** - Part Five of the *Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of 1999* outlines a range of humanitarian, human rights and socio-economic issues including measures to protect the voluntary repatriation and reintegration rights of refugees and IDPs in conformity with international conventions, norms and practices (Article XXII). Article XXIII aims to guarantee the security of displaced persons and refugees including the agreement of the parties to “take effective and appropriate measures to ensure that the right of Sierra Leoneans to asylum is fully respected and that no camps or dwellings of refugees or displaced persons are violated”.

28. **Croatia (1998)** - The government of Croatia also undertook several measures in the area of restoring HLP rights following conflict, although these were often the subject of criticism. The *Programme of Return and Accommodation of Expellees, Displaced Persons and Refugees* was ostensibly designed to promote the return of property to persons displaced during the conflicts of the 1990's. In practice, however, the return of property was predicated on the availability and acceptability of alternative accommodation for the current secondary occupant, thus leaving former holders of occupancy rights in many instances, without a restitution remedy. Only owners of private property were entitled to benefit from the restitution procedure, despite the fact that many seeking restitution were classified as ‘social occupants’ holding social occupancy rights, a status somewhere between outright ownership and tenancy. The restitution processes in Croatia reveal the importance of approaching property restitution with sensitivity to the specifics and history of the property rights in the country concerned, and in a manner that grounds the restitution procedures in the legal system of the State concerned, but in a manner which is wholly consistent with international legal principles regarding restitution. Once again, they also indicate the critical role which must be played by the international community in actively supporting the emergence of the rule of law, including even the construction of courts and the promotion of non-ethnically based methods of judicial decision-making. Without pressure from the international community, it is likely that restitution would have been resisted entirely.

29. **Bosnia and Herzegovina (1995)** - The Dayton Agreement ending the war in Bosnia and Herzegovina established a variety of important principles delineating rights to housing and property restitution for refugees and other displaced persons. The 1991-1995 war resulted in millions being displaced and hundreds of thousands being killed. In Annex 7 of the 1995 *General Framework Agreement for Peace in Bosnia and Herzegovina*, refugees and displaced persons are guaranteed: 1. The right freely to return to their *homes of origin*; 2. The *right to have property restored which was deprived* during hostilities; and 3. The right to compensation for any property *which cannot be restored* to them”.²¹ Following the end of the war, almost two million people returned to their countries and homes of origin throughout the Balkans, including Bosnia and Herzegovina. Undoubtedly, the role of the international community in persuading the relevant parties to accept the contents of Annex 7, including restitution, as well as the subsequent programmes such

²¹ General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7 Agreement on Refugees and Displaced Persons, Articles 1-2. Annex 7 also includes: “4. Guarantees of safety, without risk of harassment, intimidation, persecution or discrimination, particularly on account of their ethnic origin, religious belief or political opinion; 5. The obligation of the Parties to prevent activities hindering or impeding the safe and voluntary return of refugees and displaced persons; 6. Various confidence-building measures; 7. Free choice of destination; and 8. Creation of positive conditions for return”.

as the Property Legislation Implementation Plan (PLIP) and the Stability Pact for South Eastern Europe, were instrumental in making the return and restitution process as widespread as it was. The recognition of restitution rights within the *General Framework Agreement*, the development of several institutions, including the establishment of a Commission on Real Property Claims (CRPC) which enabled displaced persons to submit restitution claims to an independent body, and the development of specific programmes devoted to restitution. UNHCR, the Office of the High Representative and other institutions were instrumental in promoting legislative reform involving housing and property law and in working with other institutions on these issues.²² These agencies backed the conception, drafting and eventual adoption of a series of laws in Bosnia and Herzegovina that overturned wartime laws on abandoned property. Among the laws adopted to repeal the abandonment laws which discriminated against displaced persons and refugees and bring local law into conformity with international standards, are the *Law on the Cessation of the Application of the Law on Abandoned Apartments* (1998) (Bosnia and Herzegovina), *Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens* (3 April 1998) (Bosnia and Herzegovina), and the *Law on the Cessation of the Application of the Law on Abandoned Apartments* (2 December 1998) (Republika Srpska). Clearly, without the adoption of laws repealing both the laws and intended effects of the abandonment laws, restitution simply could not have taken place. These new laws were indispensable in creating a national legal framework in Bosnia and Herzegovina that promoted, rather than obstructed, the recovery of housing and property by returning refugees and IDPs.

30. **Tajikistan (1994)** - HLP restitution issues figured prominently during the post-conflict period in Tajikistan, and the experiences of the country with restitution were remarkably successful in restoring refugee properties to them upon return. During the ethnic conflict of the early 1990s, over 60,000 persons fled to Afghanistan and a further 500,000 moved to the capital Dushanbe or into the mountains. As a result, many of the homes of refugees and IDPs were destroyed or illegally occupied by members of opposing ethnic groups. The reconstruction of damaged housing and the illegal occupation of housing rapidly came to be seen as the largest obstacles to return once conditions of security had been established. The Law of the Republic of Tajikistan on Forced Migrants (20 July 1994) went into considerable detail concerning the rights of refugees and IDPs to housing and property restitution, recognising, for instance: 4. With the aim of facilitating the earliest social and economic adaptation of the refugees-citizens of the Republic of Tajikistan and forced migrants returned to the places of permanent residence, the Ministry of Internal Affairs of the Republic of Tajikistan, hukumats of oblasts, cities and rayons of the Republic of Tajikistan in common with the agencies of the Procurator's Office of the Republic of Tajikistan shall: - immediately vacate illegally occupied dwellings owned or rented by the refugees-citizens of the Republic of Tajikistan and forced migrants in houses belonging to the State or communal housing fund and pass them to their rightful owners; - in case of the destruction or loss of the State-owned dwelling, provide out of turn an available dwelling space at his whereabouts in conformity with the standards in force in the Republic. According to the wish of the

²² For comprehensive coverage of housing and property law in Bosnia, see the 1999 joint publication by UNHCR, the Office of the High Representative (OHR) and the CRPC entitled *Property and Housing Issues Affecting Repatriates and Displaced Persons in Bosnia and Herzegovina*.

victims, in return for the dwelling, allot them a land plot for the construction of a dwelling house or give them a right to join a building cooperative out of turn. Several months after the adoption of these rules, virtually all the homes concerned were in fact vacated and the original inhabitants could return to their original homes.

31. **Mozambique (1993)** - Section IV of Protocol III to the *General Peace Agreement* ending the lengthy civil war in Mozambique, included explicit restitution rights for returning refugees, providing that: "Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it."²³ Likewise the *Tripartite Agreement between the Government of the Republic of Mozambique, the Government of Zimbabwe and UNHCR for the Voluntary Repatriation of Mozambican Refugees from Zimbabwe (1993)* also dealt extensively with restitution and return issues.²⁴ In 1997, a Land Law was adopted which includes provisions designed to help returnees and peasants. Under the law, the State still owns all land but grants user rights to individuals, communities and businesses in the form of leases that can last up to 100 years. The Law requires that courts recognize verbal evidence from community members regarding occupancy of land, if persons do not have possession of title documents, which in turn has assisted restitution even further.

²³ Under the same 1994 law, the relevant authorities are obliged to take measures "on returning to forced migrants the property left by them in places of their previous residence. If it is not possible to return it, then compensation shall be paid in manner and amount as determined by the Council of Ministers of the Republic of Tajikistan" (Art. 7). Article 11 obliges the Government to safeguard the security of the forced migrants on their return to their places of permanent residence as well as the protection of their rights and lawful interests. While article 12 guarantees the right to "repossess the personal property and real estate" left during the time of flight, and rights to receive a lump sum allowance or other cash benefit, and to receive credit on preferential terms to reconstruct and build new houses and outbuildings to replace what has been destroyed. The beneficiaries of the law are also legally guaranteed freedom of movement and the right to choose one's residence, the right to rent-free accommodation in places of temporary residence, protection against forced return to the place of previous residence and other such guarantees. In addition, the State organs are required to: provide a forced migrant, in the process of choosing a place of permanent residence, with accommodation from special housing resources meant for forced migrants, or enter him into the list of citizens who, according to the housing legislation of the Republic of Tajikistan, are given the right of immediately obtaining accommodation from the State housing resources as well as by purchasing housing from citizens. (Art. 6) In order to cope with the large-scale secondary occupation of returnee homes, the Government adopted several legislative measures, including a Special Law on the Return of Illegally Occupied Houses and Resolution No. 542 of 22 August 1995 on Additional Measures Facilitating the Return of Refugees-Citizens of the Republic of Tajikistan and Forced Migrants to the Places of Permanent Residence and Their Social and Legal Protection. These regulations stipulate that those who had illegitimately occupied the homes of refugees and IDPs were to evacuate these residences immediately. Bina Hanchinamani (2000) 'The Impact of Mozambique's Land Tenure Policy on Refugees and Internally Displaced Persons' in Human Rights Brief, Washington, vol. 7, issue 2, pp. 101-16.

²⁴ 1. Pursuant to the General Peace Accord, as well as other reconciliation initiatives taken by the Mozambican Government and other parties, the returnees shall have the right of return to return their former places of residence or to any other places of their choice within Mozambique. They shall not be subject to any form of legal process, persecution, discrimination or punishment for any reason whatsoever on account of their having been refugees; 2. ...the Mozambican Government shall issue, together with other relevant parties, a declaration inviting all refugees to return and guaranteeing that no one shall be punished or discriminated against on account of his religion, political affiliation or for having been in exile...4. The Mozambican Government shall ensure that returnees have access to land for settlement and use, in accordance with Mozambique laws; 5. The Mozambican Government shall, in accordance with the relevant provisions of Protocol III of the General Peace Accord, assist returnees who attempt to recover their lost property.

32. **Rwanda (1993)** - The Arusha Agreement²⁵ and the accompanying Protocol on the repatriation of refugees and the resettlement of displaced persons (June 1993) provided housing and land restitution rights to Rwandan refugees. Those who had lived in exile for ten years or more, however, were excluded from these guarantees, but were meant to receive alternative lands and assistance to resettle. This latter measure was ostensibly adopted “to promote social harmony and national reconciliation”.²⁶ This measure has been widely criticised and has clearly negatively affected the rights to return of refugees who fled as far back as 1959, but many of whom returned in the mid-1990s.²⁷ A considerable proportion of these returnees have not been able to return to their homes of origin because their houses have been destroyed, occupied by others in the intervening period and due to government relocation programmes.²⁸ A Ministerial Instruction issued in September 1996 attempted to regularise the highly volatile situation surrounding secondary occupation by entrusting “abandoned land” to the municipalities, who were empowered to administer and manage these lands. Secondary occupants were allowed under the Instruction to temporarily occupy abandoned lands. In all circumstances, however, the original owner maintained the right to immediate restitution should they return home. If an original inhabitant returned to find their home occupied by an unlawful secondary occupant, the occupant was

²⁵ On the Arusha Agreement, see: Second Progress Report of the Secretary-General on the United Nations Assistance Mission for Rwanda (S/1994/360 (1994)). See also: UNGA Res. A/Res/49/23 (1994). Article 4: provides: “With a view to promote social harmony and national reconciliation, refugees who have fled the country more than ten years ago cannot reclaim their property if it has been occupied by other individuals. To compensate them, the Government must put at their disposition land and help them to resettle.” while Article 28 stipulates that “The Commission on Compensation will proceed to manage the sites of installation. The inhabitants of this site will be considered on use the model of ‘village settlement types’ to stimulate the creation of zones of development in a rural context and to be compatible with traditional schemes of dispersed settlements.”

²⁶ In addition, the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region (12-17 February 1995), recognised the following measures to be taken by both Burundi and Rwanda regarding returning refugees: Sec. C. Measures to be Taken in and/or by the Countries of Origin: Burundi...20. In addition, to reassure refugees and internally displaced persons, the Government should...(e) publicly reassure refugees and internally displaced persons regarding the right to restoration of their private property, while adopting concrete measures to clarify the legal status of property left behind by refugees, including those who fled prior to October 1993, notably in 1972. Rwanda: 22. ...The Conference therefore urged and encouraged the Government of Rwanda to continue with its programmes in the following areas...(d) ensuring respect for the property rights of refugees and internally displaced persons by: i. continuing to apply concrete measures to adjudicate property disputes in a fair and expeditious manner; ii. enacting legislation to regulate the strictly temporary and provisional nature of any house occupation on an emergency basis, to be authorised and recorded by designated officials. NOTE: In regulating the manner and modalities of return, UNHCR and others also urged the authorities in Rwanda and Burundi to comply with various repatriation principles, including: a) The right to return; b) Non-discrimination; c) Voluntariness based on informed consent; d) Return in conditions of safety and dignity; e) Respect for private property (“Governments must ensure re-instatement of returning refugees and IDPs in their homes and land, while finding alternative solutions when this is legally or otherwise impossible”); and f) Freedom of abode.

²⁷ General Assembly Resolution 51/114 (1997) on the Situation of human rights in Rwanda (A/51/619/Add.3) “reaffirms the link between the voluntary return of refugees to their homes and the normalisation of the situation in Rwanda, and concerned that acts of intimidation and violence directed against refugees, particularly by the former Rwandan authorities, have prevented refugees from returning to their homes, [and]... 7. Invites all States, the organisations and bodies of the United Nations system and intergovernmental and non-governmental organisations to continue and to intensify their contributions of financial and technical support to accelerate the efforts of the Government of Rwanda to, inter alia, restore the judicial system, promote reconciliation through the recently established Commission for National Reconciliation and safely reintegrate returning refugees in conditions of safety and dignity, including addressing competing claims to housing and property”.

²⁸ The Human Rights Field Operation for Rwanda (HRFOR) has reported that property problems had been the biggest impediment to the rapid reintegration of the returnees, given that some 22% of the homes of returnees were destroyed, 10% of lands were occupied and 8% of houses were occupied (E/CN.4/1997/42). In addition to these problems, return to Rwanda was further aggravated by land disputes and extreme land scarcity, and augmented by the fact effective absence of adequate property legislation. Between 1994-1999, UNHCR built 100,000 homes in Rwanda as a means of promoting return and stability in the nation.

given two months to voluntarily vacate the premises. If the unlawful occupant is unable to find new accommodation during the two-month period, the Government (Ministry of Rehabilitation) is entrusted with finding another home or providing them with building materials. The *Protocol on the Repatriation of Refugees and the Resettlement of Internally Displaced Persons* provided that the return of all refugees is an inalienable right and constitutes a factor for peace, unity and national reconciliation. The Protocol asserts that all people who return are free “to settle down in any place of their choice” as long as “they do not encroach upon the rights of other people”. It also asserts that “property is a fundamental right for all the people of Rwanda” and that “[a]ll refugees shall ... have the right to repossess their property on return. However, these rights are effectively over-written by the ten-year clause, mentioned above. The Protocol, therefore, effectively blocked the implementation of restitution rights for those who had been out of the country for more than ten years. Though the ten-year rule was accepted by many on pragmatic grounds, this did not stop returning Tutsis from occupying the property of any Hutu – despite the fact that they did not systematically dispute access to their own families former lands. Even with the ten-year rule, Article 4 of the Protocol provides that for those persons who were not able to regain their homes, the State would “compensate them by putting land at their disposal and shall help them resettle” and that “for estates which have been occupied by the Government, the returnee shall have the right for an equitable compensation by the Government”.



*Cafeteria wall in Hpa An,
Kayah State (José Arraiza/NRC)*

33. **El Salvador (1992)** - Though often overlooked, the 1992 El Salvador peace agreement is exceptionally detailed in addressing a wide range of HLP concerns which were seen by the parties as fundamental causes of the grievances that led to the emergence of the conflict years earlier. This agreement sought to address issues which are often excluded from such agreements such as land reform measures, the necessity of new land legislation, land tenure concerns and the inventory of indigenous land allocations. The 1992 *Peace Agreement Between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (1992)* addresses HLP concerns in Section 2 (the agrarian problem) of Chapter V, for instance: *Lands in excess of the constitutional limit of 245 hectares* - The Government of El Salvador shall transfer rural farmland that has not yet been transferred under articles 105 and 267 of the Constitution of the Republic. It likewise undertakes to ensure that implementation of the relevant constitutional requirements is not evaded by owners of rural holdings in excess of 245 hectares. *New legislation* - Since the current agrarian legislation is haphazard, contradictory and incomplete, the Parties agree that it must be harmonized and unified into an agrarian code. To this end, the Government shall submit the relevant draft legislation to the Legislative Assembly no later than 12 months after the signing of this Agreement. If it fails to do so, COPAZ shall take on the task of preparing the corresponding preliminary draft. *The land-tenure system in conflict zones* - In accordance with the New York Agreement, the current land-tenure situation in conflict zones shall be respected until a satisfactory legal solution for the definitive land-tenure system is arrived at. Consequently, landholders shall not be evicted pending agreement on such a solution; moreover, they shall be given financial support to increase agricultural production. In view of the irregularity of the land-tenure system in conflict zones, the Parties agree on the following: *Determination as to who are the "current landholders"* - "Landholders" shall mean those currently occupying and/or working the land in conflict zones. *Inventory of cases covered by this part of the Agreement* - Within 30 days from the signing of the Agreement, FMLN shall submit an inventory of land or buildings affected by the Agreement. Upon verification that such land or buildings are in fact subject to the provisions of this Agreement, and in accordance with the procedure set forth in the next section, the Government of El Salvador shall seek to provide a satisfactory legal solution for their final disposal through the voluntary sale of such property by the rightful owners to the current holders, on the terms referred to in section 3 (F) of this chapter. Should a rightful owner not wish to sell his property, the Government of El Salvador shall make use of the legal mechanisms at its disposal to try to resettle the peasants or small farmers on such land as may be available for the purpose and shall, as far as possible, seek to ensure that such land is situated in the same zones. *Establishment of a Special Commission* - COPAZ shall appoint a special commission whose members shall be of recognized integrity and ability. The special commission, to be formed within 20 days following the signing of this Agreement, shall be entrusted with the following tasks and duties: To verify the inventory of affected land or buildings within conflict zones. Once the inventory has been verified, the special commission shall submit copies to the Government of El Salvador and to COPAZ; Should the need arise, to facilitate the settlement of disputes between current holders and rightful owners; To take any decisions and measures it deems necessary and proper for the prompt and effective fulfilment of the agreements set forth in this chapter. *Legalization of land tenure* - Except for particularly complex cases, the Government of El Salvador shall legalize the land-tenure situation in conflict zones definitively within six months from the signing of the cease-fire agreement,

granting, as appropriate, individual or collective title to the land. *Payment for lands* - Lands shall be purchased from their former owners at market prices. The sale to the current holders shall be subject to the same conditions as those granted to beneficiaries of the reformed sector. However, special conditions may be agreed to in the interests of the peace process.

34. **Guatemala (1991)** - An agreement concluded between UNHCR and the Government of Guatemala on 13 November 1991 committed the government to ensuring “to those repatriates who were landless when they left the country, fair and legal access to land, under the same terms and conditions granted to their fellow countrymen”. The agreement also includes provisions in which the Government of Guatemala agreed to ‘undertake all possible efforts to guarantee the recovery and legalisation of such lands, or ... the compensation of such land with others of similar quality and location’. UNHCR was involved in programmes involving documentation enabling returnees to purchase, transfer or title land. Of the 20,000 returnees who were repatriated collectively, roughly half recovered their original lands or lands in direct compensation for lost original lands and the other half bought new lands under a land-buying scheme. The lack of legal titles, the loss of title documents during the conflict and the destruction of public housing, property and land records all contributed to the difficulties of return in Guatemala. The *Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict* (Oslo, 17 June 1994) between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca also outlined some, but not all, issues linked to restitution and land rights.²⁹

²⁹ “An essential element of the resettlement process is legal security in the holding (inter alia, the use, ownership and possession) of land. In that regard, the Parties recognise the existence of a general problem which particularly affects the uprooted population. One of the principal manifestations of legal insecurity is the difficulty of producing evidence of landholding rights. This situation stems, inter alia, from: problems concerning registration; the disappearance of the files of the Instituto Nacional de Transformación Agraria (INTA); the institutional weakness of specialized bodies and municipalities; the existence of rights based on customary systems for the holding and surveying of land; the existence of secondary occupants or the annulment of rights on the basis of the improper application of provisions concerning voluntary abandonment” (Para. 8); “In the particular case of abandonment of land as a result of armed conflict, the Government undertakes to revise and promote legal provisions to ensure that such an act is not considered to be voluntary abandonment, and to ratify the inalienable nature of landholding rights. In this context, it shall promote the return of land to the original holders and/or shall seek adequate compensatory solutions” (Para. 9). The same parties also agreed under the “Indigenous Rights Accord”, (Mexico City, 31 March 1995) the following relevant restitution rights: “The rights relating to land of the indigenous peoples include both the communal or collective and the individual tenure of land, rights of ownership and possession and other real rights, and the use of natural resources for the benefit of communities without detriment to their habitat. Legislative and administrative measures must be developed to ensure recognition, the awarding of title, protection, recovery, restitution and compensation for those rights” (F1)... “Restitution of communal lands and compensation for rights Recognising the particularly vulnerable situation of the indigenous communities, which have historically been the victims of land plundering, the Government undertakes to institute proceedings to settle the claims to communal lands formulated by the communities and to restore or pay compensation for those lands. In particular, the Government shall adopt or promote the following measures: (a) Suspend the awarding of supplementary titles in respect of property to which the indigenous communities have claimed a right; (b) Suspend the statute of limitations in respect of any action involving the plundering of the indigenous communities; and (c) When the statute of limitations has already expired, however, establish procedures to compensate the communities which have been plundered with lands acquired for that purpose” (F7). See also: Liam Mahony (1999) *Risking Return: NGOs in the Guatemalan refugee repatriation*, Life & Peace Institute, Uppsala.

IV. CONCLUSIONS

35. Boiled down to their core essence, a series of key lessons have been learned on how best to address HLP Rights in peace agreements and post-conflict processes, and all of these are relevant to the peace process in Myanmar. These include:

Address HLP issues within the context of governance issues in peace agreements, not only in terms of human rights or refugee/IDPs: HLP issues are invariably rule of law issues and directly impinge on political understandings, as well as legislative and judicial sectors. Using the peace process as a vehicle for addressing outstanding HLP grievances can be highly beneficial to building the foundations needed for peace;

Include HLP rights directly within peace agreements, voluntary repatriation agreements and other policy documents: Directly addressing these rights and highlighting them will assist in peacebuilding and protect the rights of victims of conflict;

Consider establishing a mass-claims mechanism for conflict-related property claims: Mass claims mechanisms, in particular, offer important advantages for the resolution of large groups of claims. These bodies define types of claims, according to the needs of a particular situation involving large-scale dispossession and thus involving the systematic disrespect of basic principles of justice. The mass claims mechanism assumes that such systematic pattern of abuses was the rule rather than the exception and reverses the burden of proof.³⁰ Hence, defining the scope of the claim allows their grouping and a speedy decision making process on claims that present similar merits. Moreover, the processing of claims, including the provision of information to claimants, is computerized, increasing effectiveness and accessibility. The claimants often benefit from a free of charge process in which the investigation is carried out by the administrative body. The claimant does not need to hire a private lawyer for his or her claim. Moreover, the establishment of offices and mobile units allows the mechanism to reach displaced persons.³¹

Include HLP rights competencies within the institutional and administrative structures of peace operations and fund them adequately: Addressing HLP rights within peace agreements is not discretionary if the protection and promotion of human rights are key objectives of the overall peace plan;

Determine the Applicable Legal and Policy Framework During the Planning Process: Valuable months are often spent during the initial periods of peace negotiations identifying local laws, compiling these, translating them and trying to understand how the entire domestic legal framework on housing, land and property rights actually fits together. Having consolidated information on such legislation can be vital in ensuring that all relevant HLP issues are addressed;

³⁰ R. Williams, 'The Contemporary Right to Property Restitution in the Context of International Justice' (2007), International Center for Transitional Justice Occasional Paper Series, 51.

³¹ Arraiza, Jose-Maria and Moratti, Massimo, 'Getting the Property Questions Right: Legal Policy Dilemmas in Property Restitution in Kosovo (1999-2009)', 21 (3) International Journal on Refugee Law, 421-452, 429.

Ignoring HLP Rights Will Not Make the Problems Go Away: Unless HLP rights are given the attention they require, they will invariably re-surface, with often violent results;

Peace Monitors are Important HLP Rights Protectors: Peacekeepers can assist in halting illegal forced evictions and arresting those responsible, stopping acts of violence against civilians, protecting housing against looting, damage or destruction and assisting in the restoration of HLP rights by evicting secondary occupants deemed to be illegally occupying housing;

A Gender Perspective Should Pervade all HLP Sectors: Every effort should be made to ensure that all women's HLP rights, in particular equality and inheritance and succession rights form core parts of all peace agreements;

Prepare for a Long-Term Process: The full enjoyment of HLP rights by everyone will invariably be a long-term process, but one which will stand a far larger likelihood of success if addressed properly within peace agreements;

Convene National Housing, Land and Property Rights Consultations: Facilitating national dialogues on HLP issues is a concrete step that can be undertaken in all countries to assist in developing better and more appropriate HLP policy and law;

Minimize Residential Disruption to the Maximum Possible Extent: Do not order, carry out or tolerate forced evictions of people from their present homes (unless truly extraordinary circumstances so warrant);

Identify measures to ensure affordable housing and land to all: Introduce or expand housing subsidy programs to ensure that low-income groups are not forced to spend a disproportionate percentage of their income on satisfying housing requirements; and develop rent regulation policies to protect low-income groups against unreasonable rent increases;

Identify and allocate affordable land for low-income housing settlements: Set benchmarks for the identification of land for eventual use and/or allocation to low-income groups; and develop longer-term plans for land allocation and distribution (particularly of State land) with a view to accurately addressing future housing needs;

Develop an Emergency Policy Response to Homelessness: Reducing and eliminating homelessness warrants major consideration by peace mediators. Resources should be sought to assist the homeless and to begin the process of finding permanent housing solutions for all. Identifying vacant State property and allocating this for the temporary or permanent use of the homeless would be an immediate step that could be taken with very limited financial implications;

Promote Programs for Groups with Special Housing Needs: Develop special housing policies for vulnerable and other groups with special housing needs, including: women-headed households, the disabled, older persons, minorities, indigenous peoples, unaccompanied or separated children and others; and

Registration of Housing: The housing, land and property registration system, and/or the national land cadastre will require establishment, (or re-establishment and updating). As appropriate, alternative titling and deeds systems should be proposed to expedite the conferral of security of tenure and official registration of housing rights.

36. Indeed, it is now the clear view of most commentators that HLP issues simply must be addressed if peace agreements of any sort are to provide the basis for longer-term social harmony and economic prosperity. Any successful peace agreement following the conflict in Myanmar will require an expansion of the HLP-sensitive approach which appears to be emerging, albeit thus far only to a limited extent.

37. Doing so will require extensive skills, patience and even deal sweeteners designed to overcome the frequent reluctance of the negotiating parties to address HLP rights, particularly if legal, territorial or financial/asset compromises are concerned. It will be important for mediators to maintain appropriate levels of flexibility in seeking to reach an agreement, but this cannot be at the expense of HLP rights issues, which are, after all not only human rights concerns, but also development, economic, justice and rule of law issues all rolled into one. To achieve consensus among the negotiating parties on these often complex concerns, it will always be vital to address HLP issues at the outset of negotiations, rather than at later more delicate stages of the process, let alone being treated as potential bargaining chips to be negotiated away in the interests of what may be perceived to be larger' concerns. Given the extremely high stakes involved in addressing certain HLP themes, in particular when the restitution or property, payment of reparations and transfer of large economic assets is involved, there will always been some hesitancy by negotiating parties to come to an immediate agreement on HLP concerns, but without addressing these adequately, peace will remain a distant proposition in Myanmar.

38. Notwithstanding the precise form that any agreement ending the current conflict(s) in Myanmar eventually takes, the government, ethnic armed groups and people of Myanmar continue to face a massive series of housing, land and property rights challenges in all corners of the country, all of which will need to be addressed and remedied as part of any eventual peace accord. As the many examples outlined above clearly show, there is widespread agreement within international law, national rules and across all political persuasions that peace and reconciliation can best be built on the foundations of justice within the HLP sector whereby everyone with HLP claims must have the opportunity to have those claims addressed and resolved.

39. As unlikely as it may seem today, peace must eventually come to the people of Myanmar. All conflicts no matter their origins, brutality or terms of their conclusion inevitably come to an end, and the time to secure a just peace across Myanmar has surely arrived. Consciously addressing the housing, land and property dimensions of such conflicts, deeply understanding the greed and grievance dimensions of them, and using the peace process to resolve them will help pave the way to creating conditions for sustainable peace. Addressing in detail the wide spectrum of HLP concerns within the peace negotiating process and within the terms of an eventual peace agreement will be vital. Understanding how other countries have addressed these similar themes, grasping both the successes and failures of these previous efforts and fully comprehending how vital these are to enduring peace will greatly increase the chances for longer-term peace in Myanmar. Numerous peace agreements concluded throughout the world during the past three decades have addressed HLP concerns clearly and forcefully. Let us all hope that Myanmar is next.

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