

BURMA: Farmers ambushed, attacked and prosecuted for case against army-owned company

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ASIAN HUMAN RIGHTS COMMISSION - URGENT APPEALS PROGRAMME

Urgent Appeal Case: AHRC-UAC-073-2011

7 April 2011

BURMA: Farmers ambushed, attacked and prosecuted for case against army-owned company

ISSUES: Land rights; judicial system; fabrication of charges; corruption

NEW AHRC WEBSITE: **BURMA PAGE**

<http://www.humanrights.asia/countries/burma>

Dear friends,

The Asian Human Rights Commission (AHRC) is concerned by the case of a group of farmers who lodged a complaint about attempts of an army-owned company and the powerful Htoo Company to acquire their land at a greatly undervalued amount. The farmers' complaint was rejected in court on grounds that the land was being acquired for a government project, even though the company is private. After, the company and army officers involved organized for a gang to ambush and attack a group of the farmers and to have a false criminal case lodged against them. The case has gone to court very quickly and it looks as if the court is getting orders to punish the farmers severely as a way to frighten the other farmers to stop opposing the army-backed construction project.

CASE NARRATIVE:

On 18 December 2010 Htoo Construction Company, which is owned by U Teza, reputedly the most powerful and army-connected businessman in Burma, brought earthmoving equipment onto the land, marked it with flags and cleared it for the construction of a road to the site of a caustic soda and PVC factory, in the process demolishing paddy dykes and embankments, even though the land was being used for agriculture at the time.

The farmers began to make complaints to the company officials and to government agencies. Then, on 27 January 2011 Major Maung Maung Aye (retired) and Major Win Myint, of the army-owned company that is a joint partner in the project, threatened them that whether or not they wanted to sell or

were satisfied with the small compensation, they had to sign to give up the land. When the farmers refused to sign, Win Myint threatened them that, "If a parent scolds children verbally and it doesn't work, then scolding with a stick is necessary."

On February 4, four farmers, U Than Oo, Daw Toke Toke, Ko Htay and Ko Aye Choe, lodged a complaint that the Htoo Company had illegally trespassed on and destroyed their land. But, when the police investigated the complaint, they told the court that the factory is a government project and therefore the company is entitled to take the land by forcible acquisition. Therefore, the court summarily dismissed the complaint.

In fact, the company showed no documentary evidence to the court or police that they have authorization to obtain the land by force. Simply because the project has army involvement, the police and court reached this conclusion. Also, under the law for state ownership of agricultural land, staff of the land registry department would have to come to court to testify and confirm that the land is now registered for state ownership none did.

So, the farmers lodged an application for review in a higher court. Meanwhile, the company and army officers, angered by the farmers' persistence, followed through on their threats.

On March 21 as Than Oo and four fellow farmers were going home at night, they found the road near the factory construction site office blocked. Suddenly a group of around 20 persons started yelling "thief, thief" and then grabbed and assaulted Than Oo and the other farmer on the bike with him, and took them to the office. When villagers gathered at the site, the manager of the construction reportedly threatened to run them over if they came too close. The two assault victims were held there illegally until around 4am when police took them away.

Later in the morning, the police sent the two men for medical treatment. According to reports, the assault caused serious injuries to U Than Oo's skull, as well as a variety of injuries to U Aung Lin. During the time that the two were held in hospital for treatment, the police came and chained them. The police, allegedly on payment of bribes, opened a case against the two victims of assault, as well as the other three villagers who were on the two other motorcycles at the time but who got away. They have since lodged a series of fabricated charges against the five farmers, and the case has been opened and is being processed in court very quickly, reportedly on orders from higher up that it be completed without delay, with the expectation that the court will give the farmers a harsh punishment as a way to remove the obstacles to the military-backed construction project.

Further details of the case are in the sample letter below: your action is required to address the issues both of forced confiscation of land and also the assault and criminal case against the farmers.

ADDITIONAL COMMENTS:

The case is important because it speaks to the emergence of new forms of private-military economic interests in Burma which will seriously test the country's derelict legal system and threaten to tear apart what little social fabric remains after half-a-century of military rule.

As Burma moves towards a market-oriented system, more and more farmers are facing instances of attempted land confiscation and coercion from powerful and connected businesses. The legal system is incapable of stopping these business interests from getting their way. As the political system also is changing towards a superficially semi-civilian arrangement with more powers vested at state and

regional levels, it is likely that cronyism and political influence through economic interests will increase considerably. This case also shows how the private, public and military interests in such cases all get conflated, making it very difficult for rural residents to fight against the complex of military, economic and political powers pushing forward these types of projects.

It is also common for ordinary people who make complaints against officials and powerful companies in Burma to be attacked and to be made the target of false counter-complaints. For more commentary on these and other human rights issues in Burma, visit the Burma page on the new AHRC website: <http://www.humanrights.asia/countries/burma>.

The [AHRC Burmese-language blog](#) is also updated constantly for Burmese-language readers, and covers the contents of urgent appeal cases, related news, and special analysis pieces.

REQUESTED ACTION:

Please write to the persons listed below to call for the case against the assaulted farmers to be dropped, for a case to be opened against the assailants, and for the farmers' complaints about illegal takeover of their land to be taken up properly in court. Please note that for the purposes of the letter Burma is referred to by its official name, Myanmar.

Please be informed that the AHRC is writing separate letters to the UN Special Rapporteurs on Myanmar and on the independence of judges and lawyers, and to the regional human rights office for Southeast Asia calling for interventions into this case.

SAMPLE LETTER:

Dear _____,

MYANMAR: Farmers attacked, prosecuted because of case against army-owned company

Names of complainant farmers: 1. U Than Oo (M); 2. Daw Toke Toke (F); 3. Ko Htay (M); 4. Ko Aye Choe (M); all residents of Sissayan Village Tract, Kanma Township, Thayet District, Magway Division, Myanmar; holders of 6.75 acres of land at plot 281/B in the tract

Names of farmers being prosecuted: 1. U Than Oo; 2. U Aung Lin; 3. Ko Htun Min; 4. Ko Kyaw Nyunt; 5. Ko Khin Maung Hsan, all male residents of Sissayan Village Tract, Kanma Township

Names of respondents:

1. Major Maung Maung Aye, retired
2. Major Win Myint, retired, of Myanma Economic Holdings Ltd., an army-owned company (counter-complainant)
3. U Gyo Kar, staff of Htoo Trading Company at Mazit Village, Wegyi Tract, Kanma Township

Case brought by farmers: Criminal Case No. 12/2011, Kanma Township Court, summarily dismissed on 18 February 2011, Judge Daw Mi Mi Khine presiding

Case brought against farmers: Criminal Case No. 30/2011, Kanma Township Court, transferred to Min Hla Township Court on 1 April 2011; under sections 452, 336, 294, 427 of the Penal Code, for trespass, endangering personal safety, obscenity and mischief causing damage; section 5(1), Control of

Import and Exports (Temporary) Act, 1947, for three unregistered motorcycles

I am writing to you regarding a case of special concern in which army officers in Myanmar have used their unusual authority in an attempt to force small landholding farmers to sell land at a greatly undervalued price. When the farmers tried to oppose them, the army officers threatened them. A criminal complaint that the farmers lodged to stop the forceful acquisition of the land failed on the grounds that the land is for a government project, even though it is a private company that is acquiring the land. Now, five of the farmers involved have had counter criminal-cases brought against them, and persons connected to the companies seriously assaulted two in a nighttime ambush.

According to the information that I have received, on 4 February 2011 the four farmers named above lodged a complaint that the Htoo Company, which I am aware is one of the biggest and most powerful companies in Myanmar, had illegally trespassed on and destroyed their land.

The farmers allege that without their permission on 18 December 2010 the Htoo Company brought earthmoving equipment onto the land, marked it with flags and cleared it for the construction of a road to the site of a caustic soda and PVC factory, in the process demolishing paddy dykes and embankments, even though the land was being used for agriculture at the time.

The farmers also allege that on 27 January 2011 Major Maung Maung Aye (retired) and Major Win Myint, of the army-owned company that commissioned Htoo Company to do the project, threatened them that whether or not they wanted to sell or were satisfied with the small compensation, they had to sign to give up the land. According to witnesses, when the farmers refused to sign, Win Myint threatened them that, "If a parent scolds children verbally and they don't listen, then the stick is necessary."

But, when the police investigated the complaint, they came and told the court that the caustic factory is a government project and therefore the company is entitled to take the land by forcible acquisition. Therefore, the court summarily dismissed the complaint.

The court's decision to dismiss the complaint was wrong, because by law if the land is taken for a government project, then it should in the first place be the government undertaking the project. But in this case, it is a private company doing the work on behalf of an army-owned company and using its connections to influence the police investigation and judicial inquiries.

If in fact the company is authorized to go onto the land for a government project, then it must have evidence to prove this. But neither Htoo Co. nor Myanma Economic Holdings Ltd. showed any documentary evidence to the court that the project is in fact a government project as the police said, and that they have authorization to obtain the land. Also, under the law for state ownership of agricultural land, staff of the land registry department would have to come to court to testify and confirm that the land is now registered for state ownership, but in this case, this was not done.

After the complaint failed, the farmers' lawyer lodged an application for review in the Thayet District Court. The company and army officers, angered by the farmers' persistence, followed through on their threats. On March 21 as U Than Oo and four fellow farmers were on their way home riding three motorcycles at about 8pm, three men also on motorcycles rode up behind them as they were near the construction site office for the new factory. Then they saw that a large block of wood had been laid across the road, blocking their path. At that moment, a group of around 20 persons came from the direction of the site office, yelling "thief, thief" and then grabbed and assaulted Than Oo and the other

farmer on the motorcycle with him, U Aung Lin, and took them to the factory construction site office.

When those farmers who got away arrived back at the village and word of the ambush spread, a group of villagers came out to the site office. U Gyo Kar, staff of Htoo Company, allegedly turned the lights of vehicles at the compound onto them and warned through loudspeaker that if they came any closer they would drive into them.

At about 12pm the Kanma Township Police chief and local station chief arrived and took Than Oo and Aung Lin away at about 4am. They kept them at the lockup until 10am and then sent them to the local hospital for medical treatment for injuries suffered in the assault. When the hospital staff saw serious injuries to U Than Oo's skull, as well as a variety of injuries to U Aung Lin, they transferred the two men to the district hospital. During the time that the two were held in hospital for treatment, the police came and chained them. The police, allegedly on payment of bribes, opened a case against the two victims of assault, as well as another three villagers who were on two other motorcycles at the time but who got away.

The five farmers are now being prosecuted with a series of fabricated offences connected to the supposed theft, and with riding unlicensed motorcycles. Although the case was opened in the Kanma Township Court, the prosecutor for security reasons had the case transferred on April 1 to the Min Hla Township Court, saying that among other things because the case details had been broadcast on overseas radio stations, it was not suitable to continue the trial in the township. The case has been brought very quickly to court, which seems to be in response to the demands of the army officers involved, with the idea to punish swiftly the farmers who are obstacles to their project. I have also received information that the district court has ordered the township court to finish the case quickly, which suggests that there may be higher up influence on the case also.

I am concerned that as Myanmar moves towards a market-oriented economy but its legal system is not adapted or strengthened in response, these types of cases will become more and more common. I am particularly concerned at how the case shows the nexus between military and economic interests in Myanmar, and at the inability or unwillingness of the courts to distinguish between these interests. For these reasons, I urge that everything possible be done to protect the farmers in this case, and in other cases like it.

I am also aware that assaults and counter-criminal complaints are common in cases where people in Myanmar have the tenacity to lodge cases against powerful officials or companies. I regret to find that this case also is following the trend and urge that the authorities in Myanmar pay special attention to this case to show that the police and courts cannot be used by thuggish private interests for their own personal gain, at the sacrifice of the rights and interests of ordinary citizens. Accordingly, I call for the absurd, fraudulent charges against the victims of assault to be dropped and for a case of assault and illegal confinement to be opened against those responsible.

Yours sincerely,

PLEASE SEND YOUR LETTERS TO:

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Thank you.

Urgent Appeals Programme
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