



# DISPUTED TERRITORY

MON FARMERS' FIGHT AGAINST UNJUST LAND ACQUISITION  
AND BARRIERS TO THEIR PROGRESS



A REPORT BY

THE HUMAN RIGHTS FOUNDATION OF MONLAND - BURMA

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Website address: <http://www.rehmonnya.org>

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## ACRONYMS AND ABBREVIATIONS

<b>AMDP</b>	All Mon Regions Democracy Party
<b>AR</b>	Artillery Regiment
<b>FDI</b>	Foreign Direct Investment
<b>FMB</b>	Farm Management Body
<b>HLP Rights</b>	Housing Land and Property Rights
<b>HURFOM</b>	Human Rights Foundation of Monland
<b>IB</b>	Infantry Battalion
<b>IDP</b>	Internally Displaced Person
<b>LIB</b>	Light Infantry Battalion
<b>LUC</b>	Land Use Certificate
<b>MIC</b>	Myanmar Investment Commission
<b>MOMC</b>	Military Operation and Management Command
<b>NLD</b>	National League for Democracy
<b>NMSP</b>	New Mon State Party
<b>RLU</b>	Rehmonnya Labour Union
<b>RAFU</b>	Rehmonnya Agriculture and Farmers Union
<b>SLORC</b>	State Law and Order Restoration Council
<b>SLRD</b>	Settlement and Land Records Department
<b>UN</b>	United Nations
<b>USDP</b>	Union Solidarity and Development Party
<b>VFV Law</b>	Vacant, Fallow and Virgin Lands Management Law
<b>VPDC</b>	Village Peace and Development Council

## A. INTRODUCTION

Over the years HURFOM has produced a number of accounts highlighting the hardships faced by Mon farmers who became victims of land confiscation or unjust land acquisition.<sup>1</sup> In this report HURFOM follows-up on previously documented abuses and concentrates on an emerging new trend: farmers' active and collective pursuits for rights to their land.

*Disputed Territory* aims to elaborate on the activities of and express solidarity with farmers who are resolutely, and in some cases for the first time, seeking justice regarding their land. To exhibit current challenges and bring into focus some of the key obstacles in the Mon context, this report uses case studies of appeals over past military land confiscations in Ye Township and on-going transgressions by various investors in Kyaikmayaw Township. Where barriers to justice exist, HURFOM recommends effective and immediate solutions.

HURFOM contends that farmers' newly voiced demands present an important opportunity for President Thein Sein's government. Inherent in an environment of growing activism is the chance to meet appeals with justice, thereby demonstrating to domestic and international critics that the administration is committed to a clear break with the abuses of past military regimes. Violations of farmers' rights need to be publicly condemned and owners of wrongfully seized land must have property restored or be given fair compensation. There is an urgent need for the establishment of a credible legal framework to prevent dispossession and violated rights from continuing to be hallmarks of agrarian life under this government's nominally civilian rule.

The argument presented herein is simple. Since 2011 farmers have been actively pursuing their rights to land, yet to date little progress has been made. Few past victims of unjust land acquisition have had land returned, misconduct by investors in land acquisition continues, and secure land rights remain virtually absent from Burmese law.

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<sup>1</sup> "Unjust land acquisition" is used throughout this report in reference to acquisitions of land in which landowners' rights are not respected. Typically this involves the failure to obtain free, prior and informed consent for the acquisition, and may also include failure to pay compensation or payment of compensation below the land's market value. The term is used broadly, to encompass past cases of military land confiscation and on-going acquisitions of land by unscrupulous investors.

Given the focus on farmers' struggle for their rights, this report pays considerable attention to the legal framework in which past and on-going land disputes have taken place. Inadequate legislation and public lack of awareness of existing legal rights are highlighted as key reasons why Mon farmers do not possess rights to their land in 2013. In a nation emerging from conflict and actively pursuing economic development, farmers are in desperate need of robust, legally enshrined protection of their land rights.

With government land surveys characterised by a lack of transparency and enduring bias, the precise number of acres of land unjustly acquired from Mon farmers over the years remains nearly impossible for an organisation of HURFOM's capacity to confirm. However, information gathered for this report suggests that it stretches to tens of thousands of acres. HURFOM calls on all persons in positions of authority to elevate the voices and champion the rights of farmers who for generations have crafted Burma's unique and prolific landscape.



## B. METHODOLOGY

**S**ince 1995 HURFOM has been engaged in documenting the voices of Mon populations with research methodology that was developed over these 18 years of experience.

Research for this report was conducted from April to September 2013. During this period five field reporters visited four Mon-populated townships: Mon State's Ye, Thanbyuzayat and Kyaikmayaw townships, and Tenasserim Region's Yebyu Township. Interviews were conducted in person where possible and by phone when transport or security issues made interviewees' locations inaccessible, and field reporters shared interview transcripts and field notes with HURFOM via satellite phones and online communications. With local authorities often backing the military personnel and companies involved in cases under investigation, field reporters noted they had to carry out research with caution.

After preliminary visits it was decided that field reporters would focus on Ye and Kyaikmayaw townships because cases there reflected the spectrum of different perpetrators against whom Mon farmers are appealing unjust land acquisition: military in the former and various companies in the latter. Ye and Kyaikmayaw were also determined to be better suited to collecting comprehensive data than other regions; in Thanbyuzayat and Yebyu townships victims of confiscation had more consistently migrated to neighbouring countries for work opportunities.

Field reporters made use of an extensive network to facilitate interviews and gain the confidence of victims. On our reporters' fourth and final trip to Ye Township, a local religious leader provided assistance that was invaluable to our work.

In total close to 100 interviews were conducted. 83 local residents were consulted in Ye and Kyaikmayaw townships and seven in Yebyu Township. In Ye Township 14 villages were covered, whilst testimony was obtained from residents of five Kyaikmayaw villages. In addition, field reporters consulted four members of the Settlement and Land Records Department, two parliamentary representatives (both members of the Land Investigation Commission), five members of village administration, one Union leader and numerous legal experts. Where possible HURFOM uses the real names of interviewees, although many requested to remain anonymous or to appear under an alias given security concerns related to their cases. Similarly, for protection of interviewees and at their request, in some cases their precise locations are not listed.

Over the course of this research, various persons declined to talk with HURFOM reporters. Some victims of military confiscations in Ye Township expressed distrust for our reporters, saying they would only cooperate with political parties. Of 12 civil servants who declined interviews, two said they were concerned about farmers' rights in on-going land disputes but feared that giving testimony might jeopardise their positions. All companies active in Kyaikmayaw Township refused requests for information.

In addition to conducting interviews, HURFOM was able to obtain copies of correspondence regarding land disputes in Ye, Kyaikmayaw, Yebyu, and Thanbyuzayat townships. These contained both original letters of appeal from residents and responses by government personnel.

Where possible, cases represented here are given in the fullest and most accurate detail possible, with hopes that the information gathered in this report may be used as an advocacy tool for advancing the cases of the victims. Appendix 2 contains a list of confirmed cases of military land confiscation in Ye Township, all of which remain unresolved. This register was made by crosschecking a list of victims in Ye compiled from HURFOM's archives with new information obtained during this year's interviews. Whilst the original list was too extensive for all cases to be followed up directly during our data collection period, in each village reporters invited a handful of interviewees to the local monastery to discuss their and others' cases.

Attempts to confirm cases in Ye revealed to HURFOM the challenges faced by agents investigating land disputes. In some villages it was difficult for reporters to accurately track the chronology of land ownership due to sale, rental or re-confiscation of land. It was also noted that land acreage and the number of agricultural assets (trees or plants) involved in confiscations proved difficult to confirm due to falsified military records,

deficient land documentation, inflated claims by victims hoping to secure more compensation, and human error when remembering exact circumstances.

In addition to new materials collected, this report includes information, testimonies and images from HURFOM's extensive archives. It also draws on the growing number of news articles and research documents available surrounding land conflict and rights in Burma, supplemented by original pieces of land rights legislation. As far as possible, HURFOM aimed to analyse research collected in Mon regions in the context of wider land rights issues throughout Burma.



Field reporter interviewing a local resident.

## C. BACKGROUND

### 1. LAND CONFISCATION UNDER MILITARY RULE: 1962-2011

Land confiscations under military rule were supported by a domestic legal framework that flouted international norms (see Appendix 1) and in which land could be seized from owners within the parameters of the law.<sup>2</sup> By the time Ne Win's military government took power in 1962 legally defined land rights in Burma, also known as Myanmar, had seen significant decline. British colonial rule had recognised private ownership of land and, whilst land could legally be acquired by the State for public purposes, in this period landowners enjoyed various rights over the use and transfer of their land.<sup>3</sup> However, when Burma gained independence from British rule and moved to a model of socialist governance, private land rights were replaced by a system in which the State formally owned and could exert claims over the country's land.

The 1947 Constitution, adopted immediately prior to 1948 independence from British colonial rule, formally designated the State as the ultimate owner of all land.<sup>4</sup> This was followed by the 1953 *Land Nationalisation Act* that, with the exception of smaller plots of land (up to 50 acres) that farmers could prove they had owned since 1948, brought all agricultural land subject to State reclamation and redistribution schemes.<sup>5</sup> The aim of this legislation was to protect smallholder farming and reverse large-scale acquisitions that had taken place in the post-independence period, but it set a precedent for the State wielding constitutionally defined ownership rights and legally seizing land. Even before the 1962 military coup the way was paved for widespread land confiscation.

With a legal basis for land confiscation already in place, successive military governments reaffirmed, enhanced, and increasingly exercised the State's legal ownership of the country's land. Shortly after Ne Win seized power the 1963 *Disposal of Tenancies Act* was passed, deepening State control over land by establishing the State's right to

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<sup>2</sup> For a detailed history of Burma's land law see Leckie & Simperingham, *Housing, Land and Property Rights in Burma: The Current Legal Framework*, 2009.

<sup>3</sup> Guidelines for the legal acquisition of land by the State for public purposes are set out in the 1894 *Land Acquisition Act*.

<sup>4</sup> 1947 Constitution, Article 30.

<sup>5</sup> Exempted farmers' rights to land were conditional on their continuing to use the land for agricultural purposes and refraining from letting it lie fallow.

terminate landlords' tenancy arrangements and initiate its own.<sup>6</sup> Furthermore, both the 1974 and 2008 Constitutions reiterated that the State was the ultimate owner of all land.<sup>7</sup> As military demands for land arose and confiscations proliferated, the justification that the State was acting in accordance with rights conferred to it by the country's law was repeatedly employed.

## **(I) LAND CONFISCATION BY MILITARY BATTALIONS**

One of the most prominent types of land confiscation in Mon areas under military rule was the seizure of civilian land by military battalions. Where compensation was paid it was described as negligible, and most victims reported receiving none at all.<sup>8</sup>

In Mon regions land confiscation by the military is recorded as most prolific after 1995. Prior to that year the regime was still waging war against a number of the country's ethnic minority populations and large regions of Mon territory were held under the direct control of the New Mon State Party (NMSP), the predominant ethnic Mon resistance group. However, the 1995 ceasefire between the NMSP and Burmese military forces returned many of these areas to governmental administration. As the military sought to exert its control and counter renewed insurgencies, increasing numbers of troops were deployed to this newly accessible territory.<sup>9</sup> These battalions began to build bases, often employing forcible confiscation to meet their growing land needs.

To make matters worse, in 1997 government funding for military activities was severely depleted and battalions were ordered to follow a policy of 'self-reliance'. Battalions' demands for land outgrew just housing and acreage for bases to include the need for farming projects that supplied food and income to cover operating costs. As the rising

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<sup>6</sup> In 1963 Ne Win's government also passed the *Law Safeguarding Peasants Rights*, intended to protect indebted farmers from creditors foreclosing on land. However, whilst this prohibits the confiscation of land and property by civil law courts, it makes no pronouncements against State confiscation of land.

<sup>7</sup> *Constitution of the Socialist Republic of the Union of Burma* (1974) Article 18(a); *Constitution of the Republic of the Union of Myanmar* (2008) Article 37.

<sup>8</sup> Cases have been reported of a 99% gap between compensation offered and the market value of land (HURFOM, *Laid Waste*, 2009, p.38).

<sup>9</sup> HURFOM, *No Land to Farm*, 2003, p.9.



number of military units based in Mon areas attempted to better meet their own needs, land confiscations gathered pace.<sup>10</sup>

Troop deployments to Mon areas and resulting land confiscations further intensified when preparations began in 1998 for the construction of the government-owned Kanbauk to Myaing Kalay pipeline. Running from Tenasserim Region to Karen State, the 183-mile-long pipeline was to travel the length of Mon State through five different townships.<sup>11</sup> With military forces tasked with its construction, security and maintenance, by 2003 over 20 new battalions had been deployed along the pipeline's route.<sup>12</sup> In a report published in 2009, HURFOM stated that pipeline battalions had seized approximately 12,000 acres of land in addition to the 2,400 acres confiscated by the State to clear a path for the project.<sup>13</sup>

A large number of these land confiscation cases were concentrated in Mon State's Ye Township and are detailed in Section E.

## (II) LAND CONFISCATION BY LOCAL ADMINISTRATION



Land confiscated by military troops.

In addition to land acquisition by battalions, under military rule Mon farmers routinely experienced land confiscation by village administrators. In some cases this was carried out in response to orders from above dictating confiscation on behalf of the military or for State projects, but on other occasions administrators took advantage of the government's tolerance of local-level corruption and seized land for personal gain.

<sup>10</sup> HURFOM, *No Land to Farm*, 2003, p.19

<sup>11</sup> HURFOM, *Laid Waste*, 2009, p.9

<sup>12</sup> *Ibid.* p.14

<sup>13</sup> *Ibid.* p.20

Since 2011 when political and civil space began to open for farmers to lodge appeals regarding military-era confiscations, new cases have come to light (see Section D). For example, from 2011-12 farmers from Thanbyuzayat Township sent two successive letters of appeal to State authorities detailing confiscations in their home village of Kayokepi in 2008. The letters alleged that the village's administrator, U Cartoon, had seized 19 acres of land from five farmers, splitting it into small plots and selling it for profit.<sup>14</sup>

An investigation in 2011 by the Thanbyuzayat Township General Administration Department concluded that the Kayokepi land had been confiscated following orders from a Light Infantry Battalion (LIB) General and that its sale was intended to raise funds for the construction of a road between Kayokepi and Htin Shu villages. The road was indeed subsequently built, but U Cartoon has since proved unable to provide a detailed account of how the money was spent.<sup>15</sup> Whether or not the funds were wholly used for the road's construction, the case demonstrates the common theme of a lack of transparency.

Similarly, HURFOM documented this year that 201 acres of land were allegedly confiscated in late February 2011 from residents of Kaloh village in Ye Township by sub-Township Administrator U Kyaw Moe and village administrative staff. Like the Thanbyuzayat case, land was split into small plots and sold off. Villagers were told that the resulting profit would be invested in community development, but they allege this promise never materialized in any visible way. Given the lack of transparency, residents were left to assume that village administrators personally profited from the sale.<sup>16</sup>

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<sup>14</sup> Letter from Kayokepi Farmers to the Department of Agriculture and Irrigation, 05/09/11 (Source T2); Letter from Kayokepi farmers to Mon State Parliament, 20/01/12 (Source T1).

<sup>15</sup> HURFOM, Field Report (hereafter "FR") T1, July 2013.

<sup>16</sup> HURFOM, 'Kaloh village's appeal for confiscated land remains unresolved', 28 June 2013.

## 2. CONTINUED LAND CONFLICT UNDER CIVILIAN GOVERNMENT: 2011-13

Despite the inauguration of a nominally civilian government in March 2011, unjust land acquisition has remained a recurring theme for Burma's rural and agrarian populations. Almost a quarter of the human rights violations recorded by the Network for Human Rights Documentation – Burma (ND-Burma) from April to September 2012 consisted of land confiscation cases that reached across seven different states<sup>17</sup> and the group called land confiscation “one of the most pressing issues of 2012”.<sup>18</sup>

### (I) CONTINUED ABUSES BY THE MILITARY

Since 2011 reports have continued to emerge of military land confiscations in Mon regions. In June 2011 HURFOM reported on land confiscations by Navy Unit No. 43 on Kywe Thone Nyi Ma Island in Tenasserim Region's Yebyu Township.<sup>19</sup> Although confiscations began in December 2010 prior to Thein Sein's presidency, they continued into the new government's term.

At the time of the 2011 report 1,000 acres of land had already been seized, reportedly with no compensation paid, and a further 3,000 acres of land were designated for acquisition by the navy unit.<sup>20</sup> A communication from Secretary Myo Aung Htay on behalf of the President in August 2011 detailed that 81,196.62 acres of land in the area had been transferred to the navy unit.<sup>21</sup> Although the letter held that at



A former plantation owner points to his land and rubber trees that were confiscated by the military.

<sup>17</sup> ND-Burma, *Report on the Human Rights Situation in Burma April 2012-September 2012*, 2012, p.4.

<sup>18</sup> ND-Burma, *Report on the Human Rights Situation in Burma January 2012-December 2012*, 2013, p.1.

<sup>19</sup> Located in Tenasserim Region, Yebyu Township contains a substantial Mon population.

<sup>20</sup> HURFOM, *Burma's Navy Attacks Civilians' Livelihood*, 2011, pp.10-11.

<sup>21</sup> Letter from Secretary Myo Aung Htay to Coastal Region Command, Maw Ra Waddy Navy Department, 24/08/11 (Source YB1).

the time of seizure none of the land was being cultivated or used and was therefore rightfully acquired, testimonies collected by HURFOM earlier that year disprove this claim and suggest that at least some portion was unjustly confiscated from residents.

## (II) PEACE PROCESS LAND ACQUISITION



With President Thein Sein's administration heralding its emphasis on democratic reform, one of its central priorities since 2011 has been an end to conflict between Burmese military forces and the country's numerous ethnic armed groups. However, over the course of negotiations reports have emerged of farmers becoming unwitting victims of the peace process. Allegedly, in some cases land has been used as a bargaining tool to appease armed groups or as a means to incite division

between the ethnic populations they represent.

In May 2013 residents from 14 villages in Paung Township of Mon State protested against on-going injustices in their communities.<sup>22</sup> One major complaint surrounded a conflict over 3,000 acres of land in Zin village marked for confiscation by the NMSP to be used in an NMSP agricultural project. Nai Tala Nyi, an NMSP representative, detailed that since 2004 the group had sought permission from the government to appropriate this land. The permission was finally granted when the NMSP signed a ceasefire with the government in 2012.<sup>23</sup> Whilst the NMSP stated that no land would be confiscated if farmers could prove ownership and that around half of the chosen land was too mountainous to be cultivated, the case highlights the impact of negotiations between government and ethnic actors on farmers' land security.

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<sup>22</sup> HURFOM, 'Paung Township residents protest against injustice in their communities', 5 June 2013.

<sup>23</sup> The 1995 ceasefire between the NMSP and Burmese forces broke down in 2010, with a new ceasefire signed in February 2012.

With numerous armed factions operating in Mon areas, the NMSP has not been the only group involved in land conflicts during the recent peace process. In July 2013 HURFOM published a case study detailing land confiscated in Kha Yone Guu of Kyaikmayaw Township by the Mon Peace Process group, also known as the Nai Syoun group, which is a breakaway from the NMSP.<sup>24</sup> Having allegedly built good relations with the Burmese military by selling them illegally imported arms, in 2012 the group was granted permission to deploy troops to Kha Yone Guu and immediately sought land to build a base. Cases of confiscation reportedly included villagers who could present ownership papers for their land and residents who were threatened at gunpoint or otherwise intimidated into handing over high value land for minimal compensation. One Kha Yone Guu resident expressed his belief that the government had permitted the confiscations to turn Kha Yone Guu's Mon residents against the armed group.

“It is a kind of strategy of the government in its military policy to create conflict within ethnic groups. So the government creates opportunities for armed groups to carry out such activities.”<sup>25</sup>

### **(III) LAND CONFLICT LINKED TO ECONOMIC DEVELOPMENT**

In addition to curbing ethnic conflict, another stated priority of President Thein Sein's administration has been to significantly advance Burma's economy. However, it is of concern to HURFOM that pursuit of this goal appears to have generated a wave of unjust land acquisitions throughout the country, including in Mon populated areas.

Several land conflicts occurring after 2011 reportedly involved misconduct by domestic and foreign investors as they scramble to acquire vast tracts of land for development projects. For the most part this is not a new trend; since the State Law and Order Restoration Council (SLORC) moved away from Socialism in 1988 and towards a market economy, disputes over companies' land acquisitions have routinely arisen.<sup>26</sup> The 1991 'Wasteland Instructions Law' that sanctioned granting companies up to 5,000 acres of terrain classified as 'wasteland' for leases of up to 30 years, in many ways opened the door for this. However, since 2011 such cases have been occurring at a rapid rate. Land

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<sup>24</sup> HURFOM, 'Ethnic armed groups also guilty of land confiscation: The case of Kha Yone Guu', 11 July 2013.

<sup>25</sup> *Ibid.*

<sup>26</sup> Discussion here draws on Food Security Working Group-Land Core Group (FSWG – LCG), '13 Studies of Land Confiscations in Three Townships in Central Myanmar', 2012.

prices in Burma are soaring and show no immediate signs of reversal, and investors have attempted to grab plots of land while they can at a comparatively low expense. For foreign investors, the 2010 elections and subsequent relaxation of Western economic sanctions provided the impetus to initiate projects within an emerging economy. Later sections of this report detail how 2012 laws privileged new investors' interests, leaving farmers' land rights largely unprotected in the process.

High profile cases such as disputes over the China-backed Letpadaung copper mine project are among the most visible symptoms of an emerging land acquisition epidemic to which Burma's ethnic regions are not immune.<sup>27</sup> Reportedly, farmers in ethnic border areas are at some of the highest risk of unjust land acquisition by new investors. A report by the Transnational Institute and Burma Centre Netherlands states:

“Burma's borderlands are where regional cross-border infrastructure and millennium-old trade networks converge and are some of the last remaining resource-rich areas in Asia.”<sup>28</sup>



Kan Trakulhoon, president and CEO of Siam Cement Group (photo: The Nation).

In Mon territory the most serious infractions have occurred in Mon State's Kyaikmayaw Township, with land unjustly acquired from residents by various domestic companies planning to establish extensive cement production in the region (this case is discussed in full in Section F).

With plans recently announced in Moulmein, the capital of Mon State, of a USD 386 million cement plant by Thailand-based Siam Cement Group and designs for an electric power plant run by another Thai-based company, potential risks to farmers' land

<sup>27</sup> A recent report by the Karen Human Rights Group (KHRG) detailed land confiscation and obstacles to land use resulting from new resource extraction and development projects in 7 Karen-populated research areas (KHRG, *Losing Ground: Land conflicts and collective action in eastern Myanmar*, 2013).

<sup>28</sup> TNI & BCN, *Developing Disparity: Regional Investment in Burma's Borderlands*, 2013, p.2.

security in the region continue to arise.<sup>29</sup> Ko Than Hlaing, a senior construction engineer originally from Moulmein, emphasised the importance of community members being able to share in the benefits of investment rather than solely bearing the costs.

“We always welcome rural developments in our country. It is a great opportunity to create jobs in our areas... The unemployment rate for young people in rural areas is increasing in our country. They should be offered job opportunities [as a result of] Foreign Direct Investment [FDI]. Domestic citizens should get capacity development from FDI.”<sup>30</sup>

Compounding the threat to farmers’ land rights is the spate of State-backed development projects brought on by new investment designed to improve the country’s infrastructure as it seeks legitimacy in global markets. In June 2013 HURFOM reported on destruction of land along the route of a road construction project planned to link Mon State’s Thanbyuzayat Township to Thailand via the border town of Three Pagodas Pass. With 280 acres of land destroyed since the project commenced in 2011, sources allege that on 7 June 2013 Col. Aung Lwin, Border Security Affairs Minister, commanded the chief engineer of the Public Construction Department to focus singlehandedly on the road’s construction, even where this was at the expense of residents’ land.<sup>31</sup>

### 3. THE CURRENT LEGAL FRAMEWORK OF LAND RIGHTS IN BURMA

In 2012 various land laws were repealed<sup>32</sup> and a number of new laws were passed concerning farmers’ rights to land and the acquisition of land by other agents. Below is an overview of some of the key laws in effect at the time of writing.<sup>33</sup> The contention is that these new laws have been used to (1) vindicate past land confiscations, thus

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<sup>29</sup> Global Cement, ‘Siam Cement Group spends US\$386m on first cement plant in Myanmar’, 4 September 2013.

<sup>30</sup> HURFOM Interview O14, September 2013.

<sup>31</sup> HURFOM, ‘Land destruction looks set to continue in path of Thanbyuzayat to Three Pagodas Pass road’, 17 June 2013.

<sup>32</sup> The following were repealed: *Land Nationalisation Act (1953)*, *Disposal of Tenancies Act (1963)*, *Law Safeguarding Peasants’ Rights (1963)*, *Foreign Investment Law (1988)*.

<sup>33</sup> For a more detailed account of laws in effect see FSWG-LCG, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*, 2012.

avoiding land restitution and compensation payments, (2) deny the rights of farmers in on-going land conflicts, and (3) facilitate future unfair acquisitions of farmers' land.

## **(I) CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR (2008)**

The 2008 Constitution declares Burma to be a market economy in which private property rights are recognised (*Articles 35 and 37*) and requires the government to enact necessary laws to protect peasants' rights (*Article 23*). However, the 2008 Constitution maintains the State as the ultimate owner of all land (*Article 37*) and thereby preserves the government's right to forcibly acquire land from its citizens.

## **(II) FOREIGN INVESTMENT LAW (2012)**

The 2012 Foreign Investment Law passed in November of that year stipulates that foreign agents can invest up to 100% in any one project (*Article 9*). The law regulates investment in various ways, stating that:

- Agricultural projects must be carried out as a joint venture with a citizen (*Article 35*).
- Foreign investors can lease land for up to 50 years, which can be extended up to a total of 70 years (*Article 31*).
- Investment is restricted where the project can "affect the traditional culture and customs of the national races within the Union" or is an agricultural project that could be carried out by citizens (*Article 4*).
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However, the Myanmar Investment Commission (MIC), a body appointed by the government to oversee foreign investment (*Article 11*), is given considerable authority to overrule these regulations. Notably, it may allow restricted investments for "the interest of the Union" (*Article 5*) and stipulate longer land leases in less developed, difficult to access areas (*Article 36*).



### (III) FARMLAND ACT (2012)

The Farmland Act was passed on 30 March 2012 and came into force on 31 August 2012 with a set of accompanying regulations. The law upholds the State as the owner of all land but permits the “right for farming” to individuals in order that the country’s agricultural production may develop (*Article 3*). Disposing with socialist-era legislation, the act formalises the 2008 Constitution’s commitment to a market economy, putting in place a system of private land ownership where citizens and other bodies may legally own, sell and otherwise transfer land.

By this law, the right to use farmland is recognised when land is formally registered in the owner’s name, notably excluding rights to land conferred by informal customary ownership practices (*Article 4*).<sup>34</sup> Land use rights are to be managed by Farmland Management Bodies (FMBs) at Village/Ward, Township, State and Central levels, and registered by the Settlement and Land Records Department (SLRD). Individuals with claims to land must apply to their Township’s SLRD for a Land Use Certificate (LUC) and pay a fee to register their land should the SLRD decide in their favour (*Articles 5-8*).

Far from establishing fully secure land tenure, various conditions are made on the right to use land (*Article 12*) with failure to comply punishable by anything from a fine to the revocation of the owner’s LUC. Notably, conditions include:

- The use of land only for the purpose specified in its LUC, unless permission is granted from the relevant FMB. Farmers are prohibited from growing anything other than their regular crop or using their land for non-agricultural purposes.
- An obligation to cultivate land at all times, refraining from leaving it fallow without sound reason.

Further jeopardising farmers’ land security, State ministries reserve the right to utilize farmland for projects in the long-term interest of the State (*Article 29*), although compensation must be paid (*Article 26*) and land returned if the project is terminated or not carried out within the prescribed timeframe (*Article 32*). Whilst compulsory sale of land is a rights-respecting feature of law in many countries there are serious concerns in Burma’s case, given a precedent of State abuse of the legally enshrined right to

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<sup>34</sup> For example, it is common in Mon areas to consider land to be owned by the first person to cultivate on it. This practice is known in Burmese as *dama ucha*, or “wields the machete” (FSWG-LCG, *13 Studies of Land Confiscations in Three Townships in Central Myanmar*, 2012, p.15).

appropriate land.<sup>35</sup> This is compounded by the fact that the law lacks clear guidance on when and for what reasons the State may demand sale of land, and on how compensation is to be decided.

The Farmland Act does permit “agriculturalists associations” (*Article 38*). However, there is no mechanism to refer land appeals to an independent judicial body (*Articles 22-25*). Instead, village/ward FMBs are designated as responsible for deciding land disputes, with appeals to be lodged first with the Township FMB, then the District and finally the State FMB that holds ultimate decision-making power.

## **(IV) VACANT, FALLOW AND VIRGIN LANDS MANAGEMENT LAW (2012)**

The Vacant, Fallow and Virgin Lands Management Law (hereafter the “VFV Law”) was also passed in March 2012. In effect the law expands on the 1991 *Wasteland Instructions*, granting rights to investors looking to acquire vacant, fallow or virgin land. By this law:

- Land may be acquired by citizens, joint-venture investors (by approval of the MIC) or government bodies for the purposes of agriculture, mining or other government allowable purposes (*Articles 4-5*).
- Up to 5,000 acres of land may be granted at any one time, up to a maximum of 50,000 acres (*Article 10*).
- Lease periods of up to 30 years are allowed (*Article 11*).

Decisions to grant land are made by the Central Committee for the Management of Vacant, Fallow and Virgin Land chaired by the Minister for Agriculture and following recommendations from various government bodies (*Articles 6-7*). Powers conferred on the Central Committee include the right to grant more than 5,000 acres of land for projects in line with State interests (*Article 10*).

In conjunction with the Farmland Act the VFV Law designates the right for investors to acquire any land not formally registered with a LUC, superseding claims to land conferred by customary ownership practices. Whilst the law acknowledges that farmers

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<sup>35</sup> See for example the US Constitution’s Fifth Amendment and the UK Acquisition of Land Act (1981). See also the UN Pinheiro Principles.

may in fact be cultivating formally unregistered areas of land (*Article 25*), where they lack official documentation their rights are left unrecognised. If LUCs are not held then compensation need not be paid to cultivators, nor must their consent to acquisition be obtained.

Farmers are offered limited legal recourse to protest such acquisitions. Again no independent judicial body is assigned to handle disputes, with the Central Committee given responsibility for handling contested cases (*Article 25*). Offering some protection, the accompanying VFV Rules stipulate that the Central Committee must ensure that farmers cultivating unregistered land are not unjustly dealt with (*Rule 52*). However, the VFV law makes clear that protest is subject to severe legal consequences: individuals protesting against land acquisition by interfering with the concerned project's progress are liable to penalties of up to 3 years imprisonment or a 1 million kyat fine (*Articles 26-28*).

It is worth noting that concerns over land security under the VFV Law are applicable to land owned by the vast majority of Burma's farming population. In June 2013 it was claimed that 85% of farmers in the country lacked currently valid paperwork for their land.<sup>36</sup> Reports have indicated few government efforts to facilitate swift land registration and there is a pressing need for the registration process to be streamlined and accessible to farmers looking to obtain LUCs.<sup>37</sup>

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<sup>36</sup> Displacement Solutions, *Bridging the HLP Gap*, June 2013, p.27.

<sup>37</sup> See for example, FSWG-LCG, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*, 2012, p.26.



## D. PURSUING LAND RIGHTS: 2011-13

Commenting on the current situation for Burma's farmers, the Asian Legal Resource Centre stated in an ND-Burma report that:

“Almost daily, news media carry reports of people being forced out of their houses or losing agricultural land to state-backed projects, sometimes being offered paltry compensation, sometimes nothing.”<sup>38</sup>

Although HURFOM's research shows that this observation is all too true, another trend has encouragingly emerged alongside it. With almost equal frequency, news outfits have been reporting on farmers taking action against unjust land acquisition.<sup>39</sup> Encouraged by President Thein Sein's nominally civilian government and making use of new freedoms<sup>40</sup> granted by its reforms, farmers across Burma have been taking a stand against unjust land acquisition by demanding restitution for past confiscations, calling for fair treatment in on-going land disputes, and moving to secure rights over their land in the future.<sup>41</sup>

### 1. MON FARMERS' FIGHT FOR THEIR RIGHTS TO LAND

Research confirmed Mon farmers' participation in this surge of civil action. Information obtained from Ye and Kyaikmayaw townships from April to September 2013 is summarised below, alongside research from this period and HURFOM archive materials regarding Thanbyzayat, Paung and Yebyu townships and other areas of Tenasserim Region. Case studies in Sections E and F expound in full on residents' activities in Ye and Kyaikmayaw townships.

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<sup>38</sup> ND-Burma, *Report on the Human Rights Situation in Burma April-September 2012*, 2012, p.1.

<sup>39</sup> For some recent cases see: Mizzima, 'Land loss resident in Dawei to sue ITD', 24 June 2013; Irrawaddy, 'Farmers across Burma ask Thein Sein for help', 27 June 2013; Myanmar Eleven, 'Hundreds gather in protest against seized lands in Yangon, 27 July 2013; Mizzima, '24 villages threaten protest', 31 August 2013; Myanmar Eleven, 'Farmers protest against land grabbing in Bago region', 2 September 2013.

<sup>40</sup> For example of new freedoms granted, see the December 2011 Peaceful Protest Law and relaxation of press censorship restrictions in August 2012.

<sup>41</sup> In September 2012 Myanmar Eleven reported that the recently established Human Rights Commission was receiving around 30 letters of complaint daily, with most of them related to land disputes. For a detailed account of farmers taking collective action in Karen regions see KHRG, *Losing Ground: Land Conflicts and collective action in eastern Myanmar*, 2013.

## (I) DEMANDS

Most farmers taking action against unjust land acquisition stated that the return of their land was their first priority,<sup>42</sup> largely due to the land's current value. One farmer from Mae Gro village in Kyaikmayaw Township said:

“We want to get our land back since land prices are high now.”<sup>43</sup>

Several farmers seeking restitution deemed fair compensation at the land's current market value to be an

acceptable alternative where land is currently in use by its new owners and return is impractical.<sup>44</sup> Other farmers lodged more modest requests. One farmer from Kyaung Ywa in Ye Township said residents from his village had given up altogether on hopes of restitution for land confiscated from them in 2001 by Light Infantry Battalion (LIB) No. 591. Instead, they were appealing to be compensated only for the plants growing on their land at the time of its seizure.<sup>45</sup>



Farmers who lost their land in eastern Kyaikmayaw Township demonstrate on their farmlands (Photo: Peace and Diversity Party).

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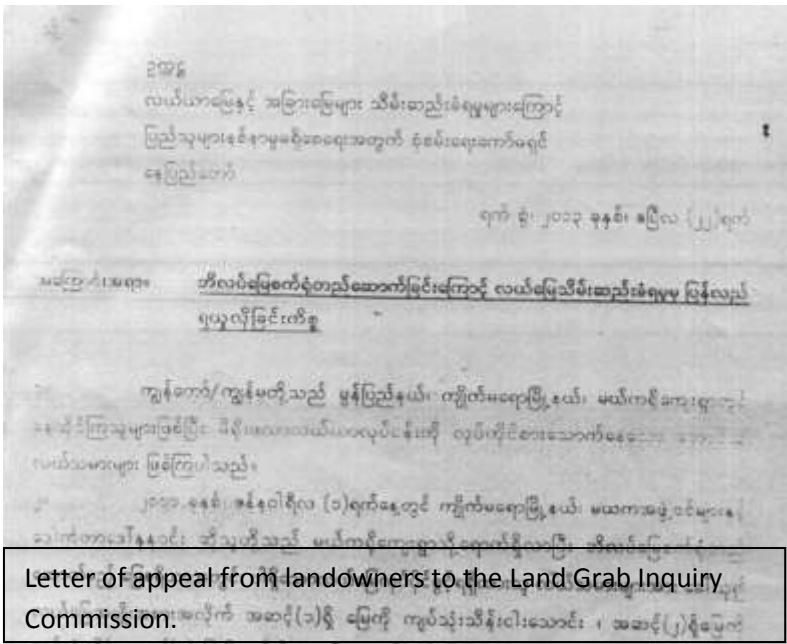
<sup>42</sup> HURFOM Interviews Y5-6 & Y9 (Ye Township), Y10 (Koe Mile), Y11 (Kundu), Y14 (Kan Hla), Ye Township, July-August 2013; HURFOM Interviews K1-3 & K9 (Mae Gro village), K13 (Ka Don Si village), Kyaikmayaw Township, April-August 2013.

<sup>43</sup> HURFOM Interview K9, Mae Gro village, Kyaikmayaw Township, August 2013.

<sup>44</sup> HURFOM Interview Y5, Ye Township, July 2013; HURFOM Interviews K2-3 (Mae Gro village), K13 (Ka Don Si village), Kyaikmayaw Township, April-August 2013.

<sup>45</sup> HURFOM Interview Y13, Kyaung Ywa village, Ye Township, August 2013.

## (II) LETTERS OF APPEAL



The most common activity reported by Mon farmers when tackling cases of unjust land acquisition was penning letters of appeal. Written appeals were recorded in Mon State’s Ye, Kyaikmayaw and Thanbyuzayat townships, in addition to Yebyu Township and other areas of Tenasserim Region.<sup>46</sup> These were variously directed to the President, government departments, senior military authorities, local administration, parliamentary representatives and the recently established

<sup>46</sup> Appeals in Ye Township: HURFOM Interview Y1 Kaloh village, Ye Township, July 2013; HURFOM FR Y2, Ye Township, September 2013 (mention of appeals against in Koe Mile, Kamarwat and Kundu villages); HURFOM, ‘Kaloh village’s appeal for confiscated land remains unresolved’, 28 June 2013; Correspondence from government departments and Dr. Banyar Aung Moe regarding appeals for land confiscated by LIB Nos.587 & 343 in Hnin Sone and Ayu Taung villages May-October 2012 (Sources Y1-4). Appeals in Kyaikmayaw Township: HURFOM Interviews K1, K2, K3, K4, K9, Mae Gro village, April-August 201; HURFOM Interview K7, Kwan Ngan village, August 2013; HURFOM Interviews K12, K13, K14, Ka Don Si village, August 2013; HURFOM FR K2, Kyaikmayaw Township, August 2013 (mention of appeals in Kwan Ngan village); Letter from Mae Gro village farmers to the Land Investigation Commission, regarding land unjustly acquired by June Industry Co. Ltd. 22/04/13 (Source K1); Letter from Kaw Pa Naw village farmers to various areas of government and parliament regarding Pacific Link compensation dispute 23/04/13 (Source K2); Letter from Pyar Taung and Natural Environment Watch Network (Kaw Pa Naw, Kaw Doon, Mae Gro, Kwan Ngan, Ni Don, Ka Don Si, Pauk Taw, and Kaw Wan villages) regarding June Industry Co. Ltd. and Zaykabar company cement projects 27/06/13 (Source K3); HURFOM, ‘Ethnic armed groups also guilty of land confiscation: The case of Kha Yone Guu’, 11 July 2013. Appeals in Thanbyuzayat Township: HURFOM FR T1, July 2013 (mentions appeals in Kayokepi, Waekalaung, Kyaung Ywa and Wae Win Karaw villages); Letters from Kraitpi village farmers to Mon State government & Ministry of Agriculture and Irrigation regarding land confiscation by village administration, September 2011-January 2012 (Sources T1-2). Appeals in Yebyu Township: Response to appeals by Secretary Myo Aung Htay on behalf of the President regarding by land confiscated by Navy No. 43 in Kywe Thone Nyi Ma village, 24/08/11(Source YB1). Appeals in other areas of Tenasserim Region: HURFOM, ‘Owner watches confiscated farmland sell for housing’ (Kaw Taung village), 5 October 2012.

Land Grab Inquiry Commission (see below). Letters illuminated the range of abuses and perpetrators, from past to on-going land acquisitions and involving the military, local administration, investors and ethnic armed groups.

### **(III) DEFYING AUTHORITY**

Several farmers were recorded as having defied the authority of unjust land acquisitions. Nai Tun Toung, 54, from Mae Gro village of Kyaikmayaw Township told a story that echoed narratives shared by a number of farmers who said they cultivated crops or built structures on land that had been unjustly taken from them but then never subsequently used.

“Since last year we have grown rice paddy on our land without permission from [June Industry Co. Ltd], even though we may face some problems from them. We don’t want to be silent...Whether they [the government] accept our letter [of appeal] or not we will grow paddy on our land for our daily food.”<sup>47</sup>

Correspondingly, a farmer from Kaloh village, Ye Township explained how in February 2012 he built a fence around land that was confiscated from him in 1992 for railway line construction but was never used for that purpose.<sup>48</sup> In a similar act of defiance, residents of Ye Township’s Tu Myoung village refused in June 2012 to pay an annual tax levied by the military in exchange for permission to work on land confiscated by LIB No. 586 in 2001.<sup>49</sup>

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<sup>47</sup> HURFOM Interview K4, Mae Gro village, Kyaikmayaw Township, April 2013.

<sup>48</sup> HURFOM Interview Y1, Kaloh village, Ye Township, July 2013.

<sup>49</sup> HURFOM, ‘Land tax controversy between Ye residents and military battalion’, 20 June 2013.

## (IV) REFUSAL TO ACCEPT UNFAIR COMPENSATION OFFERS



The entrance to Ka Don Si village in Kyaikmayaw.

Various farmers who experienced investors' attempts at unjust land acquisition told HURFOM that they, or others in their village, declined unsatisfactory offers of compensation even when company officials used threats to coerce the owners into signing compensation agreements.<sup>50</sup> Nai Tun Kyi, a 55-year old farmer from Mae Gro village in Kyaikmayaw Township, detailed his refusal to cooperate with the June Industry Co. Ltd. in 2011.

“They announced that they would give 100,000 kyat per acre, and, as it was a State project, they threatened that if we did not agree then they would take the land without compensation. The farmers, including my family, decided not to accept their small amount of compensation and refused to sign for it.”<sup>51</sup>

Ma Thin, 36, from Kyaikmayaw's Ka Don Si village described repeated refusals to hand over her land to the Pacific Link Company.

“Other people have already sold their plantations to the [Pacific Link] company but we have no plan to sell ours yet, although the company has called on us five times already to sell to them. We will increase the price [asked] for our plantations, and the company can take it or not.”<sup>52</sup>

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<sup>50</sup> HURFOM Interviews K1 (Mae Gro village), K7 (Kwan Ngan village), K8 (Kaw Pa Naw village), K10-11 (Ka Don Si village), Kyaikmayaw Township, April-August 2013.

<sup>51</sup> HURFOM Interview K1, Mae Gro village, Kyaikmayaw Township, April 2013.

<sup>52</sup> HURFOM, Interview K14, Ka Don Si village, Kyaikmayaw Township, August 2013.



## (V) ORGANISED PROTEST

In one case, Mon farmers were documented to have participated in an organised protest against land confiscation. In May 2013 over 100 farmers from 14 villages in Paung Township gathered to protest against injustice in their communities, with land seized by the NMSP cited as a primary complaint (case detailed in Section C). The demonstration was recorded as the first of its kind in the township's history. According to Nai Aung San, a protester leading the event:

“The purpose of the protest is to demand the same rights for all local people. If our demands do not succeed, we will know that the authorities are not properly committed to democracy.”<sup>53</sup>

## (VI) FORMATION OF FARMERS UNIONS



Landowners' union meeting in Ni Don.

Some Mon farmers took action by moving to establish union-based advocacy groups in an attempt to unite farmers and improve their standing in land-based conflicts. In 2012 a victim of the navy land confiscations on Kywe Thone Nyi Ma Island of Yebyu Township said:

“If we create a union to support farmers' rights, this will not happen again.”<sup>54</sup>

Whilst the Myanmar Farmers Association (MFA) exists on a national level, the group has been criticised for representing the interests of high to middle income agribusiness players as opposed to championing the rights of the country's smallholder farmer majority.<sup>55</sup> To work towards achieving a truly representative alliance, Mon farmers have exercised permissions

<sup>53</sup> HURFOM, 'Paung Township residents protest against injustice in their communities', 5 June 2013.

<sup>54</sup> HURFOM, 'Farmers in Mon State urge formation of a Farmers' Union', 18 September 2012.

<sup>55</sup> Transnational Institute, *Access Denied*, May 2013, p.8.

granted in the 2012 Farmland Act and begun the process of registering their own Farmers Union.<sup>56</sup> Attempts to establish such a union failed in 2007, but enough political space may have opened up for dormant plans to now take root.<sup>57</sup>

Nai Kao Tala Rot spoke to HURFOM about the formation of the Rehmonnya Agriculture and Farmers Union (RAFU) designed to represent Mon people living in Mon State, Karen State and Tenasserim Region. An ex-NMSP member, Nai Kao Tala Rot founded the Rehmonnya Labour Union (RLU) in 2009 and more recently accepted an offer from RAFU's founder Nai Ron Dein to impart his experience to the establishment of the RAFU. The Union is in the process of official registration, with an application currently under consideration by township-level authorities.

“We give help to any people who request it from us...All people have the right to work on and cultivate [land], so we will be working on helping people whose land has been confiscated to claim their rights...We will continue to help [local people] fight for their rights if land confiscation happens again in the future...We hope our union can help them [local farmers] escape from a deep hole and the human rights abuses that happened in the past.”<sup>58</sup>

In addition to responding to cases of land conflict, Nai Kao Tala Rot detailed that the RAFU offers training for farmers covering land rights and land registration processes amongst other topics. Trainings have been given in Kyaikmayaw, Moulmein and Chaung Zone townships, with plans to begin activities Ye and Yebyu townships.

## 2. THE LAND INVESTIGATION COMMISSION

Some appeals lodged by Mon farmers were directed to and investigated by the newly formed Land Investigation Commission, established in June 2012 in response to disquiet amongst the nation's farmers. Passed with 395 votes in its favour, the commission had the backing of broad parliamentary support.<sup>59</sup> The Land Investigation Commission is divided into nine groups composed of parliamentary representatives and tasked with

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<sup>56</sup> See 2012 Farmland Act, Article 38.

<sup>57</sup> HURFOM, 'Farmers in Mon State urge formation of a Farmers' Union', 18 September 2012.

<sup>58</sup> HURFOM Interview O13, September 2013.

<sup>59</sup> Myanmar Times, 'Reps ignore ministry on land-grab committee', 5 August 2013.

investigating disputed land acquisitions since 1988 in specific regions. Notably, its mandate is limited to investigating cases and formulating recommendations and does not include or bestow decision-making capabilities.

Mon farmers' complaints fall under the jurisdiction of Group 9, or the "Land Grab Inquiry Commission", responsible for investigating disputes in Tenasserim Region and Karen and Mon states. The five-person group is led by U Htay Lwin, a member of the Upper House of Parliament, along with four Lower House MPs representing the different constituencies covered under the Commission's authority.<sup>60</sup> The group began field research activities in late September 2012 with tours of various areas in Karen State.<sup>61</sup>

"As part of the Commission's activities we have to survey land, make conclusions, consult any other facts or issues [relevant to the cases] and give feedback. We only handle cases after 1988," said Mi Myint Than, a member of the Commission and Ye Constituency MP for the All Mon Regions Democracy Party (AMDP). "Six types of land confiscation cases have been submitted to parliament: Farms and plantations confiscated for the extension of military bases, to construct railway lines and motorways, build bridges and airports, establish companies, build [State-owned] factories and complete civil [agriculture and animal husbandry] projects...After exploring and observing the cases, we submit findings from our field trip to upper levels [of authority]. After coming back from field research, we have to meet and consult [with the upper levels] to share our and other groups' findings. When we finish sharing our observations and conclusions we have to draft a plan of action [for the cases]."<sup>62</sup>



Mi Myint Than, a member of the Land Grab Inquiry Commission.

Given that investigations in Mon State commenced only in June of this year, results have yet to be seen.<sup>63</sup> For Mon areas, the nascent activities of the Land Grab Inquiry Commission Group 9 signal a step in the right direction, and HURFOM acknowledges the

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<sup>60</sup> HURFOM Interview O12, July 2013.

<sup>61</sup> Irrawaddy, 'Land grab probe travels across Burma', 26 September 2012.

<sup>62</sup> HURFOM Interview O1, July 2013.

<sup>63</sup> Mizzima, 'Land grab commission opens inquiries in Mon State', 12 June 2013.

enormous task at hand and the significance of burgeoning efforts to collect and respond to farmers' appeals. It is hoped that this report will serve as a research and advocacy tool to assist with these land survey endeavours and provide recent, supplementary data from Ye and Kyaikmayaw townships. Most cases presented herein occurred after 2005 and up until today and therefore suitably match the Commission's mandate to cover land disputes originating after 1988. However, there are some clear reasons, outlined below, to doubt that the Land Investigation Commission represents a convincing attempt on the government's part to improve processes and inadequacies currently inherent in land dispute resolution.

## **(I) OBSTACLES TO INVESTIGATIONS**

Members of the Land Grab Inquiry Commission detailed various obstacles faced during the course of their inquiries. For example, MP Mi Myint Than described the failures to cooperate with investigations exhibited by senior military authorities.<sup>64</sup>

“When we requested that the [Southeast Command] Chief of the military meet and consult with us, he dispatched a junior to us who had only been in the military for two days. He [the replacement] was new to military service, so how could he tell us about the military? In my opinion, I thought that [the military authorities] did not want us to inspect them and uncover the truth.”<sup>65</sup>

Commission Member Daw Nan Say Awa, who also serves as the MP for the Phalon-Sawaw Democratic Party for Hpa-an Constituency, Karen State, reported that members of the Settlement and Land Records Department (SLRD) had failed to respond to requests from the group for assistance to investigations.<sup>66</sup>

Another obstacle was apparent during field surveys in Hpa-an Township, Karen State where the group's investigations were hindered by farmers' fear of reprisals from authorities involved in land confiscation. Mi Myint Than commended the efforts of other villagers, unaffected themselves by land disputes, who disregarded threats from village

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<sup>64</sup> Failure by military authorities to cooperate with investigations has been reported by other Commission investigation groups (Mizzima, 'Seized land commission facing problems during investigations', 7 September 2013).

<sup>65</sup> HURFOM Interview O1, July 2013.

<sup>66</sup> HURFOM Interview O2, July 2013.

administrators and bravely assisted the Commission by encouraging hesitant farmers to discuss their cases.<sup>67</sup> Still, apprehension surrounding frank discussions of land disputes represents a substantial challenge to the Commission's investigations as it pursues comprehensive and accurate data collection.

## (II) LACK OF INFLUENCE

Land Grab Inquiry Commission members interviewed by HURFOM displayed a genuine commitment to helping farmers pursue their rights to land. Speaking to HURFOM, Mi Myint Than emphasised the Commission's freedom from government control and the impartiality of its members.

"We were chosen, not because of our relation to any cases, but because we were interested in solving the problems of the local people who have been affected [by land confiscation]."<sup>68</sup>

However, the potential of the Commission to influence outcomes is limited and the group's mandate is purely investigatory in nature.

"When we give feedback [to farmers who lodged appeals] we will not be able to provide specific answers...We have to urge seniors [in positions of authority] to make sure that the owners get their land back," continued Mi Myint Than. "We tried to reach out and increase public awareness about the issue as much as we could. We communicated to people close with us that they should pass our offers on to local people who want to get our help. We would like to help them escape from deep problems as far as we can, but it depends on the senior people [in government]...Although Myanmar has been changing into a democracy for two years, law and order is still weak. The people who have the right and power [to resolve land problems] are the [same] people who were involved in these kinds of issues in the past."<sup>69</sup>

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<sup>67</sup> HURFOM Interview O1, July 2013.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

This sentiment was supported by events following the Land Investigation Commission's first report to parliament in March 2013 concerning military land seizures.<sup>70</sup> The response was directed to the Land Investigation Commission as a whole, but has important implications for activities in Mon areas.

It was reported that between July 2012 and January 2013 the Land Investigation Commission received 565 separate complaints regarding military confiscations covering almost 250,000 acres of land.<sup>71</sup> However, on 16 July 2013 Burma's Minister of Defence announced to parliament that only 18,364 acres of land reported on by the Commission would be returned to owners. He asserted that the remainder could not be returned as it was in use by military battalions or was too close to active military space to be safely used by civilians.<sup>72</sup> He also claimed that a number of complaints listed by the Commission had been perpetrated by other actors and unfairly blamed on the army.<sup>73</sup>

In Section C, HURFOM noted concerns that local and national-level corruption will continue to impinge upon justice and dispute resolution until laws provide for land acquisition cases to be investigated and decided by independent decision-making bodies. The government communication above evidences that without direct dispute resolution authority, the Land Investigation Commission's efforts may remain toothless.

The Land Investigation Commission is also unable to expedite restitution of land or payment of compensation following the announcement of decided outcomes. Those farmers mentioned above and representing the small fraction of land designated for return by the military have yet to regain their farms and plantations. Despite hopes that land would be restored to former owners before the end of fertile monsoon season, no immediate actions were taken. Burma's Union Parliament Speaker Thura Shwe Mann and Land Investigation Commission Member MP Pe Than were among the critics of the slow-moving land restitution process.<sup>74</sup> Whilst the Minister of Defence had initially promised that land would be returned in July of this year, on 23 August Presidential

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<sup>70</sup> One commission member was reported as claiming that military abuses were being tackled first as these cases were less complex and data more complete (Irrawaddy, 'Military involved in massive land grabs', 5 March 2013).

<sup>71</sup> Irrawaddy, 'Military involved in massive land grabs', 5 March 2013.

<sup>72</sup> Irrawaddy, 'Only fraction of land will be returned: Minister', 18 July 2013.

<sup>73</sup> DVB, 'Military agree to return meagre fraction of land confiscated by military', 18 July 2013.

<sup>74</sup> Mizzima, 'Restoration of land seized too slow, too less: Inquiry Commission', 28 August 2013; Myanmar Eleven 'Parliament speaker calls for quick return of seized land', 1 September 2013.

Office Minister U Soe Thein announced that land would be returned to farmers in October and contingent upon their ability to produce LUCs.<sup>75</sup>

### 3. ELUSIVE PROGRESS

On the whole research showed that farmers' vocal pursuit of their land rights has been met with little real progress. As detailed above, few cases of land disputes in Mon regions have been brought to satisfactory and just conclusions and most are accompanied by concerns about the methods of handling complaints. On a nationwide scale, the Land Investigation Commission's limited impact showcases its restricted capacity to influence decisions that, instead, frequently remain in the hands of local, military, or state authorities that were themselves complicit in the disputes.

President Thein Sein promised<sup>76</sup> to develop "clear, fair and open land policies", but his commitment to reform continues to be questioned. For example, the newly drafted Farmers' Interests Promotion Bill remains silent on the issue of unjust land acquisition.<sup>77</sup> Current legislation still leaves the door open for investors to obtain vast areas of land from farmers whose rights are legally undefended. Worryingly, reports have also emerged of the country's law being applied to arrest activists staging protests over land disputes.<sup>78</sup>

"Today the government is a government that neither takes action for you nor listens to your complaints," said a legal agent from Thanbyzayat Township. "The government does nothing and becomes a toothless government with no responsibility or accountability."<sup>79</sup>

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<sup>75</sup> Irrawaddy, 'Military to return some confiscated land soon: MP', 8 July 2013; Mizzima, 'Seized lands to be returned', 26 August 2013.

<sup>76</sup> DVB, 'Ministry agrees to return meagre fraction of land confiscated by military', 18 July 2013.

<sup>77</sup> DVB, 'Move to aid farmers may devastate sector', 4 August 2013.

<sup>78</sup> See, for example, DVB, 'Farmers in hiding near Inle Lake as officials crack down on 'plough protests'', 12 June 2013; Irrawaddy, 'Activist Naw Ohn Hla Jailed 2 Years for Letpadaung Protest', 29 August 2013; Irrawaddy, 'Land Rights Activists Sued for Protesting Without Permission', 8 May 2013.

<sup>79</sup> HURFOM Interview O7, email correspondence, June 2013.

The question arises: what exactly is standing in the way of progress? The following sections explore some of these barriers using land dispute case studies from two different townships to analyse the obstacles Mon farmers' face in their pursuit of just land rights. HURFOM stands alongside these courageous Mon farmers and calls for reforms to facilitate immediate and equitable recognition of their rights to land.



Farm in eastern Ye Township.



## E. CASE STUDY 1: PAST MILITARY CONFISCATIONS IN YE TOWNSHIP

### 1. CASE SUMMARY

**A**s outlined earlier in the report, under military rule various factors conspired to bring about large-scale military confiscations of land in Ye Township, located in the south of Mon State. These confiscations largely took place after 1995 following the ceasefire between NMSP and Burmese military forces. As a zone newly accessible to the Burmese military and on the route of the Kanbauk to Myaing Kalay gas pipeline, Ye Township saw a surge of military battalions deployed to the area and subsequently seeking land.



Reports published by HURFOM in 2003 and 2009 together indicate over 6,000 acres of land confiscated by the military in Ye township from 1998 to 2009.<sup>80</sup> These and more recent HURFOM articles<sup>81</sup> have reported land confiscations over this period in around 30 towns and villages in Ye Township at the hands of over 20 different, identifiable military groups.<sup>82</sup> Many of these were large-scale acquisitions; for example, 360 acres

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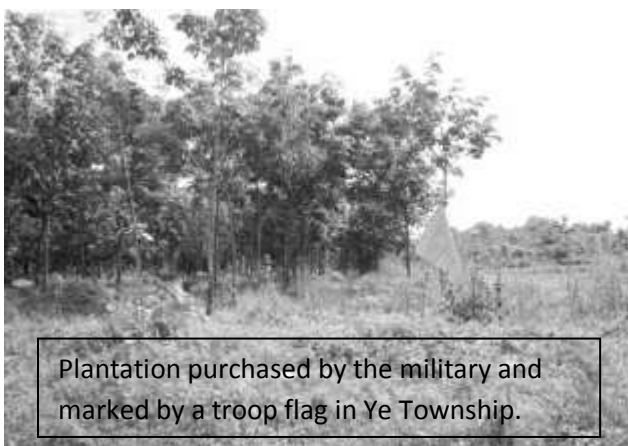
<sup>80</sup> HURFOM, *No Land to Farm*, 2003; HURFOM, *Laid Waste*, 2009.

<sup>81</sup> Recent reports include: HURFOM FR Y2, September 2013; Correspondence from government departments and Dr. Banyar Aung Moeregarding appeals for land confiscated by LIB Nos.587 & 343 in Hnine Zone and Ayu Taung villages (Sources Y1-4), May-October 2012; HURFOM news archives (available online). See also Appendix 2 of this report.

<sup>82</sup> Reports regarding military land confiscation received from: Kamarwat, Kalaw Lay, Kyaung Ywa, Cha Pone, Ah Mae, Koe Mile, Kundu, Kan Hla, Kaw Hlaing, Kaloh, Kyone Paw, Hangan, Lein Maw Chan, Ayu Taung, Kyaung Ywa, Kaw Palaing, Khaw Zar, Don Phi, Phar Lane, Mawkanin, Taungbon, Hangan, San Pya, Duya, Abaw, Tu Myaung, Thar Ga Yan, Sonnatha, Gukataw, Kalar Gote island. In addition Hnin Sone and Lamine sub-townships.

Perpetrators known to HURFOM: LIB Nos. 106, 282, 299, 317, 343, 538, 583, 585, 586, 587, 588, 591; IB Nos. 31 & 61; AR Nos. 311 & 317; MOMC No. 19; Navy Unit No. 43.

confiscated in Ayu Taung village by Light Infantry Battalion (LIB) No. 343.<sup>83</sup> Most plots of land were seized for direct use by the battalions, although in some cases land was confiscated on behalf of government departments.<sup>84</sup>



Plantation purchased by the military and marked by a troop flag in Ye Township.

Victims of previous Ye military confiscations were revisited by HURFOM in 2013 and each reported losing between 2 and 40 acres of land with little or no compensation provided (see Appendix 2). Sums of compensation recorded were as low as 563 kyat for almost seven acres of land.<sup>85</sup> Often the fact that land was unregistered and officially classed as ‘vacant’ was used to justify failure to compensate land or the crops growing on it.<sup>86</sup>

Residents were frequently coerced into signing compensation agreements that were used to give an impression of legitimacy to military land acquisition. Nai Khin Mung Nyit from Koe Mile village had his 10-acre plantation confiscated by LIB No. 299 in 2001 on behalf of the Ministry of Environmental Conservation and Forestry. He told HURFOM:

“When they confiscated [the land], [the military] said they would compensate us. They took us to visit their base office in order to force us to sign [an agreement for the compensation]. They called us to visit five or six times. They gave 100,000 kyat to my oldest brother and then we five siblings divided this to take 20,000 kyat each. 100,000 kyat was not a lot of money, it could be spent on a child’s snack. But we were too afraid of them to refuse to sign our signatures.”<sup>87</sup>

<sup>83</sup> HURFOM FR Y1, Ye Township, July 2013; Letter from the Ministry of Agriculture and Irrigation regarding land confiscation by LIB 587 & 343 in Hnin Sone and Ayu Taung villages (Source Y2), 18/04/12.

<sup>84</sup> For example land in Koe Mile village confiscated in 2001 for use by the Ministry of Environmental Conservation and Forestry (HURFOM Interview Y10, Koe Mile village, Ye Township, August 2013; HURFOM FR Y2, September 2013).

<sup>85</sup> Letter from the Ministry of Agriculture and Irrigation to the President and Union government regarding land confiscation by LIB 587 & 343 in Hnin Sone and Ayu Taung villages (Source Y2), 18/04/12.

<sup>86</sup> *Ibid.*

<sup>87</sup> HURFOM Interview Y10, Koe Mile village, Ye Township, August 2013.

To put that sum into perspective, at the time 100,000 kyat was roughly equivalent to a third or half of the profits generated from one durian harvest on a plantation of that size.<sup>88</sup> Although larger sums of compensation were offered to certain other residents in the area, the extent of the undervaluation of land that is central to providing families with income year after year is apparent. Today Nai Khin Mung Nyit's plantation is valued at 10 million kyat.

## 2. THE AFTERMATH OF MILITARY CONFISCATIONS FOR YE RESIDENTS

From July to August 2013 HURFOM field reporters revisited victims of previously reported cases of military land confiscation in 14 villages in Ye Township and some in Lamine and Ye towns.<sup>89</sup> In five of those villages a large number of previously reported cases were no longer being disputed<sup>90</sup>, whilst in another five various difficulties meant that little reliable data could be obtained.<sup>91</sup> Hence 105 on-going land dispute cases were confirmed in the surveyed areas and followed-up by HURFOM researchers (see Appendix 2).

In general, the confiscations under discussion took place in 2001 and research revealed the spectrum of farmers' experiences in Ye Township over the 12 years following the loss of their land.

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<sup>88</sup> HURFOM Interview Y11, Kundu village, Ye Township, August 2013.

<sup>89</sup> Villages surveyed were: Kyonepaw, Koe Mile, Kyaung Ywa, Kan Hla, Kundu, Ayu Taung, Phar Lane, Duya, Gukataw, Thar Ga Yan, Kaloh, Hangan, Kaw Hlaing and Mawkanin villages.

<sup>90</sup> HURFOM reporters found that land marked out for confiscation in Phar Lane, Duya, Gukataw and Thar Ga Yan villages had never in fact been seized from owners, and that in Koe Mile village some land that ended up in the hands of the Ministry of Environmental Conservation and Forestry after military confiscation had been returned to residents

<sup>91</sup> Residents in Kaloh, Hangan and Kaw Hlang villages were notably suspicious of and uncooperative with HURFOM reporters. This problem was possibly exacerbated by the fact that security concerns rendered HURFOM reporters unable to visit these villages in person and interviews had to be conducted via telephone. In Ayu Taung and Mawkanin villages data was difficult to confirm due to migration of many victims to different areas.

## (I) RENTAL AND RE-PURCHASE OF LAND

After their land was confiscated, the majority of farmers continued to work on their properties for at least some period of time due to tenancy agreements with the land's new military owners. In all villages surveyed, offers of tenancy agreements had been made to residents.<sup>92</sup> However, a letter of appeal noted that offers had not been made to farmers whose land had been classified as fallow.<sup>93</sup> Interviewees in Ayu Taung village suspected that the military had made different offers to different parties in order to create disunity amongst villagers and prevent them from uniting in collective protest.<sup>94</sup>

In many cases farmers were given permission to work on land for three to five years without incurring fees, particularly where they had received no compensation at the time of seizure.<sup>95</sup> However, in Koe Mile village farmers noted that the rent-free period officially granted to them was five years but, for two of these years, they were prevented from using their land.<sup>96</sup>

After rent-free periods ended, or where they were never granted, farmers were required to pay the military ever-increasing usage fees in exchange for



permission to cultivate the land they had previously owned. According to Nai Kyaw Thein, 50, whose eight-acre plot of land was confiscated by LIB No. 586 in 2001:

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<sup>92</sup> HURFOM FR Y2, September 2013.

<sup>93</sup> Letter of appeal by Ye Township residents, 13/05/12 (Source Y5).

<sup>94</sup> HURFOM FR Y2, September 2013.

<sup>95</sup> Letter from Ministry of Agriculture & Irrigation regarding confiscation by LIB No. 343 in Ayu Taung village (Source Y2), 18/04/12; Letter from Ministry of Home Affairs regarding confiscation by LIB No. 343 in Ayu Taung village, 13/04/12 (Source Y3); HURFOM Interviews Y2, Y4, Y9, Y12, Y13, Y14, July-August 2013 (mention payment-free lease in Hangan, Kundu, Kwan Bae and Kan Hla villages); HURFOM FR Y2, September 2013 (mentions payment-free lease in Ayu Taung, Koe Mile, Kundu and Kyonepaw villages).

<sup>96</sup> HURFOM FR Y2, September 2013.

“After the five years [rent-free period] we had to pay 550 kyat per rubber tree [growing on the plantation], 700 kyat per tree the following year, 800 kyat the next, and eventually 1,300 kyat”.<sup>97</sup>

Most interviewees reported that payments were decided on a per plant basis, with prices demanded varying from battalion to battalion. Fees being paid today hovered around 1,300 kyat per plant.<sup>98</sup> With plantation sizes ranging widely, villagers reported paying up to 1.5 million kyat per year in usage fees.<sup>99</sup> One villager told HURFOM that, with the price of rubber fluctuating and rent prices rising, he had at times been driven into debt by the payments levied on his former land.<sup>100</sup> It was also reported that the military occasionally demanded additional taxes from renting farmers<sup>101</sup> to cover arbitrary purchases or expenditures for the battalions. In one case concerning LIB No. 586, residents were told the collected taxes would be used to “fix the generator, host guests, and give presents to senior [members].”<sup>102</sup>

With few other options to earn an income, many villagers agreed to the rental arrangements. Some continue to pay usage fees on their former plantations to this day.<sup>103</sup> However, numerous interviewees said that they had been unable to afford the payments demanded and so could not rent their land.<sup>104</sup> Where this was the case in Kyonepaw and Kyaung Ywa villages, it was reported that businessmen from other areas had subsequently taken up rental contracts on villagers’ farms.<sup>105</sup>

Other residents said they refused rental agreements out of unwillingness to negotiate with the parties behind the confiscations. Nai Hlaing, 70, from Kyonepaw village described his resistance:

“They [the military] stopped approaching me after I refused to meet with them, and many times [to avoid meeting with them] I went to work instead, even though I was called [to meet with them] and sent a letter [being summoned to a meeting]. Although I did not go to meet them...I heard that

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<sup>97</sup> HURFOM Interview Y9, Ye Township, August 2013.

<sup>98</sup> HURFOM Interview Y3, Ye Township, July 2013; HURFOM Interview Y9, Ye Township, August 2013.

<sup>99</sup> HURFOM Interview Y9, Ye Township, August 2013.

<sup>100</sup> HURFOM Interview Y5, Ye Township, July 2013.

<sup>101</sup> HURFOM FR Y2, September 2013.

<sup>102</sup> HURFOM Interview Y8, Kyonepaw village, August 2013.

<sup>103</sup> HURFOM Interview Y14, Kan Hla village, August 2013; HURFOM Interviews Y2-5, Y7 & Y9, Ye Township, July-August 2013 (Y3, Y5, and Y9 were still renting land).

<sup>104</sup> HURFOM Interviews Y4 & Y6, Ye Township July 2013; HURFOM FR Y2, September 2013.

<sup>105</sup> HURFOM FR Y2, September 2013.

they [were saying that they] would give five years permission to work [on confiscated land]...I did not go to my plantation after they confiscated it and did not ask for permission to work...My land was not affected when they built their battalion. They should not have confiscated it.”<sup>106</sup>

When farmers did agree to rent their land from the military, a variety of related abuses were recorded over the rental period. One farmer said:

“They [LIB No. 587] intimidated us, reminding us that the plantation belonged to them and we could not harm or destroy the plants while working on it even though we paid [them] the money. They said that it was not our property but theirs.”<sup>107</sup>



Another farmer described misconduct by LIB No. 343, saying:

“Although I was 70 at the time they abused us, taking our electricity and making us live in the dark.”<sup>108</sup>

In a third case, corruption amongst military authorities led to a villager having to pay rental fees again and again to multiple agents.<sup>109</sup>

Compounding their difficulties, renting farmers also reported facing insecure

access to land, with rental agreements subject to being terminated at any time. Farmers from Kundu, Kyaung Ywa and Kan Hla villages detailed contracts being terminated after two to three years.<sup>110</sup> In both Kyaung Ywa and Kan Hla it was reported that threats had been used to intimidate farmers into giving up the land. In September 2013 HURFOM reported on a new group of farmers whose rental contracts on confiscated land were being terminated, with plantations being given to soldiers’ families. One of these farmers explained how this outcome was a result of his request for a reduction in rent:

<sup>106</sup> HURDOM Interview Y8, Kyonepaw village, August 2013.

<sup>107</sup> HURFOM, Interview Y9, Ye Township, August 2013.

<sup>108</sup> HURFOM Interview Y11, Kundu village, August 2013.

<sup>109</sup> HURFOM Interview Y7, Ye Township, July 2013.

<sup>110</sup> HURFOM Interviews Y11 (Kundu), Y13 (Kyaung Ywa), K14 (Kan Hla), August 2013.

“We met with an army major to discuss the price for 2013, but he refused our request to decrease the payment from 1,200 kyat to 1,000 kyat, which reflects the change in the price of rubber. On August 29 we went again to the major for negotiations but he said he would not sell the land to anyone and was instead planning to give the land to the families of soldiers. He was worried about military leadership hearing about the land disputes and conducting an investigation. We feared his words because he told us that he didn’t care about our situation and would ‘shoot back’ if needed.”<sup>111</sup>

Aside from renting out land, army battalions have also sought to make money from victims of confiscation in other ways. It was reported that army battalions in Kyonepaw, Kundu and Kyaung Ywa villages had recently offered residents the opportunity to buy back their land.<sup>112</sup> Many farmers’ commitment to regaining their land was such that they said they would accept, agreeing to give up to the full price they originally paid for it despite concerns about the land’s current poor condition.<sup>113</sup> However, Nai Aung Soe Myit, 40, from Kyaung Ywa village said:

“Although the military has proposed that we can get back our plantations for half the price I do not want to buy it back because I would just get back the land, without any [income generating] plants. There are only tall grasses on the plantation now that I would have to clear out [to be able to plant crops] if I took it back



<sup>111</sup> HURFOM, ‘Ye Township Residents Recount Trials of Land Disputes with Military’, 16 September 2013.

<sup>112</sup> HURFOM Interviews Y8 (Kyonepaw), Y11-12 (Kundu), Y13 (Kyaung Ywa), August 2013.

<sup>113</sup> HURFOM Interviews Y8 (Kyonepaw), Y11-12 (Kundu), August 2013.

so it would be a lot of work again.”<sup>114</sup>

A recurring narrative about the decline of formerly fertile land appeared in other interviews as well, and in general conditions were reported to have deteriorated once farmers were no longer actively cultivating their land. In several cases land lay unused by battalions and was covered in weeds.<sup>115</sup> Nai Kyaw Thein, whose land once encompassed 1,200 rubber trees, said:

“I love my plantation so much that [after his rental contract was terminated] I went to look at its condition and I was sad to see that my plantation was almost destroyed. They kept the plants that they could [use to] have fruit to eat and, as for the plants that could not provide fruit, they cut them all down and did not replant them. So now there are long grasses [on the plantation] and it looks like a jungle.”<sup>116</sup>

In other cases, land had been rented out to companies whose lack of expertise in farming had caused the destruction of land and plants.<sup>117</sup> Overuse of chemicals by inexperienced cultivators was given as one cause of this decline.<sup>118</sup>

## **(II) LOSS OF LIVELIHOODS AND LABOUR MIGRATION**

For farmers in Ye Township who either refused to pay usage fees, had rental contracts terminated, or were never given the option to continue working their plantations for a cost, land seizures resulted in a damaging blow to their livelihoods. Some were fortunate enough to own multiple plantations to offset the loss of one, but for others their single plots of land represented their sole source of income.<sup>119</sup> In addition, with up to eight years of continuous investment and labour needed to see a profit from rubber

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<sup>114</sup> HURFOM Interview Y13, Kyaung Ywa village, August 2013.

<sup>115</sup> HURFOM Interviews Y8 (Kundu), Y11 (Kyonepaw), Y13 (Kyaung ywa), August 2013; HURFOM Filed Report Y2 (section on Kyonepaw), September 2013.

<sup>116</sup> HURFOM Interview Y9, Ye Township, August 2013.

<sup>117</sup> HURFOM Interview Y12, Kundu village, August 2013; HURFOM Interview Y14, Kan Hla village, August 2013.

<sup>118</sup> HURFOM, ‘Ye Township residents recount trials of land disputes with military’, 16 September 2013.

<sup>119</sup> HURFOM FR Y2 (comment on Koe Mile village), September 2013; HURFOM Interview Y11, Kundu village, August 2013.



trees, one of the primary crops in Ye Township, the loss of plants for little or no compensation created a further affront to the farmers' years of effort.

"I want to provide a livelihood for my family," said one interviewee. "So when my plantation was confiscated I was like a person with broken legs."<sup>120</sup>

Farming families that lost their plantations were left to find new sources of work. One former landowner said:

"Now I work digging wells, cutting grass and working on other people's plantations."<sup>121</sup>

However, several farmers were reported to have migrated to other parts of the country or Thailand to seek work due to shortages of work opportunities in their native communities.<sup>122</sup>

Some interviews illustrated that children had shouldered their families' financial burdens by working to support parents who lost farmland or plantations.<sup>123</sup> In some cases, this inverted dependency

created friction for adults who had to shift from the role of breadwinner to relying on the income generated by younger members of the family. Mi Khin Win, a resident on Kan Hla village, told HURFOM:

"My father is still upset now about his plantation, and although we [Mi Khin Win and her siblings] give him a share [of our wages] he does not want to take it because he says that he has not done any work to get the money. To



A migrant working on a plantation in Thailand after he lost his land in northern Ye.

<sup>120</sup> HURFOM Interview Y5, Ye Township, July 2013.

<sup>121</sup> HURFOM Interview Y4, Ye Township, July 2013.

<sup>122</sup> HURFOM FR Y2, September 2013; HURFOM Interview Y4, July 2013; HURFOM Interview Y11, Kundu village, Ye Township, August 2013; HURFOM, *Destination Unknown: Hope and doubt regarding IDP resettlement in Mon State*, October 2013, pp.39-40.

<sup>123</sup> HURFOM Interview Y6, Ye Township, July 2013; HURFOM Interview Y14, Kan Hla village, August 2013.

this day he says that if the plantation had not been confiscated by the military then his family would not be in a difficult situation.”<sup>124</sup>

Despite various testimonies collected about the loss of livelihoods, HURFOM research suggests that it is likely that the full extent of hardship faced by many families in Ye Township following confiscations remains undocumented. Field reporters described a recurring sense that some interviewees were too embarrassed to admit the full scope of financial difficulties that befell following their loss of land.<sup>125</sup>

### (III) ATTACHMENT TO LAND AND THE TOLL OF ITS LOSS

Many farmers expressed a deep attachment to their land and, as a result, a heavy emotional toll associated with its loss. Nai Hlaing, 70, from Kyonepaw village told HURFOM that despite refusing to rent his plantation from its new military owners, he helped them put out a fire on the land.



A migrant working on a plantation in Thailand after he lost his land in Ye Township.

“Although the land does not belong to me anymore I still love it because I cultivated it for many years.”<sup>126</sup>

In 2012 a farmer in Chapon village told HURFOM that the connection he felt to his land had prevented him from migrating for work, despite the fact that the little land left to him after confiscation was not sufficient to support his family.

“After [some of] my land was confiscated, I wanted to go abroad like other people did but I could not leave my remaining four acres even though they didn’t provide enough

<sup>124</sup> HURFOM Interview Y14, Kan Hla village, August 2013.

<sup>125</sup> HURFOM FR Y2, September 2013.

<sup>126</sup> HURFOM Interview Y8, Kyonepaw village, August 2013.

income. There were many people like me who could not leave their land.”<sup>127</sup>

One young son of a land loss victim concluded:

“I had to send my father to the hospital three times because he was depressed [after troops confiscated the family plantation].”<sup>128</sup>

### 3. WIDESPREAD APPEALS, POOR RESULTS

After years of hardship faced by farmers in Ye Township, the advent of President Thein Sein’s nominally civilian government and the end of decades of direct military rule ushered in a wave of public demands for rights over confiscated land. The initiation of democratic reform in 2011 was not the first catalyst for farmers in Ye Township to speak out against land seizures,<sup>129</sup> but complaints began to be heard at a hitherto unprecedented frequency.

Over the past few years, former residents of Chapon village began trickling back home in search of land restitution after being displaced by confiscations perpetrated by Navy Unit No. 43.<sup>130</sup> Farmers in Tumyoung village refused to pay annual rental fees to Light Infantry Battalion (LIB) No. 586, instead demanding the return of their land.<sup>131</sup> Formal letters of appeal were sent by residents in villages throughout Ye Township to the government and members of parliament.<sup>132</sup> By various means, the victims of past land confiscations began to make their voices heard.

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<sup>127</sup> HURFOM, ‘Villagers slowly return to former communities in search of confiscated land’, 18 December 2012.

<sup>128</sup> HURFOM Interview Y7, Ye Township, July 2013.

<sup>129</sup> For example, *HURFOM FR Y2, September 2013* notes that at the time of seizure some residents in Koe Mile successfully resisted confiscation of land by the Ministry of Environmental Conservation and Forestry, who withdrew from some areas of land subsequent to a letter of appeal submitted by residents.

<sup>130</sup> HURFOM, ‘Villagers slowly return to former communities in search of confiscated land’, 18 December 2012.

<sup>131</sup> HURFOM, ‘Land tax controversy between Ye residents and military battalion’, 20 June 2013.

<sup>132</sup> Appeals have been made known to HURFOM in: Koe Mile, Kamarwat and Kundu (HURFOM FR Y2, September 2013); Hnin Sone and Ayu Taung (Correspondence from various government departments and MP Dr. Banyar Aung Moe, Sources Y1-4, May-October 2012).

## (I) RESIDENTS DEMAND LAND RESTITUTION AND FAIR COMPENSATION

On the whole, residents requested for the return of their land or, failing that, fair compensation. A letter of appeal submitted by a group of former landowners from Ye Township demonstrates people's desire to move on from past hardship while emphasising the need for justice and land rights to be recognised by the current administration. The letter concludes, "In order to be a dutiful government, the government needs to repay residents for their loss."<sup>133</sup>

"People should not point to and look back on mistakes from that period of time, although many pains and problems were caused in the conflict period. It is better, if there is the opportunity, to make a new start and heal the injuries experienced by residents in the conflict period...the military confiscated many pieces of land to extend their military bases, which included many cases of corruption. However, some of the problems [faced



<sup>133</sup> *Ibid.*

Authorities use coercion and offer unfair compensation to landowners in Ni Don.

by residents] can be solved. Therefore we, the residents, have written this letter of appeal to be submitted to the authorities and other departments.”<sup>134</sup>

The letter was written on behalf of all victims of military confiscations in the region, many of whom it said were unaware of their legal rights regarding land taken from them. It demanded that: (1) authorities account for all military land confiscations in the region and justify them by law, (2) land involved in unjustifiable seizures be returned to residents, and (3) in the remainder of cases compensation be paid for crops growing on the land at time of seizure. The letter called for assistance to help farmers gain secure rights over currently held land and avoid future land conflict, recommended that Ye farmers’ rights under new land laws be explained to them, asked that help be given to residents to formally register their land, and demanded that rights to registered land be fully respected by the authorities in the face of prospective investment acquisitions.

## **(II) DISAPPOINTING OUTCOMES**

Thus far, such appeals have produced disappointing results, and HURFOM’s research revealed few instances in which confiscated land had been designated for return.

There were some promising indications in Koe Mile village regarding land confiscated by the military on the behalf of the Ministry of Environmental Conservation and Forestry. In 2012 the Ministry told farmers that their land would be returned to them, and asked locals for 8,000 kyat per acre for confiscated land to be measured prior to restitution, saying that LUCs would be distributed to formalize the land’s return. To date, the papers have not been issued. Whilst some Koe Mile farmers have begun to cultivate their land again without the official documentation, some are continuing to appeal for LUCs, recognising that without them their land rights remain deeply insecure in the current legal setting.<sup>135</sup> One Koe Mile resident said:

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<sup>134</sup> Letter of appeal by Ye Township residents, 13/05/12 (Source Y5).

<sup>135</sup> HURFOM FR Y2, September 2013.

“The forest department has already measured the land to be given back but the permission [to cultivate on it] has not yet been given. We are not sure whether we will get the permission or not, but we are still hoping.”<sup>136</sup>

## **(I) CONFISCATIONS BY LIB NO. 343 AND 587: A FAILURE TO CONDEMN AND WEAK LEGAL PROTECTIONS**

A series of correspondence regarding confiscations by Light Infantry Battalion (LIB) Nos. 343 and 587 in Ayu Taung and Hnin Sone villages provides insight into key difficulties faced by Ye farmers seeking justice for past abuses.

Mi Myint Than, MP for the Ye Township constituency, submitted a letter of appeal in late April 2012 on the behalf of farmers in Ayu Taung and Hnin Sone villages. Records showed that LIB No. 343 had acquired 360 acres of land in Ayu Taung whilst LIB No. 587 appropriated 224 acres in Hnin Sone. Mi Myint Than condemned such large-scale military land acquisitions.

“I think that they chose [to confiscate land in] areas suitable for business. If the government set a specific limit, 50 or 100 acres of land for each military base depending on whether it is big or small, the situation would be solved.”<sup>137</sup>

On 3 October 2012 Mi Myint Than’s letter was met with a response from the Vice Chief Director of the Parliamentary Department who forwarded correspondence obtained in May from the Ministries of Home Affairs and of Agriculture and Irrigation.<sup>138</sup> The latter detailed that pursuant to Mi Myint Than’s appeal they had dispatched an investigation team in May 2012 to survey the area and consult military authorities. This group was led by the administrator for Ye Township and included the chiefs of the Ye Township and Lamine Sub-township SLRD (accountable for these villages) and the Lamine Sub-township administrator.<sup>139</sup>

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<sup>136</sup> HURFOM Interview Y10, Koe Mile village, August 2013.

<sup>137</sup> HURFOM Interview O1, July 2013.

<sup>138</sup> Letter from Tin Win Aung, Vice Chief Director of the Parliamentary Department on the behalf of the Chief Director, to Mi Myint Than, 03/10/12 (Source Y1).

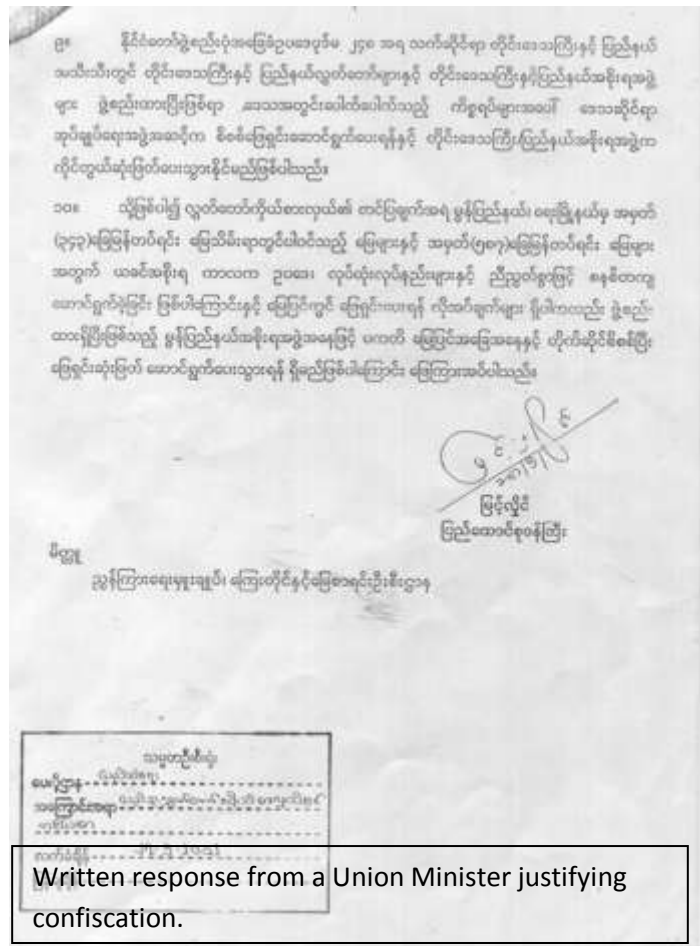
<sup>139</sup> Letter from Myin Hlaing, Ministry of Agriculture and Irrigation to the President and Union government, 18/05/12 (Source Y2).

The responses from the government ministries brought to light various concerning trends. First, the ministries failed to condemn past military seizures by asserting that the land had been rightfully acquired for military purposes. Delegating responsibility for handling the disputes to the Mon State Parliament, the Ministry of Agriculture and Irrigation advised:

“The land confiscated was not taken for individuals’ own purposes, but was validly utilised for establishing battalion departments to secure and defend the nation...the previous government acted legitimately regarding land confiscated by LIB Nos. 343 and 587 in Ye Township.”<sup>140</sup>

Since this ruling, members of Mon State Parliament seem to have endorsed its stance. One interviewee told HURFOM in August that the military decreed that only land outside the 360 acres legally requisitioned by LIB No. 343 would be returned to owners.<sup>141</sup>

In the case of Hnin Sone, the Ministry of Home Affairs encouragingly suggested that 35.17 acres of appropriated land that was never used by LIB No. 587 should be returned to previous cultivators, but it failed to condemn initial land seizures.<sup>142</sup>



<sup>140</sup> *Ibid.*

<sup>141</sup> HURFOM Interview Y12, Kundu village, August 2013.

<sup>142</sup> Letter from Lieutenant General Ko Ko, Ministry of Home Affairs to the Union government, 13/05/12 (Source Y3).

Secondly, land laws offered little protection to farmers seeking land restitution or compensation. The ministries' failure to condemn past military land confiscations was facilitated by weak land laws that were used to justify, by laws at the time of seizure and at present, land acquisition and failure to pay just compensation.<sup>143</sup>

The Ministry of Home Affairs stated that of 584 acres of land acquired by the two battalions, 458 acres had been registered to owners and 126 acres classified as "vacant or virgin".<sup>144</sup> Where land had been taken from owners, the seizures were in accordance with laws allowing the acquisition of land for State purposes and following permissions issued by the Ministry of Home Affairs and the Moulmein General Administration Department.<sup>145</sup> The correspondence revealed that compensation totalling 1,882,341 kyat had been paid by LIB No. 343 for 242 acres of land and the crops growing on it. However, this sum represents an average of just 7,778 kyat per acre, and in 2013, land surveyed by HURFOM in Ye Township was valued at an average of 1.7 million kyat per acre (see Appendix 2). The 2012 Farmland Act states that "confiscated farms are to be compensated without any loss,"<sup>146</sup> but it provides no guidance or specifics as to how this restitution is calculated.

Land classified as vacant or virgin was considered justifiably acquired and not necessitating compensation according to the 2012 VFV Lands Law. Regarding 118 acres of vacant land taken by LIB No. 343, the Ministry of Home Affairs advised:

"Following instructions from the Ministry of Home Affairs and in line with land law, the vacant land confiscated by LIB No. 343 was transferred to the Ministry of Defence Department without payment."<sup>147</sup>

Notably, the Ministry acknowledged that some land officially classified as vacant had in fact been in use:

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<sup>143</sup> At the time of both letters the 2012 Farmland Act had been passed, however it had yet to be enacted. Whilst ministries are likely to have been applying previous legislation to the case, as detailed here the Farmland Act offers no new protection and confers similar rights to the State to acquire land.

<sup>144</sup> Letter from Lieutenant General Ko Ko, Ministry of Home Affairs to the Union government, 13/05/12 (Source Y3).

<sup>145</sup> Letter from Myin Hlaing, Ministry of Agriculture and Irrigation to the President and Union government, 18/05/12 (Source Y2).

<sup>146</sup> *Farmland Act* (2012), Article 26.

<sup>147</sup> Letter from Lieutenant General Ko Ko, Ministry of Home Affairs to the Union government, 13/05/12 (Source Y3).



“Although the land [acquired by LIB No. 343] is specified as vacant/virgin in the land records, at 7am on 6.5.2012 the field survey group confirmed that it had contained the following: (i) over 3,000 rubber plants planted by U Win, (ii) 1,500 rubber plants, 300 betel nut plants, and other plants grown by U Aung Tin, (iii) 700 rubber and 100 betel nut plants cultivated by U Chit Tin and U Mg Myint, (iv) one acre of trees and bamboo grasses owned by U Thein Tin, (v) two acres of land cultivated by U Kyaw Aye.”<sup>148</sup>

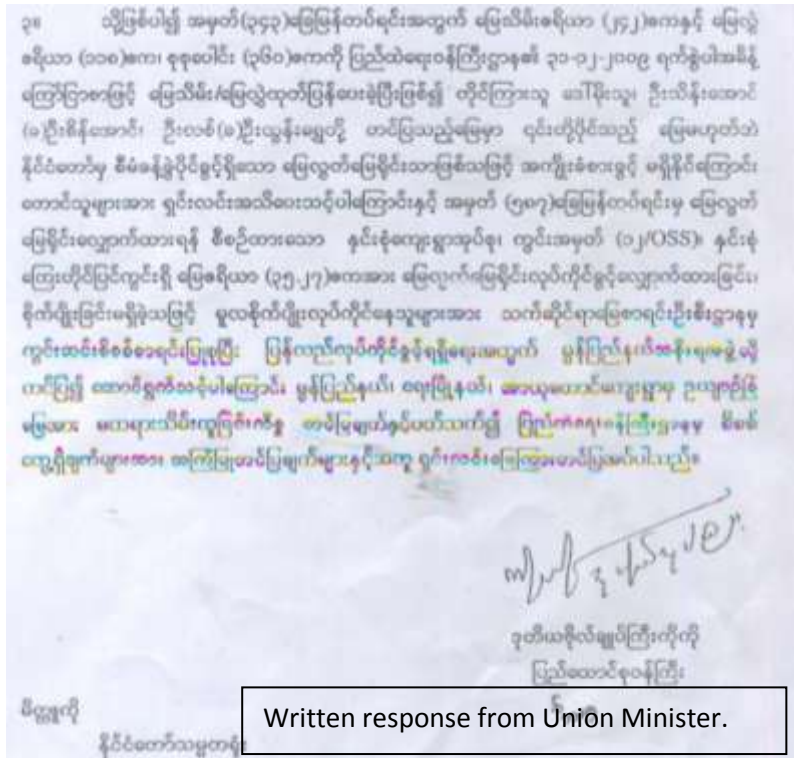
Leveraging the law’s failure to confer rights to land that is not formally registered but is held by customary ownership practices, the Ministry of Home Affairs deemed that no compensation was warranted for these farmers. For example, one petitioner was told:

“In response to the appeal of Daw Moe Tu regarding land to the east of LIB No. 343, the land presented was specified as vacant/virgin in the land records.

Accordingly, the owner was not compensated for the 1,200 rubber plants, 500 betel nut plants and 25 durian plants.”<sup>149</sup>

Finally, the information collected during investigative surveys was noted in some cases to diverge from owners’ claims. The Ministry of Home Affairs letter stated:

“The statement of the parliamentary representative (No.12/OSS) claimed that 35.27 acres of land confiscated by LIB No. 587 was in Hnin Sone village,



<sup>148</sup> *Ibid.*  
<sup>149</sup> *Ibid.*

Lamine Sub-township, Ye Township, Mon State. However, this land is situated three miles from the military base and was not included in the land confiscated by LIB No. 587 to build new facilities for troops.”<sup>150</sup>

It is possible that the Home Ministry’s statement is true, but it is important to recognise that military battalions often failed to keep accurate records of the land being confiscated, underestimating plot sizes in official documentation to avoid being held fully accountable. Nai Aung Soe Myit, 40, from Kyaung Ywa village reported that LIB No. 591 recorded confiscating three acres of his land even though 20 acres were actually seized.<sup>151</sup>

Overall, the response to appeals regarding confiscations by LIB Nos. 343 and 587 in Ye Township offered farmers little acknowledgement of or reparation for their considerable losses. In late October Dr. Banyar Aung Moe, AMDP Upper House member, criticised the appeals’ outcomes and expressed solidarity with farmers disadvantaged by it.

“We would like to suggest that the government carefully consider its actions, as it uses its law without consideration for the suffering of the people. Farmers rely on their plantations, using this income source to cover their daily expenses, community costs [for example, donations to other villagers], religion, education and healthcare. Farmers face big income difficulties if their plantations and farms are confiscated. If [the government] is looking to develop the country, all citizens should share the burden so that no one individual’s life is jeopardized. However, some people have lost their livelihoods solely to benefit the country. It is not fair or just for them. There will only be equality and justice for victims of land confiscation when they are compensated by the government.”<sup>152</sup>

Dr. Banyar Aung Moe recommended that the Land Investigation Commission reassess the case, presumably for a more objective inquiry than government ministries complicit in seizures could offer. Whilst the group has made inquiries in Ye Township their findings have not yet been publicly disclosed. However, given a lack of protections in existing legislation and the fact that the Commission is not afforded decision-making power, its ability to bring about a more favourable outcome is uncertain. Ultimately, decision-making remains centralised among bodies that use subjective, discriminatory laws to evade condemning past military abuses.

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<sup>150</sup> *Ibid.*

<sup>151</sup> HURFOM Interview Y13, Kyaung Ywa village, August 2013.

<sup>152</sup> Letter from Dr. Banyar Aung Moe, 29/10/12 (Source Y4).

## (II) CORRUPTION AND POLITICAL AGENDAS: THE NEED FOR GENUINE COMMITMENT TO JUST RESOLUTION

In addition to government refusal to condemn past abuses and weak protection of farmers' rights by law, the lack of commitment shown by numerous other bodies to pursue just resolution of appeals presents a further obstacle to the progress of Ye Township land disputes. Before land seized by military battalions can be returned it must be officially defined and recorded as having been confiscated in the first place, highlighting farmers' need for champions who are wholly dedicated to this process.

Notably, residents complained that members of the Settlement and Land Records Department (SLRD) failed to accurately survey confiscated land. Residents in Kyonepaw village reported concerns about the SLRD's land survey in their area after they noticed that the group was only measuring confiscated land in active use by the military, not land that was unused and lying fallow.<sup>153</sup> Similarly, Ye residents described how visiting officials had failed to make adequate efforts to facilitate residents' input for surveys, typically speaking in Burmese instead of local ethnic languages and using highly technical legal terminology.<sup>154</sup>

Much of the misconduct described was alleged to be the result of corruption among government officials whose ties to perpetrators of confiscation yielded vested interests in survey results that favour military retention of land. MP and Land Investigation Commission member Mi Myint Than said that land officials were "biased while conducting the surveys and the outcome looks the same as it did under the military regime."<sup>155</sup> Members of the Land Investigation Commission confirmed the impact of misconduct in surveys, stating that confiscated land was vastly under-represented in official records.<sup>156</sup>

Ye Township residents also stated that after they complained to parliament about unfair land surveys, two chief officers of the Ye Township SLRD submitted letters of resignation, disappeared, and reportedly have not been seen since. Locals said the

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<sup>153</sup> HURFOM, FR Y2, September 2013.

<sup>154</sup> HURFOM, 'Ye Township residents appeal to parliament to resolve sluggish land disputes', 5 September 2013.

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

officers' departure allowed the Department to deny responsibility for survey misconduct and evade questions about the survey's findings.<sup>157</sup>

Mi Myint Than emphasised the need for action on land issues, saying that promotion of personal agendas was not just a problem restricted to government departments. She pointed to political parties who paid lip service to land disputes without showing genuine commitment to resolution.

“The NLD [National League for Democracy] suggested re-submitting a [land survey] proposal but we don't agree with them. This kind of problem has existed for decades. [Government departments and political parties] just collect information but solve nothing. They only promote their party. They want us to vote for them.”<sup>158</sup>

It is likely that these concerns apply to cases in Ye Township. HURFOM field reporters noted several political parties engaged with victims of land confiscation in Ye, including the Mon Democratic Party (MDP) and Mi Myint Than's AMDP. Field reporters claimed that the creation of the Land Investigation Commission had given land activists confidence to work with political parties.<sup>159</sup> However, questions were raised about the Mon political parties' solutions to land confiscation cases, suggesting that promises to fight for farmers' land were being used to gain political favour and did not represent genuine commitment to pursuing swift and effective action.<sup>160</sup> Whilst several political representatives have been instrumental in advancing the claims of Ye Township's farmers, there is a need for all parties to follow suit and push for immediate and just outcomes to appeals.

The same is true for ethnic armed groups active in the Mon areas. Displacement Solutions, an experienced source of analysis on global housing land and property (HLP) rights, reported that the 2012 New Mon State Party (NMSP) ceasefire brokered with Burmese forces:

“...is not strong on HLP rights...Mon civil society organisations suggest the NMSP is genuinely concerned about issues relating to land and HLP rights,

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<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

<sup>159</sup> HURFOM FR Y2, September 2013.

<sup>160</sup> HURFOM FR Y2, Ye Township, September 2013

but in these initial stages, they have prioritised other issues they see as more pressing.”<sup>161</sup>

Nai Thein, originally from Kaloh village, told HURFOM that the NMSP failed to offer him any assistance when he visited the Ye Township liaison office to discuss his brother’s confiscated plantation.

“Agreements to protect their own ethnic people should have been included in ceasefire discussions between the government and the NMSP. The NMSP’s response to their people’s complaints means that these ethnic people may think that their party does not have the power to protect them. [I] worry that if the NMSP continues in this way, the ethnic people may not want to support the party at all, or support them less.”<sup>162</sup>

As an important actor in regional and national-level policy discussions, the NMSP must ensure that it fully commits to advancing the claims of victims of past military confiscations in Ye Township.

With regards to all parties, HURFOM acknowledges that investigating, adjudicating, and securing justice for land disputes is a challenging task. Our own field reporters noted many obstacles to collecting accurate data on cases (see Methodology). Yet these difficulties are precisely why deep commitment amongst all persons in positions of influence to just resolution of cases is of paramount importance. Anything less represents a sizeable and needless impediment to progress in Mon farmers’ pursuit of their rights to land.

<sup>161</sup> Displacement Solutions, *Bridging the HLP Gap*, June 2013, p.24.

<sup>162</sup> HURFOM Interview Y15, September 2013.



Battalion based in Ye Township.

## F. CASE STUDY 2: ON-GOING LAND DISPUTES OVER CEMENT PRODUCTION IN KYIAKMAYAW TOWNSHIP

### 1. CASE SUMMARY

In October 2010 HURFOM published a short report titled ‘Waiting in Tears’ covering Hexa International Company LLC’s plans to establish a large cement production base in Mon State’s Kyaikmayaw Township. The report expressed concerns that land for the project and being designated in SLRD land surveys would be unjustly acquired from residents.<sup>163</sup> Hexa’s plans never materialized, but have since been replaced by numerous other domestic companies competing to capitalise on the township’s hitherto untapped natural resource. To date, HURFOM continues to receive reports of farmers in Kyaikmayaw Township forced off farms and plantations for meagre compensation as these companies seek to acquire the lucrative land.



Pyar Taung Mountain in Kyaikmayaw.

Situated in the east of Mon State and bisected by the Attaran River, Kyaikmayaw Township is straddled by the Ni Don and Pyar Taung Mountains. For residents, these peaks signify the legacy of their ancestors, with caverns and mountaintops strewn with ancient pagodas, cave paintings and religious artefacts. For investors, the mountains’ value lies below, in the resources beneath these elaborate adornments. A previous employee of the Ministry of Mines estimated that 200 million tonnes of limestone, a vital raw material in cement production, was contained in Ni Don Mountain alone.<sup>164</sup> The mountains also contain a plentiful supply of coal, needed for firing production facilities that convert earth into saleable product.

<sup>163</sup> HURFOM, ‘Waiting in Tears: Impacts of impending cement factory development in Kyaikmayaw Township’, 20 October 2010.

<sup>164</sup> *Ibid.*



It is reported that plans for heavy cement production in the region began in 2006 with negotiations between Hexa and the ruling Union Solidarity and Development Party (USDP) exploring collaboration and profit-sharing from the enterprise. The project was to cover both Ni Don Mountain on the western side of the Attaran River and Pyar Taung on its eastern bank.<sup>165</sup> Residents in Kyaikmayaw Township first learned of these plans in 2009,

not long before government servants, local administration and company officials arrived to survey land in October 2010.<sup>166</sup> However, the following month it was announced that the project had been jointly taken over by the Zaykabar Co. Ltd. and the 24 Hour General Services Co. Ltd. Zaykabar was to extract resources from Ni Don Mountain to the west of the Attaran River and 24 Hour General Services would set up operations around Pyar Taung Mountain on the eastern bank.<sup>167</sup>

On 6 December 2010 Zaykabar’s Chairman U Khin Shwe, a leading property developer and Lower House MP for the USDP, visited Ni Don village and told residents:

“We came here to make this remote and unknown village, Ni Don, into a world-known project.”<sup>168</sup>

Land acquisition began immediately, with 99 farmers signing their plantations over to Zaykabar by the end of December 2010. It has since been reported by Ni Don residents

<sup>165</sup> *Ibid.*

<sup>166</sup> HURFOM Interview K1 (Mae Gro village, April 2013) mentions awareness in 2009 of the project. Mention of 2010 land survey in HURFOM, ‘Waiting in Tears: Impacts of impending cement factory development in Kyaikmayaw Township’, 20 October 2010.

<sup>167</sup> HURFOM, ‘Rock sampling for coal plan spreads fears of land confiscation in Kyaikmayaw Township’, 28 January 2011.

<sup>168</sup> HURFOM, ‘“When I became desperate”: Opinions of residents during forced land acquisition in Kyaikmayaw Township’, 18 January 2011.

that Zaykabar also acquired around 2,000 acres of land to construct a road linking future cement supply with nationwide demand.<sup>169</sup>

Meanwhile, on the eastern bank of the river, 24 Hour General Services became the next company to pull out of the project. They were swiftly replaced by the June Industry Co. Ltd., a bio-fuels company with a branch focussed on cement production. On 1 January 2011 Managing

Director Dr. Nu Nu Win and members of the Kyaikmayaw Township administration visited Mae Gro village residents to announce that the company intended to make use of plantations on the river's eastern side.<sup>170</sup> Again, land acquisition began at once, with 311.36 acres signed over to the company by the end of February.<sup>171</sup>

Two years later, in January 2013, a new company arrived in the area to establish a cement plant on the other side of Pyar Taung Mountain, directly competing with the June Company and compounding pressure on eastern bank residents to sell their land.<sup>172</sup> One resident reported in August that the new arrival, Pacific Link Cement Industries Ltd. led by retired military captain Zaw Lwin Oo, had acquired around 300 acres of land for the project.<sup>173</sup>

Research conducted by HURFOM and detailed below demonstrated rife misconduct throughout all companies' negotiations with Kyaikmayaw farmers. Compensation offers were reported to be far below the land's market value, companies showed no commitment to seeking free, prior and informed consent from residents in land



U Khin Shwe of Zaykabar Company speaking to landowners about his project.

<sup>169</sup> HURFOM Interviews K5 & K5, Ni Don village, July 2013.

<sup>170</sup> Letter from Mae Gro village farmers to Land Investigation Commission, 22/04/13 (Source K1).

<sup>171</sup> HURFOM FR K2, August 2013.

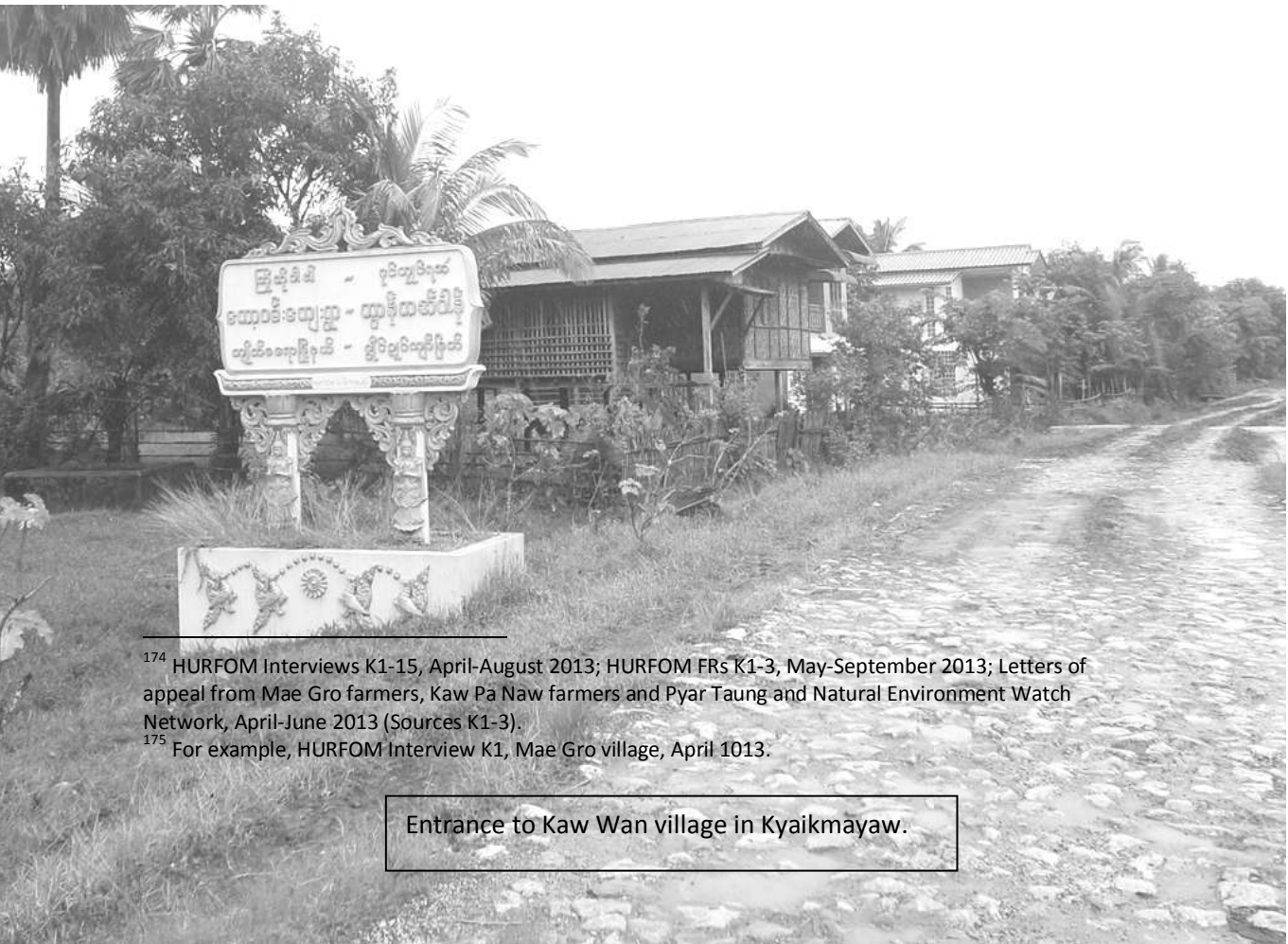
<sup>172</sup> Letter from Kaw Pa Naw residents to various government departments, 23/04/2013 (Source K2).

<sup>173</sup> HURFOM Interview K7, Kwan Ngan village, August 2013.



acquisition (even using threats and deception to gain land), and to date compensation payments have not been received in full by many residents.

In total, land acquisition by the Zaykabar, June Industry, and Pacific Link companies is known to have affected 10 villages<sup>174</sup> in Kyaikmayaw Township: Kaw Pa Naw, Kaw Doon, Kwan Ngan, Ka Don Si, Kaw Wan, Kaw Kwee and Sinma villages to the east of the Attaran River and Mae Gro, Ni Don and Pauk Taw to the west. For residents that owned land in various locations (in particular farmers from Mae Gro village), there were reports of individual families becoming victims of cement projects on both sides of the river.<sup>175</sup>



<sup>174</sup> HURFOM Interviews K1-15, April-August 2013; HURFOM FRs K1-3, May-September 2013; Letters of appeal from Mae Gro farmers, Kaw Pa Naw farmers and Pyar Taung and Natural Environment Watch Network, April-June 2013 (Sources K1-3).

<sup>175</sup> For example, HURFOM Interview K1, Mae Gro village, April 1013.

Entrance to Kaw Wan village in Kyaikmayaw.

## 2. REPORTS OF MISCONDUCT

HURFOM's research revealed various forms of misconduct that were universally perpetrated by all companies active in the area.

### (I) COMPENSATION OFFERS BELOW MARKET VALUE

Almost all residents reported that compensation offered by companies for their land was well below the market price. With land quality varying across the region, HURFOM investigations determined land in Kyaikmayaw Township to be worth between 2.5 to 4 million kyat per acre.<sup>176</sup>

Zaykabar offered a flat rate of 350,000 kyat per acre to residents.<sup>177</sup> The June Industry Company distinguished four tiers of compensation depending on land quality, with the best land ("Level 1") to receive 350,000 kyat per acre, 300,000 kyat for Level 2, 50,000 kyat for Level 3, and 15,000 kyat for Level 4.<sup>178</sup> Sums paid by Pacific Link were higher but also contingent on land quality, with reports of compensation offers usually between 500,000 to 1 million kyat per acre.<sup>179</sup>

However, where compensation offers were conditional based on land quality, residents reported that company officials failed to stick uniformly to this policy. Five farmers from Ka Don Si village reported receiving differing offers of compensation despite holding land perceived to be of similar quality.<sup>180</sup> Allegedly, farmers with personal ties to collaborating local authorities were also awarded more profitable compensation packages.

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<sup>176</sup> Market value determined from interviews with Kyaikmayaw victims of unjust land acquisition, in addition to consultation with Mon State land and property broker.

<sup>177</sup> HURFOM, 'When I became desperate': Opinions of residents during forced land acquisition in Kyaikmayaw Township', 18 January 2011.

<sup>178</sup> HURFOM Interview K1, Mae Gro village, April 2013; Letter from Mae Gro farmers to Land Investigation Commission, 22/04/13 (Source K1); HURFOM FR K2, August 2013.

<sup>179</sup> HURFOM Interview K7, Kwan Ngan village, August 2013; HURFOM Interview K10, Ka Don Si village, August 2013; HURFOM Interview K14, Ka Don Si village, August 2013; Letter from Kaw Pa Naw residents to various government departments, 23/04/2013 (Source K2).

<sup>180</sup> HURFOM, 'Farmers describe discrimination and corruption in land compensation schemes – exploitation/authorities', 19 August 2013.

“I just got thousands of kyat compensation [as opposed to millions], but others got higher than me because they were close with the village administrator,” said one farmer.<sup>181</sup>

In other cases, higher sums were awarded to placate farmers believed to understand their legal rights and who would be willing and unafraid to register complaints.<sup>182</sup>

Fuelling allegations that companies were trying to divide farmers, a few residents reported being paid substantially higher sums of compensation. For example, Mi Sone, 48, from Ka Don Si village said that Pacific Link had offered her 2.5 million kyat per acre for her land.<sup>183</sup> HURFOM research also suggested that some farmers secured around 2 million kyat per acre from June Industry.<sup>184</sup> However, these residents were notable exceptions to the general rule.



Reportedly not all farmers accepted offers of payment; some residents refused to sign agreements for compensation they perceived to be unfair (see Section D).<sup>185</sup> However, with companies drawing on a variety of strategies to obtain land from residents, many farmers bowed to pressure and relinquished their land for a fraction of its value. Nai Aung Mon, a Mon National School teacher in Kwan Ngan village, described Pacific Link’s attempts to “appease the villagers by providing school materials to children and mosquito nets to families” as a poor substitute for fair compensation.<sup>186</sup>

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<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> HURFOM Interview K11, Ka Don Si village, August 2013.

<sup>184</sup> HURFOM FR K2, August 2013.

<sup>185</sup> HURFOM Interviews K1 (Mae Gro village), K7 (Kwan Ngan village), K8 (Kaw Pa Naw village), K10-K11 & K14 (Ka Don Si village), Kyaikmayaw Township, April-August 2013.

<sup>186</sup> HURFOM Interview K7, Kwan Ngan village, August 2013.

## (II) FAILURE TO SEEK PRIOR AND FREE CONSENT



Company authorities offering donations to a senior monk in Ni Don.

In most cases companies sought some form of consent from residents for the acquisition of their land, but interviewees' descriptions of the consent given frequently indicated varying degrees of coercion. Speaking about Zaykabar Co. Ltd., Ni Don resident Nai Thein said:

"We are not pleased about what we gave to them against our wishes."<sup>187</sup>

Farmers in Mae Gro, Ni Don, and Ka Don Si villages reported that they, or others in their village, had been threatened or intimidated over the course of acquisition talks.<sup>188</sup> Referring to Pacific Link's negotiations with Ka Don Si villagers, 53-year-old resident Nai Htun said, "The company members do not speak politely to villagers."<sup>189</sup>

A common threat used by all three companies was the insistence that farmers' land was needed for a State-level project and if farmers did not hand over their land for the compensation offered, it would instead be forcibly confiscated for no payment whatsoever.<sup>190</sup>

"The authorities and the [June Industry] company threatened the owners,

<sup>187</sup> HURFOM Interview K5, Ni Don village, July 2013.

<sup>188</sup> HURFOM Interviews K1, K3-4, K9, Mae Gro village, April-August 2013 (regarding June Industry); HURFOM Interview K5, Ni Don village, July 2013 (regarding Zaykabar); HURFOM Interviews K10 & K15, Ka Don Si village, August 2013 (regarding Pacific Link); Letter from Pyar Taung and Natural Environment Watch Network to the President regarding Pacific Link, 27/06/13 (Source K3).

<sup>189</sup> HURFOM Interview K10, Ka Don Si village, August 2013.

<sup>190</sup> HURFOM Interviews Nos. K1-4 & K9, Mae Gro village, April-August 2013 (regarding June Industry); Letter from Mae Gro farmers to Land Investigation Commission regarding June Industry, 27/04/13 (Source K1); HURFOM, 'When I became desperate', 18 January 2011 (regarding Zaykabar); Letter from Pyar Taung and Natural Environment Watch Network to the President regarding Pacific Link, 27/06/13 (Source K3).

[telling them] that they had to sell this land to the company because the authorities and company had permission, if the owners did not sell their land, to confiscate it,” said one Mae Gro resident. “Therefore, the owners took the price for the land offered by the company, as otherwise the owners would have to give their land to the company [without compensation].”<sup>191</sup>

These threats were buoyed by the perception that local administration and members of the SLRD were collaborating with all three companies’ members in the land acquisition process.<sup>192</sup> For example, when June Industry’s managing director Dr. Nu Nu Win visited Mae Gro village in January 2013, she was accompanied by Kyaikmayaw Township administrators and SLRD members. Explaining the series of events leading up to the loss of her 10.29-acre plantation, 62-year-old Mi San Kyi said:

“Daw Nu Nu Win and the authorities from Kyaikmayaw said that the State needed the land so they would have to take it and use it. In February 2011 the village administrator and the USDP from Moulmein came here and said that we should accept the small compensation, and that if we did not accept it then we would lose our land without getting any compensation. So we accepted their 50,000 kyat per acre of compensation as did other field owners. No one cares for us or protects our land, including our village administrator. The authorities just used the State’s power and took our land.”<sup>193</sup>

It remains unclear whether companies were in fact acting with permission from high orders of government or if official sanction for land acquisition went no further than township-level authority. Pacific Link Ltd. demonstrated its efforts to establish useful relationships with authorities by allegedly offering them personal gains in exchange for supporting acquisitions. In one case in Kaw Pa Naw village (see below) Pacific Link paid compensation to local authority members rather than directly to plantation owners, and in Ka Don Si village, university graduate Ma Thin reported:

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<sup>191</sup> HURFOM Interview K9, Mae Gro village, August 2013.

<sup>192</sup> HURFOM Interviews K1-4 & K9, Mae Gro village, April-August 2013 (regarding June Industry); HURFOM Interview K5, Ni Don village, July 2013 (regarding Zaykabar); HURFOM Interviews K7, Kwan Ngan village, August 2013 (regarding Pacific Link); Letter from Pyar Taung and Natural Environment Watch Network to the President regarding Pacific Link, 27/06/13 (Source K3).

<sup>193</sup> HURFOM Interview K3, Mae Gro village, April 2013.

“Most residents in our village whose land was taken [by Pacific Link] know that [in the area] there are some rubber plantations owned by armed groups and senior [authorities]. Their land is situated around where the normal farmers' land was confiscated. We were surprised to see that their

land was not invaded or confiscated by the companies' employees. They avoided buying land owned by the authorities. We cannot stand that land owned by the authorities was not touched but the land of average locals was confiscated.”<sup>194</sup>

In some extreme incidents, companies showed a complete failure to seek consent to land acquisition from residents. Kwan Ngan teacher Nai Aung Mon discussed a visit in early 2013 by members of the Kyaikmayaw SLRD and village administration:

“[Before Pacific Link came to acquire land] a group came to survey it...They did not ask the opinion of villagers who did not have documents [for their land] about whether they wanted to sell it or not. They just asked people who had documents. Then they, the village administrator and land records department, collaborated [with Pacific

Link] to get the land that did not have documentation... it [only] had old documents, which are not recognized by the government as official ones.”<sup>195</sup>

In another case, HURFOM reported in January 2011 that Ni Don village administrator U Kyaw Tun had forged residents' signatures on land transfer agreements for Zaykabar Co.

<sup>194</sup> HURFOM Interview K14, Ka Don Si village, August 2013.

<sup>195</sup> *Ibid.*



Ltd. The infringement on residents' right to consent was most directly the result of corruption in village leadership, but the company persisted in holding the arrangements valid.

"I did not accept the compensation as I realized that without signing [it] over, they could not take my land according to the law," said one villager. "...What happened later on was that the village head and his younger brother, together with members of the VPDC [Village Peace and Development Council], signed [our land] over on behalf of us –[meaning] everyone who did not sign over and accept the compensation – and they took the compensation [for] themselves."<sup>196</sup>

### **(III) FAILURE TO SEEK INFORMED CONSENT**

In addition to coercive tactics, companies were also reported to have exploited farmers' lack of legal knowledge or the circulation of misinformation to obtain the compensation agreement. As a result, many farmers gave consent without being fully informed of their rights or the attendant outcomes. According to a letter to President Thein Sein from the Pyar Taung and Natural Environment Watch Network:

"Most landowners agreed with them [and gave their land away], perhaps because they were afraid or because they had no knowledge of the results that would occur."<sup>197</sup>

Testimonies indicated that companies took advantage of the fact that many farmers lacked the financial knowledge or legal skill needed to successfully negotiate fair contracts with large-scale investors. One Ka Don Si resident spoke about how her parents had not been aware of the fair market value of their land when they signed it away to Pacific Link, saying;

"After investigating [the issue], we found out that the compensation [paid] was very low."<sup>198</sup>

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<sup>196</sup> HURFOM, 'Kyaikmayaw Township landowners complain after village head illegally sells land to Zaykabar Company', 25 January 2013.

<sup>197</sup> Letter from Pyar Taung and Natural Environment Watch Network to the President regarding Pacific Link, 27/06/13 (Source K3).

<sup>198</sup> HURFOM Interview K15, Ka Don Si village, August 2013.



Project site in Mae Gro village.

Similarly, Ma Thin, 36, spoke of how her consent to Pacific Link's offer was influenced by immediate financial needs.

"I was satisfied that they gave me that much compensation because I needed money for treatment for my sick father, but in the end my father died three months ago and the compensation money was almost gone."<sup>199</sup>

Companies were also alleged to have exploited villagers' limited

knowledge of relevant land laws. For example, the companies' threats of State land confiscation with zero compensation cannot be upheld by law: the State can forcibly demand use of land, but the 1894 Land Acquisition Act (never repealed under military rule) and the new 2012 Farmland Act clearly state that in such cases, unless the land is unregistered, some compensation must be paid.<sup>200</sup>

According to an appeal letter written by Mae Gro farmers:

"On 1 January 2011 Dr. Nu Nu Win and her group visited Mae Gro village to warn farmers that if they did not accept the group's request their land would be confiscated using authority from above. When we heard their information we were afraid as, being normal and uneducated people, we worried that we would lose our land without any compensation. Therefore, we agreed to the compensation they offered."<sup>201</sup>

Nai Tun Toung, a victim of unjust land acquisition by June Industry, said:

"We just know that they were using the law with farmers who do not know about the law so that they could make a profit."<sup>202</sup>

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<sup>199</sup> HURFOM Interview K14, Ka Don Si village, August 2013.

<sup>200</sup> *The Land Acquisition Act (1894) Article 5; Farmland Act (2012), Article 26.*

<sup>201</sup> Letter from Mae Gro farmers to Land Investigation Commission, 22/04/13 (Source K1).

<sup>202</sup> HURFOM Interview K4, Mae Gro village, April 2013.



Companies are also reported to have resorted to spreading what residents considered outright misinformation. Nai Tin Ngwe, a resident of Ni Don village, described Zaykabar chairman U Khin Shwe's 2010 visit to the village by saying he:

“Summoned the peasants to confirm and explain about the land confiscation, giving the justification that the land was covered with salt water and would be flooded in the rainy season. Khin Shwe said that he took a risk for us to promote the better development of this useless land... But the water is not saltwater because it comes from a mountain stream.”<sup>203</sup>

Some landowners were left unsure as to whether or not their land was being solicited for acquisition. Two residents in Ka Don Si village said they had first been told by authority figures that their land was not included in areas marked out by Pacific Link, but then that it was.<sup>204</sup> U Khin Hla, a former village administrator, said:

“Before we submitted the letter we were confused with the information given to us by the Township administration, as they decided on one result and then told us another.”<sup>205</sup>

In a final strike against residents' informed consent, it was noted that companies did not make due efforts to ensure residents understood the information being conveyed to them. All companies communicated with residents solely in Burmese, and farmers who only speak the ethnic Mon language were unable to understand or negotiate directly with the companies without translators.<sup>206</sup>

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<sup>203</sup> HURFOM Interview K6, Ni Don village, July 2013.

<sup>204</sup> HURFOM Interview K12-13, Ka Don Si village, August 2013.

<sup>205</sup> HURFOM Interview K12, Ka Don Si village, August 2013.

<sup>206</sup> HURFOM, 'When I became desperate', 18 January 2011 (regarding Zaykabar); HURFOM, 'Farmers describe discrimination and corruption in land compensation schemes', 18 January 2011 (regarding Pacific Link and June Industry).

#### (IV) PAYMENT WITHHELD FROM RESIDENTS

ရက်စွဲ ၊ ၂၀၁၃ ခုနှစ်၊ ဧပြီလ (၂၄)ရက်  
 အကြောင်းအရာ ၊ ဘီလပ်မြေစက်ရုံ တည်ဆောက်ရန်အတွက် Pacific Link ကုမ္ပဏီထံမှ  
 လယ်မြေတန်ဖိုးငွေ မရရှိသေးခြင်း ကိစ္စ  
 ၁။ ကျွန်တော်/ကျွန်မတို့သည် ဗွန်ပြည်နယ်၊ ကျိုက်မရောမြို့နယ်၊ ကော့ပနော့ကျေးရွာနေ  
 မြည်သူများ ဖြစ်ကြပါသည်။ ၂၀၁၃ခုနှစ်၊ ဇူလိုင်လ ၃၀ ရက်နေ့တွင် Pacific Link ကုမ္ပဏီမှ  
 တာဝန်ခံဖြစ်သူ အငြိမ်းစား ဝိုင်းလွင်ဦး အဖွဲ့နှင့် ပေါက်တောကျေးရွာမှ ဦးသဲအောင် ဆိုသူတို့သည်  
 ဘီလပ်မြေ စက်ရုံတည်ဆောက်ရန် မြေစန့်ယာနှင့် မလွတ်ကင်းသည့် လယ်မြေမှ လယ်သမားများကို ခေါ်ယူကာ  
 ရှင်းလင်း ပြောကြားပြီး တိုင်းတာမှုပြုကာ မှတ်တိုင်များ ဝိုက်ထူသွားခဲ့ပါသည်။ နောက်  
 (၃/၄)ရက်ကြာသည်အခါ ကုမ္ပဏီတာဝန်ခံ ဝိုင်းလွင်ဦးမှ လယ်သမားများကို ခေါ်ယူကာ တစ်စကလွင် (၄သိန်း  
 သောင်း) ဆိုလျှင် လက်ခံ မည်လားဟု မေးမြန်းပါသည်။ လယ်သမားအများစု တလည်း လက်ခံမည်ဟု  
 တဖြေပေးခဲ့ပါသည်။ ကျွန်တော်တို့ (၇)ဦးမှ လွဲပြီး ကျန်လယ်သမားများကို ငွေပေးချေခဲ့ပါသည်။ ယခုတင်ပြပါ  
 ကျွန်တော်တို့ (၇)ဦးကို ပြောရင်းနှင့် ညှိနှိုင်းပြီးမှ ငွေပေးချေမည်ဟု ပြောဆိုခဲ့ပါသည်။  
 ၂။ ယခုစာရင်းပါ လယ်သမား(၅)ဦး (ကျွန်တော်တို့)သည် သင်္ကြန်မကျမီ (၃)ရက်အလိုတွင်  
 ပေါက်တော ကျေးရွာသို့ သွားရောက်ပြီး ကုမ္ပဏီတာဝန်ခံ ဝိုင်းလွင်ဦးနှင့် မြေတန်ဖိုး ရရှိရေးအတွက်  
 တွေ့ဆုံခဲ့ပါသည်။ ၎င်းတာဝန်ခံ ဝိုင်းလွင်ဦးက ခင်ဗျားတို့ မြေတန်ဖိုးငွေကို ပေးချေပြီးဖြစ်ကြောင်း လယ်သမား  
 အမည်ဖြင့် ငွေထုတ်ယူ ထားသော သူများမှာ -  
 (၁) ဦးမင်းလွန်းအောင် ( အမျိုးသားလွတ်တော်ကိုယ်စားလှယ် )

Letter from landowners from Mae Gro and Kaw Pa Naw villages requesting compensation from Pacific Link.

Several residents told HURFOM that, after signing their consent to land acquisition, they had not been paid in full by June Industry and Pacific Link companies.<sup>207</sup> For example, five Kaw Pa Naw farmers were left uncompensated when Pacific Link paid their compensation sums to various local authority members rather than directly to the plantation owners.<sup>208</sup>

The authority figures that allegedly claimed compensation

included MP U Loon Aung, SLRD Member U Hla Myint, and Ministry of Home Affairs Accountant U San Hlaing.

When these residents raised their concerns with Pacific Link’s managing director, Capt. Zaw Lwin Oo, he reportedly denied his company’s misconduct and told the farmers they should speak to higher authorities if they wanted to lodge complaints. Nai Kyaw Din, 67, said, “It is not fair that they took and misused the money from our plantation lands and now we want our plantations back.”<sup>209</sup>

<sup>207</sup> HURFOM Interview K2, Mae Gro village, April 2013; HURFOM Interview K11, Ka Don Si village, August 2013.  
<sup>208</sup> Letter from Kaw Pa Naw farmers to government departments, 23/04/13 (Source K2).  
<sup>209</sup> HURFOM Interview K13, Ka Don Si village, August 2013.

### 3. THE AFTERMATH OF UNJUST LAND ACQUISITION

Unjust land acquisition has taken a heavy toll on Kyaikmayaw residents who lost their livelihoods for paltry sums of compensation. During HURFOM interviews with Mae Gro villagers about the effects of land acquisition by June Industry, 62-year-old Mi San Kyi said:

“Since 2011 [June Industry] has taken 10.29 acres of our land. The land is from our grandfather and it can produce 65 or 70 baskets of rice per acre [around 15,000 kg]...we cannot survive without our fields. Now we have to live in a situation where we are very poor.”<sup>210</sup>

Many residents had reportedly been driven to seek work across the border in Thailand, and some expressed fear about the potential exploitative conditions they could encounter there. According to Nai Tun Toung, 54, who lost seven acres of land to June Industry:

“After they took our land we had no job to do. ...This seven acres of land is our main livelihood. If we have no fields then our only choice is to migrate to Thailand [and work] as a slave.”<sup>211</sup>

Kyaikmayaw farmers reported feeling ill-equipped to seek other types of employment after working their entire lives on farms and plantations. Nai Mg Aung, 59, said:

“After the company took our land we let our son migrate to Thailand to start our life again. We have to wait for money from our son for our daily food. We cannot get rice from our field and our business is falling apart. Our main job is to grow the rice paddy and beans, and we are only experts at this job...We face so many problems.”<sup>212</sup>

Despite promises of regional development, residents from Mae Gro village commented that no real signs of progress have been observed in the two years since June Industry arrived.<sup>213</sup> In contrast, concerns about the degradation of Kyaikmayaw’s natural

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<sup>210</sup> HURFOM Interview K3, Mae Gro village, April 2013.

<sup>211</sup> HURFOM Interview K4, Mae Gro village, April 2013.

<sup>212</sup> HURFOM Interview K2, Mae Gro village, 2013.

<sup>213</sup> Letter from Mae Gro village farmers to Land Investigation Commission, 22/04/13 (Source K1).

environment resulting from the project have proved legitimate.<sup>214</sup> In September 2013 HURFOM reported that a road recently constructed by June Industry to upgrade infrastructure before cement production begins diverted natural drainage patterns and exacerbated monsoon-season flooding in Ni Don village. As a result scores of homes and plantations were destroyed.<sup>215</sup>

In what residents described as a surprising and eerie twist, all project activities are currently suspended, and vast swathes of land acquired by the three companies reportedly lie unused. One Mae Gro resident said:



Plantation marked by a troop flag in Kyaikmayaw.

“The authorities and the [June] Company did not do anything with the land they took from us and now there is a lot of grass in our field.”<sup>216</sup>

Although HURFOM research<sup>217</sup> did not satisfactorily reveal reasons behind the cessation of the work, one Ni Don resident voiced suspicions<sup>218</sup> that Zaykabar’s disappearance was due to the company’s current lawsuit<sup>219</sup> against a

political party that supported victims of its production activities in Rangoon. Pacific Link Company is rumoured to have suspended its work during the rainy season but allegedly plans to recommence in October of this year,<sup>220</sup> and on-going testimonies that company

<sup>214</sup> Concerns about natural environment and wildlife voiced in letter from Pyar Taung and Natural Environment Watch Network to the President, 27/06/13 (Source K3).

<sup>215</sup> HURFOM, ‘Labor migration leaves women and children to face flooding in Mon State’, 5 September 2013.

<sup>216</sup> HURFOM Interview K2, Mae Gro village, April 2013.

<sup>217</sup> Letter from Pyar Taung and Natural Environment Watch Network to the President, 27/06/13 (Source K3).

<sup>218</sup> HURFOM Interview K6, Ni Don village, July 2013.

<sup>219</sup> Irrawaddy, ‘Zay Kabar Launches Defamation Lawsuit’, 23 July 2012.

<sup>220</sup> HURFOM Interview K8, Kaw Pa Naw village, August 2013.

members continue to proposition farmers for land corroborate reports that the project is still set to go ahead.<sup>221</sup>

## 4. CALL TO ACTION, NO PROTECTION

Since land acquisition for cement production in Kyaikmayaw Township began in 2010, residents have been uniting against companies' efforts to force them off their land. In December 2010, immediately after Zaykabar explained their intentions to Ni Don and Mae Gro residents, villagers held a meeting with local community members who possess some legal and political expertise to encourage informed analysis among participants of Zaykabar's acquisition plans.<sup>222</sup> More recently residents have become increasingly assertive in their demands, joining the rising tide of civil society action under President Thein Sein's administration.

While the acquired plantations continue to go unused, many farmers have reverted to cultivating on their former lands without seeking permission from the new owners.<sup>223</sup> Ni Don resident Nai Tin Ngwe reported that, in his village, cultivation had not been met with reprisals from Zaykabar.

"Most farmers have gone back to working on their land. The Zaykabar Company has not yet taken any action against these [farmers]."<sup>224</sup>

### (I) 2013 LETTERS OF APPEAL

In 2013 residents of Kyaikmayaw Township submitted various letters of appeal. These covered villages throughout the township, although one Kwan Ngan resident noted that locals from his village had yet to join the wave of protest.<sup>225</sup>

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<sup>221</sup> HURFOM Interview K7, Kwan Ngan village, August 2013; HURFOM Interview K10, Ka Don Si village, August 2013.

<sup>222</sup> HURFOM, 'When I became desperate', 18 January 2011

<sup>223</sup> HURFOM Interview K4, Mae Gro village, April 2013; HURFOM Interview K6, Ni Don village, July 2013.

<sup>224</sup> HURFOM Interview K6, Ni Don village, July 2013.

<sup>225</sup> HURFOM Interview K7, Kwan Ngan village, August 2013. In a similar vein, a Ka Don Si village farmer noted that some farmers in her village were satisfied with their compensation and were not participating in attempts to register unjustly acquired farmland (HURFOM Interview K10, Ka Don Si village, August 2013).

In April Kaw Pa Naw residents complained to seven government departments about Pacific Link compensation that was fraudulently claimed by local authority members on their behalf. They wrote:

“We are farmers who work on our land honestly. Each year we pay the tax that is requested from us. The person in charge, the Captain [Zaw Lwin Oo], should only have paid compensation directly to landowners. The people who received our compensation should not have taken it, as it is not their money. It was not fair or honest for them to take money in this way from honest farmers. Furthermore, the staff involved acted against their duty and used the law for their own purposes. Therefore, not only should they be prosecuted by their departments, but they should face the rule of law. We strongly suggest that this case be handled properly, that the money is returned and that action is taken against the people who fraudulently received money.”<sup>226</sup>

The day following the Kaw Pa Naw letter submissions, Mae Gro farmers registered an appeal to the Land Investigation Commission regarding June Industry’s unjust acquisition of land and failure to utilise it.



Plantation marked by a troop flag in Kyaikmayaw.

“Being farmers, farm work is the only kind of job we can do, so we want to work on our farms again...We would like the group to give us detailed information about whether they will build the cement factory. If the plan has been terminated, we would like to be able to work on our land again and will pay back the compensation paid by June Industry Co. Ltd. If the plan is still going to be implemented the company should show respect to the farmers and

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<sup>226</sup> Letter from Kaw Pa Naw residents to various government departments, 23/04/2013 (Source K2).

reconsider the compensation paid, which does not meet the land's value today.”<sup>227</sup>

Finally, directing their concerns to President Thein Sein, in June the Pyar Taung and Natural Environment Watch Network (comprised of residents from villages around Pyar Taung Mountain) protested against all cement projects in Kyaikmayaw Township.

“Our villages have to deal with issues of land confiscation where we are forced to sell our farmland to companies at a low price, by the government's mandate. In order to construct a cement factory they [the companies] have to buy these lands. If we do not sell it at the price that they want, there is no choice other than to lose our lands for no [compensation]. The price [offered by the companies] is much lower than normal prices, so it is the same as if [the land is being] confiscated.”<sup>228</sup>

## **(II) DELAYS AND THE ABSENCE OF INDEPENDENT DISPUTE RESOLUTION**

There have been some positive signs in response to appeals lodged by Kyaikmayaw residents. Following complaints about the use of force, June Industry reportedly taken a softer approach toward farmers when negotiating settlements and have upped compensation offers somewhat.<sup>229</sup> In addition, at the central government's orders, on 28 May 2013 the Mon State government formed an investigative group to probe cases of reported misconduct on both sides of the Attaran River.<sup>230</sup> In their letter to the President, the Pyar Taung and Natural Environment Watch Network wrote:

“They [the investigation group] investigated how the June Company forced us to sell our land, how they paid us and what is happening now.”<sup>231</sup>

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<sup>227</sup> Letter from Mae Gro village farmers to Land Investigation Commission, 22/04/13 (Source K1).

<sup>228</sup> Letter from Pyar Taung and Natural Environment Watch Network to the President regarding Pacific Link, 27/06/13 (Source K3).

<sup>229</sup> HURFOM FR K2, August 2013.

<sup>230</sup> HURFOM Interview K9, Mae Gro village, August 2013; Letter from Pyar Taung and Natural Environment Watch Network to the President, 27/06/13 (Source K3).

<sup>231</sup> Letter from Pyar Taung and Natural Environment Watch Network to the President, 27/06/13 (Source K3).

Results from this investigative team are yet to be seen, but there are some reasons to be cautious about its potential to resolve Kyaikmayaw farmers' manifold complaints. First, the establishment of the group may serve to postpone government action on the case. One Mae Gro farmer said he was told his case would be discussed by the Mon State government once investigations concluded, and that following this he and other Mae Gro farmers would have to submit another letter of appeal to the central government to prompt a decision.<sup>232</sup>



Second, the impartiality of the group is open to debate considering that it is comprised entirely of government servants and local administration members, including township administrators, the head of the Kyaikmayaw Department of Forestry, and a representative from the Department of Agriculture and Irrigation.<sup>233</sup> In the wake of a visit from the group, Ka Don Si residents said it was “lucky” that Pacific Link employees now living in the village

were not present when the investigative team held discussions with local people because the company staff are thought to have influence over local authorities.<sup>234</sup>

The recently formed Land Investigation Committee may better meet the need for an independent body to investigate and adjudicate Kyaikmayaw land disputes. The Committee has already conducted investigations in Kyaikmayaw Township, though their findings are yet to be released. However, the Committee's responsibilities do not include the decision-making power needed to ensure that complaints are translated into fair outcomes for Kyaikmayaw farmers. The authority to decide land dispute cases still lies with the central government, and with Zaykabar's chairman serving as an MP for the ruling USDP, it remains to be seen whether justice will prevail for farming families in this much-disputed region.

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<sup>232</sup> HURFOM Interview K9, Mae Gro village, August 2013.

<sup>233</sup> Letter from Pyar Taung and Natural Environment Watch Network to the President, 27/06/13 (Source K3).

<sup>234</sup> HURFOM FR K2, August 2013.



### (III) KYAIKMAYAW FARMERS' LEGAL POSITION

As their cases move forward and decisions start to be made on appeals, the little protection afforded to farmers by current law remains a disquieting part of the process.

Under the new 2012 laws, farmers who lack valid documentation for their land are afforded no rights to compensation for land acquired. All Kyaikmayaw farmers in this position, whether current victims of unjust land acquisition or at the mercy of future attempts, are unsupported by the law when demanding compensation that meets their land's market value. For example, the reports of Pacific Link targeting unregistered land for seizure raise apprehensions that companies recognise and are capitalising on this legal loophole.

Even for Kyaikmayaw farmers possessing ownership documents, their land rights are diluted by the law. Under the Farmland Act, concerns over failure to obtain free, prior and informed consent are legally irrelevant in the case of a State project where farmers may be forced to hand over land against their wishes. If any of the Kyaikmayaw cement production companies are in fact operating with permissions granted to State projects, or if such instances arise in the future, then residents' consent to land acquisition is not a legal necessity.



The letter of appeal on the cement project from the villagers in Kyaikmayaw.

Furthermore, as outlined in the previous section, the law fails to provide concrete guidance on compensation to victims of State-sanctioned land acquisition. In this way, too much legal leeway is allowed to companies to make their own judgements on fair land values.

The one legal protection offered to Kyaikmayaw farmers is found in the 2012 Farmland Act's requirement that land for State projects must be returned if the project is terminated or not carried out within the prescribed timeframe.<sup>235</sup> However, the lack of transparency surrounding company activities makes it difficult to know where a project stands, whether it is sanctioned by the State, or what timeframe is assigned to it. HURFOM thereby calls for a full investigation of these conditions and, if warranted, the return of residents' land.

#### **(IV) RESIDENTS' CALLS FOR SUPPORT**

Many interviewees in Kyaikmayaw Township expressed a desire for assistance with their land disputes. This was particularly true in Mae Gro village where over the years farmers fell victim to company after company seeking to acquire land. Nai Tun Kyi, 55, was one of several residents who called for legal counsel:

“We would like to appeal for a fair lawyer [to advocate] for our field and we want help from the people from humanitarian groups, people who help farmers like us.”<sup>236</sup>

Others called for assistance from members of parliament, specifically mentioning MPs Mi Yin Chan (USDP) and Mi Myint Than (AMDP).<sup>237</sup>

These calls for help depict farmers' acknowledgement of the need to garner experienced support that can advance their cause and build their own capacities to negotiate effectively with companies. A Ka Don Si resident said:

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<sup>235</sup> Farmland Act (2012), Article 32.

<sup>236</sup> HURFOM Interview No, K1, Mae Gro village, April 2013. See also HURFOM Interview K4, Mae Gro village, April 2013.

<sup>237</sup> HURFOM Interviews K2 & K4, Mae Gro village, April 2013.

“We are oppressed due to having a lack of knowledge. So we would like someone who has education and knowledge to guide and help us. We would like to request a group to come that can help solve [our problems] and seek justice for us.”<sup>238</sup>



Ni Don monk advocating for farmers to oppose cement company activities.

However, these calls for assistance also represent a growing feeling among dispossessed Kyaikmayaw farmers that they have been left alone to battle unscrupulous companies and their unrestricted pursuit of land. Rather than being protected by community authorities, families reported observing local leadership’s collaboration and complicity in unjust land acquisition. One Mae Gro farmer said:

“No one cares for us or protects our land, including our village administrator.”<sup>239</sup>

Another Mae Gro resident expressed similar feelings, whilst also indicating the need for the government to take action against companies’ misconduct in order to resolve residents’ difficulties.

“Before the authorities took the land directly, but now companies collaborate with the authorities to take our land for their business. The companies should stop making a profit from the villagers and should not abuse them. The government should punish them [the companies]. We hope that the government will solve the problem for us.”<sup>240</sup>

There is a pressing need for the government to publicly acknowledge, condemn, and punish misconduct after remaining silent on the issue and leaving companies in

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<sup>238</sup> HURFOM, ‘Farmers describe discrimination and corruption in land compensation schemes – exploitation/authorities’, 19 August 2013.

<sup>239</sup> HURFOM Interview K3, Mae Gro village, April 2013.

<sup>240</sup> HURFOM Interview K1, Mae Gro village, April 2013.

Kyaikmayaw to acquire land as they see fit. With plans in place for the establishment of an enormous-scale cement production in Moulmein Township by the Siam Cement Group,<sup>241</sup> the government must immediately and irrevocably tighten regulations to send a clear message to extractive companies that transgressions in land acquisition are unacceptable.

The Burmese government is also not the only authority that must promulgate messages rejecting unjust land acquisitions. Ethnic armed groups active in Kyaikmayaw share responsibility in this regard.

“Personally, [I think that] some [members] from the NMSP are also involved in this issue,” said Ma Thin, a Ka Don Si resident. “Others believe that they [members of armed groups] are helping to protect [the Mon people], develop [Mon areas] and build a peace process. However, not only have they failed to protect us from exploitation and protest against the companies, but also they have lost their pride and appealed to the companies [to persuade them] not to take their [own] land away.”<sup>242</sup>

Like in Ye, there is a need for all persons in position of influence, whether local authorities, central government, members of parliament or ethnic armed groups, to stand behind Kyaikmayaw farmers in their battle against unjust land acquisition and fight for reparations for their loss of livelihood.

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<sup>241</sup> Global Cement, ‘Siam Cement Group spends US\$386m on first cement plant in Myanmar’, 4 September 2013.

<sup>242</sup> HURFOM Interview K15, Ka Don Si village, August 2013.

## **G. CONCLUSIONS: KEY BARRIERS TO MON FARMERS' STRUGGLE AGAINST UNJUST LAND ACQUISITION**

Numerous obstacles bar the way for Mon farmers who are actively fighting against unjust land acquisition. This section combines the Ye and Kyaikmayaw township case studies as evidence of predominant hurdles to (1) securing a fully just resolution to past and newly arising land conflicts, and (2) preventing further unjust land acquisition from arising by ensuring secure land rights for farmers.

### **1. WEAK LAW AND POLICY**

Despite new legislation passed in 2012, the law offers insufficient protection and limited rights over land to farmers facing unjust land acquisition. This is a barrier to farmers claiming legal recourse for land unjustly acquired from them in the past, and also constitutes an obstacle to effective prevention of future injustice.

#### **(I) WEAK LAND TENURE SECURITY**

The 2012 Farmland Act offers weak land security for farmers, with forcible acquisition of land for State purposes continuing to be endorsed. This is a concern given that the law lacks guidelines on the circumstances in which this acceptable and the processes by which this may be justly undertaken (see Section C). Legislation does not make due



effort to ensure that, in line with international law, State rights to acquire land for public purposes are not abused (See Appendix 1).

- Ye government ministries used the law's weak land tenure security to vindicate past military seizures of land and avoid satisfying residents' demands for land restitution or fair compensation.
- In Kyaikmayaw Township threats were made by various investors about forcible land acquisition for "State projects". Whether or not these were grounded in fact, they had credibility because by law consent need not be sought in such cases. If "State project" claims prove genuine, Kyaikmayaw residents are left with little legal basis for land restitution demands. Whilst by law compensation must be paid, lack of guidelines on this leaves residents without guarantee of payment to the market value of their land.

## **(II) FAILURE TO RECOGNISE CUSTOMARY OWNERSHIP PRACTICES**

As outlined in Section C, farmers lacking currently valid legal documentation for their land are made vulnerable to forced acquisition by the 2012 Farmland and VFV Laws, which do not require consent or compensation due. In the Mon context this violates the *United Nations Declaration on the Rights of Indigenous People* (see Appendix 1) by ignoring the right of indigenous people to own land possessed solely by their community's customary practices.

- In Ye Township laws allowing State-sanctioned acquisition of formally unregistered land were used by government departments to vindicate past military acquisition of land for zero compensation. As a result residents' claims for compensation regarding land and destroyed plants were denied.
- In 2013 the Pacific Link Co. Ltd. in Kyaikmayaw Township was reported to have purposefully sought out land in Kwan Ngan village that was not covered by currently valid LUCs, failing to seek these residents' consent to sale. Not only does this set a worrying precedent for future land acquisitions, but farmers have little legal argument for land restitution or compensation.

## 2. THE LACK OF AN IMPARTIAL BODY TO HANDLE LAND DISPUTES

Farmers' appeals for justice have been hindered by the fact that, by law, there exists no impartial body assigned to adjudicate their complaints. As outlined in Section D, the Land Investigation Commission does not effectively constitute such a body due to its limited mandate; despite offering some improvement to standards of investigation, decision-making power remains centralised. As TNI notes:

“Although centralising power to allocate land is not necessarily problematic, it is especially so in Burma because of the larger context of high inequality, combined with endemic corruption and extreme concentration of political power more generally.”<sup>243</sup>

In both Ye and Kyaikmayaw townships Mon farmers' appeals were left to investigation and decision-making by members of government departments and local administration bodies that were often complicit in the abuses in question. Various considerations highlighted the need for an independent body to handle land disputes, both at the stage of investigation and decision-making.

- In Ye, SLRD officials' inaccurate surveying of confiscated land showed that impartiality and justice for past military confiscations cannot be secured where investigation is delegated to local authorities. Similarly, government correspondence sent in response to appeals revealed biases in decision-making, and ministries that initially ordered or benefited from confiscations unsurprisingly endorsed past land acquisitions.
- In Kyaikmayaw the investigations into unjust land acquisition perpetrated by private companies were carried out by government servants and local administration members who were implicated in collaborations with investors to coerce or force residents off their land. Although results are still unknown, the impartiality of these investigations appeared unlikely.

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<sup>243</sup> TNI, *Access Denied*, 2013, p.3.

### **3. A LACK OF GOVERNMENT COMMITMENT TO ENDORSING RESPONSIBLE CONDUCT IN LAND ACQUISITION**

With decision-making on land disputes currently centralised, the importance of government commitment to endorsing responsible and just land acquisition is paramount. State condemnation of and restitution for unjust land acquisition is a pillar of international law (see Appendix 1) and a pre-condition for a political system committed to protecting its people's rights.<sup>244</sup> However, research showed that the government in Burma has thus far been unable to achieve these goals.

- In Ye government ministries failed to condemn past military confiscations of land, instead relying on weaknesses in law to vindicate these seizures and resist reparations. Although some confiscated land that now lies fallow is slated for return to its original owners, no condemnation was made of the initial seizure.
- In Kyaikmayaw farmers expressed concern that they had been left unprotected from misconduct by a government that privileged the interests of investors and tolerated or encouraged unjust acquisition. Few actions have been taken to publicly acknowledge, condemn, or punish misconduct by cement companies active in Kyaikmayaw, nor to regulate their conduct in the first place.

### **4. FARMERS' CAPACITY TO NAVIGATE LAND CONTROVERSIES**

Many farmers were never exposed to adequate information about their legal land rights or the repercussions of selling land under market value, and therefore faced significant challenges when confronted with land-related disputes. In on-going cases investors were noted to have openly taken advantage of these conditions to acquire land for unfair prices or using coercive techniques.

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<sup>244</sup> See Displacement Solutions' recommendation in 'Myanmar at the HMP Crossroads' of the pressing need for Burma's government to make strong political pronouncements against "HLP misdeeds" (June 2012).



## **(I) LEGAL UNDERSTANDING**

In both Ye and Kyaikmayaw townships it was observed that residents needed support to fully understand their legal rights regarding land.

- In Ye Township a letter of appeal stated that many victims of military confiscation had not known the laws applicable to their case at the time and emphasised that farmers needed training to ensure that they understood the rights granted under current law. Although the law offers them weak protection, it is likely that many Ye farmers would benefit from realizing their legal entitlement to fair compensation for State-purpose land acquisition.
- In Kyaikmayaw investors exploited residents' lack of legal knowledge by citing the State's involvement in the project and threatening forcible land acquisition without compensation if the landowners refused to comply with company compensation offers. For landowners that held official land documentation, these claims of State authorisation would not supersede the legal requirement to provide fair compensation. However, many residents were unaware of this and forfeited their land for a fraction of its market value.

## **(II) FINANCIAL KNOWLEDGE**

In Kyaikmayaw Township a lack of financial knowledge amongst some farmers enabled exploitative investors to successfully make unfairly low offers of compensation. Farmers were seen to have lacked the financial skills needed to successfully negotiate profitable contracts with large-scale companies.

## **(III) LANGUAGE BARRIERS**

It was also reported that authorities involved in land surveys and acquisitions repeatedly failed to make an effort to communicate directly with residents in their ethnic Mon language, using only Burmese. This meant that for farmers who solely speak Mon, their input and concerns could not be fully registered or incorporated.

- In Ye Township SLRD members surveying land confiscated by the military communicated with farmers only in Burmese, denying them the opportunity to fully state their cases or engage with the survey process.
- In Kyaikmayaw Township company representatives spoke solely in Burmese to farmers in the course of negotiations. In this way due efforts were not made to seek fully informed consent for the subsequent land acquisitions.

## **5. THE NEED FOR PERSONS IN POSITIONS OF INFLUENCE TO CHAMPION THE RIGHTS OF FARMERS**

There is an immediate need for all persons in position of influence in land dispute cases to effectively advocate for farmers' rights on their behalf where they cannot fully pursue their own. Now, although some positive signs have been demonstrated, farmers are largely left to fight their cases alone.

### **(I) CORRUPTION IN GOVERNMENT DEPARTMENTS AND LOCAL-LEVEL AUTHORITY**

Far from advancing Mon farmers' rights to land, government departments and local-level authorities have frequently exhibited poor conduct by collaborating with perpetrators or endorsing injustice. This has misled investigations into past abuses and facilitated new cases of unjust land acquisition.

- In Ye Township bias was seen in handling of appeals by the Ministry of Defence, Ministry of Home Affairs, and the Settlement and Land Records Department (SLRD), all reportedly tied to perpetrators of past military abuses.
- In Kyaikmayaw Township members of the SLRD and local administration were alleged to be accepting bribes and documented as having collaborated with companies to assist them in acquiring land through unjust means.

## **(II) CALLS FOR CONTINUED COMMITMENT FROM MON POLITICAL PARTIES**

To their credit, research indicated various Mon political parties to be involved in supporting farmers' appeals for justice. In particular, in Ye Township AMDP MPs Dr. Banyar Aung Moe and Mi Myint Than were instrumental in advancing claims lodged by residents against LIB Nos. 343 and 587. However, HURFOM emphasises the need for all Mon political parties to show genuine commitment to farmers' rights and vocally push for swift and tangible results to appeals.

## **(III) SUBDUED SUPPORT FROM MON ARMED GROUPS**

As an influential actor in Mon areas, there is a need for Mon armed groups, and in particular the New Mon State Party (NMSP), to more dutifully commit to advancing the claims of all victims of land-related injustice. Without this, farmers are left unprotected by one of their most influential sources of support and advocacy.

- The NMSP's 2012 ceasefire agreement privileges a number of political concerns but is weak on the promotion of Mon farmers' rights to land. This is particularly relevant to past Ye Township military confiscations, as it is important that reparations for these widespread abuses become a central part of the peace process. The Burmese government has an important responsibility in this regard as international law stipulates that land restitution procedures, institutions and mechanisms be included in peace agreements (see Appendix 1). However, significant efforts are also required by the NMSP to push for this outcome.
- In terms of individual armed group members' conduct, in Kyaikmayaw Township residents felt that members of Mon armed groups had failed to protect them from unscrupulous investors. It was voiced that they had instead tried to appease companies, attempting to ensure the security of their own land.

## H. RECOMMENDATIONS

With multiple barriers to the progress of Mon farmers' fight against unjust land acquisition, HURFOM issues the following recommendations:

### FOR PRESIDENT THEIN SEIN'S GOVERNMENT:

- To reform laws laid out in the 2008 Constitution (*Article 23*) in order to protect farmers interests and offer legal recourse in cases of unjust land acquisition. In particular:
  - To establish clear and just guidelines on State acquisition of land, fully detailing necessary pre-conditions and outlining mechanisms for deciding on fair compensation.
  - To recognise by law the rights of farmers holding land in accordance with customary law. Failing this, for the government to take efforts to streamline the formal land registration process and support all landholders to obtain LUCs.
- To appoint an independent and transparent judicial body to investigate and decide on cases of unjust land acquisition. It is suggested that the Land Investigation Commission's mandate be widened, or for a separate fully impartial body to be created and assigned decision-making powers.
  - All investigation and decisions made to date must be reassessed by this body to mitigate the effects of bias in the handling of appeals.
- To publicly condemn unjust seizures of land under the previous military regime and ensure that, in compliance with international law and as part of the peace processes, land is restored to victims or fair compensation paid.
  - In particular, the government must recognise the demands of international law for actors in post-conflict settings to, "Establish and support equitable, timely, independent, transparent and non-discriminatory procedures,

institutions and mechanisms to assess and enforce housing, land and property restitution claims”<sup>245</sup> (see Appendix 1), bringing about concrete results for farmers in a swift and fully transparent manner.

- As a matter of urgency, the Ministry of Defence must ensure that land currently unused by battalions is returned to its former owners immediately.
- To publicly acknowledge, condemn and punish all cases of misconduct by investors acquiring land in Mon areas.
- To set a no-tolerance policy for unjust land acquisition perpetrated by companies and ensure that conduct is thoroughly regulated.

### **FOR ALL INVESTORS ACTIVE IN MON REGIONS:**

- To follow responsible conduct in land acquisition, ensuring that free, prior and informed consent is sought from all parties and fair compensation for land paid. Where appropriate, investors must make efforts to include Mon language speakers in the process of negotiation with farmers.
- To commit to full transparency in all projects undertaken. In this regard for the Zaykabar Co. Ltd., Pacific Link Cement Industries Ltd. and June Industry Co. Ltd. to disclose whether their projects are in fact genuine State projects, and if so, detailing (1) Permissions granted to acquire land and (2) Project timeframes listed in permissions. If no State permission was granted, or projects have been terminated or timeframes exceeded, then in line with Farmland Act (2012) *Article 32* land acquired without free, prior and informed consent must be restored to Kyaikmayaw residents immediately.

### **FOR LOCAL ADMINISTRATION, GOVERNMENT DEPARTMENTS AND MILITARY PERSONNEL:**

- To eliminate corruption and complicity in unjust land acquisition. Full commitment to protecting farmers’ rights must be demonstrated at all points of the process, whether personnel are involved early on with land acquisition negotiations or later when investigating or adjudicating appeals.

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<sup>245</sup> *Pinheiro Principles*, Principle 12.1.

- To cooperate completely with the Land Investigation Commission's inquiries and exhibit to local residents that disclosing abuse will not be met with reprisals.

### **FOR ALL MON POLITICAL PARTIES AND ARMED GROUPS:**

- To show full and genuine commitment to (1) championing the rights of Mon farmers throughout the peace process, (2) advancing appeals on farmers' behalf, and (3) furthering the rights of Mon farmers in the wider national dialogue on land rights.

### **FOR THE GOVERNMENT, LOCAL ADMINISTRATION, POLITICAL PARTIES, NGOS AND CBOS:**

- To make concrete efforts to enhance farmers' capacity to handle land disputes, particularly by offering accessible legal counsel and financial skills trainings.

### **FOR ALL MON STATE FARMERS:**

- To cooperate with investigations of land disputes and provide honest and accurate information.

### **FOR THE INTERNATIONAL COMMUNITY:**

- To call on Thein Sein's government to more fully commit to protecting the rights of farmers in cases of land acquisition.
- To promote responsible conduct by all foreign investors active in Mon regions, in particular with regards to Siam Cement Group's plans to establish cement construction in Moulmein, the capital of Mon State.

# I. APPENDICES

## APPENDIX 1 – LAND RIGHTS IN INTERNATIONAL LAW

A number of points of current international law apply to past and on-going land conflicts in Mon regions:

### 1. CONDEMNATION OF LAND CONFISCATION

- **The United Nations (UN) Universal Declaration of Human Rights** states that “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property” (*Article 17*).
- **The UN Guiding Principles on Internal Displacement** asserts, “States have a particular obligation to “protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands” (*Principle 9*).
- **UN Principles for Housing and Property Restitution for refugees and IDPs (Pinheiro Principles)** asserts the right to peaceful enjoyment of possessions (*Principle 7*).

### 2. RESPECT FOR RIGHTS TO LAND HELD BY CUSTOMARY OWNERSHIP PRACTICES

- **The UN Declaration on the Rights of Indigenous People** recognises the right of indigenous people to own and develop land possessed by their community’s customary law, regardless of whether it has been formally registered (*Article 26*).

### **3. DEMANDS FOR RESTRICTIVE READING OF STATE RIGHTS TO FORCIBLY ACQUIRE LAND**

- **The UN Guiding Principles on Internal Displacement** states that “The prohibition of arbitrary displacement includes displacement - in cases of large-scale development projects, which are not justified by compelling and overriding public interest (*Principle 6*)
- **The Pinheiro Principles hold that** “States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions” (*Principle 7*).

### **4. LAND RESTITUTION AND COMPENSATION**

- **The Pinheiro Principles** state that “All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/ or property that is factually impossible to restore as determined by an independent, impartial tribunal”<sup>246</sup> (*Principle 2*) and that “States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards” (*Principle 15*).

The principles offer guidance on how land restitution and compensation schemes should be carried out. This includes that States should:

- “Establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims” (*Principle 12.1*).

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<sup>246</sup> Although Principle 21.1 states that compensation may be paid in lieu of restitution if voluntarily accepted by the injured party.



- “Take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process” (*Principle 12.3*).
- “Include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements” (*Principle 12.6*).
- Ensure that “Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim” (*Principle 13*).

# APPENDIX 2- THE LIST OF LANDOWNERS

လယ်ယာမြေပြန်လည် ရယူလိုသူ လယ်သမားများ၏ ကမည်းနှင့် ထိုးမြဲလက်မှတ်

စဉ်	ကမည်း	မှတ်ပုံတင်အမှတ်	ပိုင်ဆိုင်မှု ဧက	လက်မှတ်
၁၉	ဦး	၁၀/ကမရ (၂၆)	၈	ဆိုး
၂၀	မောင်	၁၀/ကမရ (၂၆)	၃	ဖြူဖြူ
၂၁	မောင်	၁၀/ကမရ (၂၆)	၅	အိုး
၂၂	မောင်	၁၀/ကမရ (၂၆)	၄၉.၅	မောင်
၂၃	ဦး	၁၀/ကမရ (၂၆)	၂	တင်
၂၄	မောင်	၁၀/ကမရ (၂၆)	၉.၁၀	ဖြူဖြူ
၂၅	ဦး	၁၀/ကမရ (၂၆)	၅	မောင်
၂၆	ဦး	၁၀/ကမရ (၂၆)	၇	မောင်
၂၇	ဦး	၁၀/ကမရ (၂၆)	၆.၉	မောင်
၂၈	ဦး	၁၀/ကမရ (၂၆)	၂	မောင်
၂၉	မောင်	၁၀/ကမရ (၂၆)	၄.၉၁	မောင်
၃၀	မောင်	၁၀/ကမရ (၂၆)	၁၁	ဖြူ
၃၁	မောင်	၁၀/ကမရ (၂၆)	၆	ဖြူဖြူ
၃၂	မောင်	၁၀/ကမရ (၂၆)	၁၀	မောင်
၃၃	ဦး	၁၀/ကမရ (၂၆)	၇	မောင်
၃၄	ဦး	၁၀/ကမရ (၂၆)	၃	မောင်
၃၅	ဦး	၁၀/ကမရ (၂၆)	၁၁	မောင်
၃၆	ဦး	၁၀/ကမရ (၂၆)	၃	မောင်

လယ်ယာမြေပြန်လည် ရယူလိုသူ လယ်သမားများ၏ အမည်နှင့် ထိုးမြဲလက်မှတ်

စဉ်	အမည်	မှတ်ပုံတင်အမှတ်	ပိုင်ဆိုင်မှု ဧက	လက်မှတ်
၁	စိန်	၁၀/ကမဂ (လိုင်)	၁၇.၃၃	
၂	စိန်	၁၀/ကမဂ (လိုင်)	၁၆.၇၁	
၃	စိန်	၁၀/ကမဂ (လိုင်)	၉.၂၂	
၄	စိန်	၁၀/ကမဂ (လိုင်)	၇.	
၅	စိန်	၁၀/ကမဂ (လိုင်)	၁၄.	
၆	စိန်	၁၀/ကမဂ (လိုင်)	၂.၈၀.	
၇	စိန်	၁၀/ကမဂ (လိုင်)	၈.	စိန်
၈	စိန်	၁၀/ကမဂ (လိုင်)	၃.	လှိုင်
၉	စိန်	၁၀/ကမဂ (လိုင်)	၁၀.	ကျ
၁၀	စိန်	၁၀/ကမဂ (လိုင်)	၃.	ကျော်ကျော်
၁၁	စိန်	၁၀/ကမဂ (လိုင်)	၄.၅	စိန်
၁၂	စိန်	၁၀/ကမဂ (လိုင်)	၈.၈	ကျ
၁၃	စိန်	၁၀/ကမဂ (လိုင်)	၁၀.၃၉	ကျ
၁၄	စိန်	၁၀/ကမဂ (လိုင်)	၄.	ကျော်ကျော်
၁၅	စိန်	၁၀/ကမဂ (လိုင်)	၅.	ကျ
၁၆	စိန်	၁၀/ကမဂ (လိုင်)	၆.	ကျ
၁၇	စိန်	၁၀/ကမဂ (လိုင်)	၁၀.	ကျ
၁၈	စိန်	၁၀/ကမဂ (လိုင်)	၅.	

# APPENDIX 3- MAP



Affected area in Kyaikmayaw Township.

**Thanphyuzayat Township**



	Village boundary		Village
	State boundary		Bridge
	Country boundary		Railway
	Village that in confiscation case		Motor way

Affected areas in Ye Township.







# DISPUTED TERRITORY

MON FARMERS' FIGHT AGAINST UNJUST LAND ACQUISITION  
AND BARRIERS TO THEIR PROGRESS



A REPORT BY

THE HUMAN RIGHTS FOUNDATION OF MONLAND - BURMA

OCTOBER 2013