



EVERYONE HAS THE RIGHT TO RETURN HOME

Explaining the right to return and the right to housing, land and property restitution in Burma (2008)

Centre on Housing Rights and Evictions (COHRE)

Introduction

Burma today is experiencing a housing rights crisis. Somewhere between one and two million people were rendered homeless as a result of the impact of cyclone Nargis. At time of writing, aid distribution has been extremely slow, due to the reluctance of the Burmese regime to accept international assistance.

Before cyclone Nargis hit, there were already an estimated one million people displaced Burmese, mostly from Burma's many ethnic minorities. This displacement was caused by the Burmese military's counterinsurgency tactics in the civil conflicts it is fighting, and by their policy of military self-sufficiency, where poor villagers are forced to provide food, labour and land to the military. Development projects, such as dams, mines and oil pipelines have also caused mass displacement and other violations of human rights.

Under international law, displaced people have the right to return to their original houses and land, unless return is factually impossible. If going home is genuinely impossible, then people have the right to adequate alternative housing – close to their livelihoods, and education and health facilities, with access to clean water and sanitation. These rights are set out in the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons – commonly known as the Pinheiro Principles.

These rights apply equally to those Burmese displaced by Cyclone Nargis and those who were already forced to leave their homes and lands.

What is the right to return?

Every displaced Burmese has a right to return home. All refugees and displaced persons have the right to go back voluntarily to their former homes, lands or places where they used to live, in safety and dignity. This means that persons displaced against their will must be allowed to return to their former homes and lands, if and whenever they wish 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, on physical, material and legal safety issues 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 cannot be limited to a certain period of time.

What is the right to restitution?

The right to housing, land and property 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.



This right is important for refugees and displaced persons to get on with their lives in Burma in peace, in adequate housing that meets their social, cultural and livelihood requirements.

If restoration, reparation or reconstruction of 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.

Who has the right to return and restitution?

Every person who has been forced to leave their homes, lands and properties has a right to return home. This includes refugees (people who have fled to other countries) and internally displaced persons (people who were forced to leave their homes but who have stayed in Burma at a different location).

Persons can be forced to leave for many reasons and under many different circumstances. It does not matter if they had to leave because of fighting, or because their land was confiscated, because of natural resource exploitation such as mining, logging, or oil and gas extraction. Also, it does not matter if they had to leave because of development projects such as gas pipelines, dams, roads or railways; or because of agriculture policies, such as imposed farming systems or opium eradication. Finally, it does not matter if they had to leave because of natural disasters such as floods, tsunamis or cyclones.

The right to return and restitution applies to all displaced persons. It does not matter where they came from or where they went to. It does not matter if they came from one of the lowland Divisions or from one of the seven States. And it does not matter to what ethnic group they belong.

What happens if your home or land is confiscated and occupied?

A large number of houses and land in Burma has been confiscated and occupied by armed groups. People who are displaced because their homes and lands have been occupied by the Tatmadaw or any other armed group, still have the primary right over their homes and lands. They remain to have a right to return to their homes and lands, unless it is agreed otherwise in a negotiated peace agreement. If such an agreement is negotiated the displaced people must have had a free and fair consultation and have the right to be compensated and get a new house.



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.

What happens if your home or land is damaged or destroyed?

Displaced people whose home, land or property has been damaged or destroyed have a right to have it repaired or rebuilt (right to restitution). If reparation or reconstruction is impossible, for example, because the land is flooded or gone because of a dam or because of the cyclone, people have a right to be compensated and get a new house.

What can 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.

Also, in order for this right 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, the value of the home and land, the number of people residing on 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. These documents are essential to make restitution claims in Burma, therefore it is important that every displaced keep them in good conditions in a safe and secure place.

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