ADDRESSING MYANMAR'S UNSETTLED RESTITUTION GAP

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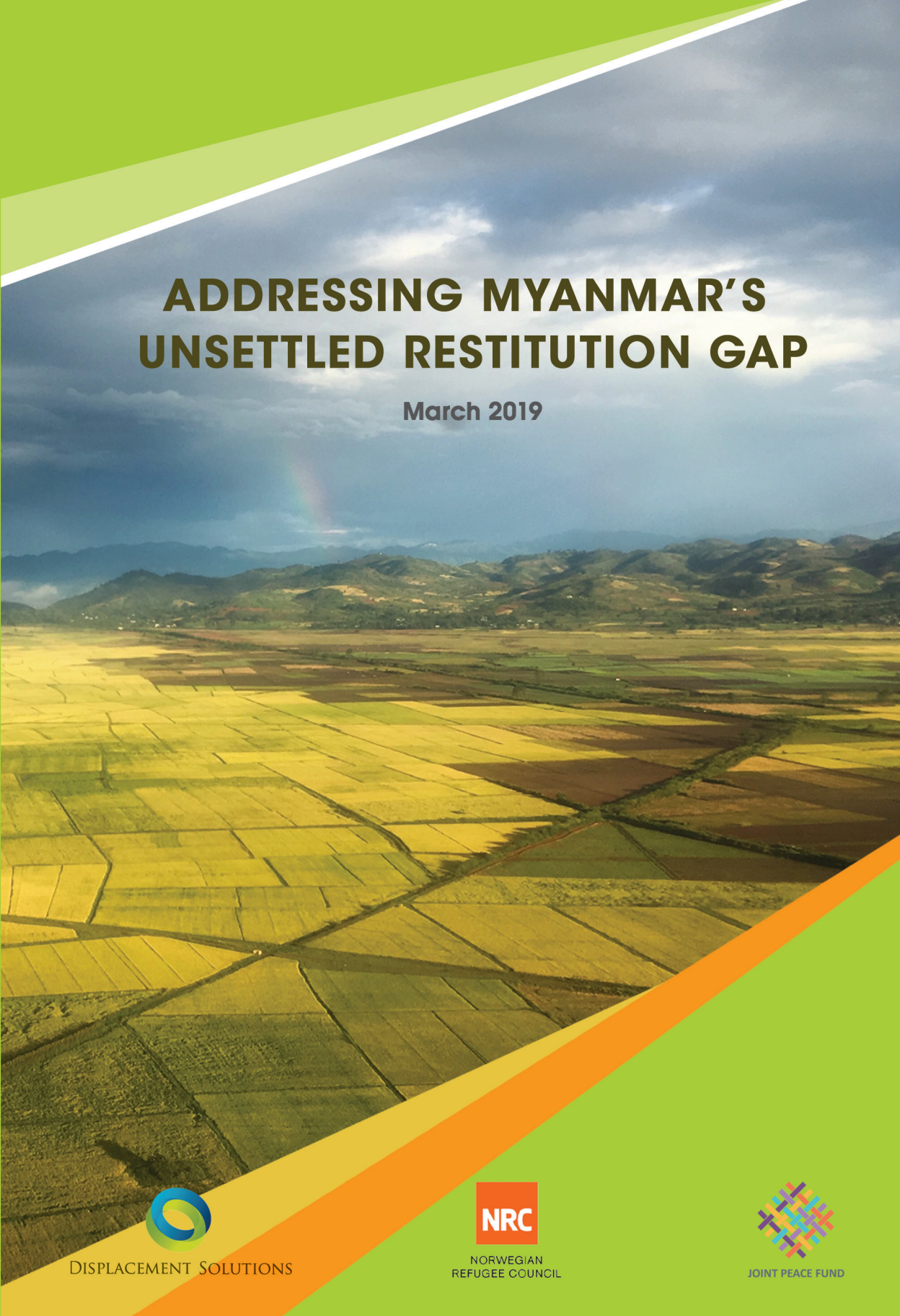

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ADDRESSING MYANMAR'S UNSETTLED RESTITUTION GAP

The protection of Housing, Land and Property (HLP) rights in Myanmar is marred by armed conflict, inadequate laws, lack of safeguards against powerful actors, competing parallel administrative structures and unbridled development. Myanmar is indeed a showcase of HLP rights challenges, linked to its decades long civil wars, uneven transition and reforms prioritising large scale investment over small farmers rights and interests and customary land tenure systems. The Myanmar Peace Process is bringing together signatories to the 2015 Nationwide Ceasefire Agreement and non-signatories, aiming at a country wide peace agreement. So far, land and natural resources are acknowledged as important areas of discussion, however the debate requires more flexibility and inclusion. Restitution is not yet clearly in the agenda and peace process structures should be better connected to land law reform bodies (the National Land Use Council). This compilation of papers, edited by Scott Leckie (Displacement Solutions) and José Arraiza (Norwegian Refugee Council) explores some of these issues in depth in order to contribute to this important debate.[1]

[1] *The views expressed in this document are those of the authors exclusively and do not represent any official position.*

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OBSTACLES TO RESTITUTION IN MYANMAR: EXPERIENCES FROM TWO INVESTIGATION COMMITTEES (CAITLIN PIERCE)

Introduction

70% of Myanmar's population is engaged in land-based livelihoods. Through a series of economic policies, conflict, and corruption, millions of acres of land were confiscated from farmers between 1988-2016. It is difficult to find reliable numbers for land confiscations in Myanmar for a variety of reasons. However, official numbers put the estimate for allegedly vacant land redistributed in this time frame around 3.8 million acres; other research puts it over five million acres.[2] Using numbers from the 2003 Agriculture Census, a back-of-the-envelope calculation suggests that between three to four million people may have been affected by these acquisitions.[3]

After the end of military rule in 2011, the Thein Sein government began an array of good governance and reform initiatives, including a land reform process. This included the passage of some new land laws in

2012, and an associated increase in land grabbing, as different actors sought to secure long-term legal land rights in Myanmar, which had not before been possible. In response to demonstrations and violent clashes throughout the country, the Parliamentary Land Investment Commission (PLIC) was formed in 2012 to investigate claims of illegal land confiscations.[4]

[2] *Woods, Kevin. Commercial Agriculture Expansion in Myanmar: Links to Deforestation, Conversion Timber, and Land Conflicts. (Forest Trends Report Series: March 2015); U San Thein et al. Agro-Business Large Scale Land Acquisition in Myanmar: Current Situation and Way Forward," 2017.*

[3] *The 2003 Census indicates that the average size of land holdings in Myanmar was 6.24 acres, and on average each landholding supported 5 people.*

[4] *Land in Our Hands et al. A Promise Unfulfilled: A Critique of Land Reinvestigation Committee (December 2017) details that this was not a straightforward process and met with great resistance by some government and military actors.*

Government-led restitution processes: 2012- March 2016
Parliamentary Land Investigation Committee (PLIC)

During Myanmar's transition from a military to partially - democratic government under President U Thein Sein from 2010-2015, Parliament established the Investigation Commission for the Prevention of Public Disenfranchisements Connected to the Confiscation of Farmland and Other Lands, also known as the Parliamentary Land Investigation Commission (PLIC). Thousands of land grab cases were reported to this commission; however, the commission's mandate was simply to investigate and advise the Central Land Use Management Committee, as Parliament has no jurisdiction to render binding decisions in these cases.[5]

Some communities and civil society organisations (CSOs) assert that even in its advisory capacity, the PLIC was evasive and failed to disclose detailed information on military land grabs or to investigate land acquisitions driven by agro-concessions.[6] The PLIC estimated that it would receive around 300 claims, but publically disclosed that in reality it received over 15,000 cases totaling over 467,749 acres (the PLIC did not disclose information on acres for 74% of cases mentioned).[7] As research by MRLG argues, the numbers put forward by the public reports do not add up, and indeed many more cases or acres may have been received.[8] Moreover it is not clear from the data released how many farmers or households are implicated; some of these cases may represent individual claims while others might be collective cases of 100s of farmers.

The PLIC and Central Land Use Management Committee ended at the conclusion of Thein Sein's government in March 2016, leaving hundreds of uninvestigated and unresolved cases.

[5] *Report of Central Land Use Management Committee mentioned on the News Lights of Myanmar Newspaper dated 17th March 2016.*

[6] *U San Thein, Pyae Sone, et al. Transparency Under Scrutiny: Information Disclosure by the Parliamentary Land Investigation Commission (MRLG: February 2017).*

[7] *18th Report of the PLIC; a very rough back of the envelope calculation suggests that the PLIC received claims for over 620,000 acres.*

[8] *U San Thein, 2017.*

Karen elders, Kyaukkyi Township, Eastern Bago Region

May 2016-present Central Land Grab Reinvestigation Committee

A key part of the NLD's 2015 election manifesto was a commitment to return land to farmers. When the NLD government took office in May 2016, one of its first acts of governing was to establish the Central Land Grab Reinvestigation Committee, under the purview of Vice President II. The stated purpose of the Reinvestigation Committee was to accelerate the resolution of land grab cases and ensure that affected civilians do not suffer further.[9] These committees are replicated at each administrative level and similar to their precursor mechanisms, but with an important difference – they include "farmer's representatives" at each administrative level from village tract to state/region level. This represents the first instance in contemporary Myanmar of non-government (executive, military, or elected) personnel having a formalized role in such a far-reaching and sensitive advisory body.[10]

However, it is difficult to analyze how effective this new system is. There has been even less public disclosure from this Central Committee than from the PLIC on the numbers of cases received and resolved. The Central Committee has not made public its annual reports, preventing detailed public analysis, but the Global New Light of Myanmar reported on April 2017 disclosures by the Central Committee, which suggest in its first year of operation it settled around 18% of the cases it received.[11] Without further public disclosure it is not possible to know what the Committee considered to be "settled." The article shared that the Committee stated that it additionally facilitated the return of 400,000 acres of discarded land that the previous Central Committee was managing, and in a separate statement, the Minister of Defense disclosed the Ministry has been arranging to return 258,013 acres of land.[12] There is not yet any information available on the Committees'

[9] *The Republic of the Union of Myanmar President Office order letter number 14/2016 issued on 5th May 2016*

[10] *Caitlin Pierce and Ye Yint Htun Myanmar's Foray into Deliberative Democracy: Citizen Participation in Resolving Historical Land Grabs (Namati: June 2017)*

[11] *Global New Light of Myanmar "2,075 Land Grabbing Complaints Settled in One Year," April 13, 2017.*

[12] *Global New Light of Myanmar "Ministry of Defence Issues Press Release on Land Returned to the Nation," 17 December 2017.*

[13] *Source: Farmer Journal, 7 April 2018.*

performance in the second year of its mandate.

In two years under the current government, 6320 cases were submitted to the land grab reinvestigation committee and only 669 cases (11%) could have been resolved leaving 5651 cases to carry on, according to vice-president in the fifth working meeting of land grab reinvestigation committee.[13]

Policies guiding the work of the Reinvestigation Committees

The Central Committee, which is responsible for setting the policies and guidelines for lower-level Committees to follow, first released a set of policies in June 2016 and an updated set in March 2018 (Appendix I).[14] Collectively, this paper will refer to them as the "Reinvestigation Committee Policy." In addition to the ten key principles outlined in Appendix I, the Central Committee also released three principles regarding land held by the military;[15] five policies for how the Reinvestigation Committees shall engage with Ministries who are unwilling to release land[16]; and 15 points to guide operations of the State/Regional level Reinvestigation Committees, such as frequency of meetings, suggestions for note taking, etc. The March 2018 guidelines also require the State/Regional Committees to assign full-time staff to the Reinvestigation Committees, which may be an important step in light of the severe time lags and transactional costs involved in the Committees' work to date.[17]

The Reinvestigation Committee policies do not explicitly exclude nor include claims from conflict-displaced IDPs; however, anecdotal evidence suggests that even in post-conflict areas, the Reinvestigation Committees are not operating or have been instructed not to accept cases relating to armed conflict.[18]

[14]In April 2017 the Central Committee provided 8 additional points of guidance in an internal memo to the lower level committees as to how to decide compensation, return, and prioritization of cases.

[15]The three guiding policies regarding military land grab 1. The military shall confiscate only the land the military unit needs according to its size of unit. And the land military confiscated shall neither be sharecropped to any civilians nor shall be set up a joint-venture. 2. The military and its units shall take after calculating and measuring the minimum size of land needed actually for security and training grounds. The extra land shall be released as soon as possible in line with procedures and rules to the government in order to be returned to affected original farmers. 3. With regards to the grabbed land not connecting with the military unit area, except from the part being directly applied for the military matters, the rest land shall be released to the government to be returned to original farmers.

Farmers planting rice in Eastern Bago

Challenges

As evidenced by the Central Committee's recent formation of four geographically- focused Monitoring Groups to investigate the procedures and activities of Committees in all States/ Regions,[19] the Committees have not yet performed as hoped. This section highlights some key challenges in the current system, and where applicable, implications for individuals having claims resulting from conflict-caused displacement.

1. Released land does not necessarily return to the original owner

Under Article 3 of the Reinvestigation Committee Policy, land can be returned in any one of three ways: a) releasing/ transferring grabbed land to the State; b) returning land to the original farmer or those who had the land use permission prior to the current user's acquisition; c) transferring the land to other

[16] *In Myanmar, the term "release" is used to describe the return of land to the State and the cancellation of a use permit. Released land can then be returned to an "original user," leased to another party, or held by the State for future use.*

[17] *Pierce and Htun, 2017; Analysis on Implementation of Land Reinvestigation Committee: Lessons Learnt [sic] from Irrawaddy Region (Than Lwin: December 2017)*

[18] *Gendered experiences of land confiscation in Myanmar: Insights from Eastern Bago Region and Kayin State, (Saferworld: Forthcoming 2018).*

ministries or organizations that need to use the land. According to some members of Reinvestigation Committees, Article 3 is the main obstacle to original users receiving back land.[20]

Option (c) in particular poses a challenge to original users receiving land as it implicitly treats all land as first and foremost belonging in the public domain and available for use. It allows current users and/or the government to prioritize secondarily the rights that original users might have under the VFV Law, Land Acquisition Act, or Natural Disaster Law, which includes "conflict" as a type of natural disaster.

2. The Reinvestigation Committee, courts, and Land Management Bodies have overlapping mandates

There are currently three different venues that claimants can pursue to try to seek restitution: the Reinvestigation Committees, courts, or the Land Management Bodies. Many of the personnel in the Reinvestigation Committees overlap with those involved in the Land Management Bodies, but there are no clear procedures for referring cases between these different bodies as a formal matter.[21] Anecdotal evidence suggests that in some cases, investigations by officials are based on Farm Land Administration policy instead of Reinvestigation Committee Policy, when the latter might be more appropriate to the case. [22]

This is a grey area of law and policy. The Farmland Law gives final authority to the Farmland Management Body system to decide any disputes related to farmland and has an associated suite of policies and practice for doing so.[23] There is currently no executive order or legislation that gives primacy to the Reinvestigation Committees or associated policies. Often due to the long periods of time that have elapsed since land was confiscated and the multiple transfers that may have

[19] *Notification no. (1/2018) of the Land Acquisition Reinvestigation Central Committee dated 13 Feb 2018.*

[20] *Thanlwin 2017.*

[21] *Pierce and Htun, 2017.*

[22] *Thanlwin 2017.*

[23] *Finality clauses in the Farmland Law and Vacant, Fallow, Virgin Land Laws, which vest final dispute resolution authority in the administrative bodies are unconstitutional, but nevertheless persist.*

occurred in the interceding years, both the Reinvestigation Committees and the Land Management Bodies may be implicated in different parts of the case, but there is no clear guidance on how to apply both sets of policies to cases such as these.

3. Myanmar law does not have a clear definition of "public purpose"

Myanmar law does not provide a definition of "public purpose" for land use and land acquisition. The 1894 Land Acquisition Act allows the government to acquire land for "public purpose" or for use by a private company, but does not define these uses in greater detail. Legitimacy of acquisitions and current land use, including "public purpose" are at the core of the Reinvestigation Committee Policy's guidance on what factors should be considered in assessing current claims and possible remedy (Annex I). A lack of further definition allows the government great leeway in retaining land or allowing companies to do so.

4. GAD chairs all committees at the sub-national level, which may disadvantage women and IDPs

Government officials particularly GAD and DALMS (formerly SLRD) fill key roles in sub-national level Reinvestigation Committees, including as Chair of committees. In some instances these same individuals may have been part of the original confiscation and displacement process, which weakens trust in the outcomes of the Committee decisions. In other instances these officials do not have the time or resources to devote to conducting rigorous investigations, given their other legally required duties.[24] GAD involvement also means that the Reinvestigation Committees are comprised almost entirely of men, which may have implications for women's accessibility and claims.[25]

[24] *Pierce and Htun, 2017; Thanlwin, 2017.*

[25] *Women and Local Leadership; Leadership Journeys of Myanmar's Female Village Tract/Ward Administrators (UNDP: 2015).*

[26] *Walking Amongst Sharp Knives, (Karen Women Organization: February 2010).*

Farmers in Hpa An, Kayin State (José Arraiza/NRC)

At the village tract level, the VTA chairs the Committee. The VTA has historically exerted great influence over many facets of residents' life in Myanmar, though has taken somewhat different roles in conflict-affected and Dry Zone areas.[26] In accordance with the 2012 Ward and Village Tract Administration Law, constituent villages now elect the VTA, making it the only position within the GAD system that is elected. One of the requirements of being VTA is to have lived continuously in the village tract for at least 5 years.[27] While this is an improvement over the past and is important to ensure that individuals who fill such powerful positions understand the needs and people in their constituency, it does continue to exclude recently-returned IDPs or refugees from the VTA position until after they have lived in their village of origin for at least five years.

5. Requirements for documentation may disadvantage communities in conflict-affected areas

The Reinvestigation Committee Policy formally recognizes that a respected elder's testimony may substitute as evidence of previous ownership when documentation is not available. This is a positive step and not reflected in other legal rules in Myanmar. Nevertheless research suggests that in both the Land Management Bodies and the Land Reinvestigation Committees, claims without accompanying land use documents (such as tax receipts, Form 7, etc.) take up to twice as long to process as those with documentation and may face additional discrimination.[28]

Conflict-affected and displaced communities may be particularly unable to produce documentation of land ownership due to a suit of factors: cultural practices related to customary tenure is not traditionally documented by the Government of Myanmar; if individuals did hold land documents, they may have been lost or left behind when displaced by conflict; ethnic communities who do not speak Burmese may have faced language barriers to securing documentation, as all land administration in Myanmar is conducted in Burmese. Women may be further disadvantaged by this requirement, as most land documents are only in a male head of household's name.[29]

[27] *The 2016 Amendment to the W/Village Tract Administration Law reduced the residency requirement for VTA candidates from 10 to 5 years.*

[28] *Caitlin Pierce and Nyi Nyi Htwe, Evidence is not sufficient to secure land rights in Myanmar: Impartial and Transparent Procedures are Critical, (Namati: January 2017); Pierce and Htun, 2017.*

[29] *Caitlin Pierce and Nant Thi Thi Oo, Gendered Aspects of Land Rights in Myanmar, (Namati: April 2016)*

Recommendations

Overall, the Reinvestigation Committee provides some useful principles for restitution in Myanmar: formal involvement of non-governmental actors, guiding principles for how to assess cases, and an effort to localize investigation responsibilities. However, more needs to be done. Several research and policy briefs cited in this article have outlined detailed recommendations for how the Reinvestigation Committees could be strengthened.[30] Below recommendations are proposed to complement those and offer an additional specific focus on how a national restitution system could be strengthened to better accommodate conflict-caused displacement.

"Public purpose" needs to be defined and used in a more limited and specific way. The vague but legally powerful term "public purpose" allows government actors to retain significant amounts of land for which communities or individuals may have valid claims. This is problematic for all claimants, and may be particularly so for conflict-affected claimants, as a broad exercise of "public purpose" doctrine would allow Myanmar government to retain territorial influence in post-conflict areas. In light of the current process to draft a new Land Acquisition Act, the establishment of the National Land Use Council, and new Investment Law, now is an opportune moment for broad consultations on what "public purpose" should mean in Myanmar.

Investigations and claims processes should be expanded to not only include individual title claims, but also communal and customary land arrangements. The National Land Use Policy recognizes communal and customary land arrangements as valid land tenure systems and practices in Myanmar. These tenure systems are particularly prevalent in ethnic areas. The Reinvestigation Committee Policy permits elder testimony to be used to identify a "rightful person" to receive the land, which is a positive step forward from sole reliance on documentation. However, restitution policy needs to go further and recognize that the land may belong to more than one individual, for which there is not yet a recognized documentation system in Myanmar.

[30] *Namati (June 2017); LIOH et al (December 2017); Thanlwin (December 2017)*

Committees charged with assessing restitution claims should be co-chaired by government and non-government actors. This could take different forms in different areas. In areas that have not experienced conflict, a Farmer's Representative or CSO member may be an appropriate co-chair. In conflict- affected areas, a member of an EAO might appropriately fill that role. Ultimately political will at the highest -levels is necessary to secure the return of land; however, ensuring that the investigations done at the local level are seen as legitimate and take into account multiple-perspectives is equally important.

Appendix

Ten guiding policies with regards to the application against land grabs by the original or rightful ownners" (21 March 2018)

To investigate and resolve only land grab cases happened after 1988.

If the land confiscated by government and institutions and was leased out to private companies and individuals is found not being used accordingly or is found the intended project unsuccessful, it is to be returned to original/rightful owners who can show document or who can prove ownership legally or who is recommended as the rightful person by respected community elder though lacking official document.

For the grab land transferred to departments according to law and is being applied for the sake of the country and public, in order to continue using without need to release, original owners shall be compensated at current market price.

For the land grabbed not in line with law as well as not being applied for the sake of the public (the country), it is to be returned to original owners who can show document or who can prove ownership legally or who is recommended as the rightful person by respected community elder though lacking official document.

For the land grabbed not in line with law but being applied for the sake of the public (the country), granting proper compensation to original/ rightful owners must be arranged by departments or organizations

currently holding land. And those departments or organizations must arrange to receive official land use certificate.

With regards to land use certificate for the land returned to original/ rightful owner, Granting certificate shall be arranged as per 2012 Farmland law if it is farmland.

Although land was used other way, if the land can also be applied as farmland for rightful owner, category of other way shall be repealed.

If it is the land unable to develop or use as farmland, it shall be arranged as per laws and by-laws as per the land's capability or usability, If it is other type of land except from farmland, relevant governing ministries or organizations shall proceed as per law and by-laws to grant document.

For cases in which compensation had been granted yet improperly and original/rightful owner reclaiming to receive more compensation, as it had been settled according to the then value, the then-decision will be final. However for those who denied to accept the compensation at the time of grabbing, releasing land or paying compensation at market value shall be arranged by the organization that took land or by the state/regional government or by Naypyitaw council.

With regards to matters happening on the ground and difficult to handle/ resolve, sub-committees in each level shall do examining and analyzing series of cases, and take instructions/guideline from Central land investigation committee and if in need seek decision from the union cabinet.

With regards to land grabbed for urbanization and industrialization, the state/regional government shall hold the 3 points meeting/talk/negotiations with permitted companies, land owners or farmers and the government and lead negotiations to get a fair resolution not affecting both sides.

With regards to land grabbed not in line with laws and regulations but grabber successfully attempted to have official land use documents such as La Na -39, Form 105 and Form-7, state/regional government shall arrange to issue revoking orders and arrange to return lands to original/rightful owners.

Rubber plantation workers in Hpa An Township, Kayin State (José Arraiza/NRC)

DOMESTIC LEGAL CHALLENGES TO INCLUDING RESTITUTION RULES IN MYANMAR LAW (SHAUN BUTTA)

In Myanmar agriculture is the backbone of the economy and claiming housing, land and property rights is key to securing people's livelihoods. In recent years development agencies and local non-government organisations in Myanmar have played an important role in advocating for and supporting the formulation and implementation of legal and policy reforms to secure housing, land and property (HLP) restitution rights. Beneath this nascent land rights movement lies a history of widespread land grabs by the previous military junta (1962-2010), which saw the destruction of livelihoods, the marginalisation of rural labour and a significant growth in social inequality.[31] In recent years, increased attention has been paid to the gendered implications of land confiscations and the significant legal and other obstacles that remain to securing women's HLP restitution rights.

Formal rights to housing, land and property have become a key feature of women's empowerment movements in the Global South.[32] Current

debates over HLP rights and the importance of recognising customary communal tenure in Myanmar offer an opportunity to advocate for more equitable land and resource distribution. Conceptualising rights to land in a framework of legal pluralism,[33] this paper details the major hurdles women face in securing HLP restitution rights in Myanmar.

Key to this is the question of what a genuine restitution process might look like in Myanmar and how gender might be integrated into it. It demonstrates how women in Myanmar face unique issues to claiming HLP restitution rights as a result of discrimination they face within formal and customary land tenure arrangements, their lack of resources as small-scale farmers, and their limited participation in local governance institutions. It is argued that changes to state law and legislation are instrumental to increasing gender parity. In addition, it highlights how concerted political action is required to prevent the legal appropriation of customary communal lands which only deepens gender inequality in access to and control over resources. It concludes by providing recommendations as to how policy makers, non-government organisations and donors can advance land reform struggles so as to better target women and achieve gender justice.

[31]In this paper 'Land grab' refers to instances in which the state or other powerful actors make people relinquish their land involuntarily. This includes land which is under formal and informal (especially customary) tenure.

[32]See for example Agarwal, B. 1994. A field of one's own: Gender and land rights in South Asia (Cambridge: Cambridge University Press); Agarwal, B. 2003. 'Gender and land rights revisited: Exploring new prospects via the state, family and market' Journal of Agrarian Change 3, no. 1–2: 184–224; Food and Agriculture Organization of the United Nations (FAO) 2013. "Governing Land for Women and Men: A Technical Guide to Support the Achievement of Responsible Gender-Equitable Governance of Land Tenure." Governance of Land Tenure Technical Guide. http://www.fao.org/docrep/017/i3114 e/i3114e.pdf accessed 26 September 2018; Razavi, S. 2003. "Introduction: Agrarian Change, Gender and Land Rights." Journal of Agrarian Change 3(1–2): 2–32. United Nations Working Group on the Issue of Discrimination against Women in Law and in Practice (UNWGDAW). 2017. Insecure Land Rights for Women Threaten Progress on Gender Equality and Sustainable Development. Available at: http://www.ohchr.org/Documents/Issues/Women/WRGS/Womenslandright.docx.

[33]For more details on mixed administered arrangements see Jolliffe, K. 2015. Ethnic Armed Conflict and Territorial Administration in Myanmar (Yangon: Asia Foundation).

[34]In cases where confiscated land has already been developed, it was announced that affected farmers should receive adequate compensation.

Women's HLP Rights in Myanmar

In 2010 Myanmar embarked on an ambitious political and economic reform process. As part of the reforms, the then President Thein Sein announced in 2012 that the nominally civilian government would investigate and return underdeveloped lands forcibly seized by the military and compensate others that were affected (1988-2010).[34] Simultaneous to this, the new Farmland Law came into effect, followed by the Vacant, Fallow and Virgin Land Management Law, both of which aimed to develop business opportunities in the agricultural sector under President Thein Sein's reform agenda. These new laws set the rules regarding access to land and conditions of its use. Based on a pre-existing system of user-based rights,[35] the distribution of Land Use Certificates (LUCs) to farmers was implemented to legalise land use rights and the transfer of land title. However, these laws permit the state to use compulsory acquisition to acquire land for public purposes and development interests. As a result, land under both formal and customary tenure remains highly vulnerable to appropriation by the state, ethnic armed organizations (EAOs) and commercial interests, leaving ordinary people with very limited levels of security of tenure and legal protections against arbitrary displacement.

[35]According to the 2008 Constitution, while individuals receive land use rights, the state remains the ultimate owner of all lands. Article 37 of the Constitution stipulates that the Union of Myanmar "is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union."

[36]See Htet Naing Zaw & Aye Kyawt Khaing. 2013. Military Involved in Massive Land Grabs: Parliamentary Report. The Irrawaddy, 5 March. Available at https://www.irrawaddy.com/news/burma/military-involved-in-massive-land-grabs-parliamentary-report.html (accessed 26 September 2018); Radio Free Asia. 2016. 'Farmers in Myanmar's Bago Region Protest Land Grabs by Army' Burma Link, 6 July. Available at https://www.burmalink.org/farmers-myanmars-bago-region-protest-land-grabs-army/(accessed 26 September 2018);

[37]See for example Human Rights Watch (HRW). 2016. 'The Farmer Becomes the Criminal': Land Confiscation in Burma's Karen State (Washington DC: Human Rights Watch); HRW. (2018). 'Nothing for Our Land': Impact of land Confiscation on Farmers in Myanmar (New York: Human Rights Watch); Karen Human Rights Group (KHRG). Losing Ground: Land Conflicts and Collective Action (Chiang Mai, Thailand: Karen Human Rights Group); KHRG. 2015. 'With only our voices, what can we do?' Land Confiscation and Local Responses in Southeast Myanmar (Chiang Mai, Thailand: Karen Human Rights Group); Mark, Siu Sue, 'Are the Odds of Justice "Stacked" Against Them? Challenges and Opportunities for Securing Land Claims by Smallholder Farmers in Myanmar', (2016) Critical Asian Studies 48, no. 3: 443-460; Namati and Landesa. 2015. Recommendations for Implementation of Pro-Poor Land Policy and Land Law in Myanmar: National Data and Regional Practices (Yangon: Namati); Transnational Institute. 2013. Access Denied: Land Rights and Ethnic Conflict in Burma, Burma Policy Briefing Nr. 11 (Yangon: Transnational Institute).

Over the last five years, there has been a widespread movement led by farmers and land activists in Myanmar to demand the return or compensation for appropriated land under the previous military government and to prevent further land grabs by the state and other powerful interests.[36] Alongside these movements, development organisations and civil society based initiatives have played an important role in promoting and supporting the formulation and implementation of legal and policy reforms in an effort to secure people's access to HLP rights. Much of the literature examining HLP rights in Myanmar focuses on the sheer scale of land alienation that occurred under the military regime, the lack of restitution and its resultant impacts on people's livelihoods.[37] Increasingly there has also been an explicit focus on gender equality and strengthening women's land rights research on how policies and regulatory frameworks can better target women to mitigate the detrimental effects of land alienation.[38]

In Myanmar women face significant legal and obstacles to securing housing, land and property (HLP) restitution rights. While women are not a homogenous group, and their experience differs according to their wealth, ethnicity, marital status, education level and geographical location, there are distinct gendered challenges that need to be better addressed in the development of land policies and restitution frameworks. The equality of men and women is enshrined in Myanmar's constitution. Myanmar's 2012 land laws also uses gender neutral language and the National Land Use Policy which passed in January 2016 provides provisions to ensure women and men have equal rights in practice to own and manage land.[39] However, there is a major discrepancy between these legal frameworks, their policy and regulatory design and how they are implemented on the ground.

[38]See for example See Eshbach, L., and Louis, E. 2016. Assessment of the Gender Dimensions of Land Use and Tenure in Yway Gone Village Tract, Minhla Township. Washington, DC: USAID Tenure and Global Climate Change Program; Faxon, H. 2017. 'In the law and on the land: Finding the female farmer in Myanmar's National Land Use Policy,' The Journal of Peasant Studies, 44(6): 1197-1214; KHRG. 2016. Hidden Strengths, Hidden Struggles: Women's Testimonies from Southeast Myanmar (Mae Sot, Thailand: Karen Human Rights Group); Namati. 2016. 'Gendered aspects of land rights in Myanmar: Evidence from Paralegal Casework' https://namati.org/wp-content/uploads/2016/03/Namati-Gender-policy-brief-FINAL-1.pdf (Accessed December 2016). Oxfam. 2014. Delivering lessons from Myanmar's Dry zone: Lessons from lessons from Mandalay and Magwe on realizing the economic potential of small-scale farmers. Yangon: Oxfam; Transnational Institute. 2015. Linking women and land in Myanmar: Recognising Gender in the National Land Use Policy. Yangon: Transnational Institute.

Farmer in Mrauk U, Rakhine State (Jose Arraiza/NRC)

Across Myanmar, agriculture is the backbone of millions of people's livelihoods and women play a key role as farmers in the cultivation of crops, vegetables and the negotiation of access to land. Despite women's crucial contribution to agriculture and family food security, across Myanmar women are less likely to be listed on ownership documents and face systematic discrimination in their access to, ownership of and control over land and its productive use. In Myanmar, women face systematic discrimination in socio-cultural and politics relations, impacting their ability to participate at all levels of government and in the development of regulatory frameworks around HLP rights.[40] This is reflected in government data and the fact that there are no women administrators in the country's 330 townships.[41] Women are also poorly represented as Village Tract Administrators and on farmland management committees which play a key role in the current restitution process set up by the government.[42] In addition, village-level decision-making bodies are often dominated by men and may restrict women's involvement entirely according to patriarchal customary practices. According to Namati, a legal empowerment NGO which works on land rights in Myanmar, of the more than 2,000 clients the organization has assisted with land registration, 80 percent have been men.[43] Research by Hilary Faxon, a technical adviser to the Gender Equality Network, also shows that

[39]*Pierce, C. 2016. 'Myanmar Risks Leaving Women Behind.' The Diplomat, 4 April. Available at: https://thediplomat.com/2016/04/myanmar-risks-leaving-women-behind/ (accessed 26 September 2018).*

[40]*Faxon, H. O. 2015. The Praxis of Access: Gender in Myanmar's National Land Use Policy. BRICS Initiatives for Agrarian Studies; Faxon, H. O. 2017. 'In the law and on the land: Finding the female farmer in Myanmar's National Land Use Policy,' The Journal of Peasant Studies, 44(6): 1197-1214. GEN (Gender Equality Network). 2014. Towards gender equality in the National Land Use Policy. Transnational Institute (TNI). (2015). Linking Women and Land in Myanmar: Recognising Gender in the National Land Use Policy. Yangon: (Transnational Institute)*

[41]*See Kyi Pyar Chit Saw and Matthew Arnold. 2014. 'Administering the State in Myanmar: An Overview of the General Administration Department' Discussion Paper No. 6. Yangon, Myanmar: The Asia Foundation: pg. 17.*

[42]*Minoletti, P. 2014. Women's Participation in the Subnational Governance of Myanmar. Subnational Governance in Myanmar Discussion Paper Series, Discussion Paper No. 3. MDRI/CESD & The Asia Foundation. Minoletti, P. (2016). Gender (In)equality in the Governance of Myanmar: Past, Present, and Potential Strategies for Change. The Asia Foundation, UKAid, & Australian Government Department of Foreign Affairs & Trade; United Nations Development Programme (UNDP). (2015). Women and Local Leadership: Leadership Journeys of Myanmar's Female Village Tract /Ward Administrators. Yangon: UNDP.*

[43]*Namati. 2016. Gendered Aspects of Land Rights in Myanmar: Evidence from Paralegal Casework (Yangon: Namati). Available at https://namati.org/wp-content/uploads/2016/03/Namati-Gender-policy-brief-FINAL-1.pdf (accessed 26 September 2018).*

significant gender bias was also reflected in conversations regarding the drafting and review of the National Land Use Policy in 2014-2015. Furthermore, the negotiation of restitution claims is further complicated by the fact that most of the past land-grab cases involve powerful men who sometimes sit as administrators on boards, committees and in lower levels of government regulating HLP restitution rights. In addition, while laws in Myanmar grant women equal rights in practice, the rights of many women are governed by customs that do not afford them equal access to or control over land.[44]

Social norms and customary practices which restrict ownership and participation in decision making make it difficult for women to secure HLP rights if their land is appropriated by the state or community. While Land Use Certificates were introduced in 2012 as a mechanism to bring more security of tenure to ordinary citizens, in reality these new laws have left people and women, in particular, vulnerable to land insecurity and arbitrary land confiscations. Because of the recent nature of these reforms, the evidence to date is fragmentary. However, preliminary research suggests that women are losing out in the process of formalisation and are particularly vulnerable in areas where customary communal land management is practiced.[45]

From a gender perspective, land titling in Myanmar has a male bias, granting women rights primarily through a father, husband, brother or

[44] *See Eshbach, L., and Louis, E. 2016. Assessment of the Gender Dimensions of Land Use and Tenure in Yway Gone Village Tract, Minhla Township. Washington, DC: USAID Tenure and Global Climate Change Program; Faxon, H. 2017. 'In the law and on the land: Finding the female farmer in Myanmar's National Land Use Policy,' The Journal of Peasant Studies, 44(6): 1197-1214; Namati. 2016. 'Gendered aspects of land rights in Myanmar: Evidence from Paralegal Casework' https://namati.org/wp-content/uploads/2016/03/Namati-Gender-policy-brief-FINAL-1.pdf (Accessed December 2016). Oxfam. 2014. Delivering lessons from Myanmar's Dry zone: Lessons from lessons from Mandalay and Magwe on realizing the economic potential of small-scale farmers. Yangon: Oxfam; Transnational Institute. 2015. Linking women and land in Myanmar: Recognising Gender in the National Land Use Policy. Yangon: Transnational Institute.*

[45] *See Faxon, H. 2017. 'In the law and on the land: finding the female farmer in Myanmar's National Land Use Policy,' The Journal of Peasant Studies, 44(6): 1197-1214; GEN (Gender Equality Network). 2015. Raising the curtain: Cultural norms, social practices, and gender equality in Myanmar. Yangon. http://raisethecurtain.org.; Namati. 2016. Gendered aspects of land rights in Myanmar: Evidence from Paralegal Casework. https://namati.org/wp-content/uploads/2016/03/Namati-Gender-policy-brief-FINAL-1.pdf (Accessed December 2016). Oxfam. 2014. Delivering lessons from Myanmar's Dry zone: Lessons from lessons from Mandalay and Magwe on realizing the economic potential of small-scale farmers. Yangon: Oxfam. TNI (Transnational Institute). 2015. Linking women and land in Myanmar: Recognising Gender in the National Land Use Policy.*

son. Although current laws allow women to own land, social norms and customary practices mean that land is often registered in the name of the "head of household" and authorities often discourage joint titling.[46] Even in matrilineal societies where land ownership is common amongst women (eg. Karen), it is difficult for women to voice their concern about decisions predominantly made by men, including village leaders, government officials, and company representatives. Furthermore, as research by Faxon suggests, women's implicit exclusion from the category of 'farmer' undermines the value of their labour and their participation as valued decision makers.[47] Ensuring legal tenure for women is further exacerbated in areas under dual administration between the government and EAOs.[48] More needs to be done to proactively empower women to protect, document, and steward their HLP rights.

In recent years, an explicit gender focus has begun to emerge in the land-rights movement. Much of this focuses on the need for capacity building and the importance of access to land knowledge, social relations and political processes is key to empowering women and securing HLP rights. Preliminary research shows that men consistently have much greater access to information on land related policies, laws and procedures. Where men seek information from newspapers, government offices and NGOs, women are more likely to get their information from neighbours and community members. Women are also less likely to directly seek the assistance of government authorities or offices when they have an issue related to their HLP rights. Ethnic minority women in particular, face further vulnerabilities due to low levels of female literacy and where government offices are perceived as male spaces for the majority Bamar ethnic group. At a time when Myanmar faces increasing pressures from agribusiness, logging and mining ventures, this is especially important in communities where people practice customary communal land tenure.

Without formal recognition or documentation, women's HLP restitution rights in areas under customary tenure are highly vulnerable. While property rights are evolving toward more formalised systems due to new laws implemented in 2012, to simply focus on land title belies the complexity of land tenure in Myanmar. Underpinning much of the advocacy in Myanmar around land reforms is the assumption that individual ownership and land titling can help to empower people and secure their HLP rights. However, as has been demonstrated in other contexts, recognition of customary tenure on a collective and individual basis is also

Farmers in Hpa An, Kayin State

recognised as a key element in efforts to ensure gender equality with respect to HLP rights.[49]

Since the political and economic reforms in Myanmar commenced there have been increasing concerns about HLP rights in relation to land appropriation for development purposes in ethnic minority states in particular where customary communal tenure is widespread. While the 2016 National Land Use Policy allows for the recognition of customary land use tenure, this is yet to be implemented in legal and legislative frameworks. As it stands, the state is able to use compulsory acquisition to acquire land for public purposes and development interests under the 2012 Vacant, Fallow and Virgin Land Management Law. In recent years investment and related land grabbing has increased dramatically in areas of Myanmar where people practice customary communal tenure, especially in the areas of agribusiness, mining, hydroelectric dams and infrastructure development projects. These areas of Myanmar are often endowed with significant reserves of natural resources and have become a site of increased attraction for natural resource extraction. Taking a political economy analysis, Kevin Woods, for example, argues that land deals reflect that agro–food–energy systems are becoming in-

tegrated and globalized under the dominance of wealthy corporations.[50] In negotiating these deals, regulatory and policy frameworks favour powerful companies and foreign investment over communal and family rights to land.

Research indicates that ethnic minority people in Myanmar face an uphill struggle navigating the extremely complex, costly and time-consuming processes in getting customary communal land rights recognised.[51] Laws and policies in Myanmar regulating land are sometimes conflicting or inconstant, leaving loopholes that companies can exploit to acquire land more quickly. This is even more complicated in conflict affected communities where armed actors and powerful businessmen are able to take advantage of a lack of transparency and accountability as land deals are negotiated, implemented and enforced and monitored. In this context, the outcomes and impact of land concessions are likely to be gendered.

Research in other contexts shows that the recognition of customary communal land tenure is vital for women to securing their livelihoods.[52] This includes access to valuable natural resources including edible wild plants, clean water, firewood and medicinal plants – all of which are important to women's poverty status and the family's food security. Land concessions given to powerful companies in areas previously used and maintained under customary communal law also negatively impact on family food security as women's agricultural activities are displaced. Furthermore, in contexts like Myanmar where corruption is common and rule of law weak, poor women are more likely to face violence from male officials in their claims to protect land rights.[53]

[50] *Woods, K. 2015. Commercial Agriculture Expansion in Myanmar: Links To Deforestation, Conversion Timber, and Land Conflicts. Washington, DC: Forest Trends; Woods, K. 2018. 'Rubber out of the ashes: locating Chinese agribusiness investments in 'armed sovereignties' in the Myanmar–China borderlands' Territory, Politics, Governance; Scurrah, N., Hirsch, P., & Woods, K. 2015. The Political Economy of Land Governance In Myanmar. Mekong Region Land Governance (MRLG).*

[51] *Ewers, K. 2016, The Recognition of Customary Tenure in Myanmar (Vientiane: Mekong Region Land Governance)*

[52] *Julia Behrman, Ruth Meinzen-Dick & Agnes Quisumbing (2012) The gender implications of large-scale land deals, Journal of Peasant Studies, 39:1, 49-79.*

[53] *Faxon, H.O, Furlong, R., & Sabe Phyu, M. (2015). 'Reinvigorating Resilience: Violence Against Women, Land Rights, And The Women's Peace Movement In Myanmar.' Gender & Development, 23(3), 463- 479.*

National Policies and Inputs for the Promotion of Gender Equality

Women's command over housing, land and property is a key path towards women's security and empowerment.[54] It is important to recognise that while women fare particularly poorly with regards to securing HLP rights, in Myanmar the consequences are also typically poor for men. However, considering the following recommendations should be central to efforts to promote gender equality with respect to land tenure as part of ongoing land governance reform in Myanmar.

1. Stronger legal provisions for Gender in Housing, Land and Property Restitution Rights

In Myanmar, amendments to the 2012 Farmland Laws to allow joint registration of agricultural land and monitoring mechanisms should be advocated for. Without addressing the gendered issues associated with land titling, current registration processes are likely to result in a formalized gender imbalance in legally-held land rights. These trends have the potential to have serious long-term consequences for women as legal rights and claims are increasingly enforced in Myanmar. As part of this process, laws should be revised to ensure clear and accessible mechanisms for women in seeking HLP restitution rights. Participatory and gender-equitable land use planning needs to be implemented at all levels of government and in the development of land-related laws, policies and programs. In addition, local land regulation bodies should be given training about the importance of women's HLP rights and specific provisions made to increase women's representation within land administration institutions and councils.

[54] *Agarwal, B. 1994. A field of one's own: Gender and land rights in South Asia. Cambridge: University Press; Agarwal, B. 2014. 'Food security, productivity, and gender inequality.' In Oxford handbook of food, politics, and society, edited by Ronald J. Herring, 273–300. Cary, NC, USA: Oxford University Press; Berhman, J., R. Meinzien-Dick, and A. Quisumbing. 2012. The gender implications of large-scale land deals. Journal of Peasant Studies 39, no. 1: 49–79; World Bank. 2012. World development report on gender equality and development. Washington, DC: World Bank.*

Farmer in Hpa An Township, Kayin State (Jose Arraiza/NRC)

2. Building on What's There: Empowering Women as Activists and Agents of Change

With limited prospects for legislative reform from above, policy makers and donors should also look to build pressure from below and enable women to better secure HLP restitution rights. Since the beginning of reforms in Myanmar, the country has seen a flourishing of civil society and land activist networks which are gaining strength through collective action to protect land rights. Female land rights activists have been key players in mobilising and articulating concerns related to HLP rights in Myanmar. In order to confront the historical marginalisation of women, those interested in supporting gender equality should focus on supporting resistance efforts of grassroots female activists and enabling women to better serve their communities as experts, educators and trainers. Support for legal literacy programs, for example, can help to increase co-ownership. In particular, there needs to be better support made concerning women's abilities to exercise voice and to serve as community leaders in conflict-affected communities where these concerns are further exacerbated.

3. Recognition of Customary Communal Land Tenure

The formal recognition of customary communal land tenure has the potential to play a key role in guaranteeing women's HLP rights in Myanmar. Amendments to the 2012 land use laws should be revised to recognise customary land use tenure systems as stated in the 2016 National Land Use Policy. While patriarchal social relations can pervade customary laws and tenure in many parts of the Myanmar, there is strong evidence to suggest that women are more able under these systems to claim their rights.

4. Research

In literature on HLP restitution rights in Myanmar there is growing attention to the unique challenges women face. However, funding needs to be more clearly targeted at research so as to provide a more comprehensive picture of the gender implications of land grabs in different areas of Myanmar. In particular, process-oriented approaches should be considered outlining the responsibilities of various sets of key actors for prioritising gender equality.[55] This data can be used to build stronger laws and policies to protect women's HLP rights.

[55] *See for example Behrman, Julia, Ruth Meinzen-Dick, and Agnes Quisimbing. 2011. "Gender Implications of Large-Scale Land Deals." International Food Policy Research Institute Discussion Paper 01056. http://www.ifpri.org/sites/ default/files/publications/bp017.pdf.*

Rubber plantation workers in Hpa An Township, Kayin State (José Arraiza/NRC)

DOMESTIC LEGAL CHALLENGES TO INCLUDING RESTITUTION RULES IN MYANMAR LAW (SHAUN BUTTA)

1. OVERVIEW

The Republic of the Union of Myanmar government must address the issue of restitution in Myanmar in order to secure a just and lasting peace with the ethnic armed organisations (EAOs), contribute to transitional justice and facilitate the sustainable return and reintegration of populations displaced by decades of conflict. Given the legal challenges ahead, this will not be easily accomplished. However, with a ceasefire and political resolution which takes restitution principles seriously, the requisite political will and some legislative adaptations, the building blocks of a successful restitution scheme are not impossible to achieve.

Myanmar's legal framework already contains some of the principles and legislative building block required for the formation and implementation of a restitution process.[56] In addition to these components, those responsible for the eventual process of restitution should be guided

by the internationally recognised Pinheiro Principles[57], as well as best practices from prior restitution processes.[58] The design of restitution processes in Myanmar should also draw on any processes with contextual similarities (legal pluralism, federalism, customary land management practices etc) as well as given full consideration to any Myanmar specific characteristics.[59]

With those principles to guide the process, the domestic legal challenges to incorporating restitution into the Myanmar legal system need to be assessed by looking at the legal challenges which exist within the three arms of government.

[56]*Land laws lack conflict sensitivity, and only the Disaster Management Law addresses conflict as an issue to be addressed by administrators. However, this law is yet to be interpreted in such a way – it should not be relied upon as providing the legal basis for addressing displacement or restitution.*

[57]*Centre on Housing Rights and Evictions, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons: The Pinheiro Principles, 2005.*

[58]*See for example, International Organisation for Migration, Property Restitution and Compensation: Practices and Experiences of Claims Programs, 2008; Displacement Solutions and Norwegian Refugee Council, Restitution in Myanmar: Building Lasting Peace, National Reconciliation and Economic Prosperity Through A Comprehensive Housing, Land and Property Restitution Program, March 2017; Displacement Solutions and Norwegian Refugee Council, A Framework for Resolving Displacement in Myanmar: The United Nations 'Pinheiro Principles' on Housing and Property Restitution for Refugees and Displaced Persons, March 2017.*

[59]*International Human Rights Clinic, Resolving Land Disputes Through Restitution Mechanisms: A Comparative Analysis of Country Case Studies, Chicago Law School, 2017.*

2. Legislative Challenges

2.1 The Constitution

The 2008 Constitution is the basis of the entire legal system. Its provenance and construction is problematic, as is the result of only having a 'quasi-democratic' governance structure. One of the essential problems which it presents is the combined issue of military representation in civilian government, alongside the process for amendment.[60] Given the unlikelihood of amendment in the near future, those seeking to implement restitution laws will need to draw on the present provisions of the Constitution which protect HLP rights, of which there are a considerable number. Most relevantly;

Reference	Articles
Constitution 2008	347. The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.
	348. The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.
	355. Every citizen shall have the right to settle and reside in any place within the Republic of the Union of Myanmar according to law.
	356. The Union shall protect according to law movable and immovable properties of every citizen that are lawfully acquired.
	357. The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.

[60] *Currently, it is very difficult to amend without military support; Constitution of the Union of the Republic of Myanmar 2008, Chapter XII, Amendment of the Constitution, s436(a).*

372. The Union guarantees the right to ownership, the use of property and the right to private invention and patent in the conducting of business if it is not contrary to the provisions of this Constitution and the existing laws.

381. Except in the following situations and time, no citizen shall be denied redress by due process of law for grievances entitled under law:

(a) in time of foreign invasion;
(b) in time of insurrection;
(c) in time of emergency.

2.2 Federalism

The issue of federalism is set to be an enormous challenge to restitution laws. The structure and substance of ceasefire deals with EAOs and the resulting political dialogue is likely to revolve around the issues of natural resource management, administrative structures and implementation of Union-level and EAO land law and policy. Whereas central government has not addressed restitution at the legislative level as yet (apart from the NLUP), the EAOs have already begun to roll-out land policies which address the issue of restitution specifically (see Annex IV for more details). EAO demands for a federal governance structure as part of any ceasefire/ political process may mean that restitution will need to be considered in the context of a dual legal system. As an example, questions such as 'how will a national restitution law and mechanism apply in post-ceasefire EAO controlled territories?, will have to be answered. Based on EAO negotiating positions till now, there is reason to believe that some groups will not be seeking integration between EAO administration and central government, but will lobby to maintain administrative control of territory and implement EAO land policies, while recognising customary ownership and land management practices.

2.3 Current Land Law and Dispute resolution mechanisms

Several legal challenges to incorporating restitution into Myanmar law are posed by current land legislation.

Farmer in Mrauk U, Rakhine State (Jose Arraiza/NRC)

2.3.1 The majority of land considered for restitution is likely to be agricultural land which falls under the classification of Farmland or Vacant, Fallow and Virgin Land.

These two types of land are often the targets of land grabbing. The laws establish that the administration, including dispute resolution, for such land currently falls under the mandate of the Farmland Administration Bodies and the Vacant, Fallow and Virgin Land Management Committees.[61] A restitution law would need to remove the jurisdiction for dispute resolution from these bodies. This would clearly require legal amendments to the current laws and rules/regulations for their implementation. Alternatively, if the Farmland Law and Vacant, Fallow and Virgin Land Law operate simultaneously with a restitution law, jurisdiction for dispute resolution over farmland/ VFV land would have to be reserved to a restitution mechanism, set up under a restitution law, for cases related to restitution, rather than simply for those cases involving issues of boundary disputes or registration issues etc.

[61] *Farmland Law 2012, Chapter VI, Duties and Authority of the Central Farmland Administrative Body, s17(a); The Vacant, Fallow and Virgin Lands Management Law 2012, Chapters VIII-X.*

2.3.2 Current land laws are not conflict sensitive

Current laws do not take into consideration the effect of conflict and displacement on the ability of the citizen to protect HLP rights while in displacement. The laws focus on productivity of land and suggests the potential for reclassifying land that has been left fallow without a 'sound reason'.[62] The law should explicitly state that forced displacement constitutes a 'sound reason'. A future restitution law needs to reflect conflict sensitivity and the situations the hundreds of thousands of mostly rural citizens which have been displaced throughout the country. The approach should be to look at HLP restitution as a rights-based activity focused on protection and equitable remedies, as opposed to the current law, focuses on capitalisation of land, punishing vulnerable members of the community and discriminating against them on the basis of status, which is unconstitutional.[63]

2.3.3 Dispute resolution provisions within the law are unconstitutional

Issues with the constitutionality of the Farmland law in particular, strengthens the reasoning for removing the jurisdiction for dispute resolution for restitution cases from the Farmland Administration Bodies (FABs), to an independent restitution mechanism. According the Farmland Law, appeals are available up to the State level, after which decisions are final. The lack of appeals from State-level FAB decisions is arguably unconstitutional according to the Constitution 2008; Article 11 – separation of powers, Article19 b) – judicial independence and right of appeal, and Article 381– rights of due process.

Restitution of HLP assets for displaced populations is made more complicated with every piece of land seized illegally by government, the military and companies. The provisions in the legal framework, however, have not resulted in a system which protects the interests of small land-holders, and have failed to provide recognition of customary land management systems (ownership and shifting cultivation). The legal provisions therefore, are leading toward greater, not less land confiscation

[62] *Farmland Law 2012, Chapter IV, s12)i).*

[63] *Constitution of the Union of the Republic of Myanmar 2008, s348.*

and conflict. This will naturally lead to a jurisdictional conflict between a restitution law and the dispute resolution mechanisms already present in laws such as the Farmland Law and the Vacant, Fallow and Virgin Land Law.

As such, a future restitution law will have to make provisions for a restitution mechanism to clearly assume the jurisdiction for resolving such conflicts at the expense of current administrative bodies (see Executive/Administrative section for more details).

2.4 Customary land management practices

Customary land management practices, in particular communal ownership and shifting cultivation (shwe pyaung taungya) must be recognised within any restitution law as valid forms of prior tenure and use. Currently, these concepts are being ignored within Union-level legislation. Although a National Land Law is being drafted currently and should theoretically follow the NLUP (which does recognise customary land management practices[64]), it remains to be seen how the NLL will reconcile the competing conceptions of productive land use between the Union-level laws and the EAO land policies, which explicitly recognise these types of customary land management practices. It may be a potential challenge for the drafters of a restitution law to incorporate these concepts (typically viewed as being connected to ethnic land use and not elements of a productive land management system), into a restitution law which is supposed to be constructed and implemented from central level.

2.5 Legislative Drafting

Myanmar has a peculiar mixture of verbose, inscrutable legislation left over from the colonial era, mixed with modern land legislation that is drafted so loosely that its interpretation places far too wide a discretion in the hands of those administering the law. This would not be such an issue were it not for the fact that land-grabbing in Myanmar has been so prevalent historically. The discretion provided for administrators to interpret the law, combined with the lack of judicial

[64] *The Republic of the Union of Myanmar, National Land Use Policy 2016, relevant sections – Shifting agriculture: s29(d), s53, s70. Communal Ownership: s7(d), s16(e).*

oversight of administrators guaranteed by finality clauses, is a lesson for the drafters of restitution laws to consider. One remedy will be addressed by including referral to the judiciary in difficult cases and the other will be to draw on legal draftspersons (rather than parliamentarians, as sometimes happens) in order to craft appropriate, well-considered legislation.

3. Executive/Administrative Challenges

In Myanmar, the jurisdiction of land administration and dispute resolution has moved from the courts to administrative bodies, constituted by members of various departments.[65] In terms of resolving long term grievances over land, this has proven to be an abject failure.[66] Incorporating restitution into Myanmar law will require an honest appraisal of what is at stake if land grievances are not remedied in a fair and transparent manner in future, and the elements which have hampered past efforts. This will mean abandoning old models of non-transparent, inefficient, corrupt and under-funded administrative bodies and instituting a restitution law and mechanism with real decision-making power, independence and resources.

3.1 Authority and Independence of Bodies

A key legal challenge of incorporating restitution will be the drafting of a law which can establish a statutory body, rather than further administrative committees, such as the entirely ineffective Rescrutinisation of Confiscated Land and Other Lands Committee. Two critical elements of a restitution mechanism will be authority and independence.[67]

[65] *This has been part of a trend since Ne Win's socialist era to undermine the judiciary, for more see Nick Cheesman, Opposing the Rule of Law: How Myanmar's Courts Make Law and Order, Cambridge University Press 2015, 90.*

[66] *The President's office in April 2017 reported that only 212 cases out of 3,980 received had been resolved by the Rescrutinisation of Confiscated Land and Other Lands Committee, for example. Republic of the Union of Myanmar President's Office, 'VP U Henry Van Thio attends meeting of committee on confiscated farmlands' accessed online at http://www.president-office.gov.mm/en/?q=briefing-room/news/2017/04/01/id-7452.*

[67] *Author's own research in Kachin State and Shan State.*

Farmers in Hpa An Township, Kayin State (José Arraiza/NRC)

3.1.1 Authority

The current trend of administration in Myanmar is to create bodies at the central level and replicate them down through the administrative structures to the village-tract level. These committees however, do not have sufficiently decentralised powers, and result in a top-down hierarchical decision-making structure. This model needs to be abandoned, not only in relation to the normal administration of land, but specifically in any restitution mechanism. A well-functioning restitution mechanism will need complete independent decision-making authority, preferably with some level of decentralisation, to avoid the inefficiency and reliance on state-level and above decision-making, which has paralysed the present administration bodies.

3.1.2 Independence

Given the military's history of involvement with land-grabbing, restitution mechanisms are not going to function well unless they can be free of military interference. Additionally, military connections to private companies are likely to further hamper restitution efforts. Independence is potential legal issue which needs to be resolved through the correct constitution of bodies involved in restitution decisions; specifically, this means excluding the GAD from the decision

-making process (though not necessarily excluding them from positions within restitution bodies completely). Research suggests that the influence of the GAD and connections to the military have had some role to play in inhibiting the proper functioning of existing dispute resolution mechanisms.

3.2 Mandate/Jurisdiction

As mentioned above, a legal challenge to adopting restitution into the legal framework, will be to provide any mechanism with a strong, clear mandate for the types of disputes will be addressed. This mandate will necessarily mean taking some of the cases which are now being handled by the FABs, the VFV Committees and the Rescrutinisation of Confiscated Land and Other Lands Committees. In practice, this means removing some of the decision -making and control of the GAD, in order to gain full independence and authority to follow-through with the return of HLP assets to their rightful owners, or gaining in-kind or monetary compensation as appropriate. This is likely to be fought vigorously by the GAD and military, and may even be opposed on Constitutional grounds. If this cannot be achieved through the restitution law as a first step, the likelihood of success will be diminished significantly.

3.3 Resource issues (budget/records)

A well-resourced investigative body is critical to the success of restitution efforts. Much can be learned from the lack of funding which currently inhibits the work of administrative bodies, which have no independent budget to perform investigations or correct records at the speed necessary.[68] Independent staff, with salaries, offices, administrative resources, vehicles etc will all be essential. Such specificity will need to be part of the restitution law.

[68] *Author's own research in Kachin State and Shan State.*

3.4 Referral paths to the judiciary

As noted above, the 2008 Constitution guarantees the right of every citizen to challenge administrative decisions. In recent legislative history, this right has been denied, however a restitution mechanism needs to reinstate the jurisdiction of the judiciary to handle complex cases which prove too difficult to resolve through a restitution mechanism. Preferably, the forthcoming national land law will re-establish the precedent for such a dispute resolution pathway, by amending current land laws to reflect the ultimate authority of the judiciary to interpret Myanmar law.

3.5 Current laws which should protect citizens' land rights (like the Land Acquisition Act 1894 [LAA]) are not followed in practice

The LAA is meant to protect the citizen's interest in land in cases where that land must be acquired by the state for public purposes. Analysis of the text reveals strong theoretical protections for citizens[69], however, these have not been followed in practice. Research shows that people are rarely paid for losses, or when they are at far less than market rates. Currently, the obligation rests on the government to calculate and deliver compensation, however when that does not occur, there is no avenue for the citizen to compel a government official to perform their duties (or to stop a particular action). This means there although the LAA has provisions available which open an avenue for a court decision in contested compensation claims, these are not used in reality. Further, the lack of court acceptance of the prerogative writs (the primary tools for administrative law in other legal systems), means that there are no checks and balances which regulate the administrative actions of the executive, through the oversight of the judicial branch.

This historical lack of compliance and enforcement of the law needs to be addressed in a restitution law, by providing the requisite powers alluded to earlier, along with a method of compelling/sanctioning authorities which do not perform certain duties.

[69] *LAA 1894 protective provisions: Notification of government intention to acquire land; s6(1), objections to acquisition; 5A(2); compensation requirements; s11(2), availability of court jurisdiction in dispute resolution; 18(1), among others.*

3.6 Records

Land records are still in the process of being updated across the country since the advent of the 2012 land laws. While incomplete/inaccurate records is likely to seriously undermine restitution efforts, a second issue is the lack of documentation in general across the population. Many rural populations have never bothered with documentation, especially in areas where land is held under customary land tenure systems (which require no documentation).[70] As a legal issue, a restitution law will need to take account of the evidentiary issues which are likely to be faced by such populations (particularly for the long term displaced/returning refugees) and incorporate an achievable standard of evidence as proof of prior ownership and use of HLP assets. The current land laws are actually laudable for their acceptance of witness testimony in lieu of documentation when recognising de facto land use rights.

4. Judicial

The judiciary has been an important factor in many previous restitution schemes. Usually the role of the judiciary is to be a last resort for any restitution cases which prove too difficult for a restitution mechanism to handle. The challenges of incorporating restitution into the legal framework are both theoretical and practical. Once a restitution law is drafted and provisions are added which reserve to the judiciary the ultimate jurisdiction for complex cases and appeals, practical matters will likely surface.

[70] *Author's own research in Kachin State, Shan State, Mon State, Irrawaraddy Division and Rakhine State.*

4.1 Knowledge and training

A restitution scheme is likely to put strain on the judicial system in a variety of ways. Judicial officers assisting a restitution mechanism would need to be well-versed in the restitution law and the operations of the mechanism and processes of making claims etc. Knowledge of the Pinheiro Principles would also be of assistance to decision-makers. Judicial officers hearing complex and appeals cases referred to the judiciary will need all of the above knowledge plus what is normally required in administrative, property, acquisition, inheritance, etc, cases. In previous restitution efforts, such as Bosnia, Kosovo, Iraq and others, well-trained judicial officers were available to staff a mechanism, and to work on the judicial side[71]; this may not prove so easy in Myanmar. This is really a question of capacity, however, it is closely related to legal challenges and should be considered.

4.2 Transparency

Despite its common law history, Myanmar has not been systematically recording judicial decisions.[72] This lack of transparency may be a symptom of the military era; however, the situation would need to change if a restitution process is to be successfully and transparently instituted. This means both the restitution mechanism and the courts' decisions on cases would need to be made public. Parties need to know by what criteria decisions are made and they need to be able to access public information. These elements are crucial to rule of law principles and would be a remedy to years of secrecy and corruption which, have facilitated land-grabbing by those in positions of power.

[71] *Jose-Maria Arraiza, and Massimo Moriati, 'Getting the Property Questions Right: Legal Policy Dilemmas in Post-Conflict Property Restitution in Kosovo' (1999-2009) International Journal of Refugee Law, Vol 21 Issue 3, 422.*

[72] *International Commission of Jurists, Handbook on Habeas Corpus in Myanmar, 2016, 22.*

4.3 Independence

To operate correctly as a check on legislative and executive power, the judicial branch must be able to function without influence or interference by the other branches of government. It may be assumed from evidence of recent trials involving the military, that the courts are still intimidated or influenced by military/government pressure.[73]

5. Conclusions

The various legal challenges described above are by no means insurmountable. Domestic legislation already provides for a raft of protections for HLP rights, and a restitution law and process need to build on these and to highlight constitutionally enshrined rights for civilians, prior to leaning on international law and provisions. With the legal system already providing the building blocks for restitution, the question of enforcement and compliance may become the greater issue. This too is a legal challenge, in that the drafting of a law and the provisions for the formation of the various mechanisms (and composition of members) must result in an independent, well-resourced and transparent mechanism accompanied by the requisite decision-making power.

[73] *Recent trial of the Reuters journalists and the 2017 arrest and initiation of procedures against Irrawaddy journalist Lawi Weng, being cases in point. Also see International Commission of Jurists, Myanmar: Country Profile, prepared by the ICJ Centre for the Independence of Judges and Lawyers, June 2014, 6-25; International Commission of Jurists, Right to Counsel: The Independence of Lawyers in Myanmar, 2013, 2.*

Karen IDP village in Kyaukkyi Township, Eastern Bago Region

ETHNIC ARMED ORGANISATION RESPONSES TO RESTITUTION ISSUES IN MYANMAR (SHAUN BUTTA)

4.1 Overview

The previous six years in Myanmar have focused attention on land issues, as successive governments have made efforts to reform the legislation around land management. The Farmland Law 2012 and the Vacant, Fallow and Virgin Land Management Law 2012 appear to be aimed at capitalising land and making land use more productive (in the government's eyes), by formalising land use through a form of titling at the same time as maintaining tight control over the use rights granted. Despite the government's focus on land, there has been no effort to make the land laws conflict sensitive, despite the huge numbers of IDPs across the country. Nor is there a comprehensive policy on IDPs (generally, and in relation to IDP land).

While the new laws have enjoyed relative acceptance in the central lowlands, they have created controversy in the ethnic upland regions. Analysis of the land laws can be divided into two categories:

- The purpose and text of the laws
- The administration of the laws

4.1.1 Purpose and text

The purpose of the aforementioned laws appears to be prioritisation of productivity over sustainability, by favouring large agro-business interests and intentionally not recognising customary land management practices.[74]

The actual text of the Farmland Law 2012 creates several legal issues in ethnic areas. Ethnic farmers in upland areas throughout the country rely on shifting agriculture.[75] Shifting agriculture, can be used on individual or communally held land, usually entails leaving part of the parcel fallow, sometimes for years on end, so the land can regenerate nutrients. This practice however, is not recognised by the Union government as a legitimate form of farming, as it is seen as unproductive.[76] The government's position therefore causes two interrelated problems. Firstly, the law doesn't recognise shifting cultivation and therefore a Land Use Certificate cannot be issued over such plots.[77] Secondly, land cannot be left fallow without a sound reason. If land is classified by land administrators as fallow, this may open the path for such plots to be re-classified as vacant, fallow or virgin land and granted to others for use.

Another feature of remote farming communities in ethnic areas is the recognition of communal ownership of land. This type of communal tenure is not recognised in the Farmland Law, which discriminates against such communities and prevents their ability to both continue traditional practices and protect their land in the formal system. Moreover, customary dispute resolution practices (ostensibly arbitration by elders, village-heads etc), are not recognised within the formal system.

[74] *Transnational Institute, Access Denied Land Rights and Ethnic Conflict in Burma, Burma Policy Briefing Nr 11 May 2013,1.*

[75] *Kirsten Ewers Andersen, Study of Upland Customary Communal Tenure in Chin and Shan States Outline of a Pilot Approach towards Cadastral Registration of Customary Communal Land Tenure in Myanmar, Land Core Group, September 2015, 23; Ethnic Community Development Forum, Our Customary Lands: Community-Based Sustainable Natural Resource Management in Burma, July 2016, 27.*

4.1.2 Administration

The administration of the 2012 laws is as important as the laws themselves, especially in ethnic areas, where conflict induced displacement remains such a problem. In 2018, renewed conflict in Kachin, Shan and Kayin have led to further displacement, which in turn has left IDP lands untended.[78] As mentioned above, the Farmland Law is drafted without consideration of the 635,000 IDPs throughout the country which originate primarily from ethnic areas.[79] Specifically, the laws fail to specify what entails a 'sound reason' for leaving land fallow.[80] This allows a discretion for administrators not to recognise conflict-induced displacement as a sound reason to leave land fallow and open that land to VFV grants. In some areas, the lack of historical enforcement of land law and requirements for documentation, has led to use of the VFV laws to facilitate land-grabbing by the military, EAOs and foreign companies.[81] Exacerbating these situations is the corruption that underpins much of the country's land administration.

Finally, the administration of land through the FABs and the VFV Committees and the Rescrutinisation of Confiscated Land and Other Lands has systematically failed to remedy the historical land-grabbing which has been a constant over the previous decades.[83]

The points below summarise some of the outcomes of land law implementation since 2012;

- Uptake of LUCs throughout the central lowlands, less in ethnic uplands
- No decrease in land-grabbing
- Failure to resolve historical land grabs (military, government, companies)

[76] *Author's interviews with Township FAB authorities in Bhamo, Kachin State.*

[77] *Land Use Certificates issued to farmers under the Farmland Law recognises use rights and impose obligations, see Farmland Law 2012 s9a)-b) and Farmland Law Rules, s14.*

[78] *UNOCHA, Myanmar: Civilians displaced by fighting in Kachin/Shan 2017-18, 1 Jun 2018, accessed online https://reliefweb.int/map/myanmar/myanmar-civilians-displaced-fighting-kachinshan-2017-18-31-may-2018-enmy; UNOCHA, Myanmar: Humanitarian access in Kachin and northern Shan (July 2018), 9 Jul 2018, accessed online https://reliefweb.int/report/myanmar/myanmar-humanitarian-access-kachin-and-northern-shan-july-2018; VOA, Conflict Resumes in Karen State After Myanmar Army Returns, May 31, 2018, accessed online https://www.voanews.com/a/conflict-resumes-in-karen-state-after-myanmar-army-returns/4417421.html.*

[79] *IDMC Country Information, Myanmar, as of 31 December 2017, accessed online http://www.internal-displacement.org/countries/myanmar.*

- Inefficient and corrupt administration
- Failure to address customary land management practices (shifting agriculture/communal tenure/customary dispute resolution)
- Failure to address lack of conflict sensitivity in the law

The failures of the land laws and their subsequent administration have sent a clear signal to EAOs that the efforts of the Union government to address historical land injustices are either one of, or some combination of, the following;

- Not genuine
- Undermined by military/GAD
- interference
- Incompetent

Whatever the real reason behind the lack of success in remedying land injustices, it is clear to EAO groups (both NCA signatories and non-signatories) that land restitution is not going to be addressed by the Union government, or at least not through existing mechanisms.[83] Some EAO negotiators also feel that EAOs are being strong-armed on land issues by the government in recent Panglong meetings, because the government is better prepared, whereas the EAOs have not previously had a comprehensive plan and vision for how land and natural resources should be managed and administered in their areas of control.[84]

As a result, some EAOs have begun to prepare for future negotiations by preparing comprehensive land policies, which will allow them to bring greater leverage to bear in peace negotiations, as well as protect customary land in future. Some of the key elements in these policies are the efforts to recognise customary practices and to provide specific solutions to the issue of restitution.

[80] *Farmland Law 2012, s12i), and Farmland Law Rules, s53c).*

[81] *Human Rights Watch, Nothing for Our Land: Impact of Land Confiscation on Farmers in Myanmar, July 17, 2018, accessed online https://www.hrw.org/report/2018/07/17/nothing-our-land/impact-land-confiscation-farmers-myanmar; Myanmar Times, Malaysian company accused of abuses in Tanintharyi, 24 November 2017, https://www.mmtimes.com/news/malaysian-company-accused-abuses-tanintharyi.html.*

4.2 Primary Responses

Land Policy

The Karen National Union was the first EAO to recognise that having a land policy is a critical negotiating strategy for dealing with the Union government. It is through the land policy that the KNU have outlined their response to the government's lack of action on restitution issues.

The populations in the southeast where the KNU have fought against the Tatmadaw and various iterations of central government over the decades, have been characterised by massive displacement, both internally and across the border into Thailand.[85] Further, land-grabbing by a range of actors (military, militia, government, companies) over the decades has deprived traditional land owners of their livelihoods. This has particularly been the case in relation to infrastructure projects, natural resource extraction, failed government agricultural schemes and militarisation.[86]

As a response to land rights abuses in their regions, the KNU released a comprehensive land policy in December 2015. The policy must be described as a progressive, rights-based approach to land, which takes into consideration customary land management practices (shifting cultivation and communal tenure, specifically), gender and sustainable resource use.

[82]Human Rights Watch, Nothing for Our Land: Impact of Land Confiscation on Farmers in Myanmar, July 17, 2018, accessed online https://www.hrw.org/report/2018/07/17/nothing-our-land/impact-land-confiscation-farmers-myanmar; Amnesty International, Myanmar: Military land grab as security forces build bases on torched Rohingya villages, 12 March 2018, accessed online https://www.amnesty.org/en/latest/news/2018/03/myanmar-military-land-grab-as-security-forces-build-bases-on-torched-rohingya-villages/; Myanmar Times, Myanmar farmers are still waiting for their confiscated land and justice, 20 July 2018, accessed online https://www.mmtimes.com/news/myanmar-farmers-are-still-waiting-their-confiscated-land-and-justice.html; VOA, Myanmar Legacy of Land Confiscations by Military Persists, 26 July 2018, accessed online https://www.voanews.com/a/myanmar-legacy-of-land-confiscations-by-military-persists/4501164.html; RFA, Myanmar Army Will Not Return Seized Lands in Shan, Rakhine States: Deputy Defense Minister, 20 June 2018, accessed online https://www.rfa.org/english/news/myanmar/myanmar-army-will-not-return-seized-lands-06202018160749.html.

[83]It remains to be seen what will come of the National Land Law drafting process. Although the National Land Use Policy has progressive elements including recognition of customary practices and provisions regarding restitution, these must be drafted into law and approved by parliament before they can be analysed.

[84]Author interviews with EAO NCA negotiators.

The land policy is diametrically opposed to the 2008 Constitution which states in Article 37 that the Union is the owner of all land in Myanmar. The KNU policy instead states in Article 1.1.1 that the ethnic nationalities are the owners of all land and natural resources in Kawthoolei.[87] This statement is the foundational statement for the rest of the policy in terms of customary ownership and usage. Furthermore, this article explains and justifies the latter provisions on restitution; if Karen people are the owners of all land, it therefore follows that restitution of that land is a just remedy for being forcibly displaced from such land.

Critically, it contains specific provisions relating to restitution, which are outlined in the table below.

KNU Land Policy 2015
Article 4.2 Restitution

Article 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.
Article 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.

[85] *UNHCR estimates that there are around 140,000 IDPs and Refugees originating in Kayin State, see Kayin State Profile June 2014, http://data.unhcr.org/thailand/regional.php.*

[86] *See KHRG, Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar, 2014; Human Rights Foundation of Monland, Disputed Territory: Mon Farmers Fight Against Unjust Land Acquisition and Barriers to their Progress, October 2013; Tom Kramer and Kevin Woods, Financing Dispossession: China's Opium Substitution Program in Northern Burma, Transnational Institute, 2012.*

[87] *The Karen name for Karen lands.*

Article 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 Land Committee, will decide on an appropriate alternative with consensus from local authorities and village community of those impacted.

Article 4.2.4 The Government 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 befacilitated by the KAD and the Land Committee at the township level, in consultation with local customary authority and the returning IDPs and refugees being restituted.

Article 4.2.5 The Government 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 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.

Article 4.2.6 Government 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.

The KNU have chosen to adopt the internationally recognised guiding principles on restitution outlined in the Pinheiro Principles.[88] Further analysis is required to understand the following types of questions;

- How well do the Pinheiro Principles, which are based on western, private property models of housing, land and property rights, apply to areas of KNU territory where customary land management practices are dominant? For example, evidentiary issues may arise in systems where documentation of ownership is not present.
- Is compensation to be contemplated where alternatives are not available?
- Will the policy be applied as is, or will the policy provisions become some form of law?
- What form will a restitution mechanism take?
- What will happen to those who do not return? In customary systems where presence is a key factor in ownership/use rights, this may affect those remaining in Thailand and elsewhere, or who were resettled etc.

Despite such concerns, the KNU are to be commended for making a genuine attempt at addressing the issue of restitution for their populations. It is clear that land restitution is understood by the KNU to contribute to the goals outlined in the preamble of the land policy, including; access to livelihoods, sustainable use of resources, social cohesion, promotion of human rights. These are stated as goals for Karen State within a decentralised Federal system of government.

Although no information has been made publically available, other ethnic groups are following the KNU's lead. The KIA has already completed a draft of a land policy for Kachin State, which is currently awaiting approval by the KIO Central Committee. The policy is said to mirror closely the elements of the KNU policy, in that it will provide recognition of customary land management practices including shifting agriculture and communal tenure. The policy is also likely to address the issue of restitution within Kachin State. This is especially important given that land-grabbing in Kachin since the outbreak of renewed fighting in 2011 has increased significantly.[89]

Apart from the KIO, the RCSS is also working on development of a land policy which will focus on the areas of Shan State occupied by the Shan ethnic groups. The policy will not initially incorporate the other areas of Shan State including the Self-Administered Zones. Comprehensive research on customary land management practices has already been completed by civil society groups across Shan State to inform the policy. Restitution issues will also be addressed in the policy.

The NMSP has also begun work on a land policy for Mon State, though it is not clear as yet what progress has been made.

[88] *Centre on Housing Rights and Evictions, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons: The Pinheiro Principles, 2005.*

[89] *Frontier Myanmar, Kachin IDPs fear land grabs in the villages they once called home, 19 January 2018, accessed online https://frontiermyanmar.net/en/kachin-idps-fear-land-grabs-in-the-villages-they-once-called-home; Myanmar Times, Chinese banana plantations flourish as villagers lose their land in Kachin, 22 June 2018, accessed online https://www.mmtimes.com/news/chinese-banana-plantations-flourish-villagers-lose-their-land-kachin.html.*

Farmer in Hpa An, Kayin State (José Arraiza/NRC)

Karen IDP village in Kyaukkyi Township, Eastern Bago Region

ADDRESSING MYANMAR'S UNSETTLED RESTITUTION GAP (JOSÉ ARRAIZA)

Myanmar farmers who were dispossessed in the past need an effective remedy. This includes displaced persons who lost the possession of their lands due to the violence of the civil wars in Kachin, Shan, Karen, Mon and other States – or anywhere else in the country. Myanmar as a country needs also a land restitution process to move on from its civil war and land grabbing legacy. Unfortunately, neither the Peace Process bodies nor the Myanmar Land Use Council or recent legal reforms are offering clear, effective solutions. In fact, there are a considerable number of housing, land and property grievances which if unaddressed will continue to hamper efforts towards democratisation and development. Why is this restitution gap not being solved and what could be done about it?

The need for solutions (that is, effective legal remedies) to unlawful land dispossession (be it as a consequence of displacement, land grabbing –irregular expropriations–, non-recognition of customary land rights or a combination) is grounded in strong moral, legal and political reasons. Morally, Myanmar's farmer women and men need to be able to trust the

institutions that serve them, and to believe that these will realistically bring some form of justice. Legally, both domestic and international applicable legislation (including the 2008 Constitution and the International Covenant on Economic, Social and Cultural Rights, ratified by Myanmar in 2017) oblige the State to protect housing, land and property rights. Politically, restitution (restoring the statu quo ante, giving the land that was taken back or compensation in lieu of) is needed to draw a clear line between the abuses of the past and the promises of a more democratic future. It is needed to cement a much-needed peace with the Ethnic Armed Organisations (EAOs).

At the moment, however, restitution is barely an afterthought in Myanmar's legal and political reform processes. Restitution is mentioned in the 2016 National Land Use Policy, but is hardly a priority in the discussions of the National Land Use Council which is supposed to help develop and implement a promising national land law.[90] The most recent legal reforms (amendments to the Vacant, Fallow and Virgin Lands law and proposed amendments to the Farmland Law and the Land Acquisition Act) do not advance the need for a remedy, but rather the contrary. In fact, the amendments have the potential to criminalize a large number of land users and threaten the peace process.[91] The Amendments to the VFV Law risk disproportionately punishing farmers with legitimate rights and do not offer clear customary tenure protections.[92]

Similarly, the 2018 Draft Land Acquisition Act's unclear remedies and urgent acquisition provisions, inter alia, are regressive and do not improve its 1894 predecessor. Indeed, the overall trend is to facilitate land acquisition by powerful forces and to sanction or ignore the small farmers who suffer from or oppose this process. Land laws at present are not empowering the poor and thus require a new start, a rights-based reset. A solid restitution framework would be a cornerstone for such an overhaul.

[90] *The National Land Use Council was formed on 17 August 2018. Notification No. 15/2018 – Formation of National Land Use Council, 17th of January, 2018.*

[91] *Letter of concern regarding implementation of the Vacant, Fallow and Virgin Lands Management Law (2012) as Amended by The Law Amending the Vacant, Fallow and Virgin Lands Management Law (2018), available at: https://reliefweb.int/report/myanmar/41-civil-society-ogranisations-call-myanmar-government- suspend-controversial-land-law*

[92] *Earth Rights International, "Proposed Amendments to the Vacant, Fallow and Virgin Lands Management Law". Art. 27, The Law Amending the Vacant, Fallow and Virgin Lands Management Law (2018), Earth Rights International, "Myanmar 2018 Draft Land Acquisition Act – Key Issues".*

Tellingly, the Myanmar Peace Process is in essence institutionally disconnected from the Myanmar National Land Use Council, as if land law reforms and the search for peace were not related.[93] Internally, the peace process debate is stifled by a bureaucratic structure which seems to avoid controversial topics or pointing towards institutional reforms. The "five gates" of the peace process do not leave much room for substantive discussion.[94] For example, it is unclear how the ten land related points of the May 2017 Pydaungsu Accord (Second Panglong Conference) are to be implemented in practice.[95] How will the agreed balanced land policy relate to the National Land Use Policy? Such essential questions are not making it to the agenda of the Union Joint Peace Committee (UJPDC) or the National Land Use Council. Or at least, not yet.

Some Reasons Behind the Restitution Gap

Restitution has been a key feature for diverse peace processes and as part of political transitions in many countries.[96] It is an attractive process because it helps societies affected by civil wars, undemocratic regimes and other periods of widespread human rights violations to move forward. It addresses grievances that otherwise would end up creating further tensions. Restitution processes allow for unheard voices to be listened to. Restitution mechanisms can address massive numbers of claims in a way in which the regular judicial system and administration would never be able to. Examples of such healing power can be found in places such as Bosnia and Herzegovina, where two million people were displaced, internally or abroad as refugees, by the conflict. There, the restitution mechanism, known as the Commission for Real Property Claims (CRPC) provided 90% of claimants displaced by the conflict binding rights on their pre-conflict properties. As of 1999, the CRPC had processed 200,000 claims and released 80,000 decisions and, by 2003, over one million displaced persons had returned to their pre-conflict homes.[97]

[93] *During the launch of the National Land Use Policy Forum (2-3 October 2018), it was announced that the Technical Advisory Group of the National Land Use Council will include some representatives of the Peace Process, nominated by the National Peace and Reconciliation Center.*

[94] *The "five gates" are the national political dialogue, the thematic working groups, the Union Peace Joint Dialogue Committee Secretariat, the Union Peace Joint Dialogue, the Peace Conference and the Parliament. See Karen Peace Support Network, "Burma's Dead-End Peace Negotiation Process: A Case Study of the Land Sector" (2018), 12.*

In Myanmar, the number of persons affected by wrongful dispossession (be it as a consequence of abusive administrations or conflict) is certainly massive.[98] A substantive, well-informed discussion on how to address such claims looking at examples such as the above would be useful.

Overall, the lack of a robust response to the problem of land loss as a consequence of irregular expropriations and forcible displacement may be explained by a) the nature of Myanmar's transition, b) the prioritization of development over justice and c) the status of Myanmar's civil wars and the Peace Process.

a) Myanmar's transition: The 2008 Constitution and "stacked" property laws

The Myanmar transition towards democratic governance has its ceiling in the 2008 Constitution, which limits devolution of power to civilian rule. Arguably, the 2008 Constitution contains sufficient basis for the establishment of an adequate restitution programme to give farmers and IDPs their land back. It does recognise, inter alia, the right to property and to due process of law.[99] The fact that Article 37 of the Constitution refers to the State as the ultimate owner of real estate is often referred to as a Burmese peculiarity and even used to explain abuses of power over natural resources. In reality, virtually all states retain the ultimate and sovereign right over the land, exercised ultimately through eminent domain. Owners are rarely, "absolute" owners. Myanmar's constitutional recognition of property rights, although imperfect, (if read through rule of law lenses) should not be underestimated.

[95] *Pyidaungsu Accord, Land and Natural Resources Sector Agreement, 29 May 2017.*

[96] *Examples of restitution processes can be found in the recent history of countries such as Afghanistan, Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Colombia, Estonia, Georgia, Germany, Iraq, Kosovo, Romania, Rwanda, South Africa, South Sudan, Tajikistan and elsewhere.*

[97] *"Resolving Land Disputes through Restitution Dynamics: A Comparative Analysis of Country Case Studies", University of Chicago School, International Human Rights Clinic (2017), 35.*

[98] *Kevin Woods points to more than 5.2 million acres of land being confiscated. Woods, K. "Commercial Agriculture Expansion in Myanmar: Links to Deforestation, Conversion Timber, and Land Conflicts". Forest Trends Report Series. March 2015*

[99] *Articles 356-7, 372, 381, 2008 Constitution of the Republic of the Union of Myanmar.*

[100] *SiuSue Mark, Are the Odds of Justice "Stacked" Against Them? Challenges and Opportunities for Securing Land Claims by Smallholder Farmers in Myanmar, 48:3 Critical Asian Studies (2016), 443-460. Roquas, E. (2002) Stacked Law: Land, Property and Conflict in Honduras. Amsterdam: Rozenberg.*

Indeed, the various property and fair trial rights recognized in the Constitution could be a significant source of hope if it was not for the fact that the rest of the legal framework is far from consistent with such rights. In all, it is a collection of "stacked laws": multiple layers of laws that exist simultaneously, creating conflicts and contradictions in the legal system, as well as challenges to creating a well-functioning system.[100] These collection of more than 70 laws create altogether a legal environment where disempowerment, dispossession and legal uncertainty are the dominant trends.[101] As Scott Leckie has pointed out "viewed as a whole, therefore, the legislative framework governing land acquisition is skewed disproportionately in favour of the State, the military and companies with close relations or otherwise favoured by these entities, and pays virtually no attention to the rights of people and communities whose lands may be of interest to those seeking to acquire it".[102] The fact that the 2008 Constitution entrenches politically actors which have an interest in maintaining the statu quo of the land risks hampering efforts towards restitution. The EAOs fear discussing solutions which fall within the constitutional framework, as this could threaten their negotiating position towards federalism and further reforms to the political organisation of the state.

b) Prioritisation of large-scale development over land justice

Since the opening of the land market to private investment by the State Law and Order Restoration Council (SLORC) from 1988 up to the present, the priority has been large scale agricultural and industrial development.[103] The opening of Myanmar's land market to foreign investment has been the legislative priority, as shown most recently by the 2012 Farmland Law and the 2012 Vacant, Fallow and Virgin Lands Management Law and subsequent amendments. The priority has not been addressing the myriad of claims created by the past land grabs and forcible displacement, but rather an elite-inclined version of development with a poorly disguised disregard to the rights of actual users and customary land systems.

[101] *Displacement Solutions, Land Acquisition in Myanmar, Law and Practice (2015), 8.*

[102] *Ibid. 15.*

[103] *In 1988, with its decision to move to a market economy, the State Law and Order Restoration Council (SLORC)3 passed the "Wasteland Instructions" in 1991 as a step to make "vacant land" available for private investment in agriculture production. "Midcourse Maneouvres: Community Strategies and Remedies for Natural Resource Conflicts in Myanmar", Centre for Policy Research and Namati (June 2018).*

Public demands for land justice forced the governments to take steps to remedy this imbalance. The promise of restitution within the new legal framework was introduced by the U Thein Sein government (2010-2015) through a Parliamentary Land Investigation Commission (PLIC) which was then replaced by a Central Land Grab Reinvestigation Committee during the National League for Democracy government (April 2016-present). The PLIC received thousands of land grab cases; however, its mandate was simply to investigate and advise the Central Land Use Management Committee, as Parliament had no jurisdiction to solve such cases.[104]

The coming of the NLD to power brought life to the promise of "giving back the land" to dispossessed farmers. The NLD established the Central Land Grab Reinvestigation Committee. On May 5, 2016, the President's Office established a Central Reinvestigation Committee for Confiscated Farmlands and Other Lands, hereafter referred to as the Central Land Grab Reinvestigation Committee (CRC), and for lower level Reinvestigation Committees (RCs).[105] The mandate of the CRC was "to urgently address the land-grabbing issues for the people so that they do not face losses of farmland and other lands in the Republic of the Union of Myanmar."[106] The promise of the CRC included the notion that no further irregular land taking would take place and that the job would be finished within six months.[107] Problematically, there was no clear guidance on claim intake, and all levels of committees were able to take claims regardless of potential repetitions. No clear guidance was available often on basic procedural matters, enforcement powers or budgetary issues, and this severely affected its effectiveness.[108]

[104] *Caitlin Pierce, "Obstacles to Restitution in Myanmar: Experiences from two Investigation Committees" (2018).*

[105] *Union of Myanmar President Office order letter No. 14/2016 issued on 5th May 2016. It should be noted that documents, publications and translations referring to this committee often use different names for it. Some of them include: the "Central Committee for Rescrutinizing Confiscated Farmlands and Other Lands", the "Central Committee for Reviewing Confiscated Farmlands and Other Lands", the "Central Committee on Confiscated Farmlands and Other Lands", the "Central Land grab Reinvestigation Committee", the "Land Reinvestigation Committee" and the "Land Grab Committee".*

[106] *Letter No…./1-Committee/Land (Central) 2016, Date, June 10th, 2016, 1.*

[107] *Farmers, farmers' organizations and CSOs working in the agricultural sector reported that there was no consultation with civil society in the design or creation of the CRC, or subsequent lower level RCs. Farmers, farmers' organizations and CSOs working in the agricultural sector reported that there was no consultation with civil society in the design or creation of the CRC, or subsequent lower level RCs. A Promise Unfulfilled: A Critique of Land Reinvestigation Committee. https://www.slideshare.net/EthnicConcern/a-promised-unfulfilled-a-critique-of-land-reinvestigation-committeeenglish-version*

c) The status of Myanmar's civil wars and the Peace Process

By definition it is not possible to "give the land back" or restore thestatu quo ante if the wrongdoing is in progress. The forcible mass displacement of civilians in Kachin, Northern Shan, Karen and Rakhine States has not stopped since the coming to power of the National League for Democracy. The loss of land by displaced persons is often accompanied by further land grabbing by opportunistic actors. For example, large portions of the land abandoned by IDPs in Kachin are now being cultivated by private companies.[109] The current legal framework does not offer any significant safeguard against conflict related forcible displacement.

Another situation is being experienced in the "ceasefire areas", that is the areas covered by either bilateral or nationwide ceasefires. This includes much of the Southeast of the country (the states of Bago (East), Mon, Karen, Kayah and Tanintharyi Region). In such areas, interim arrangements linked to the 2015 Nationwide Ceasefire Agreement (NCA) were supposed to offer protection against forcible displacement and loss of land and to clarify EAO administration in ceasefire areas.

The reality is that the Southeast of Myanmar is a chaotic institutional puzzle where governance is shared between the Government of the Union of Myanmar institutions and those of the Ethnic Armed Organisations (such as the Karen National Union, the Karenni National Progressive Party or the New Mon State Party). Some of the EAOs, notably the Karen National Union, have their own land policies which include recognition of the right of displaced persons to return home and recover their possessions (in line with the Pinheiro Prin ciples) as well as customary land rights.[110] The integration (or interaction) of such policies within the National Land Use Policy should be an integral part of the peace discussion.

[108] *"A Promise Unfulfilled: A Critique of the Land Reinvestigation Committee", (Land In Our Hands et al), December 2017.*

[109] *Displaced and Dispossessed, Conflict-affected communities and their land of origin in Kachin State, Myanmar, OXFAM, July 2018.*

[110] *2016 Karen Land Use Policy.*

Indeed, the Myanmar Peace Process should be the forum in which to put together the different pieces of the puzzle, including the governance systems of the EAOs and offer IDPs and refugees the possibility of recovering the houses and property and to return home in dignity and safety (or to receive adequate compensation in case this is not possible). However, the Myanmar Peace Process primary problem is its own maintenance as a structure, and is yet far from achieving particular substantive outcomes. The necessary debate on the different legal policy options through which to achieve both acceptable degrees of peace and justice (which would require coordination with bodies such as the National Land Use Council) gets crippled and lost through the various gates of the system. It is also a matter of lack of incentives: Neither the military nor some of the EAO are eager to return land that they control. The Government in turn is also reluctant to get into complicated processes it cannot manage. Also, EAOs do not want to address ongoing problems unless they have a safe space to do so. They do not want to be seen as supporting reforms under the 2008 Constitution, unless there are guarantees that reforms towards federalism will be seriously considered. Otherwise, there is a fear they would lose their negotiating position.

What could be done to incorporate restitution within Myanmar law and politics?

Given the existing obstacles to making restitution a reality in Myanmar, a series of measures from an advocacy, capacity building, legal reform and policy point of view are needed. From an advocacy perspective, policy makers, including MPs at State and Union levels, civil society organisations, farmers associations and representatives, would benefit from a better understanding of the notion that restitution is a real possibility and that there are a variety of mechanisms which can make land justice happen for thousands of farmers. Restitution processes have been implemented in a range of countries over the past years. Drawing on these experiences can assist an eventual restitution process in Myanmar to achieve favourable results for refugees and IDPs as well as farmers whose land has been expropriated irregularly.

As for capacity building, policy makers could benefit from a degree of knowledge on the basic features of mass claims mechanisms, including the definition of their jurisdiction and types of claims, possible internal structures, remedies offered and enforcement powers. Exchange programmes with restitution experts from Colombia, Kosovo, South Africa and Bosnia & Herzegovina to Myanmar to dialogue with restitution advocates in the country would be highly beneficial in showing the pros and cons with restitution processes as they play out in various post-conflict settings. Direct dialogue between international restitution experts and local restitution advocates will greatly assist in promoting understanding of the practical complexities of restitution and strengthen the prospects for successful restitution in Myanmar.

In terms of legal reforms, the national land law debate, organized by the National Land Use Council should include clear arguments on how to make the restitution provisions of the 2016 National Land Use Policy a reality. In parallel, a package of executive and legislative measures should be put in place to ensure that no more harm is done to displaced persons. Such measures could include amendments to the existing laws, for example adding safeguards to IDP lands in the 2012 Farmland and Vacant, Fallow and Virgin Land Management laws (e.g., land which has been left behind by IDPs should not be considered “abandoned”). From an executive perspective, there should be a moratorium on the

issuance of any commercial license over land which is deemed to have been used by displaced persons in the past.

In order to avoid a patchwork of measures, the best would be to enact a Law on Restitution linked to and as part of the peace process (i.e., part of a comprehensive agreement) which creates a proper restitution commission, provides a definition of the claims, the procedures and the enforcement measures needed to do justice to dispossessed IDPs, refugees and farmers. In the meantime, restitution claims could be mapped using digital technology.

Policy wise, the Myanmar peace architecture (including the UJPDC and other bodies) and the National Land Use Council and its committees need to communicate and coordinate with each other and use restitution and protection of IDP's rights as a core common principle. Leadership from peace process actors, especially the Government, is needed to link UPDJC agreements with government processes and committees. Existing peace process agreements on land should be prioritised by the National Land Use Council.

Creative institutional design could improve communication and help find avenues for the integration of EAO land governance structures. In sum, addressing Myanmar's unsettled restitution gap needs to be a priority both in ongoing law and policy reforms and the peace process.

ANNEX

I. PYIDAUNGSU ACCORD

1 Looking forward to non-disintegration of the Union, non-disintegration of national solidarity and perpetuation of the sovereignty, based on freedom, equality and justice, the Union Peace Conference—21st Century Panglong 2nd session was held at Nay Pyi Taw from 24th May 2017 to 29th May 2017 for building up the Union in harmony with the Panglong spirit, based on democracy and federalism which guarantee democracy, national equality and self-determination, in accord with the outcomes of the political dialogues.

2 In this Conference, proposals acquired from discussions at different levels made in groups or in sectors over principles and proposals submitted by Union Peace Dialogues Joint Committee have been agreed as part of the Pyidaungsu Accord.

3 Part 1 of the Pyidaungsu Accord approved and signed in this conference and further parts of the agreements to be achieved in imminent different levels are to be combined to be signed as the Pyidaungsu Accord.

4 Part 1 of the Pyidaungsu Accord signed in this conference has (A) 12 agreements on principles of political sector, (B) 11 agreements on principles of economic sector, (C) 4 agreements on principles of social sector, (D) 10 agreements on principles of land and natural environment sector, altogether 37 agreements. These are described in Appendix—(A) (B) (C) & (D).

5 The above-said agreements have been signed by group leaders and witnesses in the Union Peace Conference—21st Century Panglong 2nd session as the part 1 of Pyidaungsu Accord under clause 20(E) of the Nationwide Ceasefire Agreement.

Appendix (A) Agreement of Principle on Political Sector (29th May 29, 2017) Principles to be based in Federalism

1 | The Sovereign Power – The Sovereign Power of the Union is derived from the citizens and is in force in the entire country.

2 | Exercise of Sovereignty – The 3 branches of the sovereign power of the State, namely legislative power, executive power and judicial power are separated to the extent possible, and exert reciprocal control, check and balance among themselves.

3 | Equality – Each ethnic national race is must have equality in politics and race, and simultaneously must have the right to keep, protect and upgrade their languages, literatures, traditions and cultures.

4 | Principle on Federal Union (Organization & Division of Power)

(a) The State must be set up as the Union based on democracy and federalism.

(b) The Union based on democracy and federalism must be formed by Regions and States.
NB Regions and States must have equality. As regards naming, it will be discussed later.

(c) Self-administered Regions and self-administered areas are must be organized with the names of national races' names.

(d) The 3 branches of the sovereign power of the State, namely legislative power, executive power and judicial power must be divided and entrusted to the Union, Regions, States and Self-administered Regions and areas. The Constitution must divide legislative powers and associated powers among the State, Regions, States and Self- administered Regions and Areas.

(e) Legislature power, executive power and judicial power must be entrusted to Regions & States. Region and State Hluttaws must be allowed to be set up for exercising legislative power, with Region & State Cabinets for exercising executive power and Region & State Supreme Courts for exercising judicial power in accordance with the authorities conferred upon by the Union Constitution.

(f) Union Government, Region and State Cabinets must have the right of enjoying taxes collected and development projects and resources, according to laws.
(g) Separate and independent tribunal on State Constitution must be set up for dealing with disputes on Constitution among Union and Regions and States or among Regions and States.
(h) Multi-Party Democracy.
(i) Multi-Party democratic system must be practised.
(j) Free and fair elections must be held in accord with the prescriptions included in the Constitution.

Policy and Agreement on Economic Sector (29 May 2017) Basic principles for Federal Economy

1 Effective implementation of market economy (a) To draw firm policy, law, by-law, rules and regulations at every level such as Union, Regions and States and Self-administered Regions/ Zones and promulgate them in order to be able to implement the market economy effectively. Remark: The governing body of self-administered Regions and Zones has to carry out if there appears policy, laws, by-laws, rules and regulations which they have rights to draw and promulgate. (b) To target to alleviate the poverty, to raise the living standard of the people, to narrow down the socioeconomic gap between the rich and the poor and finally aim to achieve sustainable development in promoting the private sector of national economy in line with the policy, law and by-law already set before. (c) To deter economic transactions that will shed bad effect on the national interests in accordance with the law.

2 To promulgate the law that will deter the monopolization of economy by a person or an organization.

3 To take necessary actions to provide equal opportunities for the economic development in the respective Union, Regions and States and self-administered Regions/ Zones.

4 To allocate the national budget in a fair and equitable manner in accordance with the Constitution between the Union Government and Regions and States Governments and Governments of Self-administered Regions/ Zones.

5 To share the management rights in economic affairs among the Union Government, Regions and States Governments and Governments of Self-administered Regions/ Zones in accordance with the Constitution.

6 To formulate and implement short-term, medium-term and long-term economic projects with transparency, accountability and responsibility.

Social Sector Agreement (May 29,2017)

1 To lay the program systematically that can forge the durable solution for the internally displaced people and refugees due to natural disasters, human activities and armed conflicts without discrimination by following the international norms of human rights.

2 To create the conditions for the internally displaced people and refugees due to natural disasters, human activities and armed conflicts to be able to settle and live in their home land or at any other place safely and with due regards.

3 To boost the socioeconomic condition and to effectively safeguard the rights and privileges of the aged, the disabled, women and children regardless of the race, religion and wealth.

4 To prevent and fight against the drug trafficking by laying the plan and implementing it considering the task a national issue pertaining to politics, security and rule of law.

Principles for Regional Development

1. To draw and implement the Regional Comprehensive Development Plans by coordinating among the Union Government and Regions and States Governments and Governments of Self-administered Regions/ Zones for the development of human resources and socioeconomic development. Remark: To undertake the tasks without going against the laws and principles laid by the Union Government.

2. To draw the suitable plans and programs that can attract domestic and international investment in compliance with the prevailing law and implement it for the socioeconomic development of Regions and States and Self-administered Regions/ Zones.

Social sector agreement (29 May 2017)

1. Systematic programs to be set-up and implemented to achieve a long-term durable solution for refugees and internally displaced persons caused by armed conflicts, man-made and natural disasters in accordance with international norms and respect for human rights.

2. Enable refugees and internally displaced persons caused by armed conflicts, man-made and natural disasters to return to their place of origin or settle to other places in dignity and safety.

3. Defend the fundamental rights of the old, handicapped, women and children without discriminating in race, religion, rich or poor and to work for the development of their social life.

4. Setup programs as national duty to effectively prevent and eradicate matters relating to narcotic considered to be a national, political, security and rule of law problem.

Land and natural environmental sector agreement (29 May 2017)

1. A countrywide land policy that is balanced and support people centered long-term durable development.

2 | Based on justice and appropriateness.

3 | A policy that reduce central control.

4 | Include human rights, international, democracy and federal system norms in drawing up land policy.

5 | Policy on land matter 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.

Ownership Right

7 | All nationals have a right to own and manage a land in accordance with the land law. Women and men have equal rights.

Management Right

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.

Preventive Program

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.

11 | 2015 Nationwide ceasefire agreement

Addressing Myanmar's Unsettled Restitution Gap

February 2019

The protection of Housing, Land and Property (HLP) rights in Myanmar is marred by armed conflict, inadequate laws, lack of safeguards against powerful actors, competing parallel administrative structures and unbridled development. Myanmar is indeed a showcase of HLP rights challenges, linked to its decades long civil wars, uneven transition and reforms prioritising large scale investment over small farmers rights and interests and customary land tenure systems. The Myanmar Peace Process is bringing together signatories to the 2015 Nationwide Ceasefire Agreement and non-signatories, aiming at a country wide peace agreement. So far, land and natural resources are acknowledged as important areas of discussion, however the debate requires more flexibility and inclusion. Restitution is not yet clearly in the agenda and peace process structures should be better connected to land law reform bodies (the National Land Use Council). This compilation of papers, edited by Scott Leckie (Displacement Solutions) and José Arraiza (Norwegian Refugee Council) explores some of these issues in depth in order to contribute to this important debate[1].