



Summary

## DISPLACED AND DISPOSSESSED

Conflict-affected communities and their land of origin in Kachin State, Myanmar

May 2018

*Displaced and Dispossessed* details issues relating to internally displaced persons (IDPs) in Kachin losing their land of origin, due to appropriation by various external actors. Even when conditions are eventually met for IDPs' safe, voluntary and dignified return home, their inability to reclaim their land is likely to undermine peace, reconciliation and development efforts, with particularly negative impacts on women. Considering IDPs overwhelming want to return, sustained and equitable actions to remedy this situation are urgently required.

### KEY FINDINGS

#### **IDPs are losing their land of origin**

IDPs have claimed, and evidence<sup>1</sup> indicates, many instances of IDPs' land of origin being appropriated for extraction of natural resources, small and large-scale agriculture, civilian habitation and other purposes, by armed actors, companies, non-displaced communities and others. Loss of land seems common, but the full extent of the problem is difficult to assess, due to formal and arbitrary access restrictions preventing more thorough investigation.

#### **Legal basis exists for protecting IDPs' land rights**

A range of different principles, laws, policies and positions of the Myanmar government, the Kachin Independence Organisation and the United Nations support protections in Myanmar for IDPs' land rights and the right to restitution. Although there is a lack of legal clarity at the local level, there are also no legal provisions amongst these laws and policies allowing for other actors to take over IDPs' land.

#### **Laws are used to unfairly dispossess IDPs of their land**

Through documented evidence, and during site visits in which displaced people as well as those who had acquired the land were spoken to, it was learned that external actors had on occasions used government-managed procedures, such as those under the Vacant, Fallow and Virgin (VfV) Land Management Law and the Farmland Law to unfairly acquire IDPs' land of origin.

#### **Restricted access increases impunity**

Military checkpoints and arbitrary restrictions on the movement of people are commonplace in Kachin, reducing accountability and oversight of actors appropriating IDPs' land of origin. When this occurs, IDPs, civil society and other actors are often unaware, find out too late to lodge a complaint, or are barred from accessing the land entirely.

#### **IDPs lack access to information, knowledge of laws and justice mechanisms**

IDPs tend to have both limited knowledge of Myanmar land laws and capacity to engage relevant authorities. When disputes or complaints arise, IDPs often do not know who to turn to, cannot access the right people for advice nor have [the resources to](#) assert their land rights.

<sup>1</sup> Evidence from over ten locations visited strongly indicated land appropriation, including admissions from people alleged to have appropriated land belonging to IDPs.



## KEY RECOMMENDATIONS

### All stakeholders should:

- Address all barriers to return, most urgently the presence of armed actors, landmines and ongoing conflict. This should be grounded in an equitable and comprehensive political settlement.
- Support IDPs to assert their land rights, including equitable remedy of cases where external actors have appropriated IDPs' land of origin.

### The Government of Myanmar should:

- Clarify the status of and guarantee IDPs' rights to their land of origin, in accordance with existing laws, guided by the National Land Use Policy and relevant international standards.
- Establish a 'land scrutiny commission', as committed to by the Kachin State Chief Minister, in order to establish the amount of redistributed land and how much of it belongs to IDPs.
- Suspend the granting of new land concessions, and suspend allocation of individual titles in areas where there is risk of overlapping with IDPs' land of origin. These suspensions should be in place until there is clarity about the status of IDP land and pending revision of VFV and Farmland Law procedures to better meet IDPs' specific circumstances, such as being unable to access their land of origin over long periods.
- Lift formal and arbitrary restrictions to accessing IDPs' land of origin and ensure safe passage.
- Enact legislation on restitution that introduces clear, equitable and accessible mechanisms of redress for IDPs, including guarantees that IDPs retain all their previous rights and entitlements, restitution rights, acknowledgement of customary practices and addresses women's specific circumstances, and grounded in conflict sensitivity principles. This must be in close consultation and collaboration with civil society and affected populations.

### The Kachin Independence Organisation should:

- Finalise and implement a land policy that provides for explicit protection for IDPs' right to housing, land and property rights, including restitution.

### International Donors and Organisations should:

- Support actors, particularly national civil society, working to advance protection and restitution of IDPs' land of origin.
- Stand ready to support all stakeholders in Kachin to develop and implement a robust land restitution process as part of a comprehensive peace agreement.

### Domestic and International Companies should:

- Adhere to all national and international rules and standards, ensuring conflict sensitive approaches and that no IDPs' land of origin is intentionally or inadvertently appropriated.
- Ensure any grievances raised by IDPs are processed sensitively and in accordance with international business and human rights standards.

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