



Executive Summary

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Dealing with displacement in Myanmar's peace process

A PSRP Working Paper by Kirsten McConnachie

About the Author

Kirsten McConnachie is an assistant professor in law at the University of Warwick, and an Associate of the Political Settlements Research Programme (www.politicalsettlements.org). She has researched displacement from Myanmar since 2008, including extensive fieldwork in Thailand, India and Malaysia resulting in hundreds of interviews with refugees, NGOs, CBOs and others. She is the author of *Governing Refugees* (Routledge 2014), a book about camp management and administration of justice in refugee camps in Thailand. She has also written on the governance role of non-state armed groups.

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Executive Summary

Myanmar has been engaged in a process of political change since 2011. A central goal of these reforms has been the attempt to resolve political conflicts between ethnic armed organisations (EAOs) and the Myanmar Government. Talks began under the 'civilian government' led by Thein Sein and have continued under the National League of Democracy (NLD)-led Government. However, several years of talks have produced little concrete progress.

This is a complex peace process, which has only the partial inclusion of Myanmar's many ethnic armed organisations and which is being conducted in a climate of continuing conflict and state violence and continuing tensions between the Burman majority and other ethnic groups. This is evident in large-scale displacement from Rakhine State (where more than 300,000 refugees fled to Bangladesh in September 2017) and in Kachin and northern Shan States (where more than 119,000 people have been displaced since 2011). There is also an urgent emerging problem of large-scale development and land acquisition projects creating further displacement.

It is important not to be naïve about the scale of the challenges in Myanmar's peace process, or indeed about the possibility that the peace process may break down entirely. However, it is also valuable to consider what would be required to maximise the chances of a successful peace process. There is no formula to determine why some peace processes work while others fail, but the chances of building a sustainable peace are substantially enhanced when the process genuinely engages with and seeks to correct the inequalities and injustice that gave rise to conflict. For Myanmar, that must include addressing the causes and consequences of displacement.

This working paper sets out the context and experience of displacement in and from Myanmar. It identifies a number of areas that must be addressed, including:

- The process of drafting a peace agreement, and displacement-specific provisions to include in a peace agreement;
- The timing, design and implementation of return and reintegration of displaced populations;
- Wider issues of legal protection, land governance and restitution.

The working paper also identifies some cross-cutting themes, including the need to recognise a relationship between displacement and other aspects of peacebuilding (such as political autonomy for ethnic areas and land governance); the necessity of ensuring that displaced people themselves are central to the process of policy design, ideally through institutionalised mechanisms for dialogue, consultation and representation; and the importance of securing continued funding to support refugees and IDPs with a continuing need of international protection.

Recommendations for displacement-specific provisions in a peace agreement

Past peace agreements vary in the extent to which they address displacement, from a brief mention in a peace agreement to a detailed protocol text. Some issues that are frequently included are: providing guarantees of safety and security for returnees; guarantees of access to humanitarian agencies; ensuring that returnees receive benefits or other forms of assistance; and creating institutions for effective enforcement and implementation of peace agreements. These provisions could all be usefully adapted and implemented to suit the Myanmar context, including by:

- Adopting an inclusive definition of the population of Myanmar's displaced, such as "all refugees and displaced persons", and ensuring that all programmes are extended to a wide population.
- Affirm human rights and freedoms for refugees and displaced persons (including the right to non-discrimination) and affirm relevant international standards including the *Guiding Principles on Internal Displacement*, the *Pinheiro Principles on Restitution of Property after Displacement*, the *Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* and the *UN Voluntary Guidelines on Responsible Business and Human Rights*.
- Guarantee unrestricted international humanitarian access to displaced populations anywhere in Myanmar. This is an essential guarantee of security and an essential component of building trust in the Government's commitment to peace. It is particularly important that access is guaranteed for international organisations and not only for national agencies.
- Establish monitoring mechanisms, potentially including a dedicated institution for monitoring programmes related to displacement but at a minimum ensuring representation of displaced people on any monitoring institutions that are created during the peace process.
- Provide for legal reforms to facilitate returnees' reintegration, including guarantees of safety and non-prosecution for returnees; provision of education in ethnic languages, recognition of educational qualifications gained in exile and a full restoration of citizenship documentation.

Recommendations for policies shaping refugee and IDP return

For real change and real peace in Myanmar, refugees and IDPs must be able to return home. However, the fundamental provision of international refugee law is the principle of *non-refoulement*: a refugee should not be returned to a country where his or her life or freedom is threatened. Past refugee repatriation programmes show the risks of premature repatriation and indicate approaches to ensure refugees and IDPs from Myanmar can return voluntarily, safely and with dignity. In particular:

- UNHCR should continue to uphold a high threshold for organised returns, and any assessment of safety and security in return areas should take into account the likelihood of future displacement through land grabs and large-scale development projects. Monitoring of return conditions should be continuous, including ongoing communication to refugees and IDPs using accessible formats (the nature of which will vary in different displacement environments).
 - Planning for return should take into account the full scope of Myanmar's displaced and develop equitable policies that respond to the diversity of need. This will require a holistic approach from EAOs as well as UNHCR and international NGOs to ensure that returnees are not isolated from other aspects of development and political administration in return areas.
 - Many refugees and IDPs do not yet feel that conditions are suitable for return. A number of legal and policy reforms could help to remove barriers to return and build confidence among displaced populations. This includes landmine removal, restoration of citizenship documentation, recognition of educational qualifications gained in exile, and dedicated educational support for children who have been educated outside Myanmar and are not literate in Burmese.
 - Any benefits and entitlements provided to returnees must be accessible to those populations. That
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will require sensitivity to levels of education and language literacy and awareness of transport and communications infrastructure in return areas. Many refugees and IDPs continue to have a deep fear and mistrust of engaging with government actors, which could affect their willingness to collect benefits if they require repeated engagement with authorities.

Recommendations for land reform, land governance and property restitution

Land governance is a central issue, as a cause of displacement, an impediment to return, and a risk of future displacement. Addressing displacement must include provisions related to land, such as:

- Refugees and IDPs have a right to restitution of housing, land and property, and this should be recognised in the peace process and affirmed in an eventual peace agreement. New institutions may need to be created to decide land claims and allocate land where necessary.
- New land and property issues are arising in Myanmar that risk exacerbating past discrimination and entrenching the opposition between Myanmar's central government and ethnic states. This includes land grabbing and displacement due to large-scale agriculture and development projects. Addressing these issues is critically important for the future governance of Myanmar, for the successful return and reintegration of refugees and IDPs, and to prevent future displacement. Pressing issues to be resolved include protection for existing land users, recognition of informal tenure, recognition of communal land tenure (in agriculture, forestry and communal grazing) and protection against land confiscation.
- Ethnic armed organisations must ensure that land governance is at the heart of their political negotiations with the Myanmar government. Local communities' land use rights should be recognised and their voices heard by the Myanmar Government. To prevent further environmental degradation as a result of exploitation of natural resources, EAOs should seek an immediate moratorium on extractive industries and large-scale land acquisition.
- International NGOs had an important influence in the drafting of Myanmar's National Land Use Policy. They must continue to exert pressure on the Myanmar Government to ensure that this policy is fully translated into legal reforms that provide real protection for local people and communities, including protection for customary ownership and community-based land title registration as well as the creation of mechanisms to resolve land claims which have the participation of local populations and are enforceable in Myanmar law.

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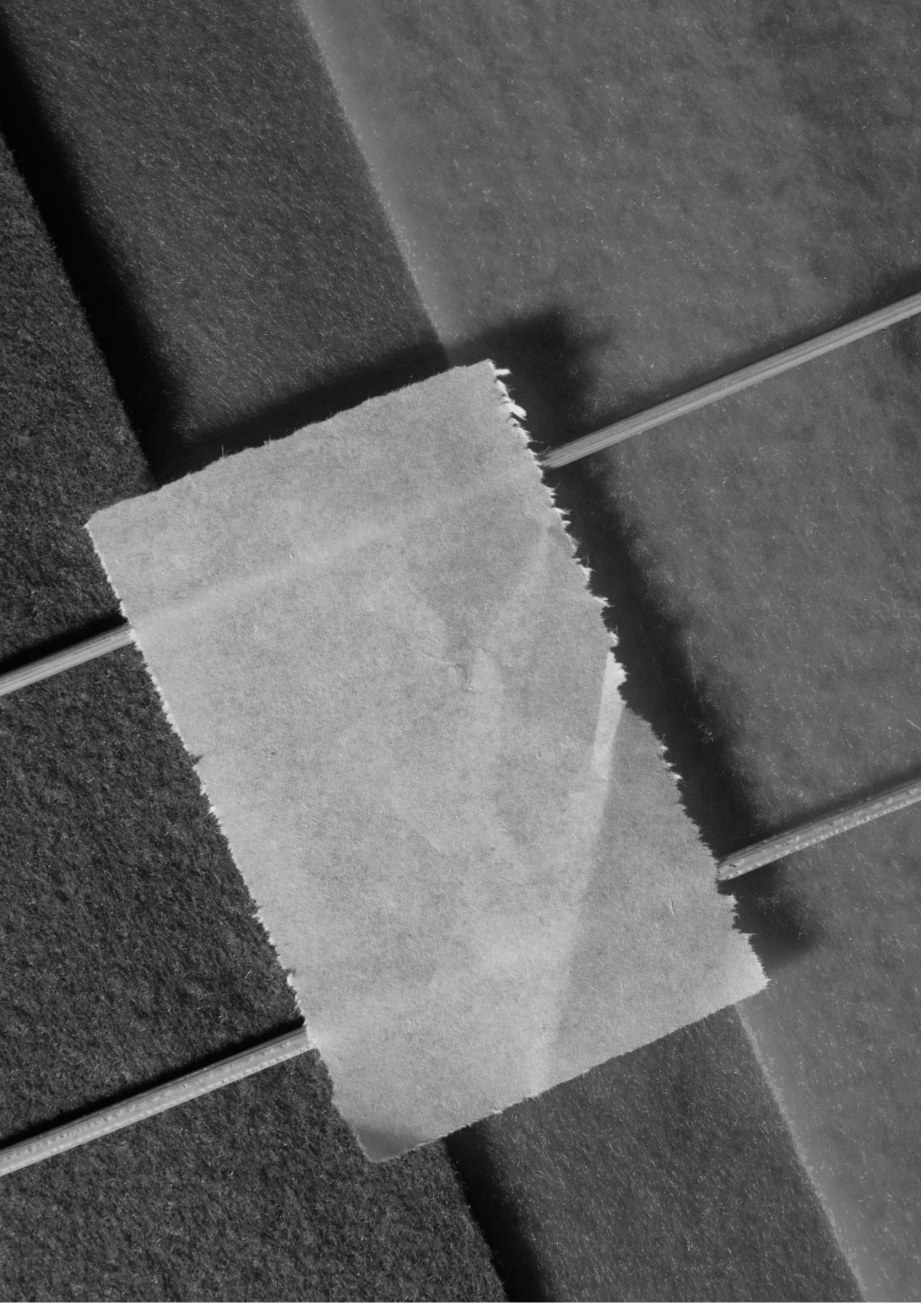
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The programme is addressing three broad research questions relating to political settlements:

1. How do different types of political settlements emerge, and what are the actors, institutions, resources, and practices that shape them?
2. How can political settlements be improved by internally-driven initiatives, including the impact of gender-inclusive processes and the rule of law institutions?
3. How, and with what interventions, can external actors change political settlements?

The Global Justice Academy at The University of Edinburgh is the lead organisation. PSRP partners include: Conciliation Resources (CR), The Institute for Security Studies (ISS), The Rift Valley Institute (RVI), and the Transitional Justice Institute (TJI, University of Ulster).

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