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A Statement by the Asian Human Rights Commission

BURMA: Draft land law denies basic rights to farmers

During the second sitting of the new semi-elected parliament in Burma this year, the government submitted a draft land law. The government gazette published the draft on September 16, and it is currently still before the parliament.

Burma needs a new land law. The current legislation on land, either for reasons of content or because of institutional factors, lacks coherence. It is ineffectual in protecting the rights of cultivators. With the rise and rise of private businesses linked to serving and former army officers and bureaucrats, the incidence of land grabbing also is fast increasing, and is bound to increase even more dramatically in the next few years. Although a new law would not stop or perhaps even slow land grabbing of its own accord, one protecting cultivators' rights and situating powers of review over land regulations and cases in the hands of the judiciary and independent agencies could at least set some clear benchmarks against which to measure actual practices, and establish some groundwork for minimum institutional protections.

Unfortunately, the draft bill before parliament is not the law that Burma needs. In fact, it is precisely the opposite of what the country needs. Rather than protecting cultivators' rights, it undercuts them at practically every point, through a variety of provisions aimed at enabling rather than inhibiting land grabbing. It invites takeover of land with government authorization for the purpose of practically any activity, not merely for other forms of cultivation. Under the draft, farmers could be evicted to make way for the construction of polluting factories, power lines, roads and railways, pipelines, fun parks, condominiums and whatever else government officials claim to be in "the national interest".

The Asian Human Rights Commission has been working closely on a variety of land confiscation cases in Burma for a number of years. Armed with the knowledge obtained from these cases, and with a familiarity of the wider existing legislative framework for land use and cultivators' rights in Burma, it has carefully studied the new draft law, and reached the following conclusions.

1. **NO IMPROVEMENTS ON EXISTING LAW:** The law does not guarantee the rights of cultivators in principle to any greater degree than the existing range of law, including the 1963 Tenant Farming Law and its amending law, and the 1963 Protection of Peasants' Rights Law, which it is set to replace. The provisions under extant law that it will replace have so far done nothing to stop land grabbing by the government in collusion with major business backers, like the Yuzana, Zegamba, Htoo and Ayashwewar companies. Therefore, in terms of basic stipulations of rights and the affording of protections for cultivators, the law offers nothing new at all.

2. **AGGRANDIZING OF EXECUTIVE AUTHORITY:** Not only does the new draft law not offer any more normative guarantees compared to its predecessors, but it proposes

oversight and routine intervention on land planning matters by an executive agency, which would have as its chairman the agriculture and irrigation minister. Under the peak agency others would operate at various levels of government. Disputes concerning land would have to be addressed through these bodies before any matter could be taken before a court. Furthermore, under the draft law's section 21, the agriculture and irrigation ministry would have the power to alter or overturn any decisions taken in any one of the new land agencies. Other sections of the law grant the ministry a range of further powers that ensure that the day-to-day running of routine affairs concerning cultivatable land will, if the law is passed, remain firmly under the control of a highly corrupt and frequently incompetent ministry. These powers include, among other things, powers to evict persons from land and order the destruction of buildings, subject to the drafting of new procedural rules under the law.

3. DENIAL OF BASIC FREEDOMS: The draft land law denies basic freedoms to farmers to make decisions about what to cultivate on their own land. Under section 23, the president is given full authority to issue instructions over the use of land for particular purposes in any part of the country. The past record of centralized land management and planning in Burma has been one of abject failure; the list of ineptly managed and spectacularly unsuccessful projects over the last half-century is far too long to mention. In fact, the only reason that the agricultural economy in Burma has not collapsed entirely is because of the capacity of cultivators to defy or sidestep authorities' instructions on land use. The draft law, regrettably, spells only more of the same problems for farmers, giving the president all the powers to do as he pleases, and none of the responsibility when things go wrong, as inevitably they shall if this law is enacted.

The land law draft is not a forward-looking piece of legislation for the new century, but a backwards-looking and highly regressive law modelled on 1960s quasi-socialist legislation, evincing an old-style authoritarian frame of mind, but one with the interests of the new class of military-connected entrepreneurs at the fore. It is designed to ensure the primacy of the executive authorities in all decision-making events, and to keep the role of the judiciary to a minimum. It aggrandizes the functions of executive officers, and like other aspects of the new constitutional arrangements, situates dictatorial powers in the presidential office. It is a law that has been written for the interests of powerful businessmen whose companies are already causing massive hardship and misery to people in various parts of Burma, and who are lining up to grab as much territory as possible in the next few years, and to share the spoils with their partners in government.

In short, this draft law is an odious draft and one that under no circumstances ought to be passed through the parliament, lest it cause chaos to the already uncertain lives of cultivators across Burma. The Asian Human Rights Commission calls upon all independent legislators to oppose the draft law, and for public and media action to speak out strongly against it, clearly and unequivocally. We have seen recently that large-scale public outcry and activism in Burma and abroad can have an affect on policymaking there. Concerted efforts to oppose this law are needed, or else within a few years smallholder cultivators around the country will be reduced to working in servitude for the interests of corporations and retired army officers on land that they once themselves possessed. This is the vision of the future contained in the draft land law currently before the parliament, and it is a nightmare vision that we are all obligated to reject.

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***About AHRC:** The Asian Human Rights Commission is a regional non-governmental organisation that monitors human rights in Asia, documents violations and advocates for justice and institutional reform to ensure the protection and promotion of these rights. The Hong Kong-based group was founded in 1984.*

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