



DISPLACEMENT SOLUTIONS

**GUIDANCE NOTE
ON
DEVELOPING POLICY OPTIONS FOR ADDRESSING LAND
GRABBING AND SPECULATION**

IN

MYANMAR

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Land grabbing and speculation, which can both manifest in a multitude of forms, are unfortunate, often-inter-twined, yet common practices in countries undergoing structural political transition. If unchecked, unregulated, or unintentionally encouraged by the very governments that replace formerly authoritarian regimes, these two land realities can serve to undermine democratic reforms, entrench economic and political privilege and seriously harm the human rights prospects of those affected, in particular internationally recognised housing, land and property (HLP) rights. Land grabbing and speculation can increase inequality, harm economic prospects and create conditions where social tensions and even violence may become inevitable. Unless law and policy explicitly address the negative consequences of these practices, land grabbing and speculation can erode citizen confidence in government, reduce incomes and livelihoods and increase poverty and broad declines in a range of vital social indicators.

And yet, there is nothing inevitable or inherent about the inequitable acquisition and control of ever-larger quantities of land in fewer and fewer hands. Indeed, governments wishing to protect the HLP rights of rural and urban dwellers and properly regulate the land acquisition and transfer process can succeed in reducing the prevalence of both land grabbing and speculation, improve the human rights prospects of current landholders and ultimately strengthen both democratic processes and macro-economic perspectives.

It is clear that these issues are affecting Myanmar at the moment, and that it is up to the Government to take steps to address these problems in a fair, effective and equitable manner. Twelve possible steps that the Government may wish to consider, include:

1. Consider a Land Value Tax to Prevent Speculation

A critical tool at the Government's disposal to prevent speculation is the imposition of a land value tax. In addition to raising government revenue, land taxes can help induce investment in and use of land in a productive manner and serve to reduce or undermine speculatively driven

land acquisition. Such a new tax should be levied on all new land transfers and purchases (as well as acquisitions contrary to legal norms), and calculated according to the purchase value of the land rights concerned. Long-term occupiers and low-income households should be exempted from any new land tax. All new land transfers and purchases should be subject to strict monitoring and only approved once a series of criteria have been met. Such a tax is particularly important given the massive tax losses that will occur if current (and extremely generous) Government tax holidays for foreign investors are kept in place.

EXAMPLES

- **In Hong Kong, a government rent is levied in addition to municipal rate. For properties which are located in the New Territories (including New Kowloon), or located in the rest of the territory and of which the land grant take place after 27 May 1985, the government rent is levied at 3% of the rateable rental value.**
- **In the Australian state of New South Wales a state land value tax is levied, which exempts farmland and a person's principal place of residence. The determination of land value, for tax purposes at a state and local level, is the responsibility of the Valuer-General.**
- **Singapore, Estonia, Taiwan, parts of the United States, Ireland, Kenya, Namibia and many other countries maintain land value taxes or are in the process of developing them. Voices in support of a land value tax in Russia have argued that the failure to enact such a tax has been a major cause in the rise of the new Oligarchs.**

2. Set (Temporary) Limits on the Size of Acceptable Land Acquisitions

Particularly during this tumultuous period of reform and transition, it may serve the people of Myanmar best if limits are set on the size of land that can be legally acquired in single settings or single transactions. Setting limits on the size of economic land concessions that can be acquired by individuals or business interests can help to reduce the likelihood of both land grabbing and speculative endeavours. Such limits may protect the rights of poorer households by limiting pressures exerted by those seeking ever-larger land holdings. In lieu of legislation to this effect, an executive order could be considered which puts in place special measures to examine all land deals over a certain size. A limit of 50 acres could be considered as one possibility.

EXAMPLES

- **The Urban Land Ceiling Act (1976) provides “for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good.”**

3. Establish a National Independent Land Transfer Oversight Panel for All Land Parcels Larger Than 50 acres

Another method that might be considered as a means of preventing land grabbing and speculation is the establishment of a national independent land transfer oversight panel for all

land parcels larger than 50 acres. All land transfers larger than 50 acres would require the formal approval by this new body.

EXAMPLES

- **Planning and/or Zoning bodies or commissions are commonplace and serve as central oversight agencies within land management systems. In American Samoa and Kenya, for instance, planning commissions seek to fairly apply zoning controls and to protect public from all hazards**

4. Strong and Public Political Denunciations of the Practices

Strong public statements against land grabbing and speculation (and the associated effects of dispossession and displacement) can go a long way to creating conditions within society where these practices will not be tolerated. Such pronouncements are a powerful way of signalling official distaste for practices that violate the basic rights of people, and can be an important means of clearly demonstrating the differences between a current and former government's approaches to these matters. The inclusion of language within one of the President's future speeches (which are watched and analysed with great interest both internally as well as outside of the country) to this effect could be an effective tool in reducing these practices. Moreover, by making clear the official distaste for the practices, including clear statements concerning the non-payment of compensation to unlawful occupiers of land designated for various projects, Government will be in a far better public position to act forcefully to prevent further abuses of land rights.

EXAMPLES

- **Kim Dae Jung's TV appearance in 1998 shortly after coming to power declaring that the forced eviction policy of the previous government would be abandoned because it violated basic human rights**
- **The inclusion of both housing rights and protections against forced evictions within the first post-Apartheid Constitution in South Africa in 1994**

5. Expand security of tenure protections under current and future legislation

Security of tenure rights need to be conferred as soon as possible on all dwellers, both rural and urban, as a means of protecting their land holdings and rights to remain where they are. Security of tenure rights under the *Farmland Act*, for instance, are far too weak at present, with both the administrative structures for conferring tenure often not trusted by farmers and procedures which far too easily allow expropriation rights to prevail over the rights of farmers to remain and successfully resist attempts at forced removal. The Government should develop policies where a bias *against* eviction is built into all land acquisition procedures, and where all available alternatives to eviction must legally be explored prior to authorising any forced removals of people from their land.

- **Great care should be taken not to prevent speculation through the adoption of new laws that give excessive powers to the State to acquire land, as occurred recently in Indonesia with its adoption of a new Land Procurement Act in 2012. Publicly justified as a tool to prevent speculation, this new Act gives considerable powers to the State to acquire land through expropriation processes which are arguably heavily skewed in favour of State interests over the rights of ordinary citizens, particularly those without formal ownership rights.**

- **In the Philippines Article XIII, Section 10 of the Constitution explicitly provides that "Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner." Section 10 then was expanded upon under Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992 (UDHA). Section 28 of the UDHA states that "Eviction or demolition as a practice shall be discouraged." However, under certain circumstances evictions may be allowed, but must comply with eight mandatory requirements, including: "Adequate consultations on the matter of settlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated". Furthermore, Executive Order No. 152, issued on December 10, 2002, instructs all government officials to secure a Certificate of Compliance (COC) from the Presidential Commission for the Urban Poor (PCUP) to ensure that procedures for a just and humane demolition, as mandated by the Constitution and as set out in the UDHA are followed.**

6. Develop proper oversight procedures to revoke rights over land acquired through land grabbing

Regulations can be developed to subject all development, infrastructure and land-based investment projects to proper oversight procedures which allow the oversight body concerned to deny permission to legally acquire land if it is determined that land grabbing was involved in the procurement of the land concerned. Enforceable legal procedures for revoking unlawfully acquired land should be established in the near term. Ultimately, land grabbing needs to be treated as a form of corruption and prevented.

7. Require long-term occupation of land prior to providing planning permission

Another useful tool to prevent land grabbing and speculation could be to require forms of proof of occupation that show clear and long-term control and rights over the land concerned. Such a regulation would place the onus on the person or business claiming rights over the land to prove that they had held the land in question for a determined period, say six months, as a means of discouraging land grabbing and speculation.

- **Throughout much of the past half century in the Netherlands, speculation and accumulation of empty housing stock has in part been tackled by policies tolerating the technically unlawful occupation of the empty housing by squatters subject to certain criteria being met. This approach, combined with one of the world's highest proportions of social housing stock set within a constant shortage of urban housing units, enabled tens of thousands of squatters to occupy properties for extended periods.**

8. Take Forced Displacement and Dispossession Seriously

When land grabbing and speculation are tolerated, these practices all too often result in human rights violations, including forced evictions and displacement, loss of housing rights, landlessness and dispossession. These practices are brutal, ruin lives and are very difficult to reverse in a fair and just manner. In a country based on the rule of law and guided by principles of equality and natural justice, these practices need to be prevented to the maximum possible extent, and laws and policies are needed to protect HLP ownership and user rights as a means of preventing new forms of displacement and dispossession. Proper forms of protecting HLP rights, increasing levels of security of tenure and developing the administrative and judicial remedies required to secure these rights are vital components in any effective HLP framework. Specific legislation and other measures should be taken to

protect slum dwellers rights and those potentially affected by resource extraction projects in rural areas, and allow them all to enjoy, as is stipulated in the International Covenant on Economic, Social and Cultural Rights, the “continuous improvement in living conditions” and protection against forced evictions and loss of housing rights. Ratifying this Covenant as well as the many other human rights treaties that have not yet been ratified will further assist in creating conditions for a better HLP future for the people of Myanmar.

EXAMPLES

- **Numerous UN resolutions and other standards such as General Comment No 7 (1997) issued by the UN Committee on Economic, Social and Cultural Rights declare forced evictions as a ‘gross and systematic violation of human rights’, that can only be carried out in exceptional circumstances and in accordance with strict rules and regulations.**
- **Brazil’s Federal Law No. 10 257 of 10 July 2001 known as ‘The City Statute’ establishes principles and guidelines which express a novel concept of urban development and land use. Public and private entities involved in the development and upgrading of urban areas are required to incorporate principles of justice, democracy and sustainability in their projects. As such, the role of Brazilian cities is now seen as one fulfilling a social function, particularly with regard to access, usage and the fair and equitable distribution of the opportunities and wealth of the urban area. The Statute of the City is supplemented by provisional measure which deals with the concession of public property for housing purposes – essentially adverse possession, or usufruct, of public land.**

9. Strictly Regulate Foreign HLP Ownership and Leasing Rights

When addressing how to approach foreign HLP ownership and leasing rights, a moderate approach to HLP rights is required; the HLP rights of everyone in society and the needs of investors need to be carefully balanced. Myanmar clearly needs investment, but this should never be to the detriment of its people. When leases are provided to non-Myanmar entities, compliance with a model contract should be secured to ensure that if land is leased, labour requirements are met, adequate rent payments are made, that a minimum certain number of local people are employed and so forth. In addition, such contracts could include provisions that prevent replacing food crops with other forms of agricultural production exclusively for purposes of export.

EXAMPLES

- **On December 22, 2011, Argentina's parliament approved a law limiting the amount of rural land foreigners can purchase. Parliament established a Ministerial Council of Rural Lands to implement the Law. Total foreign ownership of rural land cannot exceed 15% of Argentina's total land mass. No more than 15% of the 30% (e.g. 4.5% of Argentina's total land mass) can be acquired by persons and/or entities of the same nationality. Any particular individual or entity is limited to no more than 1000 hectares (24,710 acres) of rural land. The Law will not be applied retroactively and does not affect existing foreign landowners. The acquisition of land in certain areas designated as "security areas" (near Argentina's borders) will require an additional approval by Argentina's Ministry of the Interior.**

- **Thailand's land laws prohibit foreigners from owning land making it impossible for foreigners to obtain outright ownership over land and house.**

10. Begin the Land Reform Process Urgently Through the Passage of a New HLP Law

Given the scale of structural landlessness in rural areas, as well as the still central place of the State in owning and controlling the use of land, it will be incumbent upon the Government to develop new forms of land reform and to approve wider housing, land and property laws that provide the legal basis for securing the HLP rights of the entire population within the shortest possible time-frame.

11. Consider Community Land Trusts as One of Several Viable Alternatives to Outright Private Property Ownership

Community Land Trusts are forms of land ownership that can also help to prevent land grabbing and speculation by making legally possible the community ownership of land, while houses and related property asset upon the land remain owned by individuals. A community land trust is a nonprofit corporation which acquires and manages land on behalf of the residents of a place-based community, while preserving affordability and preventing foreclosures for any housing located upon its land. Few measures will keep the market value of land under control than the development of community land trusts. Should outright private property ownership emerge as the primary vehicle for conferring HLP-related rights within the context of the broader privatisation process, if not managed with extraordinary care within the framework of a pro-poor HLP policy and legislative structure, further concentration of land into fewer and fewer hands will be the inevitable result.

12. Jointly Co-Host a National HLP Summit

The Government should jointly co-host with civil society groups of all persuasions a National Housing, Land and Property Summit as a key vehicle in developing broad-based legal and policy reforms within the HLP sector. The Summit should be accessible to all relevant actors and be dedicated to providing a truly open and free venue for a nationwide discussion on how best to address the considerable HLP challenges facing the country.