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(COHRE), Geneva, Switzerland

A Guide to Housing, Land and Property Rights in Burma

ISBN 978-92-95004-78-8

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# A Guide to Housing, Land and Property Rights in Burma



CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



# **A Guide to Housing, Land and Property Rights in Burma**



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A Guide to Housing, Land and Property Rights in Burma  
ISBN 978-92-95004-78-8  
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Some material in this publication was adapted from: Bridges Across Borders South East Asia (BABSEA), Centre on Housing Rights and Evictions (COHRE) and International Accountability Project, The Cambodian Guide To Defending Land And Housing Rights (2009).

Supported by:  
Foundation Open Society Institute (Zug)  
American Jewish World Service



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# Introduction

Burma today is experiencing a housing, land and property (HLP) rights crisis. Over a million people are displaced from a combination of natural disaster, the Burmese military's counterinsurgency tactics and their policy of military self-sufficiency, as well as development projects. Large-scale displacement has disproportionately affected areas populated by ethnic nationality communities. Inadequate laws regarding HLP rights, poor recording or registration of ownership or occupancy rights and a lack of the rule of law have resulted in widespread HLP rights violations.

The effects of HLP rights violations are enormous: ruining livelihoods; causing poverty; and threatening cultures and traditional knowledge. COHRE documented some of these issues in our 2007 study: *Displacement and Dispossession: Forced Migration and Land Rights in Burma* (available at [www.cohre.org/burma](http://www.cohre.org/burma)). Many other excellent publications by Burmese groups demonstrate the extent and impact of these violations of fundamental human rights.

The HLP rights crisis in Burma can only be properly resolved in the context of substantial and sustained change in Burma, including respect for the rights of all communities in Burma. However, much can and must be done now. It is essential to help Burmese civil society groups in their efforts to raise the awareness of the people of Burma concerning their rights to housing and land. Monitoring violations is critical in exposing the systematic nature of HLP rights abuses and vital for resolving housing, land and property rights issues in the future. It is also essential to begin work in developing policies on HLP rights which are consistent with international human rights standards for a future transition to democratic rule.

This publication – a guide to housing and land rights in Burma – is part of our capacity building efforts with Burmese groups. It is aimed at those Burmese activists working on land and housing rights issues, whether they are focusing on policy development or documentation of human rights violations. It sets out the key international standards on land and housing rights relevant to Burmese groups.

We hope it will prove useful in a small way in the struggle to prevent and remedy violations of housing, land and property rights in Burma.

Salih Booker  
Executive Director  
COHRE





# I. International Human Rights Law

## 1. What are human rights?

Human rights refer to the basic rights and freedoms to which all humans are entitled. Human rights allow people to live happy, healthy and free lives.

In our daily lives, we all have basic needs, such as enough food to eat, clean water to drink and healthcare when we get sick. We also need some freedoms, such as the freedom to express our opinions and to practice our religion. Having access to these things and enjoying these freedoms are our basic rights as human beings.

Everyone, everywhere has these human rights – men and women, young and old, rich and poor – no matter where they were born or what they believe. These rights cannot be taken away from us and must be respected.

Human rights are both inspirational and practical. Human rights principles hold up the vision of a free, just, and peaceful world and set standards for how individuals and institutions everywhere should treat people.

Human rights also empower people with a framework for action when those standards are not met, for people still have human rights even if the laws or those in power do not recognise or protect them.

## **2. Where do human rights come from?**

Human rights come from the common values of many different cultures, religions and communities around the world. These values have developed in many different societies and countries because most people around the world believe that they, and the people around them, should be treated with dignity and respect.

Unfortunately, throughout history people have experienced or witnessed terrible suffering, often caused by very bad treatment by governments, military and other people. Many people have lived through wars and violence, under oppressive and cruel governments, or have not had enough food to eat or medical care when they are sick. For example, Burmese people have lived through militarisation, armed conflict, land confiscation and displacement by the SLORC/SPDC for many years. Many people have been killed and imprisoned without a fair trial. The basic human rights of the Burmese people have not been respected.

This situation reminds us of the need to strengthen the international human rights system to better protect the rights of all.

### **2.1 The Universal Declaration of Human Rights**

In 1948 representatives from many nations came together at the United Nations to create a document that would capture their hopes and aspirations for the future, and set out the protections to which every person in the world should be entitled.

This document would later become the Universal Declaration of Human Rights (UDHR). The UDHR is very important because it was the first time that the nations of the world collectively recognised that we all share a common set of values about how human beings should be treated and that these are, in fact, human rights. The UDHR was adopted by the 56 members of the United Nations on 10 December 1948 – on this day each year people around the world celebrate Human Rights Day.

The UDHR is a declaration, a statement of intent, which sets out principles to which United Nations member states commit themselves in an effort to provide all people a life of human dignity. The 30 Articles of the Declaration together form a comprehensive statement covering economic, social, cultural, political, and civil rights. The UDHR lists the basic rights of all human beings. Some of these rights include:

- The right to be free from discrimination
- The right to health
- The right to be free from slavery
- The right to education
- The right to be free from unfair detention
- The right to be free from torture
- The right to an adequate standard of living
- The right to express opinions freely
- The right to demonstrate
- The right to work
- The right to freedom of religion
- The right to a fair trial
- The right to vote
- The right to family

However, the UDHR is only a statement of principle made by governments about the basic rights of human beings and is not legally binding. Nearly twenty years later, with the goal of establishing mechanisms for enforcing the UDHR, the UN Commission on Human Rights drafted two very important legally binding international laws or treaties:

- The International Covenant on Civil and Political Rights (ICCPR), and
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights.

## **2.2 The International Covenant on Civil and Political Rights (ICCPR)**

The International Covenant on Civil and Political Rights (ICCPR) entered into force on 23 March 1976. It looks at basic freedoms, which includes:

- Right to life
- Right to a fair trial
- Right to equality of treatment
- Right to vote
- Freedom from torture
- Freedom of association
- Right to culture

The overwhelming majority of states in the world are parties to the ICCPR. In 2009, only 29 states have either not yet signed the convention, or have signed but have not yet ratified the convention. Burma is one of the few countries that has not signed the ICCPR.

## **2.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force on 3 January 1976.

The ICESCR focuses on basic needs, including:

- Right to work - including fair and equal pay and safe-working conditions, with the right to form and join trade unions
- Right to social security - including social insurance
- Right to family life - including paid parental leave and the protection of children
- Right to an adequate standard of living- including adequate food, clothing and housing

- Right to health
- Right to education - including free universal primary education, generally available secondary education, and equally accessible higher education
- Right to participation in cultural life

Burma is one of the relatively few countries in the world to have not signed ICESCR.

## **2.4 Specialised human rights treaties:**

Later, a number of specialised human rights treaties were developed, covering topics such as torture, racial discrimination, women's rights, children's rights and the right of migrant workers. Burma has signed the treaties on women's rights and children's rights. See next section.

## **2.5 The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), also described as an international bill of rights for women, entered into force on 3 September 1981.

CEDAW sets out actions that should be taken to end sex-based discrimination. States are required to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women. They must also establish tribunals and public institutions to guarantee women effective protection against discrimination, and take steps to eliminate all forms of discrimination practiced against women by individuals, organisations, and enterprises. The CEDAW includes protection of the special right of women in rural areas to housing.

## **2.6 Convention on the Rights of the Child (CRC)**

The Convention on the Rights of the Child (CRC) is an international convention setting out the civil, political, economic, social and cultural rights of children. CRC came into force on 2 September 1990. As of December 2008, 193 countries have ratified the CRC - every member of the United Nations except the United States and Somalia.

CRC deals with child-specific needs and rights. It requires that states act in the best interests of the child. CRC acknowledges that every child has certain basic rights, including the right to life, his or her own name and identity, to be raised by his or her parents within a family or cultural grouping and have a relationship with both parents. CRC recognises children's right to adequate housing.

## **3. Human rights and government duties**

As well as recognising human rights, human rights instruments create duties or obligations on States and their governments to uphold these rights. This section discusses the different types of obligations that the government has, where those duties come from, and how they are enforced.

As discussed above, one of the most important sources of rights and obligations under international law are the main human rights treaties, such as the ICCPR, ICESCR and specialist human rights treaties on women's and children's rights. Burma has duties under CEDAW and CRC, the only two treaties it has signed – and these duties are monitored by specialist United Nations Committees. Unfortunately, the Burmese government has not agreed to sign most of the important human rights treaties, and to accept the obligations under these treaties.

However, Burma still has human rights obligations under other international agreements it has signed. For example, as a member of the United Nations, Burma agreed to observe international human

rights standards – and these duties are monitored by bodies like the UN Human Rights Council. Burma has also agreed to protect and promote human rights under the ASEAN Charter.

### **3.1 Governments have duties to respect, protect and fulfil human rights.**

Under the international human rights system, it is government that has the duty, or obligations, to uphold human rights. There are three kinds of obligations:

Governments must not pass laws or take actions that violate human rights. This is called the obligation to respect rights. For example, if a government builds a large dam which stops a community's access to water for farming, fishing or drinking, they may be committing a violation of the people's right to water.

Governments must also protect people's rights from violations by other people. For example, in order to respect the right to life, governments must pass laws which punish murderers. If someone commits murder, that person should be punished according to those laws.

Governments must pass laws and take action to ensure that people are able to enjoy their human rights. This is called the obligation to fulfil human rights. For example, to respect the human right to education, governments must pass laws and take steps to try to make sure that all children are able to go to primary school. To do this, they might open new schools in remote rural villages and train more teachers.

### **3.2 Governments' duties to respect human rights are recognised in international law.**

As discussed earlier, the first major human rights instrument from the United Nations was the Universal Declaration of Human Rights (UDHR). The UDHR was not legally binding

on governments at that time, so it was decided that binding international laws – human rights treaties - were needed in order to better protect the rights contained in the UDHR, and to put obligations on governments to protect them.

Several international human rights treaties were created. These included the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as specialist treaties on the Elimination of Racial Discrimination, and on Women’s, Children’s and Migrant Workers Rights. Because the treaties are laws, governments that agree to them by signing them, have the legal duty to respect and follow them.

The United Nations created committees, made up of independent experts, to enforce the human rights treaties. These committees interpret the rights in these treaties and issue General Comments setting out their definition. They also receive regular reports from each government that has signed the treaty, hold hearings and issue recommendations and comments on the country’s performance in meeting their obligations. These comments are called Concluding Observations. In making their recommendations, the committees receive reports from civil society as well as government, and allow civil society groups to speak to them at their hearings.

When a government like Burma’s has not signed up to international human rights treaties, there are other bodies which can enforce human rights obligations against Burma. For example, in signing up to the United Nations Charter, Burma has promised to take actions to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Under its Charter, the United Nations set up the Human Rights Council to protect human rights. One of the main functions of the Human Rights Council is to review the compliance of governments with human rights standards every three years, under a process called the Universal Periodic Review. Burma



is due to be reviewed in 2011. Civil society has the opportunity to make submissions to the UN Human Rights Council at this time.

The Human Rights Council also appoints experts to monitor the human rights situation in particular countries, and to report back to the Council. Because of the critical human rights situation in Burma, the Council has appointed a Special Rapporteur on the situation of human rights in Myanmar since 1992. The current Special Rapporteur is Mr. Tomas Ojea Quintana from Argentina. Civil society groups can send information to him.

In signing up to the Charter of the Association of Southeast Asian Nations (ASEAN), the Government of Burma also promised to uphold a number of principles, including the promotion and protection of human rights. They also promised to set up an ASEAN human rights body, which was done in late 2009, with the establishment of the ASEAN Intergovernmental Commission on Human Rights.

Finally, because so many governments recognise human rights instruments such as the UDHR, the ICCPR and ICESCR it can also be argued that these rights are part of customary international law, that they apply to everyone, everywhere, and that the obligations in relation to these rights apply to all governments – even those like Burma that have not yet signed up to them. Certainly, there is a strong moral argument that the Burmese Government should respect and protect these rights.

Despite all these international mechanisms, the reality is that mass human rights violations continue in Burma and many other countries. This shows the weakness of the international human rights system in the area of enforcement. It shows how much work we have to do, as human rights activists, to strengthen and change this system so that it is more effective in protecting the rights of the most vulnerable groups. But this will only happen if people are informed about their rights and how to claim them.



## II. The Right to Adequate Housing

### 1. Housing is a Human Right

The right to adequate housing is one of the basic human rights that must be respected for people to live happy, healthy and free lives. The right to adequate housing is protected by international treaties, the most important being the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11(1) of ICESCR states that State Parties (Governments) who sign up must:

*“recognise the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”*

The Burmese Government has not signed the ICESCR, however it has agreed to follow international laws by signing the Convention on the Rights of the Child (CRC) in August 1991 and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in August 1997.

The right to adequate housing is recognised in Article 14 (2 h) of CEDAW which states that: State parties (Governments) who sign up:

*“ shall undertake all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”*

The right to adequate housing is also recognised in Article 16 (1) of CRC which states that:

*“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.”*

Article 27(3) of CRC further states that:

*“States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”*

This means that the Burmese Government has a legal duty to make sure that human rights, including the right to adequate housing, are respected.

## **2. What is the Right to Adequate Housing?**

The United Nations (UN), in particular the UN Committee on Economic, Social and Cultural rights, is responsible for monitoring this right and has worked to expand what “adequate” means. After a lot of discussions in many countries the UN has come up with a clear and comprehensive definition of what adequate housing is.

Adequate housing is more than just four walls and a roof. We need adequate housing to protect us while we sleep, cook, eat and live together as a family. Our house must have certain things for us to live happily and to keep us healthy and safe. Also, our house needs to be near to certain things for us to be able to live and work, and for our children to learn, play and stay healthy. For example, our homes should be close enough to schools for our children to receive an education.

On 12 December 1991 the UN Committee on Economic, Social and Cultural rights adopted General Comment No 4 on the Right to Adequate Housing, which recognises and describes the seven elements of adequate housing. General Comment No 4 is not law, but it is an interpretation of what the right to adequate housing, as written in article 11(1) of the ICESCR, means under international law. This interpretation can also be applied to housing rights under other international human rights instruments.

## **2.1 The Seven Elements of Adequate Housing**

The seven elements of adequate housing, as set out by the UN Committee on Economic, Social and Cultural Rights in General Comment 4, are:

### **1. Security of Tenure**

Security of tenure is the cornerstone of the right to adequate housing. People must have legal guarantee that they will not be forced to leave their homes and land (unless it is absolutely necessary under the law). This applies to everyone – including owners, renters and occupiers without documents. Tenure security can take many forms. The key is that people can live on the land without fear of being evicted at any time.

### **2. Availability of services, facilities, infrastructure**

Adequate housing must include access to basic services, such as clean water (for people to be able to drink, wash and cook); sanitation (toilets, drainage and sewage disposal); waste collection services; energy for cooking (heating and lighting) and roads. When any of these facilities are not available, health, security, nutrition or comfort is threatened and the right to adequate housing is not fully realised.

### **3. Accessibility**

Everyone has the right to live in adequate housing without discrimination. No matter what their age, sex, status, wealth, religion or where they come from, everyone has the right to adequate housing. The government must make sure people are not prevented from living in adequate housing just because they belong to a specific group. For example, neither people who are disabled people, people who have HIV/AIDS, women, and indigenous people should not be denied access to adequate housing because of who they are.

### **4. Habitability**

An adequate house must have enough space, privacy and protection. For example, an adequate house would have enough rooms so people are not too crowded. People should have privacy so they feel comfortable and safe from harm when they are inside their homes. An adequate house also provides people with protection from the weather (the rain, cold, wind, heat and/or disease vectors).

### **5. Affordability**

The cost of housing must not be too high. For example, rent should not be too high and land and building materials should not be too expensive to buy. This means that after people have paid their rent, or bought or built an adequate house, they should still have enough money to pay for their other basic needs, such as food, clothes and school fees. If not then the government should provide subsidies for particular income groups, such as affordable low-cost housing including State or private sector-enabling strategies for construction.

## **6. Location**

The house must be in an appropriate location. People's homes should be close to hospitals, schools, markets, and jobs or lands suitable for farming. Homes should not be built in unsafe or polluted areas and if there are homes in an area already, polluting industries and businesses should not be built nearby.

## **7. Cultural Adequacy**

The house must be designed and built in a way that respects people's traditions and culture. For example, it is important to many ethnic minorities in Burma such as Palaung, Karen, Shan, Mon, Rakhine to live in traditional houses that are close to other members of their community and surrounded by their traditional land and forest. They should not be forced to live in a tall building or on a very small plot of land or far from their community. The communities should be allowed to express their cultural identity and diversity.

## **3. The Right to Adequate Housing and the Duties of Government**

The fact that the Burmese Government has obligations to realise the right to adequate housing does not mean that they need to build everyone an adequate house. Their obligation is to create the conditions, through law and policy, so that in the future everyone will have access to adequate housing. International law recognises that this is a process that will take time, and depends on the resources available to the government.

As discussed above, the government has three main duties under international law:

- The government must respect people's right to adequate housing.
- The government must protect people's right to adequate housing.
- The government must take steps to help all people have adequate housing.

### **3.1 The Government must respect the right to adequate housing.**

The government must not take any action that makes someone's housing situation worse. For example, the government should not destroy someone's house or force them to move away from their home without a very good reason. If the government has a very good reason to make people leave their homes, these people must not end up living in worse conditions. In fact, their new housing must also meet the elements of the right to adequate housing discussed above.

### **3.2 The Government must protect the right to adequate housing.**

The government must protect people's houses from being damaged by other people or companies. The government must do this by passing laws and punishing people who damage other people's houses or try to steal their houses and land. For example, if a private company is building a dam, the government should ensure that any displacement takes place in accordance with international law. They must also train the police to protect people's houses and land if other people try to take or destroy them.

### **3.3 The Government must take steps to help all people have adequate housing.**

It is not likely that governments of poor countries like Burma



will be able to make sure that all their people live in adequate housing immediately. But governments still have the duty to take all the actions they can to help people with inadequate housing to improve their housing over time. For example, the government may be able to give small loans to people so that they can improve their homes.



## III. Forced Evictions

### 1. Evictions and Human Rights

We have learned that adequate housing is something that everyone needs to live happy, healthy and free lives.

The phrase “forced eviction” is not mentioned in any of articles of international human rights treaties relating to the right to adequate housing. So the question is where does the prohibition on forced eviction come from? The prohibition on forced eviction comes from the Government’s obligation to provide and protect people’s security of tenure, which is one of the main elements of the right to adequate housing. Thus the state has the obligation to not forcibly evict people, and to protect people from being forcibly evicted by third parties.

#### 1.1 Definition of Forced Eviction

After a lot of discussions in many countries and receiving reports on evictions and determining that the states have violated the right to adequate housing, the United Nations came up with the similar definition of what adequate housing is (General Comment No 4, 1991) with a General Comment No 7 on Forced Evictions on 16 May 1997.

Under international law, forced eviction is the

*“permanent or temporary removal against their will of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”*

In other words, an eviction is when people are made to leave their homes, land and properties by the government or someone else against their will. A “forced eviction” includes an element of force such as coercion, harassment, threat, violence.

## **1.2 What kinds of Forced Evictions are occurring in Burma?**

In Burma, some of the main causes of eviction include:

- **Ethnic cleansing (Burmanisation):** Whole areas are systematically depopulated in ethnic cleansing campaigns by the military regime. This includes trans-migration, where new groups of people are moved in to change the demographic make-up of a certain area.
- **Armed conflict:** People are displaced when fleeing direct fighting, or otherwise forcibly displaced by conflict groups in the course of military operations. For example, people are forcibly displaced from their land because they are accused of supporting insurgent groups by the military regime.
- **Militarisation:** Another cause of eviction is the building of new barracks and military camps, and confiscation of land for production of food crops for soldiers. The Burmese military often designates “high security areas” where people cannot go under the threat of being arbitrarily shot and killed (so-called Black and Brown areas).
- **Natural resource exploitation:** People are being evicted for natural resource exploitation such as hydro-power dams, oil and gas exploitation, mining, agricultural development (castor oil plantations), logging, fisheries. People are forced out of rural areas into concentrated urban settlements for natural resource exploitation.

- **Development induced displacement:** Nation-wide infrastructure development projects such as roads, railways, factories, bridges and airports also lead to evictions.
- **Urban displacement and urban “renewal”:** In urban areas, people are displaced by the government to make way for new urban infrastructure, such as industrial zones or in the case of the construction of Naypyidaw, an entire new city.

### **1.3 What is the legal status of these types of evictions?**

Evictions can have very serious negative impacts on people’s lives. For this reason, the United Nations decided that there was a need for specific rules to protect people’s rights in cases of eviction. Today there are clear international rules about what governments must do in cases of eviction to make sure people’s rights are respected. If an eviction happens in a way that does not follow these international legal rules then it is an illegal forced eviction.

### **1.4 Forced evictions are always illegal**

When the government, individuals or private companies unfairly force people to leave their homes and lands and do not make sure they get new and adequate housing, they are not respecting people’s human rights. If evictions do not respect people’s rights, then they are called “forced evictions” and are illegal.

Forced evictions are always illegal under international human rights law. Governments around the world have the responsibility to make sure that forced evictions do not happen in their countries unless they are absolutely necessary and respect the law.

The right not to be forcibly evicted from one's home is a fundamental human right. Forced evictions most clearly violate the right to housing under ICESCR, and most of the rules about forced eviction have been set by the Committee on Economic, Social and Cultural Rights. However, evictions violate other human rights too. Where they affect women and children, they violate the right to housing under CEDAW and CRC.

The United Nations Commission on Human Rights (which is the predecessor of the United Nations Human Rights Council) has stated “that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.”

Although the Burmese Government has not signed ICESCR, we can say that forced evictions in Burma are still a violation of the government's human rights obligations. They violate the Burmese government's obligations under the UN Charter, and possibly under customary international law. Where they affect the right to housing of women and children, which they do in most cases, they violate Burma's obligations under CRC and CEDAW.

## **2. Is an eviction a violation of human rights?**

Forced evictions violate human rights. However, international law recognises that there are circumstances in which evictions can be carried out consistently with human rights principles. In order for an eviction to meet international standards, they must comply with four sets of obligations:

1. The eviction must be absolutely necessary;
2. The government must respect rights **BEFORE** the eviction;
3. The government must respect rights **DURING** the eviction; and
4. The government must respect rights **AFTER** the eviction.

If any of these conditions are not met, the eviction is contrary to the government's international obligations, and a violation of human rights. Each of these conditions is examined in more detail below.

### **3. Is the eviction absolutely necessary?**

While governments must prevent illegal forced evictions, an eviction may be legal in some cases, if it is absolutely necessary. This means two conditions must be respected:

- There is a genuine public interest or other good reason, and
- All possible ways to avoid the eviction have been considered.

#### **3.1 Is there a genuine public interest or other good reason?**

Sometimes, people may have to move from their home or land because the government needs to use their land for a very good reason that will help people improve their standard of living or keep them safe. When a project helps many members of the society to improve their lives, we say that the project serves the public interest.

For example, if a village in Labutta, Ayeyarwady Division needs a school, and some houses need to be moved to make space for the school, it is possible that the government may be able to legally evict the people living in those houses. In this case the eviction may be necessary to improve the lives of the Burmese people. This is an example of a project that serves the public interest. The government may have the right to legally evict people in this situation, even if the people do not want to move. However, for the eviction to be legal the government must also comply with its obligations under international human rights law before, during and after the eviction (refer to part 4 below).

It is important to understand that if the land is going to be taken

by the government, it must be for the benefit of the people because it will serve the public interest or provide a public service. The government cannot legally take away people's homes or land just so that a few people can make a profit. In many countries, the government violates this rule by saying that a project is "for the public interest" or "for the country's development," even if many people disagree with the project or will be harmed by it. The government must make sure that a project really does serve the public interest. It can do this by asking for and considering people's opinions and ideas about the project.

If someone wants to build a private development for profit and they need people to move from their houses and land, they must make an acceptable offer to those people if they want to buy their land. They cannot force those people to move.

Some public interest reasons for an eviction may include:

- The construction or maintenance of public parks that are open for the public to enjoy and use;
- The building of a school that provides the public service of education;
- The building of a hospital that provides the public service of healthcare; and
- The construction of roads and railways that provide the public service of transportation.

There are some other situations in which people can be legally evicted. For example, if somebody is renting a house and refuses to pay rent or seriously damages the house, the house owner has a right to ask a court to order the authorities to evict the renter. Another example is if people are illegally occupying somebody else's land. The landowner has the right to ask a court to order the authorities to evict the people if he or she can show proof of ownership.



### **3.2 Have all possible ways to avoid the eviction been considered?**

Even when there is a genuine public interest reason, there is another condition that must be respected for an eviction to be legal. The government must also have made sure there were no other possible ways to meet its goal without evicting people. For example, imagine that the government needs to build a new road from Ye Township to Mawlamyine District, Mon State because the main road is too crowded with traffic. One option is to build the road through three villages. This would mean that 300 families would have to be relocated. Another option would be to build the road around the villages so that no families would have to move. The second option would be more expensive but still affordable for the government. Under international law, the government should choose the second option, even if it would cost more.

If the government has no choice but to evict some people, it should make sure that the number of people who will be evicted is as small as possible. If possible, the government should choose the road project which would avoid evictions

When considering other options to avoid the eviction, and before making its decision, the government must consult with the affected people. People may be able to offer ideas and opinions about how the government could achieve its goal without evicting anyone.

## **4. The Government's duties before, during and after eviction**

Even in the rare situations when evictions are allowed because they are absolutely necessary, certain international rules must be followed in carrying out the eviction. It is the duty of the government to make sure that an eviction respects these rules. There are rules that

must be followed before the eviction, during the eviction and after the eviction to make sure people's human rights are respected and protected. If governments do not follow these rules then they do not respect people's rights, the eviction is illegal and it is a violation of people's human rights. The government has the duty to make sure that the following happens before, during and after an eviction takes place:

### **Before**

- Affected persons must be provided with information about the eviction;
- Consultation and a negotiation process must take place and all parties (affected persons, government and local authority etc) must be involved;
- Affected persons must be provided with adequate and reasonable notice regarding the eviction;
- All individuals affected by the eviction process must be provided with fair and just compensation.

### **During**

- There must be government officials present during the eviction
- The authority or officials carrying out the eviction must identify themselves and their intention;
- The eviction must take place at a safe time (not at night or during bad weather);
- The authority or officials carrying out the eviction must not use force or endanger the security of the people. The use of force must be avoided as much as possible.

### **After**

- Affected persons must be provided with alternative housing, i.e. people cannot be made homeless and left in inadequate housing conditions after the eviction.
- Alternative housing (at the relocation site) must be adequate.

## 5. Government duties **BEFORE** an eviction

The government has the duty to make sure that the following happens before an eviction takes place:

- Information is provided about the eviction and the reasons for the eviction.
- There is proper consultation with people who will be affected.
- Adequate and reasonable notice is given that the eviction will take place on a certain date.
- Adequate compensation is agreed upon, which can include money, housing, and access to farming land or other things to ensure that people who are evicted can maintain or improve their living conditions.

### 5.1 Information about the eviction

The government must make sure that people are informed about any planned eviction that may affect them. They must also be told why their land is being taken and what their land will be used for. The government has a duty to show that there is a genuine public interest or other good reason for taking the land, which makes the eviction absolutely necessary.

People must also be informed about their rights to be involved in decision-making about the eviction, including their right to go to court to challenge the eviction.

The information must be shared in a language and form that the affected communities can understand. For example, if many members of the affected communities cannot read, then the information must be shared through presentations, illustrations, photographs, videos, or visits to a similar project.

## **5.2 Consultation**

The government must make sure that affected people are properly consulted about any planned eviction before the decision to carry out the eviction has been made. The government must make sure that people are told that they risk losing their land or homes. They must then listen to and consider the people's opinions, comments and concerns about the eviction and the reason for the eviction. This consultation is very important because the affected people may have ideas about ways to avoid evictions or to limit the number of people who will be evicted.

If the eviction will be carried out, the government should also consult people about ways to make sure that they will have adequate housing after the eviction. This should include consultation about compensation, plans for relocation and livelihoods options after the eviction.

A good way to ensure that there is adequate consultation is for the government and affected people to prepare a resettlement plan together. A resettlement plan contains detailed information about the steps that will be taken to maintain or improve the lives and livelihoods of the affected people, including a timeline for when all of these activities will take place.

## **5.3 Adequate and reasonable notice**

The government must make sure that all people affected by an eviction receive adequate and reasonable notice before the planned date of the eviction. Everyone affected must be notified and the government must make sure everyone understands the information about the eviction. The notice must be given well in advance of the eviction date so that the community has a chance to prepare for the move or plan what to do in response to the eviction notice. The notice must contain information about the reason for the eviction and the exact date and time that it will take place.

## 5.4 Adequate compensation

When people are evicted the government must make sure that their right to adequate housing and other human rights are not violated. This means that the government has a responsibility to ensure that the people who are evicted have access to alternative adequate housing and are able to maintain, or even improve, their living conditions and livelihoods. The government should consult the affected people and make a plan about how they will be able to do these things after they move.

One important part of this plan is compensation. The government must make sure that people are offered adequate compensation to replace any property that they own, which will be affected by the eviction. This includes people's land, house and any other possessions. It may also include property that is shared by the entire community, such as a community center, grazing lands, a market, or a temple.

Compensation can take different forms, for example:

- Money to pay for the house, land and property that will be affected (the money must be enough for people to access adequate replacements);
- Directly providing people with replacements for what they lost—like building new houses and providing replacement farmland or market stalls;
- Assistance to start new businesses, plant new crops or travel to work;
- Sharing the benefits of the development project with the local community (for example, if a community must be evicted to make room for a hydropower dam that will create electricity, the affected community could be provided with free electricity in their new homes); or
- Some combination of the above.

If a whole community or village is being evicted, the govern-

ment and the people being evicted might agree that a resettlement site is the best option for compensation and ensuring that people have adequate housing after they move. If this is the case, it is a good idea if representatives of the community or village help to identify and agree on the location of the resettlement site. They should also agree on what should be built on the site. It is important for representatives to visit the site before the community has to move to make sure that it has all the things that were agreed upon. The resettlement site should be completed, with all the facilities that were agreed upon, before people are evicted. Resettlement sites will be discussed in more detail later.

## **6. The government's duties DURING an eviction**

If the government respects all its duties before an eviction, an actual eviction can usually be avoided, for example if the community is consulted and receives adequate compensation for their homes or land. If the government properly respects its duties before an eviction, people will often agree to move because they accept the reason for the eviction and are happy with the compensation, relocation and livelihood options that have been offered.

Sometimes, these government duties are not enough to avoid the eviction. For example, some families may still refuse to move because they could not come to an agreement with the government. The government has the duty to make sure the following happens during an eviction:

- There must be government officials present during the eviction.
- The people carrying out the eviction must identify themselves.
- The eviction must take place at a safe time (not at night or during bad weather).
- The use of force must be avoided as much as possible.

### **6.1 There must be government officials present during the eviction**

The government must make sure that government officials or their representatives are present during the eviction.

The duty of government officials who are present during an eviction is to make sure that the law and human rights are respected, that the eviction is legal, and that people are protected from violence. If government officials are helping to carry out an illegal eviction or using violence to force people to leave, this is illegal and they should be punished according to the law.

### **6.2 The people carrying out the eviction must identify themselves**

The government must make sure that people carrying out the eviction identify themselves so that it is clear who they are and that they have legal authority to carry out the eviction.

### **6.3 The eviction must take place at a safe time**

The government must make sure that evictions do not happen at night or in bad weather, unless people have agreed to it. People's safety must be respected while the eviction takes place.

### **6.4 The use of force must be avoided as much as possible**

The government must make sure that there is no threat, or actual use, of unnecessary force or violence against people or destruction of their possessions during an eviction. Limited force can only be used when absolutely necessary, and should be proportionate to any resistance to the eviction.

## **7. The government's duties AFTER an eviction**

It is not enough for the government to just respect its duties before and during an eviction. The government also has to respect its duty to help people after they have been evicted from their homes and land. The government must make sure that all the plans for adequate compensation that were agreed to before the eviction are implemented and completed.

Like every other person, anyone who has been evicted has a right to adequate housing. This means that the government must make sure that no one is left homeless or living in inadequate housing after an eviction. The seven elements of the right to adequate housing must be respected for people who have been evicted.

### **7.1 People must not be left homeless or living in inadequate housing after an eviction**

The government must make sure that evictions do not leave people homeless or living in inadequate housing. Also, people who have been evicted should not be put in a situation in which their other human rights will be violated. For example, evicting people from their homes and farming land might mean that they do not have enough to eat, which would violate their right to adequate food.

The government has a duty to make sure that people who are evicted can live in adequate housing and have access to essential things such as water, food and jobs. The most common ways for the government to fulfill this duty are the following:

- By giving people who are evicted enough money to buy replacements of the housing, land and property that will be affected, and to make sure they can find alternative adequate housing;
- By providing people who are evicted with alternative



adequate land and housing, and replacing anything else that they have lost;

- By providing assistance to start new businesses, plant new crops or travel to work;
- By sharing the benefits of the project with the affected people, such as on-site upgraded housing from an urban development project;
- Some combination of the above.

People being evicted should be consulted well before the eviction about which of these options would be best for them so that they can maintain or improve their lives and living conditions.

## **7.2 Housing at a relocation site must be adequate**

All people have a right to adequate housing in any place they live, even if they are moved to a relocation site. This means that if people are moved to a relocation site, the government has a duty to make sure that their new houses meet all seven elements that make housing adequate.

To recap, the seven elements of adequate housing are:

1. Security of tenure
2. Availability of services, facilities and infrastructure
3. Accessibility
4. Habitability
5. Affordability
6. Location
7. Cultural Adequacy



## **IV. Housing, Land and Property Restitution Rights**

### **1. What is Housing, Land and Property restitution?**

The term “restitution” means restoring people who have suffered injury or loss to their original position as far as this is possible.

Housing, land and property (HLP) restitution means that people who are arbitrarily and unlawfully displaced from their housing, land or property have it returned to them: either by returning to the same place or to another place which is just as good.

HLP restitution is essential to the idea of restorative justice. It makes sense: what was yours should be given back to you in the same state that it was in when you were forced to abandon it. Or, to put it another way, people should not lose their housing and land permanently just because they are displaced because of things beyond their control.

### **2. International Human Rights standards on HLP restitution: the “Pinheiro Principles”.**

The idea of a right to housing, land and property restitution has been discussed for many years. It was not until 2005 that the United Nations Principles on Housing and Property Restitution was adopted. They are commonly called the Pinheiro Principles, named after the Special Rapporteur for Housing and Property Restitution (and later Special Rapporteur on Human Rights in Myanmar), who was responsible for writing the principles.

Although the Pinheiro Principles do not have the same force of

international law as a human rights treaty, they:

- Reflect the position of international law from human rights treaties and other bodies, and
- Are being used by more and more governments and international organisations as a useful standard for dealing with the complicated problem of Housing, Land and Property Restitution.

### **3. Who does the principle of HLP Restitution apply to?**

The Pinheiro Principles apply to refugees and other displaced persons who were deprived of their homes, lands or properties unlawfully or arbitrarily. It includes victims of forced evictions, displacement through conflict, and those who have lost their homes and lands through natural disaster.

For example, the Pinheiro Principles apply to:

- People displaced by SPDC military operations;
- People displaced by dams, roads and other development projects;
- People displaced by cyclone Nargis and other natural disasters.

Restitution rights are not limited to people with land titles, but include renters and other legal occupiers of land.

### **4. The right to return**

According to the Pinheiro Principles, every displaced person has a right to return home. Governments should allow those who wish to return home to do so.

Return must be voluntary. Voluntary return is when the choice to return is made without any pressure from any outside source -

government, political groups and rebel forces - and where there is access to accurate information on the circumstances and conditions that displaced persons are returning to.

Displaced persons should be provided with complete, objective, up-to-date and accurate information regarding their former homes, lands or places where they used to live. They should be able to live in their homes again free from fear with access to their livelihoods, to education, to clean water and sanitation and to health facilities.

The right to return is not restricted by the passing of time and should not be limited to a certain period of time.

## **5. What is the right to restitution?**

The right to HLP Restitution not only means that every refugee and displaced person has a right to return to their former homes and lands, but that they have a right to have their homes and lands restored; to have damage done repaired; to have destroyed property rebuilt.

If return to the old home or land is not possible displaced persons have a right to get compensation for their loss and/or a new house and/or land. An independent tribunal should determine whether it is really factually impossible to return.

Displaced people who do not wish to return to their land and housing may also receive compensation or other forms of restitution.

## **6. What about people who are occupying land of displaced persons?**

If homes or lands are occupied by other people, the first owner or user still has the primary right over the home and land, and the right to make a claim over the new (secondary) occupant, upon return.

However, the secondary occupant may not be forcibly evicted from the home and land and may not become homeless. He/she must be provided with alternative adequate housing, in accordance with international human rights principles.

## **7. What should be done to promote the right to return and restitution?**

A starting point to the return process is for the government to recognise that displaced persons have a right to return and to housing, land and property restitution. The government of Burma must adopt relevant rules and policies and they must give adequate assistance to ensure the return of displaced persons.

Displaced people have the right to make a restitution claim. This process should be independent and impartial. This process should be easy to understand, and not too expensive or difficult.

It is common that displaced people do not have documents to prove their housing and land claims. Governments should understand this reality, and allow people to use other forms of proof about their claims. This could include interviews and photographs. The government can also make its own investigations into people's claims.

In order for HLP restitution rights to be realised, it is important for every displaced person to collect all relevant information and documentation relating to their lands, homes and properties in Burma. This includes information on the location of the home, the type of the home, the type and use of the land. Documents may include: title deeds, papers on land use rights, land registration certificates, land tax receipts, land sales receipts, rural tax receipts, and house insurance receipts.