



HUMAN
RIGHTS
WATCH

“The Farmer Becomes the Criminal”

Land Confiscation in Burma’s Karen State



“The Farmer Becomes the Criminal”

Land Confiscation in Burma’s Karen State

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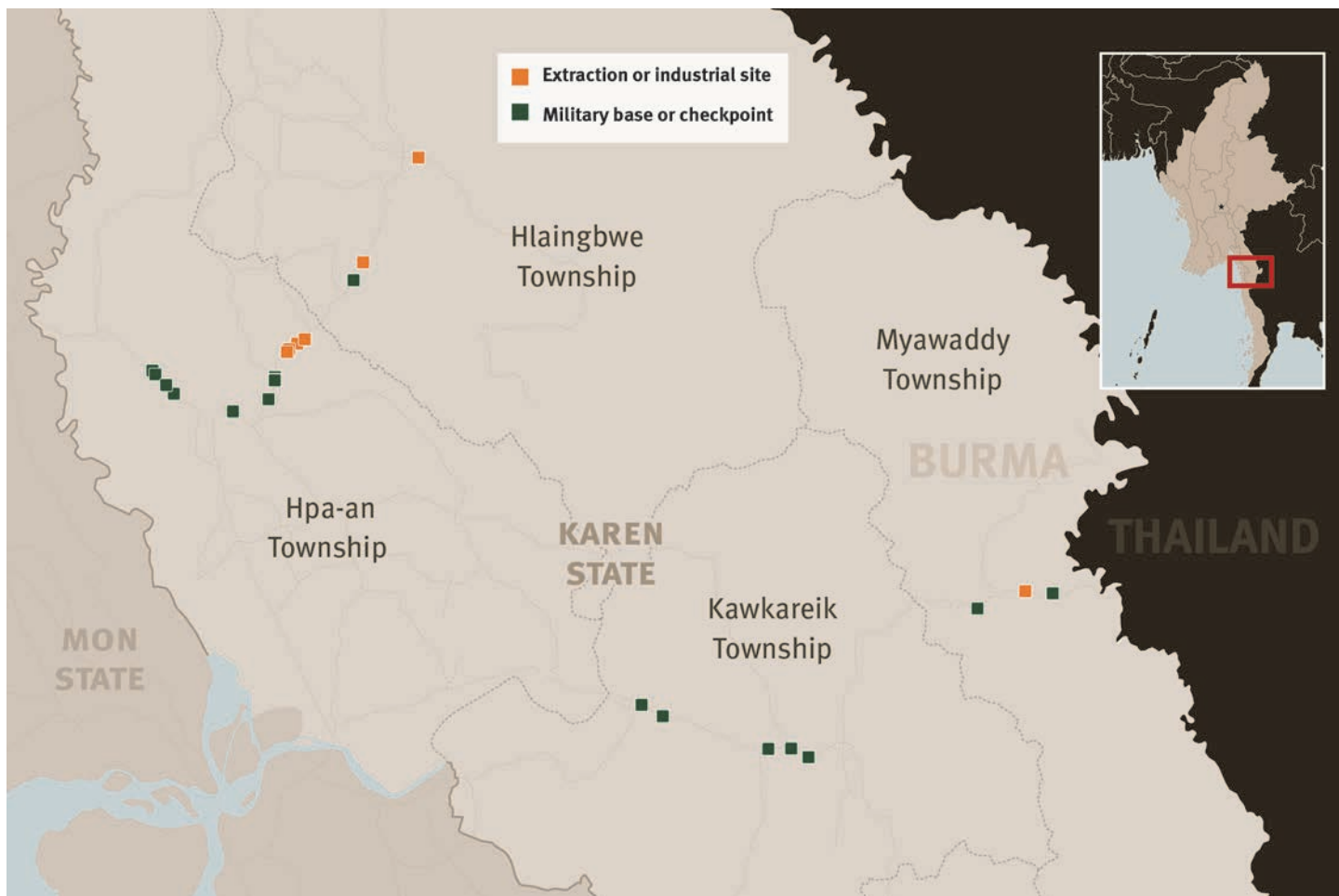
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“The Farmer Becomes the Criminal”

Human Rights and Land Confiscation in Karen State

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Glossary

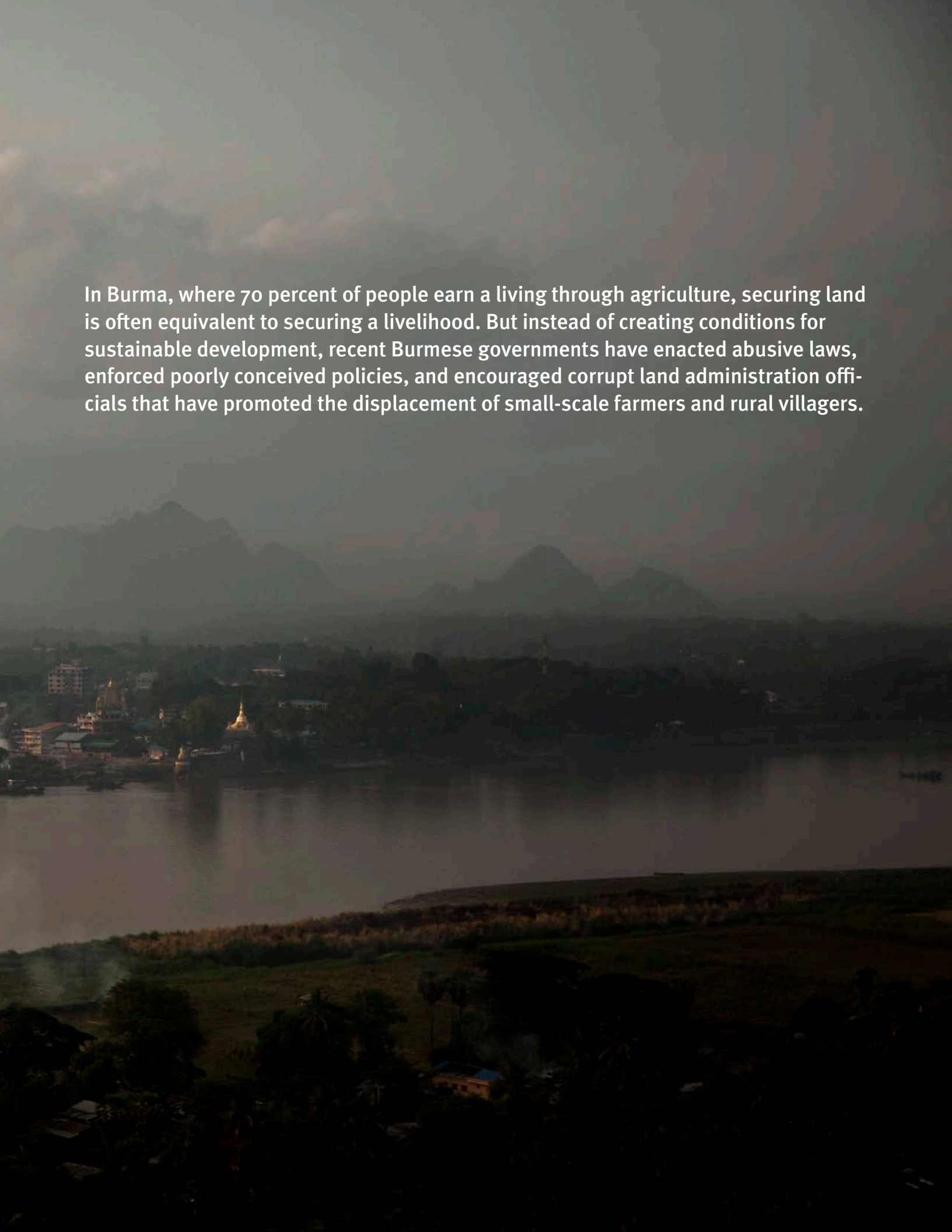
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|---------------|--|
| ADB | Asian Development Bank |
| ASEAN | Association of Southeast Asian Nations |
| BGF | Border Guard Force |
| CCVfV | Central Committee for the Management of Vacant, Fallow and Virgin Lands |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| DKBA | Democratic Karen Benevolent Army |
| ESIA | Environmental and Social Impact Assessment |
| FAB | Farmland Administration Body |
| FPIC | Free, Prior and Informed Consent |
| GAD | General Administration Department |
| GMS | Greater Mekong Sub-region |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IDP | Internally Displaced Person |
| JICA | Japan International Cooperation Agency |
| KNLA | Karen National Liberation Army |
| KNU | Karen National Union |
| LUC | Land Use Certificate |
| MoECaF | Ministry of Environmental Conservation and Forestry |
| MNREC | Ministry of Natural Resources and Environmental Conservation |
| SIZ | Special Industrial Zone |
| SLORC | State Law and Order Restoration Council |
| SLRD | Settlement and Land Records Department |
| SPDC | State Peace and Development Council |

Summary



View of Hpa-an, capital of Karen state, on the bank of the Salween River.

Photographs by Patrick Brown for Human Rights Watch

A landscape photograph of a river valley in Burma. In the foreground, there is a dark, hilly area with some trees and a small building. A wide river flows through the middle ground, reflecting the sky. On the left bank, a small town is visible with several buildings, including a prominent golden stupa. In the background, a range of mountains is visible under a cloudy sky. The overall tone is somewhat somber and atmospheric.

In Burma, where 70 percent of people earn a living through agriculture, securing land is often equivalent to securing a livelihood. But instead of creating conditions for sustainable development, recent Burmese governments have enacted abusive laws, enforced poorly conceived policies, and encouraged corrupt land administration officials that have promoted the displacement of small-scale farmers and rural villagers.

“The businessman takes the land from the farmer, but when the farmer protests, he becomes the criminal.”

Lawyer, Hpa-an, Karen State,
August 2015

Conflicts over land have come to the forefront of Burma’s national agenda in recent years. These tensions have intensified as the country has embarked on a process of democratic transition and reform, with greater openness in some areas, but continued military dominance in other sectors, particularly where the military controls key government ministries.

Land disputes are a major national problem, with rising discontent over displacement for plantation agriculture, resource extraction, and infrastructure projects—often without adequate consultation, due process of law, or compensation for those displaced. In many parts of the country, those contesting land seizures have taken to the streets in frequent demonstrations but have faced retaliation in the courts.

The dual problems of land confiscation and reprisals against protesters is particularly acute in Karen State. Located along the border with much more prosperous Thailand, Karen State is viewed by many as a desirable site for investment in the tourism, extractive, and agriculture industries.





Toll booths operated by militias on a new road financed by Thailand from Kawkaik to the border town of Myawaddy in Burma. Armed men at the tolls lack military insignia or other distinguishing marks on their uniforms, and charge 1000 to 2000 Burmese kyat for each car to pass.



Front gate of the UMH Industrial Park in the Hpa-an Special Industrial Zone, located north of the city of Hpa-an. Since the zone opened in 2011, the value of land located around the industrial zone has tripled in value.

The economic opening of the country to investors has made land more valuable, while the peace process in Karen State and other ethnic areas has given access to areas previously beyond the reach of the Burmese armed forces and military-linked businessmen. The result is that powerful interests are gaining land through questionable means while farmers are losing it, often without adequate compensation.

As peace negotiations continue and the return of refugees from Thailand gains credence, land tenure issues will likely intensify, particularly as those who return find that

land they previously farmed has now been occupied by government or business interests.¹

This report focuses on government abuses related to land confiscation in areas near Hpa-an, the capital of Karen State. The villages in this area are under the effective control of the Burmese military, called the Tatmadaw, and military-controlled militias called Border Guard Forces (BGFs), or are located in areas of mixed governance by the ethnic

¹ See, for example, “Myanmar, UNHCR to ensure safe return of refugees,” Bangkok Post, July 7, 2016, <http://www.bangkokpost.com/news/asean/1030081/myanmar-unhcr-to-ensure-safe-return-of-refugees> (accessed August 21, 2016).



Children and adults making and stacking bricks on the construction site of the UMH Industrial Park special economic zone, north of the city of Hpa-an. Sand dug from the Salween River is used in the manufacture of the bricks.

armed group Karen National Union (KNU) or other militias and the government.

The report illustrates the dynamics of land confiscation in Karen State—a longstanding problem previously documented by Human Rights Watch and local organizations such as the Karen Human Rights Group.² It details cases in

which government officials, military personnel and agents on behalf of the army, local militia members, and businessmen have used intimidation and coercion to seize land and displace local people. It also documents the impact of land loss on local villagers, some of whom have farmed land for generations but lack legal documentation to prove it.

² Human Rights Watch, “They Came and Destroyed our Village Again”: The Plight of Internally Displaced Persons in Karen State, vol. 17, no. 4(C), June 2005, <http://www.hrw.org/reports/2005/06/09/they-came-and-destroyed-our-village-again-o>, p. 28; Karen Human Rights Group, *Losing Ground: Land conflicts and collective action in eastern Myanmar*, March 2013, <http://www.khrg.org/sites/default/files/losinggroundkhrg-march2013-fulltext.pdf> (accessed June 12, 2015); Karen Human Rights Group, “With only our voices, what can

Human Rights Watch found that farmers who protest land-taking and try to stake a claim to their land face retaliation by police and government officials, and prosecution un-

we do?”: Land confiscation and local response in southeast Myanmar, June 2015, http://khrg.org/sites/default/files/full_with_only_our-voices_-_english.pdf, June 2015 (accessed July 1, 2015).

der peaceful assembly and criminal trespass laws. Many farmers whose land has been confiscated as far back as a decade have not been able to obtain any redress and, in some cases, continue to suffer abuses after calling for compensation or attempting to reclaim land. The government's failure to provide adequate compensation or other redress for land confiscation means that victims struggle to make ends meet, and frequently must become migrant workers abroad or rely on relatives working in Thailand or elsewhere abroad for economic survival.

Villagers and local groups say that government land registration services are effectively inaccessible to them, and farmers assert that local government offices fail to uphold their rights against more powerful moneyed interests. In

“Some things are getting better. There is electricity in the next village, and we may get electricity here, too. But none of that matters if our land is gone.”

Nu Yee, San Klo, Karen State,
February 2015

some cases, villagers allege that local government officials have acted as brokers for land deals or facilitated the granting of licenses for mining and other projects, leaving long-time residents and farmers empty-handed and without effective recourse.

Burma's departing national government adopted a cabinet resolution to enact a National Land Use Policy in early 2016, which could form the basis of future land law reform. The new policy aims to improve land classification and land information management systems, recognize communal tenure systems and shifting cultivation practices, create more independent dispute resolution procedures, and provide restitution for victims of land confiscation or





Two villagers in New Ahtet Kawin in front of their homes. Hpa-an police burned down their village in August 2015, and forcibly evicted these women and other residents. A total of 27 villagers refused to leave and prosecutors charged them with criminal trespass; all 27 were convicted and sentenced to prison for terms ranging from two to six months.



So Khai, sitting on the edge of thatched roof platform structure that he and other villagers built to serve as a school for children in Ahtet Kawyin village in Karen State. Villagers there have been regularly displaced by fighting in the area.

those who have been forced to abandon lands due to past or ongoing conflict.

In November 2015, the opposition National League for Democracy (NLD), led by Aung San Suu Kyi, swept nationwide elections. The party assumed executive power in March 2016 and appointed U Htin Kyaw as president. Since then the NLD government has made little progress on reforming land policy to advance these policy goals or otherwise ensure that rights are protected.

To address the problems facing farmers and other villagers such as those detailed in this report, the government should adopt additional safeguards (see Section IV). Cru-

cial is tackling the significant gap between government documentation of land rights and the manner in which land is actually being used or occupied, and by whom, in rural communities. Measures to be adopted should include recognizing community land tenure systems and shifting cultivation systems, providing formal documentation to farmers and villagers recording existing land use, and ensuring that villagers can challenge government decisions about land in an independent forum or body with the power to adjudicate land disputes.

In addition, the government should enact administrative changes to ensure that land reform at the national level results in actual changes at the local level, including by pro-



Aung Thay, who is protesting the Burmese government's decision to seize his and others' land near the Ye Bo dam, constructed in 2006. The government still has not provided financial or other compensation to him or his fellow villagers.

viding genuine notice to farmers where proposed land use changes would affect their livelihoods, and by implementing robust public consultation procedures. The government should also end the arbitrary arrest and detention of land activists for engaging in peaceful activities to protest land seizures.

A special taskforce consisting of the Burmese Defense Services (Tatmadaw), the Justice Ministry, and the Myanmar National Human Rights Commission should investigate all alleged abuses by Border Guard Forces (BGF) connected to land confiscation in BGF-controlled areas, make public the findings of the investigation, and ensure the return of

land taken improperly by members of the BGF to the villagers and farmers who had previously been using it.

Methodology

From January to August 2015, Human Rights Watch conducted interviews in Burma with ethnic Karen farmers, laborers, and other villagers from 27 different villages in Hpa-an township and Hlaingbwe township, Karen State. Some villages were visited multiple times. In April 2015, Human Rights Watch also interviewed Karen migrant workers in Mae Sot and Bangkok, Thailand.

Altogether, Human Rights Watch interviewed 72 farmers and laborers, 48 men and 24 women. Interviews were conducted in Po Karen, Sgaw Karen, and Burmese with the help of interpreters, and in English. Local groups working on land rights helped identify individuals to interview. Human Rights Watch also conducted interviews with people displaced during fighting in October 2014. Migrant workers in Thailand were referred to Human Rights Watch by family members in Burma.

All participants were informed of the purpose of the interview, its voluntary nature, and the ways in which the data would be collected and used. All orally consented to be interviewed. The names and other identifying details of some interviewees and villages have been withheld or changed to prevent possible reprisals.

Most interviews were conducted in villagers' homes with between one to four people interviewed. Often the interviews included other members of the village, some of whom participated in the interviews.

A number of villagers expressed concerns about security and possible retaliation if they spoke with Human Rights Watch in their villages. In such instances, Human Rights Watch reimbursed villagers for travel expenses to meet in a secure location.

Human Rights Watch also interviewed and obtained information from land experts, former government officials, nongovernmental organization workers, and local community members.

Human Rights Watch sought information from the national government and the Karen State government relating to land confiscation in Karen State and in Burma more generally. A

Human Rights Watch representative met with the vice chair of the Hpa-an Special Industrial Zone in August 2015 in Hpa-an, and officials from the national Ministry of Agriculture and Irrigation in Burma's capital, Naypyidaw, in February 2016.

In October 2015, Human Rights Watch received a letter from the office of the chief minister of Karen State in response to our letter seeking information on alleged human rights abuses related to land confiscation (see Appendix III).

Throughout the research, Human Rights Watch collected copies of land use certificates, tax receipts, letters to government officials and responses received, land registers prepared by villages, and site maps. We visited almost all of the sites of land confiscation discussed in this report.

Because of government-imposed travel restrictions and security concerns at the time of the research, Human Rights Watch was unable to conduct interviews in areas under the control of the Karen National Union (KNU), the main ethnic Karen political organization, whose armed wing, the Karen National Liberation Army (KNLA), has waged a war against central government control since 1948. As a result, this report does not document abuses that may be occurring in KNU-controlled areas.

Terminology

In this report Human Rights Watch uses the terms “Burma” in reference to the country and “Burmese” for the population generally, regardless of specific ethnicity. “Karen” is used in reference to the state and its predominant ethnic group. The Burmese government refers to the country as “Myanmar” and the state and ethnic group as “Kayin,” reflecting changes to the English translations of names made by the military State Law and Order Restoration Council (SLORC) after it seized power in 1989. All of these terms are still commonly used inside Burma. The 2008 constitution also changed the administrative areas called “Divisions” to “Regions,” so for example Pegu Division became Pegu Region after March 2011 when the constitution came into force.

In this report, Human Rights Watch uses the term “land confiscation” to describe instances in which the government, military, or private individuals claiming ownership appropriate via legal or extralegal means land that is already occupied or used by another. In most

cases addressed in this report, the “legal” means by which government and businesses have acquired land fail to meet domestic procedural requirements and international legal standards, notably notice and compensation requirements.

Article 37 of Burma’s constitution establishes the state as the ultimate owner of all land in the country, while also recognizing the right to private property. Given this legal framework, Human Rights Watch uses the term “land use rights” to refer to the rights of farmers to work farmland. The term “claim to land” is used for individuals who may qualify for land use rights, particularly through inheritance or under a customary system, but have not yet registered land with the government. In Karen communities visited by Human Rights Watch, references to “ownership” were often made, as reflected in direct quotes of interviews.

I. Background

The population of Karen State has for decades suffered from armed conflict between the Burmese military and Karen armed groups, widespread human rights violations, and forced displacement and outflows of refugees. These have created a complex, competing, and overlapping governance system in the state that affects land ownership and use as well as access to justice.³

A nationwide census in Burma in 2014 recorded the population of Karen State as approximately 1,573,000. However, observers criticized the census for not including certain areas of Karen State, including conflict-affected areas covered by this report.⁴ Most residents of Karen State are ethnic Karen, but there are also ethnic Mon, Shan, Pa-o, and Burman populations.⁵ Most people earn their living in agriculture or animal husbandry.

Since Burma attained independence in 1948, ethnic armed groups, including those in Karen State, have operated in many areas along Burma's borders. After Karen nationalist hopes for independence at the end of British rule were left unrealized, the Karen National Union (KNU) and its armed wing, the Karen National Liberation Army (KNLA), advanced the nationalist cause both politically and militarily.⁶

Successive Burmese civilian and military governments have sought to suppress the Karen nationalist movement. The Burmese military's counterinsurgency strategy—known as the “Four Cuts” strategy aimed to cut insurgents off from food, supplies, intelligence, and

³ See, for example, Mary Callahan, “Political Authority in Burma’s Ethnic Minority States: Devolution, Occupation, and Coexistence,” East-West Center; Ashley South, “Burma’s Longest War: Anatomy of the Karen Conflict,” Transnational Institute, 2011, <http://www.tni.org/sites/www.tni.org/files/download/Burma%27s%20Longest%20War.pdf> (accessed June 11, 2015).

⁴ The Population and Housing Census of Myanmar, 2014, Summary of the Provisional Results, Department of Population, Ministry of Immigration and Population, August 2014, table 1. Human Rights Watch was quite critical of the census, including the Ministry of Immigration and UNFPA. See David Scott Mathieson, “What Burma’s Census Missed,” September 4, 2014, <http://www.hrw.org/news/2014/09/04/dispatches-what-burmas-census-missed>; see also, Philip Heijmans, “Myanmar’s Controversial Census,” *The Diplomat*, September 2, 2014, <http://thediplomat.com/2014/09/myanmars-controversial-census/> (accessed April 11, 2015).

⁵ UNHCR, “Kayin State Profile,” June 2014, p. 8. There are at least 12 related Karen dialects, and a variety of Karen subgroups, with the largest being Sgaw Karen and Po Karen. The majority of Karen people are Buddhist or animist, but there is a significant group of Karen Christians, and a smaller group of Karen Muslims.

⁶ See Bertil Lintner, *Burma in Revolt: Opium and Insurgency since 1948* (Chiang Mai, Thailand: Silkworm Books, 1999).

recruits—resulted in widespread and systematic human rights violations and displacement. Several major waves of refugees fled over the border into Thailand to seek protection in the 1980s and 1990s. The military committed with impunity countless acts of extrajudicial killings, rape, torture, child soldier use, and abusive forced labor, as documented by Human Rights Watch and others.⁷

Internal divisions in Karen political and insurgent organizations have created difficulties in articulating or achieving a unified political position on behalf of the Karen. The KNU suffered a serious split in the mid-1990s, when the Democratic Karen Buddhist Army broke away in 1994.⁸ Additional fractures occurred with the formation of the Karen Peace Force in 1997, and the KNU/KNLA Peace Council (KPC) in 2007. Various smaller “peace groups” run by retired military or non-state armed group officers also operate throughout Karen State.

In 2010, a large section of the Democratic Karen Buddhist Army broke away and renamed itself the Democratic Karen Benevolent Army (DKBA), while other units transitioned to become various units of the Border Guard Force (BGF). BGFs are militia units that the government created after the adoption of the 2008 constitution to assimilate ethnic armed groups into the national army.

Conflict After the 2010 Elections

Karen State today remains a zone of intermittent armed conflict, though fighting has decreased dramatically since the signing of an initial peace agreement in 2012 and a nationwide ceasefire agreement in October 2015.⁹

⁷ Human Rights Watch, *“They Came and Destroyed our Village Again”*; Human Rights Watch, *Dead Men Walking: Convict Porters on the Front Lines in Eastern Burma*, July 2011, <http://www.hrw.org/reports/2011/07/12/dead-men-walking-o>; Amnesty International, *“No Place To Hide”: Killings, Abductions and Other Abuses Against Ethnic Karen Villagers and Refugees*, ASA/16/13/95, June 1995, <http://www.refworld.org/docid/3ae6a9bao.html> (accessed September 22, 2016).

⁸ Desmond Ball, *Burma’s Military Secrets: Signals Intelligence (SIGINT) from the Second World War to Civil War and Cyber Warfare* (Bangkok: White Lotus Press, 1998); The Border Consortium, *Nine Thousand Nights: Refugees from Burma* (2012).

⁹ Statement on Initial Agreement between KNU and Burmese Government,” January 13, 2012, point 7, <http://www.mmpeacemonitor.org/images/pdf/KNUandBurmeseGovernment.pdf> (accessed April 11, 2015); “Myanmar signs ceasefire with eight armed groups,” Reuters, October 15, 2015, <http://www.reuters.com/article/us-myanmar-politics-idUSKCN0S82MR20151015> (accessed April 11, 2016).

In September 2014, fighting broke out between the Burmese army and the DKBA, causing thousands of villagers to flee their homes.¹⁰ In early 2015, skirmishes continued between the DKBA and the army in Hpapun and Kawkaik.¹¹ Starting in July 2015, clashes occurred along the Asia Highway between Myawaddy and Kawkaik.¹² In February 2016, a BGF unit was attacked by remote-controlled landmines and gunfire along the same road.¹³ Landmines generally remain a major problem, and reports indicate that fighters continue to plant new mines in the region.¹⁴ In September 2016, clashes between DKBA units and BGF battalions #1011 and #1012 broke out in Hlaingbwe township, displacing nearly 4,000 civilians.¹⁵

In a July 2016 survey, The Border Consortium (TBC), an umbrella group of nongovernmental organizations, counted the number of refugees living in camps along the Thai-Burma border at 104,149, of whom about 79 percent are Karen.¹⁶ A large number of internally displaced persons (IDPs) still living in Karen State face challenges in obtaining basic services including health care and education due a lack of humanitarian access. A 2014 TBC survey found there were approximately 400,000 IDPs in southeast Burma who are

¹⁰ "Fighting Continues in Karen and Mon States," *Irrawaddy*, September 29, 2014, <http://www.irrawaddy.org/burma/fighting-continues-karen-mon-states.html> (accessed January 12, 2015); "More Fighting in Karen State Forces Villagers to Flee," *Irrawaddy*, October 10, 2014, <http://www.irrawaddy.org/burma/fighting-karen-state-forces-villagers-flee.html> (accessed January 12, 2015).

¹¹ "DKBA and Burma Army fighting Forces Kawkaik Traffic to a Standstill" *Karen News*, March 12, 2015, <http://karennews.org/2015/03/dkba-and-burma-army-fighting-forces-kawkaik-traffic-to-a-standstill.html> (accessed June 11, 2015); "Burma Army Shelling Forces Karen Villagers From Farms," *Karen News*, March 6, 2015, <http://karennews.org/2015/03/burma-army-shelling-forces-karen-villagers-from-farms.html> (accessed June 11, 2015).

¹² Karen Human Rights Group, "Recent fighting between Tatmadaw and DKBA soldiers leads to killing and displacement of villagers in Hpa-an District, July 2015," August 31, 2015, <http://khrhg.org/2015/08/15-13-nb1/recent-fighting-between-tatmadaw-and-dkba-soldiers-leads-killing-and-displacement> (accessed April 10, 2016); "Gov't Troops and DKBA Clash Over New Asia Highway," *Karen News*, July 2, 2015, <http://karennews.org/2015/07/govt-troops-and-dkba-clash-over-new-asia-highway.html> (accessed April 11, 2016); "Clashes Continue on Asia Highway between DKBA, Govt, Troops," *Irrawaddy*, July 8, 2015, <http://irrawaddy.org/burma/clashes-continue-on-asia-highway-between-dkba-govt-troops.html> (accessed August 14, 2015).

¹³ "BGF Militia Commander's truck attacked by Unknown Group with Mines and Guns," *Karen News*, February 9, 2016, <http://karennews.org/2016/02/bgf-militia-commanders-truck-attacked-by-unknown-group-with-mines-and-guns.html> (accessed March 10, 2016).

¹⁴ International Campaign to Ban Land Mines, Landmine and Cluster Munition Monitor, "Country Profiles, Myanmar/Burma, 2014," http://www.the-monitor.org/custom/index.php/region_profiles/print_profile/948 (accessed June 11, 2015).

¹⁵ "Karen State Fighting Escalates," *Karen News*, September 7, 2016, <http://karennews.org/2016/09/karen-state-fighting-escalates.html/> (accessed September 26, 2016); "Civilians Bear the Brunt of Ongoing Karen State Conflict," *Irrawaddy*, September 22, 2016, <http://www.irrawaddy.com/burma/civilians-bear-the-brunt-of-ongoing-karen-state-conflict.html> (accessed September 26, 2016).

¹⁶ The Border Consortium, "Refugee and IDP Camp Populations: July 2016," <http://www.theborderconsortium.org/media/71671/2016-07-jul-map-tbc-unhcr.pdf> (accessed September 18, 2016).

displaced due to armed conflict, generalized violence, large-scale development projects, or natural disasters.¹⁷

Many Karen have also migrated to Thailand for economic reasons. According to the International Organization for Migration (IOM), in 2015 the total number of Burmese migrants in Thailand was just under 2 million.¹⁸ Human Rights Watch found that migrants face harsh and often abusive conditions upon reaching Thailand, including killings, torture, sexual violence, and extortion.¹⁹

Karen State Governance

Karen State governance is divided among government-controlled (as designated by the government) “white” areas, non-state armed group-controlled “black” areas, and mixed-controlled or contested “brown” areas.

The chief minister runs the state government, with various other state ministers covering portfolios such as transport, security and border affairs, forestry and mining, and social development, among others.

The KNU divides Kawthoolei (its name for the free state of Karen) into nominally civilian-administered districts that are each correlated with an armed group military brigade.²⁰ The KNU has its own governance systems delivering health care, education, and land and forestry regulation.²¹ After the signing of an initial ceasefire agreement with the government in 2012, the KNU also opened offices to help liaise with the government.

Areas near Hpa-an, the state capital, are heavily government-controlled, while the KNU exercises greater control in border zones close to Thailand. In some areas, villagers continue to pay taxes to both the government and armed groups. Furthermore, in

¹⁷ The Border Consortium, *Protection and Security Concerns in South East Myanmar/Burma*, November 2014, http://www.burmalibrary.org/docs19/TBC_report-2014-11-idp-en-red.pdf, p. 13 (accessed December 1, 2015).

¹⁸ International Organization for Migration, Thailand page, <http://www.iom.int/countries/thailand>.

¹⁹ Human Rights Watch, *From the Tiger to the Crocodile: Abuses of Migrant Workers in Thailand*, February 2010, <https://www.hrw.org/report/2010/02/23/tiger-crocodile/abuse-migrant-workers-thailand>.

²⁰ The districts are Thaton, Toungoo, Nyaunglebin, Tenasserim (Mergui-Tavoy), Papun, Doooplaya, and Hpa-an. See Karen Human Rights Group, *Losing Ground*.

²¹ UNHCR, “Kayin State Profile,” June 2014, p. 8.

contested areas, business projects may require permission from both the government and the KNU, or from any combination of armed groups. Powerful business interests and companies, many of whom are former members of the military or ethnic armed groups, play a dominant role in local life.

Business Development Plans

Political reforms in Burma have promoted new laws and international agreements to enable investment, sparking plans for infrastructure development and special economic zones. Foreign investment in Burma reached US\$8 billion in 2014-2015, double that of the previous year.²²

At the national level, the government has accelerated plans to encourage foreign investment. In December 2015, parliament passed a new investment law, developed with the assistance of the International Finance Corporation (IFC).²³

The new law consolidates the Foreign Investment Law of 2012 and the Myanmar Citizens Investment Law.²⁴ In addition to guarantees of regulatory stability for investors, it protects the government's "right to regulate" in favor of human rights, including health and the environment.²⁵ In a reversal of prior drafts, the final version of the law removed a contentious investor-state dispute mechanism clause opposed by many civil society groups.²⁶

Karen State is considered an attractive area for investment because of its abundant natural resources and strategic location on the Thai border. Construction of the Asia Highway, which the Asian Development Bank (ADB) asserts will "dramatically improve connectivity within Kayin [Karen] State, between the state and the economic hub of Yangon [Rangoon], and regionally between Myanmar and Thailand, and onwards across the GMS [Greater

²² "Foreign Investment Soars to Record \$8B in 2014-15," *Irrawaddy*, April 9, 2015, <http://www.irrawaddy.org/business/foreign-investment-soars-to-record-8b-in-2014-15.html> (accessed September 8, 2015).

²³ "After Much Deliberation, Investment Law Approved by Parliament," *Irrawaddy*, December 18, 2015, <http://www.irrawaddy.com/burma/after-much-deliberation-investment-law-approved-by-parliament.html> (accessed January 11, 2015).

²⁴ *Ibid.*

²⁵ "Myanmar: public consultation improves new draft investment law," International Commission of Jurists, September 23, 2015, <http://www.icj.org/myanmar-public-consultation-improves-new-draft-investment-law/> (accessed January 11, 2016).

²⁶ *Ibid.*

Mekong Sub-region],” is already underway.²⁷ A portion of the road, which links the border town of Myawaddy to Kawkaik, was financed by Thailand and is already complete. The second portion, financed by the ADB as part of its GMS East-West Economic Corridor project, will connect Kawkaik to Eindu, a small town close to Hpa-an.²⁸

Hydropower is also being developed in the area, with seven dam sites planned along the Salween River, including the Hatgyi, Weigyi, and Dagwin dam sites in Hpapun district, Karen State, all backed by the Electricity Generating Authority of Thailand (EGAT).

In 2005, the Burmese government signed a Memorandum of Understanding to develop the Hatgyi dam site with EGAT, and pledged 60 percent of electricity flow to China, 30 percent to Thailand, and 10 percent to Burma.²⁹ The dam has been controversial, with protesters raising environmental, economic, and social concerns, and blaming the project for an increased Burmese military presence in the area.³⁰

In 2011, the Karen State government opened the 1,000-acre Hpa-An Industrial Zone, where three factories were operating at time of writing.³¹ Land around the industrial zone has reportedly tripled in value since its opening.³²

Cement production is another source of investment, with a French-led factory near Hpa-an constructed in 1986, and two military-backed plants that caused relocation of at least five villages around 2000.³³ Four large-scale mining licenses for limestone extraction and at

²⁷ “The Republic of the Union of Myanmar: Greater Mekong Subregion East-West Economic Corridor Eindu to Kawkaik Road Improvement,” Asian Development Bank, Concept Paper, Project Number: 46422, February 2013, <http://www.adb.org/sites/default/files/project-document/76022/46422-001-mya-cp.pdf> (accessed May 1, 2015).

²⁸ Ibid.

²⁹ “If the Dam is Built...We Will Be Disappeared,” *Karen News*, March 27, 2015, <http://karennews.org/2015/03/if-the-dam-is-built-we-will-be-disappeared.html> (accessed April 21, 2015).

³⁰ “Karen Groups Concerned Proposed Dams on Salween River Could Fuel Conflict and Increase Militarization,” *Karen News*, March 17, 2015, <http://karennews.org/2015/03/karen-groups-concerned-proposed-dams-on-salween-river-could-fuel-conflict-and-increase-militarization.html/> (accessed June 11, 2015).

³¹ “Kayin industry zone seeks growth,” *Myanmar Times*, April 29, 2015, <http://www.mmmtimes.com/index.php/business/14181-kayin-industry-zone-seeks-growth.html> (accessed June 12, 2015). One of the companies to invest was domestically-owned UMEH Garment Industries, which opened in November 2012; see “Clothing factory opened at Hpa-an’s first industrial zone,” *Myanmar Times*, November 12, 2102, <http://www.mmmtimes.com/index.php/business/3039-clothing-factory-opened-at-hpa-an-s-first-industrial-zone.html> (accessed June 12, 2015).

³² “Hpa-an industrial zones land prices triple,” *Karen News*, March 14, 2103, <http://karennews.org/2013/03/hpa-an-industrial-zones-land-prices-triple.html/> (accessed June 12, 2015).

³³ Human Rights Watch interviews in Hpa-an, Karen State, January 26, 2015.

least 10 exploration permits have also been granted in Karen State.³⁴ In 2014, villagers in Mi Kayin village resisted development of a Chinese-led cement factory near the banks of the Salween River. At time of writing, the KNU's refusal to grant permission has halted the project, though it still retains official government permission.³⁵

Tourism has greatly increased in Burma since 2011, with the country on track to draw 7.5 million tourists in 2016.³⁶ Though most tourism to date is concentrated in Rangoon, Bagan, Inle, and Kyaiktiyo, the opening of four new crossings on the Thai border adds the potential for expansion of tourism in Karen State.³⁷

Japan is a major supporter of investment in the area. The Japan International Cooperation Agency (JICA) is considering development in the Hpa-an to Myawaddy corridor, with plans for additional special economic zones that would utilize labor from displaced ethnic minority communities, including refugees living in camps across the border in Thailand.³⁸ In response, the Karen Peace Support Network, a network of Karen civil society organizations, has expressed concern over potential exploitation of low-wage workers and natural resources, and encouraged the Japanese government to consult with local communities on the planned projects and to protect vulnerable populations.³⁹

³⁴ Human Rights Watch interview with former Ministry of Mines official, March 31, 2015.

³⁵ "People Power Wins – KNU and State Officials Let Villagers Have Final Say On Proposed Cement Factory," *Karen News*, May 4, 2014, <http://karennews.org/2014/05/people-power-wins-knu-and-state-officials-let-villagers-have-final-say-on-proposed-cement-factory.html/> (accessed June 12, 2015).

³⁶ CTV News, "Burma tourism boom set to bring 7.5M visitors a year," August 2, 2016, <http://www.ctvnews.ca/lifestyle/burma-tourism-boom-set-to-bring-7-5m-visitors-a-year-1.3011719> (accessed August 21, 2016).

³⁷ Myanmar Centre for Responsible Business, "Myanmar Tourism Sector Wide Impact Assessment," February 2015, p. 12; "Opening of Overland Border Gates Could Boost Burma Tourism, Investment," *Irrawaddy*, August 29, 2013, <http://www.irrawaddy.org/democracy/opening-of-overland-border-gates-could-boost-burma-tourism-investment.html> (accessed June 12, 2015).

³⁸ Japan International Cooperation Agency, "Preparatory Survey for the Integrated Regional Development for Ethnic Minorities in the South-East Myanmar," October 2013, http://www.burmalibrary.org/docs17/JICA%201212628o_01.pdf (accessed November 1, 2014).

³⁹ Karen Peace Support Network, "Critique of Japan International Cooperation Agency's Blueprint for Development in Southeastern Burma/Myanmar," September 2014, http://www.burmapartnership.org/wp-content/uploads/2014/09/critique_of_japan_international_cooperation_agencys_blueprint_for_development_in_south-eastern_burmayanmar_full_report_english_2.pdf (accessed June 11, 2015).

II. Barriers to Realization of Land Rights

The following section presents a range of challenges faced by communities in Karen State, particularly farmers and other villagers in the Hpa-an area, as they try to maintain use of land they depend on for their livelihoods.

Intimidation by the Border Guard Force and Other Armed Groups

Human Rights Watch received several complaints of land confiscation that involved armed units operating in Karen State.⁴⁰ These cases ranged from alleged land grants by the government to more straightforward forced expropriations of land by Border Guard Force (BGF) commanders and various militias.

The BGFs often used intimidation to silence villagers' objections—including firing assault rifles, bringing in armed soldiers to guard disputed land, and threatening villagers.⁴¹

Human Rights Watch witnessed firsthand BGF threats to detain villagers in relation to land confiscation in Hlaingbwe township. Villagers in Htantabin village in Hlaingbwe told Human Rights Watch of land appropriation by the BGF, which had built a compound near their farmland in 2012. U Be Be, who lives in the village, said when the BGF arrived in the area, they laid claim to the 20-acre plot used for sugarcane and vegetables that he said had been in his family for four generations, planning to divide the land into blocks and sell it for houses. BGF commanders resisted repeated requests by some villagers to show them their legal documents providing evidence of their right to the land, and insisted the land was in a military zone. U Be Be, like many of the villagers, said his family lacked documents for the land: "In 2013, we planted some rubber on that land. A year later, the BGF came to us and said that they would build a road on the land and they were going to divide the land into blocks 80 feet by 60 feet and sell it for houses."⁴²

In April 2015, a few weeks after villagers held a meeting about land confiscation in the area, a BGF commander arrived with two trucks filled with armed soldiers in an attempt to

⁴⁰ See also, Karen Human Rights Group, *'With only our voices, what can we do?'*

⁴¹ Human Rights Watch interviews, Mine Kan village, Karen State, August 2, 2015.

intimidate villagers from speaking out further. The dispute followed a series of efforts by a local family to get back land they claimed as their own from the BGF commander.

After a direct conversation with the BGF commander, who would not return the land to the family, the family matriarch sent a letter directly to the commander's superior officer.⁴³

While Human Rights Watch was visiting the village, the BGF commander arrived with armed troops and confronted the woman. "Why would you do this?" he shouted. "If you do this to me, I can arrest you." The commander called to the soldiers outside, and six rushed into the house with ropes, threatening to tie up family members and take them to BGF headquarters. After protracted discussions, the BGF commander eventually withdrew with his troops from the village.

The villagers remained terrified of the BGF unit and told Human Rights Watch they felt it was hopeless to seek redress through direct contact with the BGF unit or higher levels within the BGF. They said that they were too fearful to initiate legal action against the BGF unit.⁴⁴

In some reported cases, BGF units have acted on their threats to carry out arrests, including without apparent legal basis. In May 2015, in a different village in Hlaingbwe township, a BGF unit held a man, Yar Kut, in Mae Thein jail for four days regarding a land dispute in which the BGF claimed rights to land which the man's family asserted they had been working for generations.⁴⁵ "They didn't charge me, they didn't tell me any number [of the penal code] that I broke in the law," Yar Kut said. "They just said it's because of the land." He was held in jail for four days without charge, and only released from jail after his parents paid 50,000 kyat (US\$41).

In some cases, armed groups stood guard over land for businesses seeking to develop the site.⁴⁶ In Mine Kan, villagers said BGF soldiers came to protect land claimed by the Kyaw Hlwan Moe Company for a 450-acre agricultural project on land claimed by villagers, who were actively protesting the project. According to villager Kaw Doe: "The company came to

⁴³ Human Rights Watch interview, Hpa-an, Karen State, August 9, 2015.

⁴⁴ Ibid.

⁴⁵ Human Rights Watch interview (name withheld), Q4, Ateyebu, Karen State, August 3, 2015.

⁴⁶ Human Rights Watch interviews, Mine Kan village, Karen State, August 2, 2015.

destroy the land [in early 2015] with big machines. Most of the land is destroyed now. They planted some teak and other trees just to show that they own the land.”⁴⁷

Villagers said that armed soldiers from the BGF, led by Gen. Thein Zaw Min, had since come to guard the land. One local resident said: “The villagers don’t dare to go to that area anymore. The villagers are afraid because when the BGF came, they shot a lot, almost every day when they first came.”⁴⁸

Daw Mu Pulu of Ateyebu village told Human Rights Watch that in 2006, Bo Sar Yay—who was in charge of a group of 10 DKBA fighters—seized the 20 acres of land she and her sister had inherited from her mother: “He started to plant teak and rubber on our land. He didn’t tell us anything. We wanted to complain but we were too afraid to say anything.”⁴⁹

U Di Yay, a farmer in the village, said: “We are afraid of [the BGF]. They have guns. Even if we are angry we can’t argue very strongly because they have guns.”⁵⁰

Smaller militias or “peace groups” have also been involved in land confiscation.⁵¹ In February 2015, Human Rights Watch interviewed a group of villagers in San Klo, near Eindu.⁵² The villagers complained that in 2013, Padoh Aung Sang, a member of the KNU who had left to form his own “peace group” in the late 1990s, had started to plant rubber on land owned and used by villagers for generations.

The villagers said they feared retaliation if they contested his seizure of their land. They stated that Padoh Aung San leads a local militia, the “Pyago Peace Group,” that consists of about 15 to 20 armed men living within 20 minutes of the village.⁵³ As Nu Yee explained:

⁴⁷ Human Rights Watch interview, Mine Kan village, Karen State, August 2, 2015.

⁴⁸ Human Rights Watch interview (name withheld), Y2, Mine Kan village, Karen State, August 2, 2015.

⁴⁹ Daw Mu Pulu said ownership documents had been lost in a fire but presented Human Rights Watch with a list of more than 20 elders in the village who attested by fingerprint that she and her sister had occupied the land since her mother’s generation. Copy on file with Human Rights Watch. Human Rights Watch interview, Ateyebu, Karen State, August 3, 2015.

⁵⁰ Human Rights Watch interview, Ateyebu, Karen State, August 3, 2015.

⁵¹ For more information on militias in Burma see John Buchanan, “Militias in Myanmar,” *Asia Foundation*, July 2016, <http://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf> (accessed August 21, 2106).

⁵² The name of the village has been changed for security reasons.

⁵³ Human Rights Watch interviews, Karen State, February 13, 2015.

Padoh Aung San and his armed group stay 10 minutes from here. When they came to plant the rubber, we didn't say anything to him because we were afraid of him. They have guns; they came with their guns when they checked the soil for planting.⁵⁴

Even when less explicit threats are used, some villagers remain fearful because of the shadow of past abuses by BGFs and other armed groups in Karen State. The threat of violence by BGFs and other armed groups remains a reality in Karen State, which may explain why many farmers are reluctant to protest against the taking of their land when armed groups are involved.

In January 2015, Human Rights Watch interviewed seven villagers from Myaingyinu who were displaced due to fighting between the BGF and the DKBA in October 2014. One villager said: “The BGF shot at my house. I ran away to another village and stayed with my niece.... Sometimes I cannot sleep the whole night.... One of the BGF soldiers has beaten my son three times.”⁵⁵

Villagers also said that BGFs continue to use forced labor:

The BGF told us we had to help them build a BGF camp. We worked for about a week, collecting bamboo. They didn't pay us anything. The BGF soldiers speak rudely to the villagers, and threaten to kill them if they don't do what they say.⁵⁶

BGF leaders in one case refused to respect villagers' requests that BGF personnel be stationed away from the children at the village school.⁵⁷

Similar findings were reported by Karen Rivers Watch after interviewing displaced villagers.⁵⁸ Many BGF soldiers were also reportedly belligerent in areas they controlled. As

⁵⁴ Human Rights Watch interview, Karen State, February 13, 2015.

⁵⁵ Human Rights Watch interview (name withheld), I1, Hpa-an, Karen State, January 26, 2015.

⁵⁶ Human Rights Watch interview (name withheld), I3, Hpa-an, Karen State, January 26, 2015.

⁵⁷ Human Rights Watch interview (name withheld), I2, Hpa-an, Karen State, January 26, 2015.

⁵⁸ Karen Rivers Watch, “Afraid to Go Home,” November 7, 2014, <http://www.burmapartnership.org/2014/11/afraid-to-go-home-recent-violent-conflict-and-human-rights-abuses-in-karen-state/> (accessed June 12, 2015).

one villager told Human Rights Watch, “When they are drunk, they shoot around and can hit the homes.”⁵⁹

Forced Eviction and Destruction of Property

Villagers said police have destroyed houses and other property in response to protests or other efforts to prevent the seizure of land which villagers had long used.

New Ahtet Kawyin

In June 2015, police officers torched more than 100 houses in New Ahtet Kawyin village, west of Hpa-an, after evicting over 200 people. The eviction followed villagers’ attempts to reclaim land they said had long belonged to their village. Several elderly villagers told Human Rights Watch that local people had previously farmed the disputed area of land. One elder, Mu Htaw, said:

Before the government seized our land, we did *taungya* farming [shifting cultivation] in that area. We grew vegetables and collected bamboo shoots from the forest. We used leaves to shelter our houses from the rain.⁶⁰

Villagers said that after they refused police demands in March 2015 to remove huts from the disputed land, they joined villagers from Kaw Sa Ka Lo village in a peaceful protest in Hpa-an on March 21, 2015, where police arrested 13 people under section 18 of the Peaceful Assembly and Peaceful Procession Law.

In June 2015, police began making arrests under the Forest Law. Twenty-seven men charged under articles 40 and 43 were later convicted, and served between two to six months in prison. Article 40 prohibits trespassing in a reserved forest, with a penalty of up to six months in prison and a fine of 5,000 kyat (US\$4). Article 43 prohibits cutting teak trees in government forests, with a penalty of up to seven years in prison and a fine of 50,000 kyat (US\$40). Villagers dispute that there were any teak trees on the land that they occupied.⁶¹

⁵⁹ Human Rights Watch interview, Group I, Karen State, January 26, 2015.

⁶⁰ Human Rights Watch interview, C1, Ahtet Kawyin, Karen State, April 4, 2015.

⁶¹ Human Rights Watch interview (name withheld), C12, Ahtet Kawyin, Karen State, August 1, 2015.

Villagers said that they had not seen any documents specifically naming individuals for arrest.⁶² According to Daw Hla Nyut, 21, who was in the village: “The police came on June 2, 4, and 9, and they came to arrest people. If they saw any men [there], they would arrest them.”⁶³

On June 15, Hpa-an police held a meeting in the village, informing villagers that they had one week to leave their homes. They also posted signs on fences notifying villagers that any houses not vacated by June 22 would be burned down. Most villagers decided to remain on the land. According to Daw Hla Nyut, “Many people had no place to go, and so they had to stay in the village.”⁶⁴ A week after the meeting, police officers came and destroyed the village. Tin Shwe, another villager, said:

On June 22, the police came. There were 20 cars and over 40 police and they hired some villagers from a different village to come with them. The police were wearing dark blue shirts. The police cut down all of the houses with chainsaws and they burned the bamboo houses.⁶⁵

The house of 27-year-old Mu Kalote’s mother was among those destroyed, even though family members said they had no idea that the home was part of the disputed area and no signs had been posted indicating that they had to leave. According to Mu Kalote: “Two days after the police burned the village in New Ahtet Kawyin, they came to my mother’s house and destroyed it. We didn’t expect this. We had lived there for 16 years.”⁶⁶

In February 2016, the Myanmar National Human Rights Commission concluded, in the event of an eviction of “squatters”:

Measures should be taken, based on humanitarian principles, such as, treating them humanely, giving educative talk prior to eviction, giving prior notices, making arrangements for transportation, providing

⁶² Ibid.

⁶³ Human Rights Watch interview, C9, Ahtet Kawyin, Karen State, July 31, 2015.

⁶⁴ Ibid.

⁶⁵ Human Rights Watch interview, C10, Ahtet Kawyin, Karen State, July 31, 2015.

⁶⁶ Human Rights Watch interview, Ahtet Kawyin, Karen State, July 31, 2015.

assistance in health, education and social welfare needs and resettlement following the eviction.⁶⁷

Obstacles in the Justice System

Several villagers said they faced arrest when peacefully attempting to defend their continued use of land they had been living on.

“In the past, even if you didn’t have documents for your land, nobody would arrest you,” one villager said.⁶⁸

Human Rights Watch received several reports of charges against farmers whose land had been confiscated under section 447 of the penal code for “trespass” or “squatting.”⁶⁹ Charges were also brought for trespass under article 40 of the Forest Law against individuals foraging for food and materials in areas traditionally used by Karen as communal forests.⁷⁰ Since trespass is a criminal charge, those convicted face fines and prison.

Ka Sa Ka Lo

In Ka Sa Ka Lo village, police arrested a group of villagers who in March 2015 had built structures on land they said had been in their possession since their grandparents’ time, although they lacked documents to prove it. Six were charged with trespass under section 447 of the penal code. One of the villagers present said:

The [police] asked us questions about our land ownership. At the [police] station we were charged with [article] 447. Each person needed two guarantors to be released. It is 1 million kyat [US\$800] guarantee.⁷¹

⁶⁷ Myanmar National Human Rights Commission, “Statement No. (1/2016) Myanmar National Human Rights Commission Press Statement Regarding Squatter,” <http://www.burmapartnership.org/2016/02/statement-no-12016-myanmar-national-human-rights-commission-press-statement-regarding-squatter> (accessed April 12, 2016).

⁶⁸ Human Rights Watch interview, C1, Ahtet Kawyin, Karen State, April 4, 2015.

⁶⁹ Referred to here as trespass, the Burmese word *kyuu kyaw* used in the Penal Code is also used to mean “squatting,” which may lead to confusion in the application of the law. See “Myanmar Land Briefing No. 4: Special Edition: National Land Use Policy,” GRET, 3/4, November 2014-January 2015.

⁷⁰ The Forest Law (1992), <http://displacementsolutions.org/wp-content/uploads/THE-FOREST-LAW-1992.pdf> (accessed September 18, 2016).

⁷¹ Human Rights Watch interview, Group A, Kaw Sa Ka Lo village, Karen State, March 27, 2015.

“This land is old land, owned by our grandparents,” Shue Kalay, a woman from the village, said.⁷² A group of Kaw Sa Ka Lo villagers walked the land with Human Rights Watch, pointing out old trees planted by their grandparents and a stone post that marks the site of the village, and telling local folklore about a tiger living in the mountain at the base of the town. When Human Rights Watch visited the village again in August 2015, the farmers had managed to maintain their huts on the land.

Trespass cases often arise when villagers oppose claims by businessmen who receive government permission to take land. When farmers dispute such claims by attempting to return to the land as a form of protest, businesses file a complaint and police initiate trespassing charges against the farmers. “The businessman takes the land from the farmer,” said one lawyer. “But when the farmer protests, he becomes the criminal.”⁷³

In these cases, farmers usually had little more than tax receipts from the government to argue for their claims to the land, which under Burmese law do not count as evidence of “ownership” against which a trespass charge may be defended.

Villagers often do not have the resources to defend themselves in court against criminal charges. As one villager whose land was confiscated for a hotel project said, “The hotel said, ‘If you don’t like it you can go to court against us.’ I want to go to court, [but] if you don’t hire a lawyer it doesn’t work. But I don’t have any money to pay a lawyer.”⁷⁴

Farmers pointed out that the trials can become onerous, especially when government officials fail to appear, and complained that it is time consuming and expensive for them to travel to get to courtrooms—adding to the costs of defending themselves.⁷⁵

Moung Pi, a villager from a town just outside of Hpa-an, was charged in 2013 with trespass after building a fence on land he claimed as his own. He said the cost of defending the suit was overwhelming: “I’ve nearly bankrupted myself trying to defend against the trespass suit. I had to sell another piece of land just to pay for the lawyer.”⁷⁶

⁷² Ibid.

⁷³ Human Rights Watch interview with lawyer, Hpa-an, Karen State, August 8, 2015.

⁷⁴ Human Rights Watch interview, V1, Hpa-an, Karen State, March 24, 2015.

⁷⁵ Human Rights Watch interviews, Group F, Mizan village, Karen State, January 29 and August 9, 2015.

⁷⁶ Human Rights Watch interview, H1, Ta May village, Karen State, April 2, 2015.

After being convicted of trespass, Mounng Pi spent two months in prison with hard labor, working in an agriculture field: “I worked in the heat as a farmer. If you wanted a rest, you had to pay a 50,000 kyat [US\$45] bribe.”⁷⁷

Tokawklay

In Tokawklay village, land just outside the Hpa-an Special Industrial Zone is now the subject of a trespassing case instigated by U Khin Kyu, an influential local businessman who was an army general and government official in Karen State during the State Peace and Development Council (SPDC) military government. Villagers interviewed by Human Rights Watch indicated that they had claims to the land—showing tax receipts dating back to as early as 2004.⁷⁸ However, the value of the land near the zone has reportedly tripled since its opening.⁷⁹

Villagers told Human Rights Watch they had put up a fence to demarcate the boundaries of their land in May 2014. Hpa-an police officers then came to the village and ordered the farmers to remove the fence. In July, after the farmers did not comply with the order, police filed trespass charges against seven villagers under section 447 of the Penal Code.

In June 2015, the Hpa-an court convicted six of the villagers—U Ne Win, U Myint I, Maung Kyaw Klone, U Ti Lone, U Tin Win, and U Shwe La Nge—and ordered them to each pay a 500 kyat (US\$0.40) fine. While the final fine was nominal, the villagers said that at many of the 21 court hearings they were compelled to attend, government officials failed to turn up, delaying the trial and adding to the cost of defending the suit. Villagers added that it was difficult to travel to court, and each time their effort to go to court prevented them from working the entire day. The six convicted farmers estimated that they each spent 440,000 kyat (US\$360) defending themselves against the charges.⁸⁰

Farmers find it difficult to obtain lawyers who will represent them against powerful figures in the community. Lawyers in Hpa-an and Rangoon said that few lawyers in Hpa-an were

⁷⁷ Ibid.

⁷⁸ Human Rights Watch interview, Group F, Mizan village, Karen State, January 29, 2015. Copies on file with Human Rights Watch.

⁷⁹ “Hpa-an Industrial Zone Land Prices Triple,” *Karen News*, April 19, 2013, <http://karennews.org/2013/03/hpa-an-industrial-zones-land-prices-triple.html/> (accessed June 12, 2015).

⁸⁰ Human Rights Watch interview, Mizan village, Karen State, August 7, 2015.

willing to take on land cases.⁸¹ To defend high-profile cases in Karen State involving political activists, legal aid lawyers had to be brought in from other parts of the country.

At time of writing, there is no institutionalized legal aid infrastructure to assist farmers with their land issues.⁸² While nongovernmental legal aid services have cropped up throughout the country, few such activities are currently being undertaken by civil society groups in Karen State.⁸³

Lack of Free Expression and Assembly

Many farmers said that positive initiatives by the newly elected government meant that, unlike in the past, they could now raise their voices against governmental abuses.⁸⁴

However, as farmers gain confidence to speak out in public spheres, charges related to protests are becoming increasingly common. The authorities and local police frequently deny applications for demonstrations; those who protest without permission face arrest and charges under section 18 of the Peaceful Assembly and Peaceful Procession Law.⁸⁵

According to one activist, some 40 to 50 people are currently detained in Hpa-an prison in relation to land issues.⁸⁶

Nongovernmental organizations in Hpa-an repeatedly expressed frustration over the restrictive environment imposed by the local government. In October 2015, the Hpa-an township General Administration Department (GAD) issued an order prohibiting domestic and international nongovernmental organizations from holding meetings in hotels without

⁸¹ Human Rights Watch interview with lawyer, Karen State, Hpa-an, August 8, 2015.

⁸² A new legal aid law has been drafted and is currently under consultation. “Legal Aid Bill Under Review,” Myanmar International, March 20, 2015, <http://www.myanmarinternational.tv/news/legal-aid-bill-under-review> (accessed June 11, 2015).

⁸³ Human Rights Watch held discussions with NGOs that hope to start such programs in the future. The shortage of lawyers willing to represent farmers facing trespass charges is exacerbated in Karen State by the absence of a law faculty at Hpa-an University.

⁸⁴ Human Rights Watch interview, Group F, Mizan village, Karen State, January 29, 2015.

⁸⁵ The use of the Peaceful Assembly Law to quash protests against land confiscation echoes a government approach throughout the country to control public speech. In January 2015, Human Rights Watch raised alarm over prosecutions nationwide under the Peaceful Assembly and Peaceful Procession Law. As in Karen State, many of these cases involved land activists. See Human Rights Watch, “Burma: ‘Peaceful Assembly Law’ Fails to End Repression,” January 26, 2015, <http://www.hrw.org/news/2015/01/26/burma-peaceful-assembly-law-fails-end-repression>.

⁸⁶ Human Rights Watch interview, Saw Maung Gyi, Hpa-an, March 13, 2016.

first obtaining official permission from the township.⁸⁷ The letter stated no apparent rationale for the decision.

Since 2014, protesters said authorities were unresponsive to requests to hold demonstrations against land confiscation, and that several of those who decided to protest without official permission were arrested. For example, Saw Maung Gyi, leader of the 88 Karen Student Generation Organization, which was prominently involved in organizing protests in Karen State, reported that on August 16 and 18, 2014, organizers sought police permission to protest, but were ignored:

We officially requested permission to protest peacefully but [the police] didn't reply to us until the night before the protest would take place. If we have to do things according to the law, they are responsible to get back to us in 48 hours prior to a demonstration but police officer [name withheld] said that he failed to reply to us just because he was so busy that night. So we prepared everything necessary and went to protest anyway.⁸⁸

Although they say the protest was peaceful, local police arrested 10 people—six farmers and four activists. The Hpa-an court sentenced four activists to four months in Hpa-an's Taungalay prison. Farmers had to pay a fine but avoided any prison time. The activists allege they were kept in solitary confinement for 10 days in prison before they were allowed to interact with others.⁸⁹

Similarly, in March 2015, a group of nearly 300 people organized by the 88 Karen Student Generation Organization to protest their problems securing land in Karen State decided to go ahead with their demonstration, despite lack of official permission. Although the protest was peaceful, police called a number of participants to the Hpa-an police station the next day for questioning and charged 13 people under section 18 of the Peaceful

⁸⁷ "Officially registered local social organizations (NGOs) may plan and run meetings and workshops in hotels, motels, restaurants and buildings with halls in Hpa'an only if they are able to receive official permission from Pa Ann the Hpa'an Township General Administrative Department, Hpa'an District Administrative Department and the Karen State Government and ministries and international social organizations (INGOs) with memoranda of understanding in hand may do so only when they receive official permission from the Karen State Government." Hpa-an Township Administrative Department, Letter No: 3, 13-6, October 9, 2015.

⁸⁸ Human Rights Watch interview with Saw Maung Gyi, Hpa-an, March 13, 2016. The protest went ahead on August 25, 2014.

⁸⁹ Human Rights Watch interview with U Zaw Htike, Hpa-an, Karen State, August 13, 2015.

Assembly and Peaceful Procession Law.⁹⁰ The protesters secured bail after guarantors provided a financial guarantee of 2 million kyat (US\$1,600) per person.⁹¹

The activists also faced intimidation and threats of closer police surveillance. Saw Maung Gyi was charged on August 17, 2015, on trumped-up charges under section 17(1) of the Unlawful Associations Act and sentenced in November 2015 to two years' imprisonment. He ended up spending four months in solitary confinement until he was released on parole through a pardon from then-President U Thein Sein on January 22, 2016.

After assuming office in April 2016, the NLD-led government of President U Htin Kyaw released scores of political prisoners, including prominent land rights activists and community leaders imprisoned for their activities connected to defending land and natural resources.

In May 2016, the Assistance Association for Political Prisoners (Burma) estimated that 86 people were in prison for politically related offenses and exercising their civil and political rights.⁹² Observers noted that a significant number of these political prisoners were imprisoned for their work related to land issues.⁹³

Lack of Notice, Consultation

Human Rights Watch found that in general the state and local governments, or companies involved, did not provide villagers with notice that would allow them to contest a proposed sale or confiscation, or even plan ahead for relocation.

Tin Shwe from New Ahtet Kawyin village, where police torched more than 100 houses in June 2015 after evicting 200 people, told Human Rights Watch: "We never had a chance to

⁹⁰ Sec. 18 states, "If there is evidence that a person is guilty of conducting a peaceful assembly or a peaceful procession, he or she must receive a maximum sentence of one year imprisonment or a maximum fine of thirty thousand kyat or both."

⁹¹ Human Rights Watch interview (name withheld), A1, Karen State, March 27, 2015.

⁹² Assistance Association for Political Prisoners (Burma), "List of Political Prisoners," July 13, 2016, <http://aappb.org/wp-content/uploads/2015/12/86-remaining-PP-list-Updated-on-13-July-161.pdf> (accessed September 21, 2016).

⁹³ Human Rights Watch, "Burma: Growing Political Prisoner Population," January 17, 2016, <https://www.hrw.org/news/2016/01/17/burma-growing-political-prisoner-population>; "Burma: Land Rights Activists Are Newest Political Prisoners," August 15, 2015, <https://www.hrw.org/news/2015/08/15/burma-land-rights-activists-are-newest-political-prisoners>.

explain. The government just sent a letter to the village chief and then he had to stick it up on the fence.”⁹⁴

The provisions of the Vacant, Fallow and Virgin Lands Management Act (“Lands Management Act”) and the Farmland Law provide farmers the opportunity to contest land sales that affect their historical land use. The Farmland Law requires that a notice for objection be posted at the township department office as well as ward/village tract administration office pertaining to the land in question. The objection should be filed within 30 days after the notice was issued.⁹⁵

Similarly, the Lands Management Act requires the Ministry of Agriculture and Irrigation (“Agriculture Ministry”) to notify the public by posting an objection form on the notice board of the “Naypyidaw Department Office or Regional or State Department Office, the District Department Office, the Township Department Office, and the Administrator’s Office of the ward or village tract where the vacant, fallow and virgin lands are located.” Individuals have 30 days from notification to object to the proposal.⁹⁶ During this period, the Agriculture Ministry must inquire into whether the allegedly vacant lands are truly vacant, and “whether there is a holder currently utilizing the land,” among other things.⁹⁷

In practice, villagers interviewed by Human Rights Watch did not receive these notifications nor were such measures apparently applied. Consequently, many were not aware of impending projects until it was too late to formally object under the regulations.

Agriculture Ministry officials told Human Rights Watch that most land problems occur between investors and villagers or government and villagers. They conceded that notice was a fundamental issue with the land system, and while farmers have the right to object to land sales, most often they do not.⁹⁸

⁹⁴ Human Rights Watch interview, C9, Ahtet Kawyin, Karen State, July 31, 2015.

⁹⁵ Farmland Law Rules, Notification No. 62/2012, August 31, 2012, sec. 6.

⁹⁶ Vacant Fallow Virgin Lands Management Act Rules, Notification No. 1/2012, August 31, 2012, sec. 9.

⁹⁷ Ibid., sec. 10.

⁹⁸ Human Rights Watch interview with Agriculture Ministry officials, Naypyidaw, February 5, 2016.

In some instances we documented, villagers received no advance notification at all about a governmental project, only finding out about the project when their paddy fields were flooded or construction on a new project began.⁹⁹

In Naw Kyaw Myine village, more than 3,000 acres of land were flooded by the Ye Bo irrigation dam project initiated by the Agriculture Ministry in 2009. Despite villagers' claims to the land, when the dam project planning started in 2006, the government did not inform most villagers of their impending land loss. Aung Thay, a local man who organized and collected documentation to oppose the dam, said:

The government called the district and village tract administrator and made a decision. There was no consultation with the villagers. The village administrator did not share information about the project. He only invited leaders from only three of the four affected villages to a meeting about the dam.

He added that villagers were dismayed over the loss of their ancestral lands: "It feels like we lost our parents."¹⁰⁰

In late 2014, the Agriculture Ministry built a new channel for the dam, affecting another 10 acres and displacing two more families. Again, families reported that they received no notice of the impending flood or compensation.

In addition, most farmers received no advance notice when the land they were using was sold to private parties, in many cases only learning of the sale after its execution. Mit Tarlar, a villager from a town outside of Hpa-an, told Human Rights Watch that the government developed the land without consultation with local people, who were not given a chance to raise their objections.¹⁰¹

Another villager, Hla Khin, said he was not even notified of the government meeting with the affected community: "They didn't invite us to the meeting because we do not own large

⁹⁹ Human Rights Watch interview, D1, Naw Kyaw Mine village, Karen State, January 30, 2015.

¹⁰⁰ Ibid.

¹⁰¹ Human Rights Watch interview, H4, Ta May village, Karen State, August 5, 2015.

parcels of land. They only invited landowners with over five acres of land.”¹⁰² Hla Khin owned less than one acre of land. He said that he had had plans to use the land to build a house for himself and his wife.

In a few cases, government officials visited the village or issued a written notice that farmland would be repurposed but then failed to provide information about the scope of the project, or its impact on farmland. One villager said of the Hpa-an Special Industrial Zone: “The big problem is that we do not know the size of the industrial zone. We do not know whether it will reach our land or not, and we don’t know whether we can register land that is not yet registered.”¹⁰³

In other cases, consultation was offered but did not provide villagers with a meaningful opportunity to give views and inputs into plans for the zone.

With respect to the Hpa-an Special Industrial Zone, of which foundations were laid in December 2011, the government’s consultations about land with villagers were cursory and incomprehensible to many attendees. According to farmer U Ne Win, in May 2014, Special Industrial Zone authorities invited villagers from affected communities to a meeting regarding the industrial zone; however, it was conducted in Burmese, which most Karen villagers do not understand.¹⁰⁴

This lack of adequate notice by government officials puts people who would contest a sale or development of land at a severe disadvantage. Discussions with local lawyers in Hpa-an indicated that any legal appeal of a land transfer will likely be rejected if the buyer already has received the proper forms from the government.¹⁰⁵

Further, as described below, the grievance mechanisms put in place by the Farmland Law fail to provide an adequate substitute for a court of law in deciding such issues. As a result, failure to properly notify individuals of proposed land projects often results in a nearly uncontestable legal transfer of land without input from those utilizing the land.

¹⁰² Human Rights Watch interview, H3, Ta May village, Karen State, August 5, 2015.

¹⁰³ Human Rights Watch interview, Group L, Mizan village, Karen State, March 23, 2015.

¹⁰⁴ Human Rights Watch interview, F1, Mizan village, Karen State, August 7, 2015.

¹⁰⁵ Human Rights Watch interview with lawyer, Hpa-an, Karen State, August 8, 2015.

Difficulties Demonstrating Land Claims

Prior to the 2012 land reforms, tax receipts were the only form of documentation available to farmers. Among farmers who spoke to Human Rights Watch, they were the form of documentation most commonly held.

However, while tax receipts document land use they are not a legal document that can be used to certify land ownership. As such, they do not protect against government confiscation and government officials have been unwilling to consider these when making land grants.

Human Rights Watch found numerous cases of farmers who had worked land for years and had recorded their land and paid tax to the government, but then lost the land to the government, or businessmen or non-state armed groups who had obtained more recent government certification of ownership of the land.¹⁰⁶

For example, U Muu Tay from Ta Nyin Kone village said local residents had been working the land since 1985 and had registered the land with the government in 1999. From 2000 to 2006, the villagers regularly paid tax on the land, and received receipts for those payments.¹⁰⁷ In 2006, he said, the DKBA came:

When they first arrived, they told us that we owned the land. But later they took 500 acres [of the land tax had been paid on] for their own plantation. They never offered us any money for the land. Since the DKBA took the land, we haven't received any tax payment requests [for that land] from the government.¹⁰⁸

Despite recent legal reforms related to land rights, there has not been significantly improved land tenure for farmers whose claims were not already registered at government offices. Only since 2012 have farmers been able to access Land Use Certificates (LUCs),

¹⁰⁶ Human Rights Watch interviews (names withheld), Q5, Ta Nyin Kone, Karen State, August 3, 2015; Group F, Karen State, January 29, 2015; D1, Karen State, January 30, 2015; B2, Karen State, February 13, 2015.

¹⁰⁷ Human Rights Watch interview, Q5, Ta Nyin Kone, Karen State, August 3, 2015. Copies on file with Human Rights Watch.

¹⁰⁸ Ibid.

which contain the right to sell, exchange, and lease land in a manner comparable to a system of private property rights.

Most of the villagers interviewed by Human Rights Watch had not received LUCs for their land, which are supposed to be given to all individuals with farmland currently on record with the Agriculture Ministry.¹⁰⁹ Those interviewed said that apparently as a result of the poor registration and documentation system, there were frequent mismatches between the land use maps in possession of the land office and actual land use in communities.¹¹⁰

For example, some farmers affected by the newly opened Hpa-an Special Industrial Zone showed Human Rights Watch tax bills paid to the government for use of their land and maps from local government land administration offices marking use rights to the land that they allege the government has now taken for the zone.¹¹¹ The dates of the documents varied, with some having been issued as far back as 2004.

Villagers stated that the government had not recognized their claims to the land nor given them any compensation. One aggrieved villager said, “They [government officials] look at the maps in the land office but they don’t compare them to the real use [of the land],” pointing out that the current land office maps do not reflect the community’s historical use of the land.¹¹²

Even where farmers possessed some form of documentation for their land, Human Rights Watch found that it often provided little protection against confiscation.¹¹³

U Lwan Kyaw, 72, one of several villagers who said their land was taken for the construction of the Zwebakin Hotel on the outskirts of Hpa-an, said that efforts to prove his

¹⁰⁹ Shivakumar Srinivas and U Saw Hlaing, “Myanmar: Land Tenure Issues and the Impact on Rural Development,” Food and Agriculture Organization, February 2015, http://www.burmalibrary.org/docs21/FAO-2015-05-Myanmar-land_tenure&rural_development-en-tpo-red.pdf, p. 36 (accessed May 1, 2015).

¹¹⁰ Human Rights Watch interview, Group F, Karen State, January 29, 2015; Displacement Solutions, “Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations,” May 2015, p. 4.

¹¹¹ Human Rights Watch interview, Group F, Mizan village, Karen State, January 29, 2015. Copies on file with Human Rights Watch.

¹¹² Ibid.

¹¹³ “Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law: Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar,” Food Security Working Group’s Land Core Group, November 2012, http://www.forest-trends.org/documents/files/doc_3274.pdf, p. 14 (accessed June 11, 2015).

ownership with records were dismissed: “We sent a letter to Shwe Mann [then speaker of the national parliament] but didn’t get any response. Before the hotel came, the land office said, ‘The government has taken the land, you cannot have it.’”¹¹⁴

Villagers presented Human Rights Watch with documents that showed they had paid taxes for the right to use the land, as well as maps provided by the local land office indicating that their names were on record at the local government offices as the farmers utilizing the land.¹¹⁵ U Lwan Kyaw said that in 2013, he and his wife approached the local land administration office for assistance, but officers there told them they could do nothing to help. Later, the General Administration Department under the Ministry of Home Affairs told villagers they should go to court if they were unhappy with the decision.

Burma’s land registration system primarily focuses on farmland that has already been recorded.¹¹⁶ As a result, LUCs have been issued only to those whose rights to land are already on record. Farmers that are actively using land but whose rights have never been recorded have still not benefited from the new registration systems. The registration maps on record are notoriously outdated, in some cases with maps dating back to the early 1960s.¹¹⁷

Further, the government’s land registration system appears ill-equipped to address the problems faced by people living in rural, ethnic, or conflict-affected areas, where farmers find it difficult to access government services and thus obtain registration.¹¹⁸

Registration in conflict-affected areas is particularly low. According to one study, fewer than a quarter of farmers in these areas have land documentation.¹¹⁹ Humanitarian access

¹¹⁴ Human Rights Watch interview, V1, Hpa-an, Karen State, March 24, 2015.

¹¹⁵ Copies on file with Human Rights Watch.

¹¹⁶ Shivakumar Srinivas and U Saw Hlaing, “Myanmar: Land Tenure Issues and the Impact on Rural Development,” Food and Agriculture Organization, p. 33.

¹¹⁷ Ibid.

¹¹⁸ The final draft of the National Land Use Policy lists as one of its basic principles: “To develop and implement fair procedures relating to land acquisition, compensation, relocation, rehabilitation, restitution, and reclaiming land tenure and housing rights of internal displaced persons and returning refugees caused by civil war, land confiscation, natural disasters and other causes.” National Land Use Policy, January 2016, sec. 8(h).

¹¹⁹ USAID, “Burma – Property Rights and Resources Governance Profile,”

http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Burma_Profile.pdf, p. 16 (accessed June 11, 2015).

is coordinated through the state chief minister's office but is not comprehensive, leaving many internally displaced persons without access to personal identification documents, which are necessary to show to government officials when seeking land registration.¹²⁰

Many of these farmers in conflict-affected areas possessed no government-registered land documents whatsoever; neither tax documents nor LUCs.¹²¹ In these communities that Human Rights Watch visited, land ownership was recognized through community practices based on physical boundaries and historical land use, resulting in arrangements in which all the villagers knew who possessed which piece of land.¹²² During times of conflict, when villagers either abandoned land or were prevented from accessing government services to pay land use taxes, the community land practices were simply not recorded or maintained.

In addition, LUCs cover only farmland, whereas many earn livelihoods in Karen State from land other than farmland.¹²³ One common example is land used in a shifting cultivation system. In some cases, land that is classified as vacant, fallow, and virgin by the government may actually be land that is part of the local community's *taungya* (shifting cultivation) practice in which crops are rotated and sections of land are left vacant for periods for the soil to recover.¹²⁴

There is currently no form of land title available to protect this type of use, meaning that farmers must attempt to request that the government transfer classification of such land to farmland before the use rights can be documented.¹²⁵ In the meantime, the government may determine that land is vacant, fallow, or virgin, and grant land use rights to others without protecting the rights of villagers who have traditionally used the land. As noted

¹²⁰ Human Rights Watch interviews with NGO workers (details withheld), E1 & E2, Burma.

¹²¹ Human Rights Watch interviews (names withheld), Q3, Ateyebu, Karen State, August 3, 2015; C1, Ahtet Kawyin, Karen State, April 4, 2015; Group A, Kaw Sa Ka Lo village, Karen State, March 27, 2015; Z2, Hlaingbwe Township, Karen State, April 15, 2015; J1, Kuklo village, Karen State, February 14, 2015.

¹²² Human Rights Watch interview (name withheld), O1, Karen State, March 24, 2015. See also, Shivakumar Srinivas and U Saw Hlaing, "Myanmar: Land Tenure Issues and the Impact on Rural Development," Food and Agriculture Organization, p. 36.

¹²³ It was noted that "a significant amount of currently farmed land is not official classified as farmland...and therefore, is not eligible for LUCs," in National Action Plan for Agriculture and Food and Agriculture Organization, Myanmar: Land Tenure Issues and the Impact on Rural Development, May 2015, http://www.burmalibrary.org/docs21/FAO-2015-05-Myanmar-land_tenure&rural_development-en-tpo-red.pdf (accessed May 1, 2015), p 33.

¹²⁴ "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law: Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar," Food Security Working Group's Land Core Group, p. 14.

¹²⁵ "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law: Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar," Food Security Working Group's Land Core Group, p. 9.

above, while individuals under the law have the right to contest such grants, they are rarely informed in a timely manner so as to do so.

Human Rights Watch also encountered some villagers with land registration documents issued by the insurgent Karen National Union. At times, land recognition by the government and the KNU came into conflict.¹²⁶ In some conflict-affected areas, villagers perceived the possession of KNU land registration documents as putting them at grave risk. One villager from Hlaingbwe township, an area now controlled by the Border Guard Force, explained that she had at one point received registration documents from the KNU, which evidenced her family's ancestral possession of the land: "In the past, we had documents from the KNU. But if the military sees KNU documents they will kill you, so we threw them away."¹²⁷

Problems with Local Land Administration Offices

Farmers reported problems dealing with government offices in charge of administering the land system, particularly when they were seeking to register land.

Academic research has found that Settlement and Land Records Department (SLRD) offices are severely understaffed and do not have adequate capacity to perform their legal and regulatory functions.¹²⁸ Interviewees also indicated that offices made little effort to respond or fulfill requests put forth by farmers, and many villagers told Human Rights Watch that they perceived the offices as focused solely on furthering the interests of businesses or wealthy individuals.

In Karen State, several factors make it difficult for farmers to access the SLRD. Many farmers do not speak Burmese and are illiterate; the government has not undertaken serious efforts to ensure that its land offices in Karen State have officers who can speak Karen.¹²⁹

¹²⁶ "Burma Army Mark KNU Registered Farmlands, *Karen News*, <http://karennews.org/2013/07/burma-army-mark-knu-registered-farmlands.html/> (accessed August 19, 2016). It is unclear to what extent KNU documents will be honored by the government in relation to public projects or when in conflict by business permissions granted by the MoA or MOECAP.

¹²⁷ Human Rights Watch interview with Tin Tin Aye, Karen State, April 5, 2015.

¹²⁸ Giles Henley, "Case Study on Land in Burma," Overseas Development Institute, March 2014, http://www.burmalibrary.org/docs20/Henley-2014-03-Burma_case_study_land-red.pdf, p. 9 (accessed June 12, 2015).

¹²⁹ Human Rights Watch interview, Group F, Karen State, January 29, 2015.

Illiteracy and an inability to speak Burmese means that language is a major barrier for villagers seeking to access government services. “It is not easy for me to communicate with government officials,” said one villager. “I don’t speak Burmese and they do not speak Karen.”¹³⁰ This language barrier has led farmers to sign documents that they did not fully understand.¹³¹

Farmers stated other practical factors, such as poor road conditions and lack of public transport, that made it difficult, time consuming, and expensive for them to travel from remote rural areas to the records departments, which are based in cities.¹³²

Villagers also alleged that in many cases, SLRD officers failed to perform their duties or demanded bribes to do so. Several villagers stated that the SLRD did not respond to their inquiries, claiming that officials were out to lunch, that the weather was “too hot” to travel to their village to measure the land, or other apparent excuses.¹³³ In one village, farmers reported having to bribe officials with 400,000 kyat (US\$325) simply to get them to visit their land.

In some instances where village leader permission was sought, farmers complained that they were unresponsive, refused to perform their duties, or were corrupt.¹³⁴ In one village, the local village leader is said to have told villagers that he expected to receive new motorbikes in exchange for his acquiescence.¹³⁵ Other farmers also stated they believed village leaders took pay-offs from people and groups trying to get ownership of land.¹³⁶

¹³⁰ Human Rights Watch interview (name withheld), Group L, Mizan village, Karen State, March 23, 2015.

¹³¹ Human Rights Watch interview, Group F, Karen State, January 29, 2015.

¹³² Ibid.

¹³³ Human Rights Watch interview, B1, Karen State, February 13, 2015.

¹³⁴ Human Rights Watch interview, Group L, Mizan village, Karen State, March 23, 2015.

¹³⁵ Human Rights Watch interview, Group R, Karen State, February 11, 2015.

¹³⁶ Human Rights Watch interview, D1, Naw Kyaw Mine village, Karen State, January 30, 2015. See also, SiuSue Mark, “Are the Odds for Justice ‘Stacked Against’ Them? Challenges and Opportunities to Securing Land Claims by Smallholder Farmers in Myanmar,” May 2015, http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/LDPI/CMCP_57-Mark.pdf, p. 13 (accessed June 11, 2015).

San Klo

Villagers from San Klo,¹³⁷ near Eindu, said the local land administration office provided little support in their attempt to fight a land grant given to a former Karen armed group commander—Padoh Aung Sang, a KNU member who had left to form his own “peace group” in the late 1990s—without adequate consultation with local communities who had historical ties to the land.

Although the villagers’ use of the land had been recognized by the government through the granting of usage rights, such documents offered no protection when they sought help at the land administration office against Padoh Aung Sang’s appropriation in 2013 of more than 100 acres on which he planted rubber trees.

Nu Yee, one of several farmers who met with Padoh Aung San’s family at the local land administration office, said:

We went to the land office in September 2014 and we showed them our [tax] documents. They asked us questions about how long we have lived on this land. Padoh Aung San’s family was summoned as well. After that we went back to the land office four or five times to discuss who owns the land. They said there is nothing we can do for you. There was no explanation.¹³⁸

Villagers added that they had asked the local land administration office to do a site visit, but the office had yet to do so. Nu Yee said: “The land office said, ‘It is too hot to measure your land,’ and it never came back to measure. We tried to phone them but there was no answer.”¹³⁹

Villagers said they had received no compensation from Padoh Aung San for their land and could only support themselves with help from relatives abroad. Nu Yee added: “We have given up. We have no job or source of income anymore.”¹⁴⁰

Nonexistent or Inadequate Compensation

In most of the cases that Human Rights Watch documented, people who had had their land seized received no compensation. This was true even where villagers could produce some form of documentation providing evidence of government-recognized land use rights.

¹³⁷ The name of the village has been changed for security reasons.

¹³⁸ Human Rights Watch interview, B1, Karen State, February 13, 2015.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

Aung Thay from Naw Kyaw Myine village said the government provided no compensation and that most farmers in his area, including almost “80 percent of the village youth,” had to go to Thailand when it flooded their land for a dam project.

“Now I’m just planting rubber and other small plants,” another farmer from the village said. “I have six kids. Two are in Thailand and one is in Malaysia.”¹⁴¹

Villagers in Htantabin village, Hlaingbwe township, said they had tried speak to the Border Guard Force commander of the area, requesting compensation for their destroyed rubber trees: “We told him we wanted some compensation for the rubber [trees] that we had planted. He said to us, ‘Who told you to plant rubber on that land?’ He wouldn’t give us any money.”¹⁴²

Failure to compensate occurred even in a number of cases involving official taking of land by the government for a public purpose under the 1894 Land Acquisition Act, which requires the government to provide compensation.¹⁴³

In cases where villagers were compensated, many said it fell far short of what they were owed or what allowed them to earn a sustainable living or even survive.

In June 2015, the BGF commander offered to give the villagers five blocks of the developed land, significantly less than the 20 acres they claimed. According to villager U Be Be:

Now the commander has offered to give us five blocks of the land, but it is not the same.... My grandmother on my father’s side is already old, she cannot work. If I can work that land I can give some money to my grandmother. If we lose that land, I will be very upset.¹⁴⁴

¹⁴¹ Human Rights Watch interview (name withheld), D2, Naw Kyaw Mine village, Karen State, January 30, 2015.

¹⁴² Human Rights Watch interview (name withheld), Z1, Hpa-an, Karen State, August 9, 2015.

¹⁴³ Under the Land Acquisition Act, a variety of factors should be considered, including fair market value and damages incurred by the occupant, damages related to loss of crops, and damages related to relocation costs. 1894 Land Acquisition Act, art. 23.

¹⁴⁴ Human Rights Watch interview, Hpa-an, Karen State, August 9, 2015.

Villagers from New Ahtet Kawyin also said that the land which the Karen State government offered before they were evicted in 2015 was not sufficient for all of the families to move to. The government told villagers they would determine who could receive land plots through a so-called lucky draw.¹⁴⁵ One of the villagers explained that the plots on offer were too small to earn a sufficient livelihood:

The plot [offered by the government] is 40 by 90 feet. On land that size we can only build a home, we cannot make anything or do farming. We cannot even build an outhouse. Also, there are some farmers who have small plantations already on that land. How can we know that we are not taking their land?¹⁴⁶

Moung Pi, from a village just outside of Hpa-an, said that despite possessing an executed land sale contract and land tax receipts, the government confiscated his land without compensation. He noted: “It is good land. You could not work in Thailand for 10 years and make enough money for this kind of land.”¹⁴⁷

Mit Tarlar from Ta May¹⁴⁸ said that the two parcels of land sized 60 by 160 feet that the government offered to compensate him for his 5-acre plot was woefully inadequate:

We cannot do farming on the land [given for compensation] because it is so small. You can only build a small house.... The economic situation is worse here since we lost the land. There aren’t a lot of jobs here. All of our sons and relatives had to go to work in Thailand.... I only have the house I am living in now because I went to Thailand to work.¹⁴⁹

In the case of the newly opened Hpa-an Special Industrial Zone, villagers told Human Rights Watch that they were not offered any compensation for the land, though they reported that other people dispossessed of land within the zone did receive other land.¹⁵⁰

¹⁴⁵ Human Rights Watch interview, C10, Ahtet Kawyin, Karen State, July 31, 2015.

¹⁴⁶ Ibid.

¹⁴⁷ Human Rights Watch interview, H1, Ta May village, Karen State, April 2, 2015.

¹⁴⁸ The name of the village has been changed for security reasons.

¹⁴⁹ Human Rights Watch interview, H4, Ta May village, Karen State, August 5, 2015.

¹⁵⁰ Human Rights Watch interview, Group F, Mizan village, Karen State, January 29, 2015.

U Ne Win, whose eight acres was flooded by a dam built within the zone, told Human Rights Watch that he was still waiting for the government to fulfill its promise to give him land. In the meantime, his sons and daughters had moved to Thailand to find work to support the family.¹⁵¹

Government officials did not appear to apply consistent criteria for determining the amount of compensation. When determining compensation, officials did not take into account the livelihood impact of the land confiscations.

In Kaw Klone village, then-chief minister U Zaw Min promised the return of land confiscated for rubber plantations.¹⁵² However, when Human Rights Watch visited the village in March 2015, villagers indicated that only 186 acres out of a total of 700 acres had been returned.¹⁵³ In another case, villagers were told that they would receive new land, only to discover that the new land in question was already claimed by other people.¹⁵⁴ As one farmer said, “The government offered us new land, but we cannot move there because our neighbors already own that land.”¹⁵⁵

Others have yet to receive the land promised, and have no information as to when or whether it may come. One villager dispossessed by the Hpa-an Special Industrial Zone said: “Two years ago the government built a small dam and it flooded our land.... The SLRD [Settlement and Land Records Department] has promised new land but we still haven’t received anything.”¹⁵⁶

In a few cases, businesses involved in land seizures offered token payments aimed at placating those whose land was confiscated. Villagers told Human Rights Watch that they refused to accept such payments, which they did not consider to be fair compensation for their land. In the case of the Zweekabin Hotel described above, villagers are still seeking

¹⁵¹ Human Rights Watch interview, Mizan village, Karen State, Karen State, August 7, 2015.

¹⁵² “Karen State Minister Order the Return of Confiscated Lands to Farmers,” *Karen News*, October 24, 2014, <http://karennews.org/2014/10/karen-state-minister-order-the-return-of-confiscated-lands-to-farmers.html> (accessed June 12, 2015).

¹⁵³ Human Rights Watch interview, Group J, Kuklo village, Karen State, February 14, 2015.

¹⁵⁴ Human Rights Watch interview, A1, Kaw Sa Ka Lo village, Karen State, August 6, 2015.

¹⁵⁵ Human Rights Watch interview, Group A, Kaw Sa Ka Lo village, Karen State, March 27, 2015.

¹⁵⁶ Human Rights Watch interview, Group L, Mizan village, Karen State, March 23, 2015.

compensation from the company. They said that they have received a 1 million kyat (US\$800) “donation,” but not actual compensation for the land.¹⁵⁷

The instances in which villagers were successful in obtaining compensation often came through political, rather than legal, means.¹⁵⁸ For example, in some cases villages banded together with the assistance of an influential Buddhist monk, the help of a local nongovernmental organization, or through a well-educated individual within the village, such as a school teacher or headmaster. The most successful strategies for obtaining compensation or the return of land appeared to be appealing directly in writing to the Karen State chief minister at the time, U Zaw Min, or then-President Thein Sein. In other cases, villagers sought assistance of non-state armed groups with political clout in the area to help negotiate an acceptable outcome.

In the rare instances when the government has admitted an error in seizing land, redress has been limited. Villagers in Kaw Klone said that the Karen State government had eventually acknowledged in a letter to the villagers that their land was improperly confiscated in 2008 by a wealthy businessman, Myit U, who had forced them to pay to keep the land and threatened violence against those who could not or would not pay. Despite this admission, they said, more than 1,000 acres of their land have yet to be returned, and some of the returned land is now in the hands of non-villagers. A Kuklo visitor said:

Chief Minister U Zaw Min now said that he has given back 700 acres of land, but in reality, they’ve given it to businessmen, cronies. We received a document that lists land return for 58 individuals. But some of the people on the list are not from this village. About 30 [people] from the village are missing from the list. Villagers from here got back only 186.31 acres.¹⁵⁹

Recognizing land to be one of the most pressing issues facing the country, the government in 2012 established a Land Acquisition Investigative Commission to deal with complaints of improper land confiscation, though the commission has no authority to actually resolve

¹⁵⁷ Human Rights Watch interview (name withheld), V3, Hpa-an, Karen State, March 24, 2015.

¹⁵⁸ See also, Karen Human Rights Group, *‘With only our voices, what can we do?’*

¹⁵⁹ Human Rights Watch interview, J1, Kuklo village, Karen State, February 14, 2015. Copies of the letter sent by the Chief Minister, as well as the list prepared by the villagers, are on file with Human Rights Watch.

cases. In its first report issued in 2013, the commission concluded that most land acquisitions broke existing land laws.¹⁶⁰

The commission noted that more than 117,000 acres were acquired for industrial zones, agriculture projects, or urban growth.¹⁶¹ It found a lack of transparency between government, businesses, and individuals. It further found that, though required by law, most projects which were incomplete had not reverted back to the original landowners.¹⁶² If compensation was paid, it was most often well below market level.¹⁶³

In April 2016, Burma's parliament announced it would investigate 6,000 out of some 18,000 complaints in its next term.¹⁶⁴

Loss of Livelihood, Migration to Thailand

Like much of Burma, Karen State remains a primarily agrarian society where individuals rely heavily on rice production for incomes.¹⁶⁵ Access to land is central to livelihoods, as there are few other methods to earn income. One farmer, who lost her land and did not know what other job she could do, said, "I know everything about rice farming, but I have no other education. I did not go to school."¹⁶⁶

A family's loss of land typically results in significant loss of earnings, and the resulting harm to livelihoods and food security can place immense burdens on those for whom there is little or no economic cushion. Government policies that facilitate unlawful or

¹⁶⁰ Global Witness, "Guns, Cronies and Crops," March 26, 2015, <https://www.globalwitness.org/campaigns/land-deals/guns-cronies-and-crops/>, p. 8 (accessed June 12, 2015). For an English copy of the commission's first report, see Displacement Solutions, "Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations," May 2015, Annex 4.

¹⁶¹ "Most acquisitions broke land laws, says commission," *Myanmar Times*, April 1, 2013, <http://www.mmmtimes.com/index.php/national-news/6195-most-acquisitions-broke-land-laws-says-commission.html> (accessed June 15, 2015).

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ "Parliamentary Committee: 6,000 Land Confiscation Complaints Yet to Be Addressed," *Irrawaddy*, <http://www.irrawaddy.com/burma/parliamentary-committee-6000-land-confiscation-complaints-yet-to-be-addressed.html> (accessed May 6, 2016).

¹⁶⁵ USAID, "Burma – Property Rights and Resources Governance Profile," p. 16.

¹⁶⁶ Human Rights Watch interview, Group L, Mizan village, Karen State, March 23, 2015.

uncompensated land seizures reflect a failure to take adequate steps to ensure everyone's rights to an adequate standard of living, including food and shelter.¹⁶⁷

Htee Htar from Ta Nyin Kone described the impact the loss of land has had on his village: "With no land, we cannot do farming and we cannot make a business. Since 2006 we have been working as day laborers in other fields."¹⁶⁸

Daw Mu Pulu from Ateyebu said that after DKBA soldiers seized her 20 acres of land in 2006, she became a day laborer and others in her family were compelled to become migrant workers in Thailand. While they occasionally sent her money, the situation had deteriorated since they farmed their own land. She said: "Now we only make 3,000 kyat (US\$2.40) per day and we have to buy rice. If we had our own paddy, we could grow our own rice."¹⁶⁹

Despite the recent establishment of factories and agricultural plantations around Hpa-an, villagers claim that the factories and plantations have created few jobs for local people. They say that instead, the businesses are employing laborers from other parts of the country who may be in debt and thus accept very low wages.¹⁷⁰ The vice chair of the Hpa-an Special Industrial Zone told Human Rights Watch that he estimated that only 30 percent of workers employed at the Hpa-an Special Industrial Zone are from Karen State.¹⁷¹

Families have also been fractured by land confiscations. Human Rights Watch found in the cases examined that land confiscation in Karen State almost always prompted migration for work to Thailand by at least one member of an affected family.¹⁷²

¹⁶⁷ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, art. 11.

¹⁶⁸ Human Rights Watch interview, Q7, Ta Nyin Kone, Karen State, August 3, 2015.

¹⁶⁹ Human Rights Watch interview (name withheld), Q1, Ateyebu, Karen State, August 3, 2015.

¹⁷⁰ Human Rights Watch interview (name withheld), T1, Karen State, May 19, 2015.

¹⁷¹ Human Rights Watch interview with U Saw Kyi Lin, vice chair of the Hpa-an Special Industrial Zone, Karen State, August 8, 2015.

¹⁷² Human Rights Watch has documented the dangerous and abusive situations faced by migrant workers in Thailand. In a 2010 report, it exposed trafficking and forced labor between Burma and Thailand, finding that migrant workers were subject to exploitation and police abuse including killing, torture, and physical abuse. See Human Rights Watch, *From the Tiger to the Crocodile*. In 2012, Human Rights Watch documented continued arrests and exploitation of migrant workers. See *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers*, September 2012, <https://www.hrw.org/report/2012/09/12/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers>.

Kaw Sa Ka Lo villagers said that after their land was seized, “most of the young people went to Thailand.”¹⁷³ One villager, whose brother is now in Thailand, told Human Rights Watch: “We just want our land back. We have large families but no land for our children. Our brothers and sisters are in Thailand now. They want to come back but there is no land to support them.”¹⁷⁴

An elderly woman said, “Now that I have no farm ... my family in Bangkok sends me money to support me.”

Many individuals said that they would have preferred to keep their families intact and would not have migrated were it not for the confiscation: “After our land was ruined, about half of the young people left for Bangkok. Before the factory came, we were happy farming; we could create jobs for the youth.”¹⁷⁵

Those who lost land and wished to stay were sometimes able to rent farmland from neighbors, borrowing money from relatives living abroad.¹⁷⁶ Other landless farmers who were determined to remain in their area turned to day labor if it was available: “We have nothing to do now. We are just looking for new land, and some of us do day labor. With day labor we earn 3,000 or 4,000 kyat (US\$3-4) per day.”¹⁷⁷

Land confiscation has led to cross-border migration for some, but many have migrated to Thailand for economic reasons apart from land confiscation. Overall, migrants to Thailand often face poor working conditions and exploitation. “Our relatives want to come back,” said one villager. “The working conditions [in Thailand] are poor and the salary is low.”¹⁷⁸

¹⁷³ Human Rights Watch interview, Group A, Kaw Sa Ka Lo village, Karen State, March 27, 2015.

¹⁷⁴ Ibid.

¹⁷⁵ Human Rights Watch interview, Group L, Mizan village, Karen State, March 23, 2015.

¹⁷⁶ Human Rights Watch interview, B1, Karen State, February 13, 2015.

¹⁷⁷ Human Rights Watch interview, Group L, Mizan village, Karen State, March 23, 2015.

¹⁷⁸ Human Rights Watch interview, Group A, Kaw Sa Ka Lo village, Karen State, March 27, 2015.

Lack of Redress

Villagers interviewed by Human Rights Watch repeatedly cited the lack of compensation or other forms of redress when their land had been seized. “It’s like hitting a cement wall,” one community leader said.¹⁷⁹

When a land dispute arises, the first avenue of recourse for villagers is with the Ward or Village Tract Farmland Administration Body. The committee consists of a chairperson from the General Administration Department, a secretary from the Settlement Land Records Department, and two farmer representatives. It is unclear what processes or criteria are used to select farmer representatives.

From this first level committee, contested decisions can be appealed to the township, district, and ultimately region/state level Farmland Management Bodies. Redress becomes more difficult when land disputes cannot be resolved at the ward or village tract level.

Farmers typically said their ward or village tract representative had been their initial point of contact in expressing a complaint over a land problem.

Local representatives frequently were unable to resolve the disputes. National-level Agriculture Ministry officials conceded that farmer representation at the district and region/state level was weak, and said this was because the farmer organizations were weak.¹⁸⁰ This suggests that farmers’ interests are likely to be less well-represented the higher their appeal goes.

While the land administration system allows for review of local level decisions, there is no mechanism to challenge or review decisions by an independent administrative or judicial body.¹⁸¹ Under the 2012 Farmland Law, decisions made by the Farmland Management Body regarding land classification and land ownership may not be appealed in a court of law.¹⁸²

¹⁷⁹Human Rights Watch interview (name withheld), D1, Naw Kyaw Mine village, Karen State, January 30, 2015.

¹⁸⁰ Human Rights Watch interview with Agriculture Ministry officials, Naypyidaw, February 5, 2016.

¹⁸¹ Human Rights Watch is not aware of any cases testing the constitutionality of this provision, though the writs enshrined in the 2008 Constitution arguably create a right of judicial review. See also, Melissa Crouch, “Access to Justice and Administrative Law in Myanmar,” USAID: Promoting the Rule of Law Project, October 2014, p. 6, <https://drive.google.com/file/d/oBzlo3olkeET6UnJ6NUItVUIJTg/view> (accessed August 22, 2016).

¹⁸² Farmland Law, 2012, arts. 22-25.

The Ta Nyin Kone case highlights the difficulties faced by villagers seeking redress for land confiscation.

Ta Nyin Kone

In the village of Ta Nyin Kone, locals started experiencing land problems after a DKBA unit arrived in their village in 2006. U Muu Tay, a local villager, said the villagers had been working the land since 1985 and had registered it with the government in 1999. From 2000 to 2006, the villagers regularly paid tax on the land, and received receipts for those tax payments.¹⁸³ But in 2006:

The DKBA came. When they first arrived, they told us that we owned the land. But later, they took 500 acres [of the land we had been paying tax on] for their own plantation. They never offered us any money for the land. Since the DKBA took the land, we haven't received any tax payment requests [for that land] from the government.¹⁸⁴

The villagers sought redress for their land taken, but because Border Guard Forces operating in their village were themselves involved in the land confiscation, they were afraid of retaliation if they raised the issue. U Muu Tay told Human Rights Watch that villagers wanted to protest in 2006 when the DKBA soldiers seized their land but had been too frightened to do so. “We wanted to complain but we didn’t dare,” he said.

Villagers from Ta Nyin Kone stated that they brought their case through the land dispute system but at every level the Farmland Management Body ruled against them.

Villagers said that BGF commander Bo Sar Yay was responsible for many problems in the village, and alleged that he had started using land that the villagers set aside to build a new Buddhist monastery. Several also alleged that Bo Sar Yay threatened them concerning their land. A villager said that when they raised their problems directly with him, “Bo Sar Yay said to us, ‘You should be careful because there are no police here and there is no lawyer.’”¹⁸⁵

¹⁸³ Human Rights Watch interview, Q5, Ta Nyin Kone, Karen State, August 3, 2015. Copies on file with Human Rights Watch.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

Despite those warnings, in early 2015, the villagers attempted to initiate a lawsuit against Bo Sar Yay to get the land returned to them. However, the court dismissed their suit—accepting the government’s classification and registration of the land as belonging to Bo Sar Yay—on the grounds that under the Farmland Law the court had no jurisdiction to review the matter and reevaluate the decision of the land committee.

Agriculture Ministry officials confirmed that the mechanisms under law to address land disputes were not often helpful to farmers whose land was confiscated. However, they considered this to be a problem of farmers’ failing to understand and assert their rights, which could be address with public education.¹⁸⁶ In October 2015, Agriculture Ministry officials responded to a Human Rights Watch letter requesting information about land issues in Karen State by saying that they had received no complaints at their office of land confiscations. This suggests that farmers were either not aware of the requirements to file complaints—or found such mechanisms inaccessible or futile.

¹⁸⁶ Human Rights Watch interview with Agriculture Ministry officials, Naypyidaw, February 5, 2016.

III. Land Rights Under Domestic and International Laws and Policies

National Law

Land Laws

Current land laws in Burma are a continuation of land policies adopted after independence in 1948, when the government asserted ownership over all land within the country. Under the 2008 constitution, land ownership still rests with the government, which retains the power to rescind any grant of land rights.¹⁸⁷

The acquisition of land for government purposes remains governed by colonial-era legislation. The 1894 Land Acquisition Act remains a key piece of legislation detailing legal requirements for proper land acquisition for public purposes. Under this law, the government can compulsorily acquire land for “public purposes” or for a company when notice is given and compensation is at market value.¹⁸⁸ Human Rights Watch’s research found little evidence of proper compensation being provided as required under the Land Acquisition Act.

Farmland and Virgin Lands Management Laws

Recent legal developments from 2012—such as the passage of the Farmland Law and the Lands Management Act—have initiated what is akin to a private property system. Under the two land laws, land is classified into different categories including farmland, virgin, fallow, or vacant land, and forest land. The Farmland Law regulates paddy land; the Land Management Law regulates a range of lands including unused plots and abandoned lands.¹⁸⁹

¹⁸⁷ 2008 Constitution, art. 37(a) provides that the Union “is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union.”

¹⁸⁸ Land Acquisition Act, arts. 4, 6, 23, and 38.

¹⁸⁹ It also covers land that many Karen and other ethnic minorities use as part of shifting cultivation systems in which plots are temporarily left vacant.

Under the Farmland Law, farmers can register, sell, mortgage, and lease land.¹⁹⁰ Farmers can secure their rights to land by obtaining Land Use Certificates (LUCs).¹⁹¹ Farmland must be used for agricultural purposes and is not permitted to become fallow.¹⁹² Ultimately, the state still retains ownership of all land, though it must continue to comply with the provisions of the Land Acquisition Act where the government acquires the land for a different purpose.

The Farmland Law and its rules create Farmland Management Bodies (FMBs).¹⁹³ FMBs carry out a variety of duties including issuing LUCs for farmlands, scrutinizing land use, and revoking land use rights. FMBs are also the bodies that resolve disputes relating to farmland.

The Lands Management Act regulates land that is not currently in use, or was previously used but was been subsequently abandoned. The act is important for farmers in Karen State because the traditional ways in which many Karen farmers cultivate land, including through *taungya*, or shifting cultivation, may cause the government to classify their land as vacant or fallow.¹⁹⁴ In addition, the “majority of these areas of land fall outside of the land surveys conducted by the SLRD,” meaning they are not well-documented at local land administration offices.¹⁹⁵

The Lands Management Act contains provisions that recognize use of informal and undocumented farming, providing that such land can be reclassified as farmland and subsequently an LUC can be issued. In addition, rules implementing the Lands Management Act provide individuals informally using land with the right to contest the grant of land to a proposed user.¹⁹⁶

Forests are important for the livelihood of rural Karen, many of whom forage in forests for fruits, herbs, and building materials. Such uses of forest are regulated under the Forest

¹⁹⁰ Farmland Law, 2012, art. 9.

¹⁹¹ Ibid., art. 4.

¹⁹² Ibid., art. 12.

¹⁹³ Ibid., chapters V-VI.

¹⁹⁴ “Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law: Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar,” Food Security Working Group’s Land Core Group, p. 9.

¹⁹⁵ Ibid.

¹⁹⁶ Vacant, Fallow and Virgin Lands Management Act Rules, art. 9.

Law of 1992, so those who forage for materials in the forest can be accused of improper use and charged with trespass.

In some parts of Karen State, the KNU also plays a significant role in land disputes, in some cases issuing land documents under its own land regime for those within its zone of governance.¹⁹⁷ In 2014, the KNU formally adopted its own Land Use Policy, which “envision[s] recognition, restitution, protection and support of the socially-legitimate tenure rights of all Karen peoples.”¹⁹⁸

National Land Use Policy

In January 2016, the outgoing cabinet adopted a new National Land Use Policy. Key topics addressed by the policy include land administration, classification, dispute resolution, equal rights of men and women, and communal tenure systems.¹⁹⁹ The policy is intended to form the basis for amendments to existing land laws as well as implementation by new bodies to address land issues.

Adopted after several rounds of government-led expert and public consultations, the policy envisages that the government review and amend existing land classifications, including “recognition and registration of rights for all stakeholders including ethnic nationalities and smallholder farmers, when their rights have not previously been recognized and registered,” and specifically mentions rotating and shifting cultivation.²⁰⁰

Key aspects of the policy include a call for:

- A review of the status of land, including forest land, currently used for village livelihoods;
- Protection of that land as “customary land”;²⁰¹

¹⁹⁷ At times, land grants by the government and land grants by the KNU have come into conflict. See “Burma Army ‘Mark’ KNU Registered Farmlands,” *Karen News*, July 26, 2013, <http://karennews.org/2013/07/burma-army-mark-knu-registered-farmlands.html/> (accessed September 1, 2014).

¹⁹⁸ Karen National Union, Land Policy, March 2014, <http://www.theborderconsortium.org/media/69780/2016-06-16-KNU-land-policy-eng.pdf>, p. 8 (accessed September 21, 2016).

¹⁹⁹ National Land Use Policy, January 2016. See Daniel Aguirre, “A Sound Basis for Land Reform,” *Frontier Myanmar*, <http://frontiermyanmar.net/en/sound-basis-land-reform> (accessed May 6, 2016).

²⁰⁰ National Land Use Policy, sec. 14 and 29(d).

²⁰¹ *Ibid.*, sec. 68.

- Suspension of land use other than for public purposes until such a review is possible;²⁰²
- Emphasis on community consultations and participatory procedures;²⁰³
- Ensuring “equal rights” for individuals “to access accurate and complete information related to land use”;²⁰⁴
- Ensuring equal rights for men and women;²⁰⁵
- Creation of new procedures to oversee processes to provide notice and share information;
- The right to appeal land use changes;²⁰⁶
- Representation and participation of local farmer organizations when dealing with dispute resolution;²⁰⁷
- Providing for Environmental and Social Impact Assessments (ESIAs), conducted by future land use committees; and
- Providing for policy monitoring and evaluation by a still to be formed National Land Use Council, including assessing and analyzing “whether environmental and social safeguards are being applied for impact assessment purposes,” and whether those procedures guarantee free, prior, and informed consent.²⁰⁸

Part 5 of the policy speaks to issues of land acquisition, relocation, compensation, rehabilitation, and restitution, stipulating application of international best practices and human rights standards, and participation of “township, ward or village tract level stakeholders, civil society, representatives of ethnic nationalities and experts.”²⁰⁹ It also provides for land use and housing rights for individuals who lost land due to conflict.²¹⁰

²⁰² Ibid.

²⁰³ Ibid., sec. 21(e). See also sec. 17(f).

²⁰⁴ Ibid., sec. 16(d).

²⁰⁵ Ibid., part IX.

²⁰⁶ Ibid., sec. 28.

²⁰⁷ Ibid., sec. 41.

²⁰⁸ Ibid., sec. 78.

²⁰⁹ Ibid., sec. 38.

²¹⁰ Ibid., sec. 74.

While civil society organizations have been generally positive about the adoption of the policy, representatives have expressed some serious concerns, including the need to promote democratic access to land for poor, vulnerable, and marginalized people who have little or no access, in line with the UN Food and Agriculture Organization's Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.²¹¹

Land Administration

The Ministry of Forestry, recently merged into the Ministry of Natural Resources and Environmental Conservation (MNREC) as part of President U Htin Kyaw's policy implemented in March 2016,²¹² and the Ministry of Agriculture and Irrigation, are the responsible ministries for forestry and agriculture, respectively.

Under the MNREC, the Settlement Land Records Department (SLRD) is the main office responsible for managing land. The SLRD's mandate includes "recording and registering interests in farmland and vacant, fallow and virgin land and for issuing LUCs to farmers whose use rights have been approved by a Farmland Management Body."²¹³ The SLRD has officials at the state, division, district, and township levels.²¹⁴ The SLRD acts as the administrative office executing the decisions of FMBs, described above, as well as performing other administrative tasks and record keeping.

One problem is the SLRD has ostensibly conflicting mandates. On one hand, it is tasked with deciding rights to farmland but on the other hand, it is responsible to grant land for agri-business projects.²¹⁵ As a result, decisions over issues of land use and approving such projects need closer scrutiny. Per the Farmland Law, a fundamental problem is there is no

²¹¹ See, for example, Transnational Institute, "Assessment of 6th draft of the National Land Use Policy (NLUP)," <https://www.tni.org/en/publication/assessment-of-6th-draft-of-the-national-land-use-policy-nlup> (accessed January 11, 2016).

²¹² "Myanmar's new president slashes no. of ministries from 36 to 21," *Myanmar Now*, March 17, 2016, <http://www.myanmar-now.org/news/i/?id=947fc3ae-c8fd-4735-aodd-9a840focf66b> (accessed June 9, 2016).

²¹³ "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law: Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar," Food Security Working Group's Land Core Group, p. 10.

²¹⁴ USAID, "Burma – Property Rights and Resources Governance Profile," p. 17.

²¹⁵ Farmland Law Rules, Notification No. 62/2012, sec. 2(4).

explicit provision to appeal an FMB decision to a court of law, and courts have resisted taking jurisdiction in such cases.²¹⁶

The strong military presence among the staff of many Burmese administrative offices dealing with land is another issue, raising conflict of interest concerns among bodies that are supposed to be independent.

At the district and township level, FMBs are staffed by members of both the MNREC and the Ministry of Home Affairs' General Administration Department (GAD), which "acts as the civil service for the new state and region governments and provides the administration for the country's districts and townships."²¹⁷ The Ministry of Home Affairs is one of three ministries reserved by the 2008 constitution to be headed by a high-ranking active duty military official appointed by the commander-in-chief of the armed forces.²¹⁸ The Ministry of Home Affairs, particularly the GAD, is predominantly staffed by former military officers, a process of reassignment and retirement that increased during the Thein Sein administration.

Military "retirement" to civilian ministries elicited a series of public protests in 2015, although there is little the new NLD-led government can do in regard to the Ministry of Home Affairs because of its control by the military.

International Law

In the context of land issues, the government of Burma is obligated under international human rights law to respect rights to food, housing, and an adequate standard of living, as well as rights to peaceful assembly and freedom of expression. The government must also act to end discrimination against women and ethnic minorities in all spheres, including in public and political life and development planning.

Burma's land laws and practices concerning confiscation of land, as well as restrictions on fundamental liberties, have resulted in violations of the rights of Karen farmers and other

²¹⁶ Some analysts argue that this practice is unconstitutional. See, for example, "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law: Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar," Food Security Working Group's Land Core Group, p. 19.

²¹⁷ Asia Foundation, "Administering the State in Myanmar," <https://asiafoundation.org/resources/pdfs/GADEnglish.pdf> (accessed September 21, 2016).

²¹⁸ 2008 Constitution, art. 232(b)(ii).

villagers in Karen State. The absence of adequate avenues for redress both to contest confiscation and to obtain compensation add to the abuses.

Right to Adequate Food, Housing, and Standard of Living

The right to food, housing, and an adequate standard of living are enshrined in article 25 of the Universal Declaration of Human Rights, which is generally considered to be reflective of customary international law. The declaration provides that everyone has a right to “a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.”²¹⁹ These rights are also set out in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR obligates member states to undertake steps to the “maximum of its available resources, with a view to achieving progressively the full realization” of the rights enshrined therein.²²⁰ Burma has signed but not ratified the ICESCR, which means that it must not take actions that undermine the object and purpose of the treaty.²²¹

A growing body of international human rights norms recognize the importance of access to land in ensuring these rights, particularly in areas where families rely on land to provide for their food. The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 12 on the Right to Adequate Food, noted:

[Access to food] is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights.... It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.²²²

²¹⁹ Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 25.

²²⁰ ICESCR, art. 2.

²²¹ See Vienna Convention on the Law of Treaties, concluded May 23, 1969, 1155 U.N.T.S. 331, entered into force Jan. 27, 1980, art. 18.

²²² UN Committee on Economic, Social and Cultural Rights, General Comment 12, The Right to Adequate Food, E/C/12/1999/5 (1999), art. 11; Oliver de Schutter, “The Emerging Human Right to Land,” *International Community Law Review*, 12 (2010), pp. 303-305.

In addition to the right to housing under the ICESCR, the International Covenant on Civil and Political Rights (ICCPR) obligates governments to respect and protect the rights of all people from arbitrary interference in their home and family life.²²³ International standards prohibit “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”²²⁴

The UN Food and Agriculture Organization’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security reflect international best practices in relation to land tenure security. The guidelines specify that relevant political authorities should engage and seek:

The support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.²²⁵

The guidelines urge governments to encourage “mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programs and secure on-going improvements” in land tenure programs, “to prevent corruption through transparent processes and decision-making,” and that beneficiaries are “selected through open processes” in which there is no political or other discrimination in order to promote social equality.²²⁶

²²³ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, art. 17. Burma is not a party to the ICCPR.

²²⁴ UN Committee on Economic, Social and Cultural Rights, General Comment 7, The Right to Adequate Housing, E/1998/22 (1997), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument) (accessed September 7, 2015).

²²⁵ United Nations Food and Agriculture Organization, “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,” 2012, <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>, p. 5 (accessed June 29, 2015).

²²⁶ *Ibid.*, p 5, 8, and 27.

The guidelines recommend that to achieve all this, authorities should “set up multi-stakeholder platforms and frameworks at local, national and regional levels” to monitor and evaluate the implementation of land tenure policies and programs, including with technical support from international bodies.²²⁷

Right to Peaceful Assembly

Article 20 of the Universal Declaration of Human Rights and article 21 of the ICCPR recognize the right to peaceful assembly.²²⁸

Under Burma’s 2012 Peaceful Assembly and Peaceful Procession Law, protesters can be charged for violating a variety of limitations that the law places on freedom of speech and assembly. Those wishing to hold an assembly must apply for advance permission from the chief of the township police force.²²⁹ The law also states that the organizer of an assembly can be held criminally liable if the assembly deviates from the announced location of the protest or if participants use different chants than those notified to the authorities, even if the assembly was peaceful and did not disrupt public order.²³⁰ The application process under the law not only requires basic date, time, and place information about the planned assembly, but seeks unnecessarily invasive information about the assembly’s purpose and schedule, the names and addresses of organizers and speakers, and even the chants they wish to use.

A new Peaceful Assembly and Peaceful Procession Law—passed by the upper house of parliament on May 31, 2016, but still pending debate in full parliament at time of writing—corrects some of the flaws of the 2012 statute yet still restricts freedom of assembly and freedom of expression in ways that significantly exceed those permissible under international legal standards.²³¹

The Peaceful Assembly Law contradicts international human rights standards. Maina Kiai,

²²⁷ Ibid., p. 39.

²²⁸ UDHR, art. 20; ICCPR, art. 21.

²²⁹ The Peaceful Assembly and Peaceful Procession Act (The Pyidaungsu Hluttaw Law No. 15/2011) 7th day of the Waxing Moon of Nadaw in 1373 (2nd December 2011), ch. 3.

²³⁰ The Amendment of Peaceful Assembly and Peaceful Procession Law, (2014 Pyi Htaung Hluttaw Law No. 26), June 24, 2014, art. 4.

²³¹ Human Rights Watch, “Burma: Proposed Assembly Law Falls Short,” May 27, 2016, <https://www.hrw.org/news/2016/05/27/burma-proposed-assembly-law-falls-short>.

the UN special rapporteur on the rights to freedom of peaceful assembly and of association, has stated that people wishing to exercise their right to peaceful assembly should not be required to obtain prior authorization to do so.²³² According to the special rapporteur, the imposition of criminal penalties on individuals who fail to ask the government for consent to exercise their right to peaceful assembly is an unacceptable interference with their right to freedom of assembly under international law.

The government has an obligation to facilitate peaceful assemblies “within sight and sound” of their intended target. When it fails to meet that obligation, arresting and prosecuting those who seek to assemble in a more appropriate venue is a disproportionate and inappropriate response.²³³

The special rapporteur noted in a report on the right to peaceful assembly and association in the context of natural resource exploitation that “the rights to freedom of peaceful assembly and of association play a key role in opening up spaces and opportunities for genuine and effective engagement by civil society in decision-making processes across the spectrum of natural resource exploitation activities”²³⁴

The special rapporteur has commented that the most egregious violations of freedom of association and assembly in relation to natural resource exploitation in many cases occur:

Far from centres of power, [against people] who are often at risk or already marginalized within society. They may lack access to information or the means of effectively advocating for their concerns, or they may be confronted with authorities that are unable or unwilling to address their grievances. The ability to freely associate and to peacefully assemble are indispensable in this regard.²³⁵

²³² UN Commission on Human Rights, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,” Maina Kiai, A/HRC/20/27, May 21, 2012, para. 28, <http://freeassembly.net/rapporteurreports/natural-resources/> (accessed April 18, 2015).

²³³ Ibid.

²³⁴ UN Commission on Human Rights, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,” Maina Kiai, A/HRC/29/25, April 28, 2015, <http://freeassembly.net/rapporteurreports/natural-resources/> para. 10. (accessed April 18, 2015).

²³⁵ Ibid., para. 19.

Indigenous Peoples' Rights, and Free, Prior and Informed Consent

International law concerning the rights of indigenous peoples is most clearly enunciated in the United Nations Declaration on the Rights of Indigenous Peoples,²³⁶ which Burma supported at the UN General Assembly in 2007, and in the International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.²³⁷ The UN Declaration provides for governments to “consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”²³⁸

Under the Declaration, governments should also provide effective mechanisms so that indigenous peoples obtain just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.²³⁹

As the UN Food and Agriculture Organization (FAO) notes, “At present, international law is much less clear about the land and resource rights of other individuals or groups who may not recognize themselves as ‘tribal’ or ‘indigenous’ but who nevertheless gain access to lands and resources through customary law, traditional inheritance or other informal processes.”²⁴⁰ In its principles of implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, the FAO calls for governments to engage in “active, free, effective, meaningful and informed consultation and participation with all those affected, including indigenous peoples and other communities with customary tenure.”²⁴¹

²³⁶ United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/47/1 (2007).

²³⁷ The United Nations Food and Agriculture Organization (FAO) has noted that the principle of “free, prior and informed consent” (FPIC) finds support in the ICCPR and ICESCR, in which the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have found FPIC to be an expression of self-determination. See FAO, “Respecting Free, Prior and Informed Consent,” 2014, <http://www.fao.org/3/a-i3496e.pdf>, pp. 5-6.

²³⁸ Declaration on the Rights of Indigenous Peoples, art. 32(2).

²³⁹ *Ibid.*, art.32(3).

²⁴⁰ FAO, “Respecting Free, Prior and Informed Consent,” p. 9.

²⁴¹ United Nations Food and Agriculture Organization, “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,” para. 3B(6).

While Burma has not enacted legislation providing for free, prior, and informed consent, its January 2016 National Land Use Policy contains references to “free, prior, informed, consent” without defining what the process or procedures entail.²⁴²

Women’s Rights

As a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Burma is obligated to end discrimination against women in laws, policies, customs, and practices. CEDAW requires states to “eliminate discrimination against women in the political and public life,” and in particular protects the rights of women to “participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.”²⁴³

In article 14 on rural women, CEDAW obligates governments to guarantee equal treatment of women and men in land and agrarian reform, as well as in land resettlement schemes.²⁴⁴ CEDAW also provides that states must “eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development.”²⁴⁵ CEDAW calls on states to eliminate discrimination against women in matters relating to marriage and family relations, including with respect to “ownership, acquisition, management, administration, enjoyment, and disposition of property.”²⁴⁶

The CEDAW Committee, the UN expert body that monitors state compliance with CEDAW, has stated in its General Recommendation No. 34 on the rights of rural women that states should “ensure that land acquisitions ... do not violate the rights of rural women or result in forced evictions, and protect them from the negative impacts of acquisition of land by

²⁴² National Land Use Policy, sec. 33.

²⁴³ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, art. 7(b). Ratified by Burma in 1997.

²⁴⁴ *Ibid.*, art. 14(b)(g).

²⁴⁵ *Ibid.*, art. 14(2).

²⁴⁶ *Ibid.*, art. 16(1).

national and transnational companies, as well due to development projects, extractive industries and megaprojects.”²⁴⁷

Business and Human Rights

Although governments have international legal obligations to promote and ensure respect for human rights, businesses also have a responsibility to avoid causing or contributing to human rights abuses. The United Nations Guiding Principles on Business and Human Rights provide that business enterprises should undertake human rights due diligence to identify and mitigate the human rights harm not only of their own activities but also activities to which they are directly linked by their business relationships. Specifically, companies have a responsibility to “avoid causing or contributing to adverse human rights impacts through their own activities,” as well as to “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”²⁴⁸

Companies are also expected to undertake adequate due diligence to identify the potential adverse human rights impact arising from their activities and that of their suppliers, and to help ensure that victims have access to adequate remedies for any abuses that occur in spite of these efforts. Under the Guiding Principles, companies should consider ending business activity where severe negative human rights consequences cannot be avoided or mitigated.²⁴⁹

²⁴⁷ Committee on the Elimination of Discrimination against Women, General Recommendation No. 34 on the rights of rural women, CEDAW/C/GC/34, March 4, 2016, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf (accessed May 1, 2016), para. 62.

²⁴⁸ UN Guiding Principles on Business and Human Rights, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed June 14, 2016).

²⁴⁹ Ibid.

IV. Recommendations

To the Government of Burma

- End the arbitrary arrest of land activists by police, and release activists awaiting trial for undertaking peaceful activities to protest land seizures.
- Impartially investigate allegations of unlawful land confiscation, including those detailed in this report, publicly report the findings, and investigate and appropriately prosecute those responsible for rights abuses. Provide prompt and adequate compensation to villagers who have wrongfully lost access to their land.
- Amend the Peaceful Procession and Peaceful Assembly Act to bring it fully into compliance with international human rights standards:
 - Eliminate criminal sanctions for protests that fail to give advance notice or deviate from protest locations notified to the authorities, and eliminate all criminal sanctions for peaceful expression of views by protesters; and
 - Significantly narrow the overly broad restrictions on free expression included in the act, including by removing the ban on “incorrect” information and limits on political speech, and ending the requirement that protesters identify chants in advance.
- Create a special taskforce consisting of the Burmese Defense Services (Tatmadaw), the Justice Ministry, and the Myanmar National Human Rights Commission to investigate all alleged abuses by Border Guard Forces (BGF) connected to land confiscation in BGF-controlled areas, make public the findings of the investigation, and ensure the return of land taken improperly by members of the BGF to those who had previously been using it.
- Promptly implement a system to allow villagers to effectively report abuses by local government officials—including Settlement Land Records Department (SLRD) officers and other land officials, village tract and township leaders, and police—and protect complainants against retaliation for reporting abuses. Investigate allegations of improper behavior by district and township-level SLRD officials, including refusals to register land or make site visits for local farmers.

- Improve access to free or government-subsidized legal services for the rural poor for land and other cases.
- Amend the Farmland Law to provide a clear procedure that allows individuals to challenge decisions made by Farmland Management Bodies to a court of law. Direct Farmland Management Bodies to implement an independent dispute resolution mechanism for land conflicts, ensuring that such bodies are linguistically and geographically accessible and contain representation of women and relevant ethnic groups.
- Ensure that in all future government land acquisitions:
 - The “public purposes” for which the government may acquire land under the Land Acquisition Act are clarified;
 - Proper advance notice is given to affected farmers, and farmers are given an adequate opportunity to voice disagreement and have their reasons for disagreement heard by authorities; and
 - When land is taken, fair compensation is paid to affected farmers, including individuals who have long occupied or used the land in question but do not possess land registration documents.
- Expand programs to ensure effective and fair land registration processes for individuals in conflict-affected and formerly conflict-affected areas. In the interim, adopt policies to ensure that no land parcels for which there are credible existing claims, including historical claims not currently documented by formal government systems, are granted to businesses for new projects.
- Improve existing local land administration by:
 - Ensuring broad representation of farmers, ethnic minorities, and women in Farmland Administration Bodies;
 - Providing additional support for efforts aimed at documenting existing land usage and claims to land;
 - Amending the land tenure registration system to increase land tenure security for smallholder farmers, and include recognition of communal land ownership. The tenure registration system should also recognize that individuals in conflict-affected areas face particular difficulties in obtaining land registration, and relevant officials should take steps to ameliorate those difficulties; and

- Ensuring that farmers can document claims to land through processes consistent with historical practices in their community, including by seeking attestation of other community members living in the village.
- Ensure that new laws and regulations promoting business and development contain provisions that take account of the consequences that new investment will have on existing land conflicts.
- Adopt government monitoring systems to collect land statistics, disaggregated by gender. This should include the percentage of women and men with legally recognized and documented land rights.
- Implement robust consultation procedures so that affected ethnic minority groups, working transparently through their own representative institutions, can intervene in accordance with the National Land Use Policy prior to the approval or commencement of any project affecting their lands.
- Ensure that all land evictions or displacements are implemented in accordance with international human rights standards, including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and, for indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples.

To the Burmese Defense Services (Tatmadaw)

- Ensure that Border Guard Force (BGF) units operate under the effective control of the military, and ensure that any abuses by BGF personnel, including seizure of land, are impartially investigated and prosecuted.
- Immediately issue a decree to BGF personnel prohibiting intimidation tactics against individuals who oppose land confiscation, and stating that doing so will subject them to discipline or prosecution as appropriate.

To the Government of Karen State

- End all arbitrary restrictions on public protests regarding land confiscation and other matters. Permission should be routinely granted subject only to reasonable restrictions on time, place, and manner.

- Ensure that policy consultations on land issues in Karen State include all relevant stakeholders, including women and ethnic minority groups, and are in accordance with the National Land Use Policy.
- Immediately end the use of arbitrary arrest and detention and other tactics aimed at intimidating and silencing land rights activists.

To Domestic and Multinational Companies Operating in Karen State

- Refrain from investments or business activities that involve arbitrary seizure of land from farmers.
- Operate in accordance with the UN Guiding Principles on Business and Human Rights to ensure that operations do not cause, benefit from, support, or, through other business relationships, engender human rights abuses. Proceed with projects only after assessing human rights risks, including risks concerning seizure of land and labor rights. Identify measures to prevent or mitigate the risk of rights abuses, and establish and implement effective monitoring mechanisms that permit continual analysis of human rights risks.
- Implement robust consultation procedures with communities affected by business operations, making sure that affected communities fully participate in every part of the process. Take steps to ensure meaningful participation by women in consultations concerning land acquisitions.
- Establish effective grievance mechanisms, in line with best international practice, so that individuals affected by projects can raise complaints directly to companies in addition to the government.
- Operate in accordance with the National Land Use Policy on proposed investments and operations using land in Karen State, in negotiation with local communities.
- Urge the Burmese government to respect existing land rights, including customary land rights, and to reform land laws and regulations in line with international human rights standards.
- In cases where a company's operations have contributed to land seizures, ensure that displaced communities are provided with adequate compensation.

To International Donors and Financial Institutions

- Take measures with respect to activities funded by international donors and international financial institutions to:
 - Undertake due diligence to identify the potential human rights impacts of all proposed activities and avoid or mitigate adverse impacts, and do not support activities that will contribute to or exacerbate human rights violations;
 - Provide relevant information in a timely and easily understood form to communities about proposed and ongoing activities;
 - Consult and cooperate with communities in an effort to obtain support from ethnic minorities whose lands or territories and other resources are affected in any way prior to commencing with activities. Act to ensure full and open public participation without risk of retaliation for those expressing critical views; and
 - In activities that risk an adverse human rights impact, require independent supervision and grievance mechanisms.
- Support nongovernmental organizations to provide legal services and land rights education to individuals and communities affected by land seizures in Karen State and elsewhere.
- Support outside training programs for state and local level government land administration offices on best international practice on human rights and land issues.

Acknowledgments

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Human Rights Watch would like to thank the land rights experts who consulted with us on the laws, policies, and context of land issues in Burma, including SiuSue Mark, Rob Oberndorf, and staff at the Karen Human Rights Group. Above all, we gratefully acknowledge those who shared their stories with us.

Appendix I: Human Rights Watch Letter to the Karen State Chief Minister

September 18, 2015

Re: Land Confiscation in Kayin State

Dear Chief Minister U Zaw Min,

I am writing on behalf of Human Rights Watch to request information from the government of Myanmar regarding important land issues.

Human Rights Watch is an independent, international organization that monitors and reports on human rights in more than 90 countries globally.

Human Rights Watch recently conducted research on land confiscations in Kayin State. Specifically, Human Rights Watch undertook field research in approximately 30 villages in Kayin State from January through August 2015.

Accordingly, in order to ensure our research is impartial and well-informed, we write to seek information on government policies, programs, and priorities that can be included in order to ensure government perspectives are represented in Human Rights Watch's findings from our research on land issues in Kayin State. In order to ensure that your responses can be included in a report that will be likely published in late 2015, we would be grateful if you could provide written responses to the following questions by October 15, 2015.

1. During our research, we received allegations that state and local officials may have been bribed in exchange for providing official government letters of support for land claims brought by land concessionaires. Can you please describe what steps, if any, that your state government has taken to investigate these allegations and, if so, what is the progress of those investigations? If no investigation was conducted, why not?

2. Can you please provide information on the reasons the government has largely prohibited public protests in Hpa-an and other parts of Kayin State concerning specific cases of land seizures and confiscation?
3. Can you please provide information related to the policy and planning regarding the creation and operation of resettlement sites for refugees returning from Thailand and internally displaced persons (IDPs), including the sites at Sukali and Wawlay Khi in Myawaddy Township and Hlaingbwe Town in Hlaingbwe Township? Can you please also ensure to include details of the policies regarding individual eligibility for inclusion in such resettlement sites?
4. As you know, possession of a national ID is a prerequisite for registering land claims with the government. Can you please elaborate what the state government policy is on issuance of government ID cards to persons who were previously or are still currently IDPs?
5. Can you please describe any policies, procedures and activities taken to ensure transparent and meaningful consultation with local people whose land and villages are affected by the Asia Highway project from Kawkareik to Eindu?

Human Rights Watch thanks you for your time and attention to our questions, so that the government's views are reflected in our report.

Sincerely,

Phil Robertson
Deputy Asia Director
Human Rights Watch

Cc:

Kayin General Administration Department
Kayin Ministry of Agriculture & Irrigation
Kayin Ministry of Environmental Conservation and Forestry

Appendix II: Human Rights Watch Letter to the National Agriculture Minister

September 18, 2015

Re: Land Confiscation in Kayin State

Dear Minister U Myint Hlaing,

I am writing on behalf of Human Rights Watch to request information from the government of Myanmar regarding important land issues.

Human Rights Watch is an independent, international organization that monitors and reports on human rights in more than 90 countries globally.

Human Right Watch recently conducted research on land confiscations in Kayin State, and we wish to receive an official response from the Ministry of Agriculture and Irrigation (MoAI) regarding our findings and the general policies of the Myanmar government with respect to land issues. Specifically, Human Rights Watch undertook field research in approximately 30 villages in Kayin State from January through August 2015.

We would like the Ministry of Agriculture and Irrigation's responses to be reflected in our report that will be published in late 2015. Due to production constraints, we would be grateful to receive a written response from the ministry to the following questions by no later than October 15, 2015.

1. Can you please describe the government procedures for notification, consultation, and compensation for land taken for public projects in the following locations: (1) Hpa-an Special Industrial Zone and (2) the Yay Boat Dam near Naw Ka Myine village, where villagers allege that over 3000 acres of land were ruined as a result of a dam built in 2009?
2. Our research indicates that at times, requests by villagers for land measurement and registration have not been honored by local authorities. Can

you please describe the procedures by which land registration claims are prioritized for inspection and regulatory action? Can you also please include data on the average length of time that the Ministry requires for requests for land documentation to be granted?

3. Many of the farmers we spoke to expressed an inability to communicate with local officials due to language barriers. Can you please describe what measures the ministry has taken to ensure that local MoAI officials are able to communicate with farmers in Kayin State in local languages, specifically Pwo Kayin and Sgaw Kayin in Kayin State?
4. Can you please describe efforts to register the land of individuals in former conflict areas?
5. Can you please describe whatever steps the MoAI has taken to ensure that land it grants for agribusiness and forestry projects is not already owned or claimed by smallholder farmers? Can you please describe MoAI procedures by which the accuracy of existing maps is accessed and how the MoAI updates its maps?
6. Can you please explain the MoAI's policy regarding the validity of Karen National Union-granted land rights in land disputes resolved by Farmland Administration Bodies?
7. Can you please provide data on land ownership in Kayin State, including number of acres owned by smallholder farmers, acres owned by agribusiness, and acres dedicated to forestry?
8. Can you please provide farmland ownership statistics in Kayin State, disaggregated by gender?
9. Can you please provide data regarding the number of complaints submitted to the Farmland Administration Bodies in Kayin State, and describe the types of complaints received?
10. Can you please describe steps taken to ensure land restitution for internally displaced persons (IPDs) and refugees returning to their homes from other parts of Kayin State or Thailand? Can you please describe steps taken to identify IDPs and refugee returnees, and the procedures by which returnee status is determined?
11. Can you please describe the policies and programs of the government to secure the right to a livelihood in Kayin State, including in instances in which

individuals have lost the ability to farm their land? Can you please include any data on projects regarding job creation, and provide specific information related to whether jobs created by development projects in Kayin State are employing those displaced due to such development projects?

12. Can you please describe any steps the government has taken to ensure consultation with local people affected by the Asia Highway project?

Human Rights Watch thanks you for your time and attention to our questions, so that the government's views are reflected in our report.

Sincerely,

Phil Robertson
Deputy Asia Director
Human Rights Watch

Cc:

General Administration Department, Ministry of Home Affairs
Ministry of Environmental Conservation and Forestry

Appendix III: Karen State Government Response to Human Rights Watch

From:

Karen State Government Office
Republic of the Union of Myanmar

Date: October 13, 2015

Letter No. 200/6 -19/No. 6

To:

Phil Robertson
Deputy Director, Asia Division
Human Right Watch

Subject: In response to the questions from Human Right Watch

Reference:

- (1) Letter No. 2845 dated (6-5-2015) from Union Government Office/439-Research 3-14 (3)/Ah Pha Ya (2015)
- (2) Letter No. 200 dated (2-10-2015) from State Government Office/6-60/nos. 6

Regarding the field research done in 30 villages in Karen State, from January to August 2015, by HUMAN RIGHTS WATCH that is based in New York, and their questions sent to the office of the Karen State Government, seeking responses. The office of the Karen State Government sent reference (2) to the Union Government, and the Union Government replied with reference (1), that they are able to answer the questions posed and if needed, relevant Union ministries may be contacted.

Regarding the questions, the Karen State Government also attaches their responses attached and request confirmation of receipt.

State Minister (Representative)

(Myo Aung Htay, Secretary)

Cc:

Office of the Union Government, Naypyidaw

Ministry of Home Affairs, Naypyidaw

Ministry of Construction, Naypyidaw

Ministry of Immigration and Population, Naypyidaw

Response of the Karen State Government

Question (1) - During our research, we received allegations that state and local officials may have been bribed in exchange for providing official government letters of support for land claims brought by land concessionaires. Can you please describe what steps, if any, that your state government has taken to investigate these allegations and, if so, what is the progress of those investigations? If no investigation was conducted, why not?

Answer (1) - We have not conducted any investigations at any level because we have not received any complaints against state or local officials for permitting lower land prices, requests for support or official letters in exchange for bribes.

Question (2) - Can you please provide information on the reasons the government has largely prohibited public protests in Hpa-an and other parts of Kayin State concerning specific cases of land seizures and confiscation?

Answer (2) - Crime related to land, in accordance with the law, has been resolved at the respective levels of the Land Management Committee. There is an attempt to protest against this work by a dishonest person/group who uses simple, local citizens and this can affect the rule of law and stability so it cannot be allowed, and the application for peaceful assembly and procession lacked information so it was prohibited.

Question (3) - Can you please provide information related to the policy and planning regarding the creation and operation of resettlement sites for refugees returning from Thailand and internally displaced persons (IDPs), including the sites at Sukali and Wawlay Khi in Myawaddy Township and Hlaingbwe Town in Hlaingbwe Township? Can you please

also ensure to include details of the policies regarding individual eligibility for inclusion in such resettlement sites?

Answer (3) – Regarding the creation and operation of repatriation placement for refugees returning from Thailand and Internally Displaced People (IDPs) in the areas of Sukali and Wawlay Khi, which are in Hlaingbwe town and Myawaddy Township, the situation of the programs in Karen State are as follows: 25 low-cost houses in Mae Ta Wor area of Hlaingbwe Township; 278 low-cost houses in Thitsa Aye Myaing area; 64 low-cost houses in Htan Ta Bin region of the Kyongpyine town; 51 low-cost houses in Bi Na Village of Yetagun Village Tract of Shan Ywar Thit town; 15 low-cost houses in Ta Leh village; 213 low-cost houses in Lay Kit Kaw village of Myawaddy Township; 85 low-cost houses in Myawaddy town; 92 low-cost houses in Shwe Kotko area, which are all already constructed and placements have been filled. There are also plans to build houses in Sukali and Wawlay Myaing town. Myanmar migrants and ethnic peoples who have returned from Thailand are allowed to choose to live in their place of origin, government pre-allocated areas and other needs, such as agriculture, animal husbandry, education, healthcare and access to clean drinking water, are appropriately managed and supported.

Question (4) – As you know, possession of a national ID is a prerequisite for registering land claims with the government. Can you please elaborate what the state government policy is on issuance of government ID cards to persons who were previously or are still currently IDPs?

Answer (4) – Myanmar migrants and refugees (IDPs) returning from neighboring countries are assessed by the authorized supervisory board for the issuing of citizenship cards, led by the Township Chief Administrator and after they are confirmed as genuine ethnic peoples, national ID cards are provided.

Question (5) – Can you please describe any policies, procedures and activities taken to ensure transparent and meaningful consultation with local people whose land and villages are affected by the Asia Highway project from Kawkareik to Eindu?

Answer (5) – For those citizens who live in the site of the Asia Highway project between Kawkareik and Eindu, in order to ensure transparent and meaningful negotiations with

local citizens who were affected, the information regarding the project will be shared below:

- Regarding the Asia Highway project from Kawkareik to Eindu, information on the project structure, purpose and beneficiaries will be transparently provided. Concerns related to the project will be discussed and solved with citizens.
- A specific meeting will be conducted for those from within the project area who need to be relocated and the systematic calculations for them to get reasonable compensation will be clearly explained.
- During the preparation and implementation of the project, required information will be distributed to citizens who live in the project area, and responses from citizens will be received.
- A good relationship with the citizens in the project area will be maintained, in order for citizens to collectively support the project, required information will be provided and if there are problems, a multi-level process will be put in place.
- Regarding this project, for citizens, meaningful and transparent negotiations that follow international best practices will be conducted as required, throughout the period of the project.

Appendix IV: Human Rights Watch Letters to Zwekabin Hotel

September 25, 2016

Chan Sein
Owner, Hotel Zwe Ka Bin

Dear U Chan Sein,

I am writing to you regarding land acquisition issues and the Hotel Zwe Ka Bin, in Hpa-an, Kayin State.

Human Rights Watch is an independent nongovernmental organization that monitors and reports on human rights in more than 90 countries globally. Headquartered in New York, Human Rights Watch has worked on human rights in Myanmar for more than 25 years. In February 2014, we held meetings on a range of issues with President Thein Sein and senior government officials in Naypyidaw.

From January to August 2015, Human Rights Watch conducted research on land ownership, use, and acquisition in Kayin State.

In March, Human Rights Watch interviewed a number of villagers in Hpa-an who alleged that they previously lived and worked on the land now occupied by the Hotel Zwe Ka Bin. The villagers presented government tax documents showing that they had used the land for a number of years for rice farming, and asserted that these documents verified their lawful use of the land where the hotel now sits.

These individuals stated that they received notice in 2007 from the Kayin State government that their land would be taken for a hotel project. According to the villagers, they have received no compensation for the land that is now used by the Hotel Zwe Ka Bin, although their village quarter leader informed them that they would receive compensation.

Villagers told Human Rights Watch that representatives from the Hotel Zwe Ka Bin visited them in 2014 to offer 1 million kyat as a donation, yet villagers refused to accept that amount because they believed it was not fair compensation. The villagers are requesting that their ancestral lands be returned, or alternatively that they receive a fair price for their land. Human Rights Watch understands that there are at least five families who are still seeking compensation for the land taken for the hotel project.

In the interests of accurate reporting, we would like your hotel management's responses to these issues be reflected in our report, which will be published in late 2015. We would be grateful to receive a written response to the questions below from you or your representative no later than October 15, 2015.

1. Can you please describe the legal process by which the Hotel Zwe Ka Bin acquired rights to develop the land on which the hotel is built?
2. Can you please describe steps taken by the hotel owner and management to identify which villagers were already living on or using that land, and what steps if any were taken to consult with them about the location and building of the hotel?
3. What was the involvement of the Kayin State government or local officials in the taking of the land and providing compensation?
4. Can you please describe any offers made by the Zwe Ka Bin hotel or its agents to provide financial or other compensation to any individuals living or using the land on which the hotel is located?

Thank you in advance for your time and attention to our questions, and I look forward to hearing from you so your company's views can be reflected in our report.

Sincerely,

Phil Robertson
Deputy Director, Asia Division
Human Rights Watch

May 3, 2016

Dear U Chan Sein,

I am writing to you regarding the letter sent to your company on September 25, 2015. In that letter, we requested information relating to your acquisition of land for the Hotel Zwe Ka Bin. I am writing to you again because we have not yet received a response from your company.

We hope to receive a response from your company so that we may reflect an accurate picture of the situation regarding the land acquisition for the Zwe Ka Bin hotel in our report, which will be published later this year.

Thank you in advance for your time and attention to our questions, and I look forward to hearing from you so your company's views can be reflected in our report.

Sincerely,

Phil Robertson
Deputy Asia Director
Human Rights Watch

Appendix V: Human Rights Watch Letter to the Karen State Agriculture Minister

May 5, 2016

Dear Kayin State Minister of Agriculture and Irrigation,

My name is Phil Robertson, and I am writing to you regarding land acquisition issues and the Ye Bo dam project in Kayin State.

Human Rights Watch is an independent non-governmental organization that monitors and reports on human rights in more than 90 countries globally. Headquartered in New York, Human Rights Watch has worked on human rights in Myanmar for more than 25 years. In February 2014, we held meetings on a range of issues with President Thein Sein and senior government officials in Naypyidaw.

From January to August 2015, Human Rights Watch conducted research on land ownership, use, and acquisition in Kayin State.

In February 2015, Human Rights Watch met with representatives from a community whose land has been flooded by the Ye Bo dam project in Kayin State. Representatives of the community claim that more than 3000 acres of land were flooded by the dam in 2009.

Representatives of the village also claim that there was almost no consultation with villagers about the construction of the dam or its likely impact on their land and homes, and that the government relied solely on meetings with district and village tract administrators to make decisions about the project. Village representatives also reported to Human Rights Watch that the farmers affected have not received any compensation for the loss of their land and livelihoods. The representatives that Human Rights Watch met indicated that the farmers whose livelihoods have been affected had worked on the land for generations, and presented tax receipts as evidence of their usage. Furthermore, they claimed that the land that they lost is ancestral land to which they have a strong cultural connection.

In the interests of accurate reporting, Human Rights Watch is seeking your responses to these issues and allegations. If you respond, we would ensure that your views will be reflected in our report, which will be published later this year. We would be grateful to receive a written response to the questions below from you or your representative no later than May 30, 2016.

1. Can you please describe the legal process by which the dam project was initiated?
2. Can you please describe any and all steps taken by Ministry of Agriculture and Irrigation to consult with farmers whose livelihoods were affected by the dam project?
3. Can you please describe the official notice provided to the farmers whose livelihoods were affected by the dam project?
4. Can you please describe any provisions that were made for financial or other compensation to be paid to farmers whose livelihoods were affected by the dam project?
5. Representatives indicate that a new channel for the dam was constructed in 2015, affecting additional farmers in the area. Can you please provide information relating to the construction of this new channel, and what notice was given to villagers about this addition to the dam project? What provisions were made to compensate the villagers affected by this addition to the dam?
6. Are there any further construction plans for the dam in the future? If so, can you please describe them?

I hope to receive a response from you in a timely manner so that Human Rights Watch is able to reflect an accurate picture of the situation in the report. Thank you in advance for your time and attention to our questions.

Sincerely,

Phil Robertson
Deputy Asia Director
Human Rights Watch

Appendix VI: Human Rights Watch Letter to Kyaw Hlwan Moe Company

June 1, 2016

Dear Kyaw Hlwan Moe Company,

I am writing to you regarding land acquisition issues and the Kyaw Hlwan Moe Company, in Hpa-an, Kayin State.

Human Rights Watch is an independent nongovernmental organization that monitors and reports on human rights in more than 90 countries globally. Headquartered in New York, Human Rights Watch has worked on human rights in Myanmar for more than 25 years. In February 2014, we held meetings on a range of issues with President Thein Sein and senior government officials in Naypyidaw.

From January to August 2015, Human Rights Watch conducted research on land ownership, use, and acquisition in Kayin State.

In August 2015, Human Rights Watch met with representatives from Mine Kan village who indicate that communal land in their village had been occupied and developed by the Kyaw Hlwan Moe Company earlier that year. Representatives of the community claim that this development has occurred despite the village following proper procedures to protest the development. They claim that over 450 acres of land formerly used by the community to collect vegetables and building materials has now been turned into a plantation.

Representatives of the village showed a letter to Human Rights Watch addressed to the Ministry of Agriculture and the Settlement Land and Records Department, indicating that they disagreeing with the plans, pursuant to article 9 of the Vacant, Fallow and Virgin Lands Management Rules

This disagreement was also reported on by Karen News in June 2015.

In the interests of accurate reporting, we would like your responses to these issues be reflected in our report, which will be published later this year. We would be grateful to receive a written response to the questions below from you or your representative no later than June 24, 2016.

1. Can you please describe the administrative and legal process by which the development project was initiated?
2. Can you please describe the process by which rights to the land were acquired by your company? Did the government officials regulating this process indicate that the land was being used by other persons?
3. Can you please any steps that your company took to assess the land, and to identify any individuals who were already using the land?
4. What steps or actions did your company take to consult with affected villagers before the company acted to take possession of the land?
5. What, if any, compensation did your company pay to the villagers using the land in question?
6. Can you please describe future plans for the plantation?

We hope to receive a response from so that we may reflect an accurate picture of the situation in the report.

Thank you in advance for your time and attention to our questions.

Sincerely,

Phil Robertson
Deputy Asia Director
Human Rights Watch

Conflicts over land in Burma have intensified in recent years as the country has embarked on a process of democratic transition, marked by growing foreign investments and efforts to resolve long-running armed conflicts in ethnic areas. As a result, demand for land is greater than ever—whether for resource extraction, agriculture, tourism, or infrastructure development—and powerful interests are seizing control by displacing local people without adequate compensation or effective redress. In Karen State, located on the Thai border, farmers and rural villagers regularly face land confiscation. In a country where over 70 percent of people earn a living through agriculture, losing land often means losing a livelihood.

“The Farmer Becomes the Criminal” documents human rights abuses connected to land seizures in Karen State. The report details cases in which government officials, military personnel, local militia members, and businessmen have used intimidation, coercion, and force to seize land from local people. Farmers and activists who protest land-taking face retaliation by police and prosecution under peaceful assembly and criminal trespass laws. The report analyzes the corrupt land administration structures and abusive laws that have laid the foundation for these practices.

Human Rights Watch calls on the Burmese government to release all land rights activists detained for peacefully protesting land seizures and end the arbitrary arrest of activists by police; impartially investigate allegations of unlawful land seizures; and ensure the return of land taken improperly. The government should establish an independent forum with power to adjudicate land disputes for villagers who challenge decisions about land use, and set up mechanisms for individuals to report rights abuses by local government officials.

(cover) Workers build a water catchment area behind a government-constructed irrigation dam that flooded land belonging to Aung Thay and other villagers from Karen State. To date, the government has not paid compensation to the villagers who lost land.

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