



LawKa PaLa

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Legal Journal on Burma

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(A . 3)

Housing, Land and Property Rights in Burma: Towards New Strategies

By Scott Leckie¹

One day, the much maligned military machine in Burma will give way to new ways of governing this truly extraordinary country. In a nation where good news is rarely forthcoming, there is at least some solace in knowing that perhaps that most quintessential of all Buddhist truths - impermanence - applies as much to dominant political regimes as it does to everything else. No government lasts forever, and clearly there will come a time when the Generals now ruling Burma will no longer be in power, and when more open forms of governance will begin to take root in this nation of over 50 million rights-holders. Of this we can be certain. What remains unknown, of course, are the questions of when and even more vitally, how? What might have appeared to have been the *when* moment in September 2007, quickly became yet another *Oh no, not again* refrain as it became clear that Than Shwe and his backers were as far as ever from relinquishing power. The human tragedies and gross ineptitude shown following Cyclone Nargis provided a stage for additional expectations that structural change might be near, but this too failed to materialise.

Thus, with the regime quite firmly in place at the moment, those who care about human rights in Burma are forced yet again to consider what to do to assist in improving the human rights situation in the country. If we examine purely the question of the housing, land and property (HLP) rights challenges facing the people of Burma, we are left with several possible routes of action. We can support the continuation of the excellent and courageous work done by so many in identifying and monitoring forced displacement in lengthy and professional reports, with ever more detailed and disturbing accounts, documented in increasingly articulate ways. Conversely, we might consider expanding attempts to prevent planned, often publicly announced HLP abuses such as those caused by ill-planned dams on the Salween and other rivers by attempting to organise the victims and assisting them to speak ever more loudly about their plight. Some may even wish to shift their attentions completely, and simply seek to assist resettling refugees from Burma who have given up hoping for change and who are happy enough to settle in Iowa City, Berlin or Lausanne.

And yet, as vital and well-intentioned as these and other efforts are (and there are a great many others), it is clear that to date these valuable



endeavours have yet to truly bring substantial results within the HLP sector in the country; displacement has clearly not declined in either scale or degree, dam construction and related loss of lands and homes has only increased, the return of refugees and IDPs to their original homes and lands is as far off as ever, and overall housing and living conditions throughout the country continue to decline, alongside growing impoverishment and lack of economic possibilities. Might it then be time to consider new strategies for addressing the HLP rights crisis in Burma? Might, in fact, organising around the broader themes associated with the full array of HLP rights and not solely forced displacement as such, bring more concrete, sustained results?

Towards a 'Displacement Plus' Strategy Grounded in HLP Rights

Moving from displacement-specific strategies to broader 'displacement-plus' approaches which focus on all HLP rights, would firstly require its proponents to understand that as bad as displacement may be in Burma, whether caused by conflict, disaster or poorly planned development projects, the practice remains but one of many forms of HLP abuse and deprivation prevailing in the country today. Comprehending the broader HLP crisis, of course, may begin with displacement, but it should not end there. Indeed, the displacement and HLP dynamics found in Burma today need to be analysed from the perspective of literally hundreds of years of repeated conquest, the recurring emergence of political/military fiefdoms of all sizes, and the central role that the domination of the housing, land and property sectors has played and continues to play in how the nation is governed. Burma's past and present are so dominated by forced displacement that one would be hard pressed to find very many other nations where the practice of removing people against their will from their homes and lands had such an extensive role in shaping the historical fabric of the nation, and where land issues were more at the centre of both political domination *and* eventual liberation. This lengthy history of displacement, combined with the particularly large-scale displacement in the east of the country, have both surely contributed to making this particular HLP rights abuse so central to the various strategies of the political opposition and human rights advocates.

Forced displacement is but one of a series of serious housing, land and property challenges facing the country, and yet it is this practice that receives the overwhelming proportion of attention by those concerned with human rights in the country today. To properly grasp the HLP crisis in Burma, forced displacement needs to be analysed together with HLP issues such as almost universal tenure insecurity, increasingly inadequate housing and living conditions including the inability of tens of millions of citizens to access basic services such as water, electricity, telecommunications and others, the minimal protection of tenant's rights, the physical demise of historical urban centres, including residential areas, a dysfunctional and ineffective system of land administration and



registration, severe inequities in terms women's HLP rights including inheritance and access, drastic restrictions on individual property ownership, forced evictions due to infrastructure projects and urban gentrification and re-development processes, destructive and non-participatory urban master planning processes, complete inaction on the special HLP needs of particularly vulnerable groups (elderly, disabled, children, etc.) and many other HLP concerns.

What are we to make of this long history of displacement then, when we examine the more complex and more widespread HLP crisis in contemporary Burma? How does the history of displacement and the essential presumption by the authorities (whether colonial powers, warlords, ethnic armies or the State as a whole) that those governing invariably hold all power over the land, and the fact that the citizenry effectively possesses no real rights over the land and homes they call their own, affect the entire gamut of HLP rights of people throughout the country today? And how does this same history influence the actions and behaviour of the *Tatmadaw*-led regime? These queries are complex and require equally complex answers, but to a degree, they can be answered by simply pointing to the crucial and strategic fact that displacement needs to be understood in Burma not as an issue separate or distinct from other HLP concerns, but rather as a slice of much larger HLP practices and realities that systematically, day-by-day, result in the erosion of the rights of virtually all population sectors in the country.

The prevalence of HLP problems points to a severe and complex national HLP crisis rivaling the worst systematic abuses of HLP rights in any country. To date, however, these issues have not been addressed in a comprehensive manner; whether by the UN agencies and others operating within the country, or by human rights and other monitoring groups based outside the country. There are a plethora of high-quality published resources outlining the precise scale and modalities of forced displacement in the country, most of which focus on the ethnic areas, in particular where such displacement forms a part of either counter-insurgency efforts by the SPDC, military-led land expropriation (often in the form of outright land grabbing) or both. A slightly less extensive, but no less high-quality, array of reports is regularly released outlining the negative consequences of development-based displacement, led in particular by surveys of forced displacement resulting from the various dam systems that are under construction throughout the Salween area. These and related efforts are vital, but what is missing are efforts to bring together initiatives which focus *comprehensively* on HLP concerns within the country. Other than an unexpectedly impressive and remarkably detailed and insightful 1991 UN Habitat report on human settlements in the country², reports and data on slum formation, slum conditions, housing poverty, land confiscation outside the conflict areas on the Thai-Burma border, urban forced evictions, service availability and many other critical HLP sectors are rarely addressed, despite the fact that these affect far



more people than those affected by forced displacement. Doing so, together with expanded work on specific displacement themes, however, could provide a basis for building new movements for change which have as their foundation the daily struggles for HLP dignity that virtually every family in Burma is forced by circumstance to face.

Popular HLP movements are not always widely seen by those not working within the human rights or political arenas as necessarily an obvious basis for the type of organising that can lead to longer-term political change. But more often than commonly assumed, HLP abuses quite often turn out to be the catalyst in what become large-scale initiatives that lead ultimately to structural political transition. While South African *apartheid* was surely not overthrown solely in response to racially-motivated displacement, land grabs and forced relocations, it is clear that HLP abuses in South Africa formed a key rallying cry of the democratic movement that led to the end of white-only rule. Nelson Mandela himself cut his political teeth during anti-relocation struggles in the 1950s in places such as Sophiatown, Alexandra and Lady Selborne. The daily HLP frustrations faced by millions in Eastern Europe and the Soviet Union surely played a role, albeit perhaps a smaller one, in the change that spread like wildfire there in the late 1980s and early 1990s. The growing rural unrest (and creeping urban discontent, as well) in China in recent years has everything to do with HLP rights abuses and a growing sense of social exclusion combined with massive land confiscation and expropriation. The conflicts in the Balkans centred around a series of HLP issues, none more so than ethnic cleansing and its eventual reversal. And the housing distress suffered by so many tens of thousands of New Orleans residents, coupled with the outright failings of the Bush administration to adequately redress the billions of dollars in damage caused by hurricane Katrina are widely seen, together with the Iraq debacle (which itself has much to do with HLP rights abuses), as key reasons for Bush leaving office as one of the most unpopular Presidents of all time.

Similarly, many ongoing conflicts and unresolved political struggles throughout the world have at their core, difficult to solve HLP disputes and widespread HLP abuses. The Cyprus Problem remains unresolved for many reasons, but none are as prominent as the HLP issues that continue to thwart agreement. HLP issues lie at the deep core of the Palestinian-Israeli conflict, and it is well-known that since 1948 Israel has used its control within the HLP sector – through the calculated destruction of villages, illegal confiscation of refugee land and housing and implantation of settlers – as a means of subjugation and oppression against the Palestinian people. HLP issues are fundamental to the conflict in Darfur, just as they are in a spate of longstanding refugee situations including ethnic Nepalis from Bhutan, Western Sahara, Serbia, Democratic Republic of the Congo and beyond.



What these and other cases reveal is simultaneously the central importance of the HLP sector within the political resolution process where structural changes have already occurred, and the manner by which unresolved HLP issues continue to prevent just and satisfactory conclusions to a range of unresolved conflicts throughout the world.

Arguably, thus, it is at the very least possible that the slow and gradual rise of a national HLP movement, largely domestic in nature but supported by the good will of the international community, will facilitate the emergence of new political dynamics in Burma. These in turn could lead to new ways of engaging portions of the population that have to date been unwilling to involve themselves in the forms of either covert or overt opposition used in the past, as well as the emergence of new perspectives and understandings of the proper role of the State, of government and of the basic HLP rights of every man, woman and child, and how indispensable these are for living a full life.

There is certainly no shortage of HLP issues which could form the initial basis for the emergence of such a movement. As noted, forced displacement is one. Millions have faced this practice over the past several decades and millions more remain under possible threat that they too will lose their lands if the *Tatmadaw* senses a more profitable use for land now under private possession. A movement and accompanying campaign or initiative that engaged the displaced themselves, together with their advocates, could be the beginning of a longer-term process that leads eventually to a mass HLP movement that facilitates deep political change. This could be an important way of proceeding, but arguably the ground is even riper in Burma for a wider HLP movement to emerge; one based on the full spectrum of HLP concerns.

When viewed through the lens of HLP rights, Burma is surely one of the world's poorest performers. Seen through the eyes of an ordinary citizen of Burma, the daily, even minute-by-minute, HLP challenges (and accompanying denial of rights) they are forced to endure are staggering, perpetual and cruel. Tenure security is virtually non-existent in either towns or rural areas. Basic services - water, electricity, sanitation, drainage, phone lines - are unavailable to millions of households. Credit for the poor is inaccessible with the exception of special programmes sponsored by the international community. Privacy rights and rights to respect for the home are routinely infringed by military intelligence and other actors. Tenants possess few rights against arbitrary eviction. Decrepit slums, both old and new (and in far worse conditions than slums in many neighbouring countries) have grown steadily on the outskirts of most of the larger cities and towns in the country as the countryside is no longer able to provide sufficient livelihood to many within the agricultural sector. And the list goes on. HLP problems, in fact, are so ubiquitous that few if any families -



including even sectors of the elite and most of the small middle class - live out their lives free of any HLP abuses or insecurities. Virtually everyone in Burma stands to benefit from an approach to HLP problems that treats these issues as rights of everyone and that understands in tackling HLP concerns one invariably improves overall macro-economic vitality, human security and social stability. A new HLP future in Burma could just mean the eventual onset of a new political culture, a new way of improving economic performance and a new way of raising the standard of living of all throughout the country. If fuel price hikes can spark movements such as those of August and September 2007, one can only wonder what an HLP movement might achieve.

Starting Now to Build a Better HLP Future

If those within Burma came to increasingly see the value in organising around HLP themes, the 2008 Constitution might be a good place to start. As flawed as it may be and as unpopular as many of its provisions clearly are, nevertheless the new Constitution provides a legal basis for building momentum required for enhanced attention to HLP issues. The new Constitution, for instance, requires the Union to “strive to improve the living standards of the people”, “permit citizens the right of private property”, “protect according to law movable and immovable properties of every citizen” and “protect the privacy and security of home and property”. Each of these is a central element in the bundle of entitlements that comprise HLP rights. The Constitution equally confers the right to ownership and affords citizens rights to “settle and reside in any place within the Republic”. It is true that these provisions fall short of protecting, in full, the entire range of housing, land and property rights conferred under international human rights law, but nonetheless for the regime to have constitutionally recognised these rights and duties under law are significant steps in the right direction that must be taken advantage of by human rights advocates working for justice in Burma. These rights can be used as the basis for a broad series of activities to strengthen HLP rights in Burma, and with constitutional law as the platform for expanded attention to these themes, those engaging in their enhancement may be protected to a degree previously not available. These rights can be tested, monitored and rallied in support of in ways not necessarily possible in the recent past.

Given the scale of the HLP crisis in the country, any number of initiatives might be undertaken, but five particular issues might be considered priority areas for action and attention. If backed by the international community, activities in support of these HLP objectives grounded in the new Constitution and existing HLP laws, as well as the human rights treaties already ratified by the Government, could form the basis for building the type of groundswell of support for change that will be required for a new Burma to emerge.



1. Slum Upgrading - Although they receive virtually no attention from the humanitarian or human rights communities, Burma's slums are bad and getting worse. Those working in the HLP field know what measures are most likely to bring about the positive change required to improve slum conditions and this knowledge needs to be deployed and acted upon in Burma today. City-specific and national programmes, as well as projects supported by the international community towards this end can bring real results, often in short-term time-frames. Specifically, building enhanced capacity within the important Development Committees that manage urban affairs in Rangoon and Mandalay would be one concrete step in the right direction that could assist in improving slum conditions in the country.

2. Security of Tenure - The situation of tenure insecurity in the country is equally in need of attention. Most of Burma's citizens do not possess even rudimentary forms of secure tenure and as a result are perpetually under possible threat of eviction, forced displacement and land confiscation. Again, HLP expertise is available to assist the people of Burma to improve the overall security of tenure situation through a combination of law, policy and programmes which match the prevailing needs of the country and which can take into account the best practice of countries around the world. Improving land administration processes, the conferral of title and security of tenure rights and related measures are achievable aims that can be initiated today.

3. Service Provision - As noted, most of Burma's population does not have regular and affordable access to water, electricity, drainage, refuse disposal, telephones or other basic services. Targeted measures to improve the provision of public services such as these are also possible to design and consider now. In some areas implementation will be easier than in others, but there is little reason not to expand attention to these services as a matter of HLP policy.

4. HLP Reform - The Burmese HLP legal code - the full body of some 57 laws currently in force in Burma that address and regulate housing, land and property matters (and recently compiled by the author) - does address many key HLP rights recognised under human rights law. To effectively assist the citizens in Burma to achieve their HLP rights, however, it is clear that the HLP Code requires new forms of attention, including extensive reform and amendment. HLP experts are in place today ready to assist in improving the HLP Code, modernising it in appropriate ways and thus improving the institutions and policies responsible for HLP concerns within the country. If four new laws were adopted the HLP code in Burma would be dramatically improved. This process could begin with initiatives to draft a Housing Act, a Land Act, an Urban Reform Act and an Act on Refugee and IDP Restitution.



5. Historical Town Preservation - Many of Burma's cities and towns possess buildings and neighbourhoods of great architectural and historical significance. Expanding attention to the preservation of those urban areas that are of particular importance may be another way of slowly building awareness of HLP issues within the country today. Taking the lead from Luang Prabang in neighbouring Laos, Burma could surely select, say, five historic neighbourhoods throughout the country that it might wish to preserve for future generations.

Could an emphasis on the HLP sector and greater attention to HLP issues become a new organising tool that results in change? Could the 'developmental' dimension of HLP issues, grounded in the new provisions of the 2008 Constitution, prove to be sufficiently opaque as a means of improving the lives of people now, that it would not necessarily provoke the ire of the authorities, and perhaps even inspire them to achieve better results? Alternatively, of course, we can wait for what leading Burma analyst Richard Horsey has referred to as the "Deng Xiao Ping moment", wherein someone within the military finally grasps the efficacy of instituting market-based economic reforms and open up the economy - and thus the country as a whole - to investment, social development and ideas, but not in a way that undermines the authority of the present regime. Or we can wait for another attempted mass revolt with all too predictable results. We can also begin now, without waiting any longer, to broaden thinking on how a new focus on HLP rights might just constitute a broad enough bundle of concerns, affecting such a huge majority of the population of the country, that it proves to be an initiative that makes a real difference.

Burma's citizens and their international friends need to move beyond the advocacy efforts relied upon during the past decades and identify new and refreshing ways of promoting positive change that starts with the people in Burma. An increasing reliance on HLP rights as a foundation for change, grounded deeply in the daily experience of their denial by the vast majority of those living in the country, and the clear range of concrete actions that can be carried out beginning today to improve the HLP situation in the country, could provide a whole new way of transforming the landscape of the country. A novel vision of Burma is required; a vision where all are adequately housed, where all have secure tenure to their land, where displacement as a policy tool is relegated to history, where basic services are enjoyed by all and where Burma's towns and cities become the bustling, modern, vibrant pride and joy of all the peoples within Burma as they go about living lives of dignity, prosperity, equality and security. HLP strategies could provide the basis for transforming this vision into reality, and the time to commence this work is now.



(Endnotes)

1 Director, Displacement Solutions (www.displacementsolutions.org) and Founder of the Centre on Housing Rights and Evictions (COHRE). He can be contacted at: director@displacementsolutions.org.

2 United Nations Centre for Human Settlements (Habitat), *Human Settlements Sector Review - Union of Myanmar, May 1990*, Nairobi, 1991.

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