



Yearning to be Heard

**MON FARMERS' CONTINUED STRUGGLE FOR ACKNOWLEDGEMENT
AND PROTECTION OF THEIR RIGHTS**



A REPORT BY

THE HUMAN RIGHTS FOUNDATION OF MONLAND-BURMA

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ACRONYMS AND ABBREVIATIONS

AMDP – All Mon Regions Democracy Party

AR – Artillery Regiment

CBO – Community-Based Organization

CCMVFV – Central Committee for the Management of Vacant, Fallow and Virgin Lands

CSO – Civil Society Organization

FMC – Farmland Management Committee

FPIC – Free, Prior and Informed Consent

GAD – General Administration Department

HLP Rights – Housing, Land and Property Rights

HURFOM – The Human Rights Foundation of Monland

IB – Infantry Battalion

INGO – International Non-Governmental Organization

LIB – Light Infantry Battalion

LUC – Land Use Certificate

MDP – Mon Democracy Party

MIC – Myanmar Investment Commission

MoAI – Ministry of Agriculture and Irrigation

ACRONYMS AND ABBREVIATIONS

MOC – Military Operations Command

MOD – Ministry of Defense

NMSP – The New Mon State Party

SLORC – State Law and Order Restoration Council

SLRD – Settlement and Land Records Department

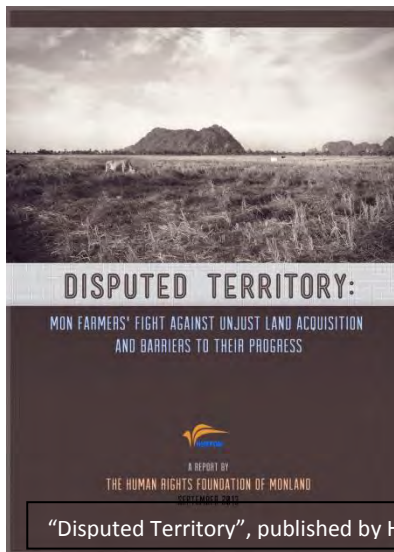
VFV Law – Vacant, Fallow and Virgin Lands Management Law

1. Introduction

In October 2013, the Human Rights Foundation of Monland (HURFOM) released *Disputed Territory*, a report documenting the emerging trend of Mon farmers fighting for recognition of their land rights in the face of unjust land and property confiscations. The report analyzed specific barriers impeding their success, from weak land policy and inadequate dispute resolution mechanisms, to an absence of support from various sources.

While *Disputed Territory* explored the broad spectrum of land right violations among Mon communities, our current report focuses more specifically on the progress, or lack thereof, in cases of military land confiscation. In this regard, over a year has passed and yet Mon farmers continue to find themselves in a fruitless struggle. New details of past and on-going unjust military land acquisition continue to be brought to HURFOM and other media outlets, on the one hand proving that Burma's political climate has become a safer space for victims to petition their rights, while on the other hand showing that significant challenges continue to preclude true justice for housing land and property (HLP) rights violations.

Since the release of *Disputed Territory*, and addressing one of the barriers to justice it highlighted, Mon farmers have gained greater access to education regarding their HLP rights, and are more aware of procedural requirements for landholders under the 2012 land laws. However, while farmers have repositioned themselves, armed with information and supported by advocates, progress remains stalled: farmers' land rights and tenancy remain insecure, properties confiscated by the military



"Disputed Territory", published by HURFOM in 2013





3. Methodology

For nearly two decades, HURFOM has worked to champion the rights of Burma's ethnic communities, specifically in regards to the Mon population; documenting and reporting through research methodology developed throughout eighteen years of experience. In releasing this report, HURFOM utilizes this experience to publicize abuses of Burma's small-scale farmers' HLP rights, advocating for support from the international community, Community Based Organizations (CBOs), Civil Society Organizations (CSOs), and International Non-Governmental Organizations (INGOs) focused specifically on HLP rights. Given the urgency of this advocacy work, some facts contained in this report have already been published in HURFOM's print issues of the Mon Forum, and online.

Research for this report was conducted by four field reporters over the space of nearly one year, from January 2013 to December 2014. Four field reporters, including one field coordinator, two full-time reporters and one part-time reporter, conducted fact-finding missions surrounding HLP rights abuses in Mon State, with specific focus on Ye and Thanbyuzayat Townships. Overall, HURFOM's field reporters obtained information regarding 145 cases of military HLP rights abuse in Mon State, meeting with 75 victims individually.

Where field reporters interviewed victims, they used structured questions specifically tailored towards the impact of land confiscations on farmers' lives and livelihoods, the wider consequences for women and children due to the loss of their families' livelihoods, and farmers' attempts to pursue justice. 70% of interviews were conducted in the Mon language and the remainder in Burmese. Field reporters obtained 22 audio and video files of interviews with Mon victims of HLP rights abuse; other interviewees declined to be recorded due to safety concerns.

In addition to conducting interviews, HURFOM also obtained written correspondence regarding land disputes in Ye and Thanbyuzayat townships, including copies of letters of appeal from residents and corresponding responses from government personnel.

All data obtained on the ground was then sent via phone, email, or physical messenger to the Thai-Burma border, for translation into English by HURFOM office staff. At this point, all data was categorized into themes for analysis.

A. Challenges to Obtaining Comprehensive Data

Where possible, the cases represented in this report are given in the fullest and most accurate detail possible, so that the information given may be used to more fully advocate for Mon farmers' HLP rights and advance the cases of reported victims. However, throughout the documentation process HURFOM field reporters faced a number of barriers to obtaining fully complete and accurate information.

I. Security Issues

HURFOM is forced to remain an unregistered human rights organization within Burma, as the government continues to deny human rights organizations or data-collection groups the opportunity to obtain official registration. As human rights reporters are not allowed to work legally inside Burma they must work covertly on the ground. However, lack of official affiliation often makes it difficult to create trust between reporters and informants, and can pose challenges to locating secure spaces for both parties to meet. For this particular report, HURFOM's field reporters found many farmers unwilling to be interviewed in their home villages. Our reporters scouted alternative meeting locations, in order to avoid restrictions from authorities and ensure safety for informants.

II. Lack of Legal Assistance Due to Fear of Retribution

Despite multiple requests, lawyers and legal experts contacted by HURFOM refused to discuss cases of military land confiscation, citing fear for their safety under the current political climate. Additionally, some legal experts informed our reporters that they required permission from their superiors before providing any information. Some lawyers approached by our reporters also attributed their refusals to cooperate to their belief that discussion of land issues remains the government's responsibility. For such reasons, HURFOM's reporters were unable to access valuable information from law experts, in particular their perspective on Burma's land conflict.

III. Government Refuses to Speak

Throughout our research, government authorities continually refused to speak with HURFOM reporters about land conflict in Mon areas. Government and civil servant





4. Background on Land Confiscation and Tenancy Rights

A. History of Land Confiscation

Land is the primary asset for the people of Burma, with 70% of the population living in rural areas and depending for their livelihoods on small-scale farming.¹ However, despite the fact that land lies at the center of rural livelihoods, land tenure for Burma's small-scale farmers remains unprotected and insecure.

As detailed in previous HURFOM reports, for decades Burma's rural farmers have had their HLP rights violated by endemic land confiscation. Predominantly, this can be attributed to military expansion, the increase of foreign investment, and a general lack of rule of law. Overall, Burma's farmers have experienced weak land tenure security and have been exposed to high levels of land appropriation by government and state institutions, the Burmese army, and business cronies with close connections to the past military regime and current government. Although Burma's rural populations have reported growing numbers of land grabs in relation to recent large-scale development, infrastructure and state-backed investment projects, the majority of reported cases go back several decades, committed predominantly by the former military regime. A recent report from Burma's Farmland Investigation Commission identified the military as the primary perpetrator of illegal land confiscations, having forcibly seized nearly 250,000 acres of farmland throughout the country. These confiscations were typically carried out through corruption and intimidation, and involved systematic failures to provide adequate compensation for lands seized.

Historically, military land rights abuses have been committed for a range of reasons: to assist government-backed infrastructure and development projects, to facilitate base expansions, to cover operating costs and for the personal gain of military personnel. In many cases, military battalions and commanding officers have illegally confiscated civilian land for economic profit, wherein battalions have forced small-scale farmers to pay tax at exorbitantly high rates to continue working on their own land (see Case Study

¹ Burma Partnership, *Endemic Land Confiscation in Burma: A Major Challenge to the Reform Process*, November 13, 2013 p.3.

1). HURFOM found that in Panga village Thanbyuzayat Township, military battalions were also reported to have exploited original landholders paying such land use tax by ordering them to buy their plants strictly from the Commander of Artillery Regiment (AR) No. 315, at inflated prices between 400 and 1200 kyat per plant.²

Alternatively, in some cases the Ministry of Defense has sold confiscated land to private companies for a handsome profit.³ The Farmland Investigation Commission have confirmed that in multiple cases the military has seized land in order sell it to private companies with links to the military.⁴ Confirming this trend in Mon areas, U Aung Myint Soe from Kyaung Ywa Village, Ye Township, told HURFOM:

“In 2001, LIB [Light Infantry Battalion] No. 583 came and marked my plantation with flags... More than half of my plantation was confiscated, including about 1,200 rubber trees and 800 betel nut plants. As far as I know, my plantation was sold to a company from Thanbyuzayat.”⁵

The history of military land confiscation has been devastating, financially and otherwise, to Burma’s agrarian population. Land confiscations have involved the loss of families’ valuable assets and with this their livelihoods. One Yebyu Township farmer said:

“Most [confiscated] plantations were rubber plantations, which [were valued at] 2.9 million kyat per acre at that time [of confiscation]. Rubber plantations that could be tapped like mine could get over 3 million kyat.”⁶

Prior to dispossession, farmers would typically have spent years investing their money and physical labor in their land, in hope of generating a livelihood to support themselves and their families. In the case of rubber plantations, farmers must devote at least seven to eight years to cultivation before the rubber trees are ready to tap. In the majority of cases examined for this report, victims testified that confiscations largely coincided with the period in which their crops matured and were finally ready for harvest. U Khin Mg, 57, from Thanbyuzayat Township, commented:

² Case 2, HURFOM interview with U Mg Aye, Panga Village, August 14, 2014.

³ Burma Partnership, *Endemic Land Confiscation in Burma: A Major Challenge to the Reform Process*, November 13, 2013, p.4.

⁴ The Irrawaddy, ‘Army MP Halts Talks on Military Land-Grabs in Burma’s Parliament’, August 16, 2013 (Accessed October 12, 2014).

⁵ Case 12, HURFOM interview with U Myint Soe, Kyaung Your Village, Ye Township, October 8, 2014.

⁶ Case 1, HURFOM interview with, Kan Taw/Kywe Thone Nyima Village, Yebyu Township, July 22, 2014.

“We spent a lot of money to buy 500 small rubber plants to grow; the cost of growing rubber plants had been increasing from year to year. We had dedicated our time for almost nine years; Artillery Regiment (AR) No. 315 confiscated our land when we were tapping rubber.”^{7 8}

B. Past and Current Military Land Confiscation in Mon Areas

Today, the most pressing land concerns in Mon areas are found surrounding land confiscations in government-controlled and mixed-administration areas, and the resettlement of displaced persons.⁹ In *Disputed Territory*, HURFOM provided a detailed account of how military land and property confiscations in Mon areas increased significantly following the 1995 ceasefire with the New Mon State Party (NMSP). For decades the military seized large swaths of land, often confiscating the land of over thirty plantation owners at one time. While today unjust military land acquisition exists in tandem with a growing number of HLP violations perpetrated by foreign companies and military cronies, it is of concern that under civilian rule the Burmese military have continued to directly confiscate land in Mon regions.

Recently, with the current government’s focus on attracting foreign investment to its agricultural land, coupled with the increasing price of rubber, the military have appeared receptive to the opportunity to make a profit by again exploiting and abusing farmers’ rights. As recently as December 2014, Burmese Army troops were reported to have confiscated land in Mon State. In this case, interviewees told HURFOM that the Burmese Army’s Military Advanced Training School No. 4 had planted confiscation land-markers on farmers’ land in Wae Kalee Village, Thanbyuzayat Township, without prior consultation or warning.

Nai Ba Thin, a Wae Kalee resident who had previously been dispossessed by the Burmese military, reported that the military training school revisited his land in December 2014 to mark off two more acres. “I was not informed about this,” Nai Ba

⁷ According to data collected by HURFOM throughout 2004 and 2005, about 250 acres of land, owned by nearly 70 residents, was confiscated in Thanbyuzayat Township by Artillery Regiment No. 315 and the Advanced Military Training School No. 4.

⁸ Case 5, HURFOM interview with U Khin Mg, Panga Village, Thanbyuzayat Township, August 15, 2014.

⁹ Displacement Solutions, *Bridging the HLP Gap*, June 2013, p. 24.

Thin told HURFOM, “I found a military landmark stone...the morning after the military had planted them. They [Military Advanced Training School No. 4] expanded it [the confiscation of his land] two more acres than previously seized land...I am not sure what their purpose is in putting this land-mark, but to seize these lands”.¹⁰

63 year old Panga villager, whose rubber plantation was confiscated by Artillery Regiment (AR) No. 315



C. Legal and Policy Framework of Military Confiscations

In light of on-going land confiscation and the fear of future seizures, there is large concern amongst Mon farmers about their capacity to obtain just resolution to land disputes, both regarding prior and current infractions. Mon Member of Parliament Nai Htaw Ong expressed, “They [the military] can no longer keep doing this”.¹¹

However, to the detriment of farmers nationwide, Burma’s on-going military confiscations operate in a legal and policy framework where land rights remain insecure, and where such seizures are legally facilitated (outlined in detail in Appendix 1). In 2013’s *Disputed Territory*, HURFOM highlighted how this legal framework poses an important barrier to farmers’ hopes for justice, both in terms of past and on-going HLP violations. HURFOM’s recent research suggests that, as outlined in Chapter 5 below, aspects of this legal framework continue to thwart farmers’ pursuit of their HLP rights.

¹⁰ HURFOM, ‘Military plants land-marking stones to steal more rubber farmers’ lands’, January 9, 2015 (Accessed January 20, 2015).

¹¹ *ibid.*

5. New Cases Emerging Due to Victims' Changing Circumstances

Over one year has passed since the release of *Disputed Territory*, and further cases of past HLP rights abuses committed by the military continue to surface. This trend has been illustrated most clearly in Thanbyuzayat Township, Mon State, where information regarding over 2,000 acres of confiscated rubber plantations has been exposed to media groups and human rights organizations within this past year.¹² While previously victims in Thanbyuzayat Township had refrained from talking about these military land confiscations, now they have begun to speak out; Case Studies 1 and 2 in this report document two such cases.

HURFOM's analysis suggests that past silence over cases of land confiscation can be attributed to a combination of factors; chiefly, an oppressive military regime, fear of retaliation and further land confiscation by the Burmese military, and a lack of activists fighting for farmers' rights. HURFOM highlights the following developments, which appear to have emboldened Thanbyuzayat's dispossessed to speak out.

A. Changing Circumstances Surrounding the Value of Land: It's Now or Never for Farmers' Rights

While in the past the military often allowed villagers to pay tax on confiscated land in order to continue cultivating it, increasing foreign investment interest in Burma's farmland has meant that farmers previously permitted to use their land in this way are allegedly being pushed off, as the military has started to sell confiscated lands to private businesses; a move considered more profitable than collecting tax from civilians.

While previously HURFOM found that victims refused to tell their stories to media and human rights reporters, for fear that the military would retaliate and evict farmers from their lands, farmers have recently been emboldened to speak out, given conceptions

¹² HURFOM, 'Wae Kalee Landowners Resubmit Appeal to Reclaim Lands Confiscated by Locally-Based Burmese Troop', June 26, 2014 (Accessed November 8, 2014).

that military receptiveness to investors' increased interest poses an even greater risk to their land use.

The price of land has been increasing dramatically in Burma, due, in large part, to land surveying in anticipation of foreign investment.¹³ With government cronies eager to grab land while it is still relatively cheap, and military authorities looking for additional profits, Mon farmers suggested an awareness that this is the last opportunity they will have to petition their right to their land before it is sold. Farmers who previously remained silent recognize that the circumstances surrounding the future of Burma's farmland are changing. If they do not receive legal recognition of their land rights now, it will soon be too late.

B. Changing Political Environment: Civilian Government

Recent reforms under the current quasi-civilian government have evinced more tolerance to public demonstrations, coupled with considerable relaxation of media restrictions; fuelling increased protest against HLP rights violations. Not only have Thanbyuzayat's farmers themselves experienced wider political space in which to display political protest, but they have been witness to increased news coverage of farmers across the country protesting for their land rights. HURFOM's research suggested that Thanbyuzayat farmers have been empowered by news of their ethnic brothers' fight for justice, and as a result are speaking out for the first time of past abuse. One Thanbyuzayat farmer told HURFOM:

*"We are submitting our letters of appeal; as other people are fighting for their plantations, I will too."*¹⁴

In this way Thanbyuzayat farmers have joined a movement of farmers throughout Burma's ethnic communities, who have gained confidence in themselves and in their self-agency.¹⁵

C. Widening Support: Legal and Political Advocates

¹³ USAID, *Country Profile Property Rights and Resource Governance*, May 2013, p.18.

¹⁴ Case 5, HURFOM interview with U Khin Mg, Panga Village, Thanbyuzayat Township, August 15, 2014.

¹⁵ Asian Human Rights Commission, 'Courts, Cops, Cronies Driving Farmers to Ruin', May 2014 (Accessed October 3, 2014).

Strengthening this movement, Burma's rural farmers have also had greater access to education over HLP rights in recent years and have sought assistance from experts and advocates in the land sector. Victims, aided by lawyers and expert community members, are appealing to higher authorities for appropriate redress for past HLP rights abuses. As an essential support, Burma's lawyers are diligently advocating that the rule of law must be upheld, and in doing so, rally the people around their cause, building support from their community by encouraging farmers to mobilize for their rights.

Simultaneously, dispossessed farmers have also enjoyed stronger support from their representative political parties. Democratic trends under Burma's quasi-civilian government have allowed for greater political openness towards issues surrounding land disputes. With the land issue at the top of national political discourse, more and more land dispute cases are being brought before Parliament, as the public pushes their representatives in government to address the land issue and advocate for their HLP rights.

One example of a Mon MP championing farmers' rights comes from MP Nai Tala Chan, from Thanbyuzayat Township. Upon learning about the Land Investigation Commissions' continued neglect and disregard for appeals by farmers from his constituency, MP Nai Tala Chan joined their fight by submitting a letter concerning the issue to the parliament chairman. On June 20th, 2014, the MP further supported Thanbyuzayat farmers by stating that if responsible authorities announced a ruling with which the farmers were not pleased they, Nai Tala Chan and the farmers, "won't accept that and will act against them".¹⁶

D. Victims Returning, Communities Speaking Out

Upon eviction, victims of unjust land confiscation were often left internally and externally displaced, with many fleeing to neighboring countries, namely Thailand and Malaysia, in search of work. This meant that previously HURFOM and other documentation organizations were unable to learn of their cases, as victims had moved away from their native villages. As land rights victims had often migrated illegally to foreign countries, it was nearly impossible to track them down for purposes of documentation. However, with trends of democracy emerging in Burma, victims have begun returning to their native villages in hopes to reclaim and assert their rights over illegally confiscated lands. Consequently, as victims return to their native lands, new information regarding past abuses has begun to emerge.

¹⁶ HURFOM, 'Wae Kalee Landowners Resubmit Appeal to Reclaim Lands Confiscated by Locally-Based Burmese Troop', June 26, 2014 (Accessed November 8, 2014).

6. Broken System Enables Continued Barriers to Justice

A. Failures and Limitations of 2012 Land Laws

Despite these promising signs, HURFOM's recent research suggests that many of the barriers to justice outlined in our previous report, *Disputed Territory*, continue to hinder farmers' progress in resolving land disputes. In particular, the lack of transparency of the 2012 land laws and respective land management committees' decision-making processes continue to allow for gross mismanagement, corruption, and disregard for the rule of law.

I. Failures and Limitations of Burma's Land Registration System

As *Disputed Territory* highlighted, the 2012 Farmland Act's land registration system, in theory meant to strengthen farmer's land tenure security, has in fact left the majority of farmers without robust rights to their land. Under the Farmland Act, the Burmese government established a system of private land ownership, where citizens and other bodies may legally own, sell, and otherwise transfer lands, through possession of a Land Use Certificate (LUC). However, according to this law, landholders who do not hold official LUCs no longer possess the legal right to use their land. As a result, they become at risk of eviction, extortion, and land grabbing by local military battalions, who have an established history of such behavior. With the process for applying, obtaining, and registering LUCs unclear, expensive, and unfeasible for the majority of Burma's ethnic landholders. Burma's land registration system proves to have failed in providing adequate protection from the risk of military abuses.

HURFOM's research in Tu-Myaung Village Tract, Ye Township, demonstrates the historical importance of this predicament. While residents in Tu-Myaung Village Tract obtained paperwork for half of their land, they were unable to do so for the remainder, leaving it vulnerable to confiscation. One group of residents commented:

"In 2001, LIB No. 586 confiscated 430.3 acres of land owned by 39 plantation owners. The plantation owners farmed only rubber trees. When confiscations began, there were 20,000 productive rubber trees, while the rest were young

*trees that could not be harvested yet; there were also other crops as well. About 200 acres of confiscated land had paper documents, while the remaining land had not received the official documents yet.*¹⁷

However, HURFOM reiterates that even where LUCs are obtained, they provide an inadequate level of land tenure security. By the 2012 land laws, land registered with a LUC may still be seized by the State, who is considered the ultimate owner of all land. The 2012 land laws do not identify the specific grounds upon which the State may appropriate land, nor do they detail provisions for the payment of compensation. Furthermore, the reach of the State is bolstered by the Ministry of Agriculture and Irrigation's (MoAI) monopoly of power over land management, administration, and allocation.¹⁸

II. Failure to Recognize Customary Tenancy

HURFOM's research also indicates that Burma's land laws continue to lack legal protection for the land rights of ethnic communities, where access to land is often based on traditional and informal institutions, through which communities have developed customary laws governing access to land, land use, land tenancy, and inheritance of land. Case Study 2 of this report highlights just one case where a conflict of rights has arisen for a Mon farmer, due to the lack of acknowledgement by law of the validity of his community's customary tenancy laws.

Such informal institutions, which vary from one community to the next depending on the community's specific customs and traditions, are known, accepted, and enforced by all community members.¹⁹ The majority of Burma's ethnic communities, which constitute over 20 million of Burma's total population, operate under customary land tenure laws.²⁰ However, the land titling system introduced by the 2012 land laws fails to acknowledge this and leaves open a significant risk of dispossession for farmers operating under customary tenancy, as few of these landowners possess formally-recognized land titles.

¹⁷ Case 25, HURFOM collective interview with Tu-Myaung Village Tract residents, September 12, 2014.

¹⁸ Displacement Solutions, *Bridging the HLP Gap*, June 2013, p.14.

¹⁹ Food Security Working Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*, November 2012, p.15.

²⁰ Food Security Working Group, Land Core Group, *Customary Land Tenure and Responsible Investment in Myanmar*, December 2013.

Significantly, under the 2012 Vacant, Fallow and Virgin Lands Management Law (VFV law), landholders are obliged to register all land acquired through customary law, or see the land re-classified as “virgin”, “vacant”, or “fallow”, creating risk of farmers’ eviction, as they are viewed as “squatters” on the land by the State.²¹ The Central Committee for the Management of VFV Lands (CCMVFL), under the command of the MoAI, has unbridled power in deciding what lands are “vacant”, leaving communities operating under customary tenancy laws extremely vulnerable to confiscation. Research suggests that much of the land classified as “vacant” and “unused” by the MoAI is actually owned by farmers who have legitimate tenancy rights under customary law. Demonstrating the threat of this framework to farmers in Mon State, a resident of A Nan Kwin Village told HURFOM:

“Not only is there no vacant land in Mon State, but even the hill and valley in which I live have owners. The land is owned, but landowners do not have legally recognized land use documents. Everyone in the community knows who owns the land, even if we don’t have the official documentation. When we trade land between each other, the village chairman draws us up traditional land documentation.

According to the government’s vacant land law, the law is intended to take our lands and the government will not recognize our ownership of the land. This law is very dangerous for the local people, who have been planting on lands the government has categorized as vacant and fallow for many years. We have been trying to obtain official documentation for our lands since the Ne Win regime, but our efforts have not been successful. We have to pay tax to the land clerk, and land administration and government bodies are purely kangaroo courts.”²²

The current legal framework is particularly dangerous to landowners, given that “vacant” classification of land has historically been used by the military to justify its seizure. In Wae Kalee Village, Thanbyuzayat Township, Military Advanced Training School No. 4 confiscated large areas of farmers’ lands between 2005-2008, claiming that confiscated lands were wild and virgin, and as such belonged to the government.²³

Accordingly, the exclusion of customary law from Burma’s national land policy represents a continued and serious threat to Mon farmer’s hopes for future land security and compensation for past violations.

²¹ Burma News International, *Economics of Peace and Conflict*, September 2013, p.36.

²² HURFOM interview with U Lu Gyne, Kyaut Pyar Village, Yebyu Township, August 9, 2014.

²³ HURFOM, ‘Wae Kalee Landowners Resubmit Appeal to Reclaim Lands Confiscated by Locally-Based Burmese Troop’, June 26, 2014.

III. Absence of Independent Mechanisms for Justice

Also continuing to hinder farmers' struggle for land security and justice, the current legal and policy framework surrounding land tenure still lacks an independent mechanism to adjudicate land disputes. Burma's 2012 land laws established land management and administrative bodies, which are run following a top-down system stemming from the central government and military, without any civilian participation.²⁴

The Farmland Management Committee (FMC) is afforded sole power over the administration and allocation of farmland LUCs, while laying beyond the reach of the State's judiciary; failing to provide an avenue through which farmers may achieve legal recourse against unfair confiscation.²⁵ Farmers wishing to appeal decisions judged by the FMC must appeal to various levels within the same system throughout state and regional levels, forcing farmers to appeal to "the same government appointed bodies [that] are also empowered to issue fines, enforce evictions, and issue criminal penalties, allowing for a mechanism which few farmers would be willing to challenge".²⁶ The FMC's sole authority over the allocation and categorization of farmland is disconcerting due to Burma's history of rampant corruption and high rates of inequality.

Furthermore, with the military-controlled MoAI designated as their overseeing body, FMCs and the CCVFFV are obliged to satisfy military interests when settling land disputes, rendering both land management committees compromised by their allegiance to the military, being unable to judge land disputes from an unbiased perspective.

Accordingly, the 2012 land laws fail to provide an independent mechanism for judicial recourse for the protection of farmers' land rights, effectively facilitating further confiscations and the continued denial and abuse of land rights.

²⁴ Win, Kanbawza, 'Burma- A Subtle Way of Ethnic Cleansing and Marginalizing People', Eurasia Review, May 13, 2013.

²⁵ Transnational Institute, *Access Denied: Land Rights and Ethnic Conflict in Burma*, May 2013, p. 3.

²⁶ Win, Kanbawza, *Burma- A Subtle Way of Ethnic Cleansing and Marginalizing People*, Eurasia Review, May 13, 2013.

IV. Sidelining of Ethnic Concerns

Yet, while efforts have been made to raise the above concerns and renegotiate this detrimental legal and policy framework, they have widely been unsuccessful; ethnic negotiating groups have tried to raise the issue of land rights during peace talks with the government multiple times, only to be rebuffed.

This lack of consideration of ethnic concerns is confirmed by recent movements on land policy, which appear to have entirely disregarded the ethnic perspectives on land issues expressed to date. On October 18, 2014, the Burmese government released a draft national land use policy which, once finalized, will guide governance over land tenure for years to come. Although the draft was released for public consultation, the government allowed just three weeks for discussions of the 90-page document, and for concerns to be raised.²⁷

In response to its release, ethnic community groups throughout Burma participated in a number of workshops to discuss and analyze the draft document. On November 1, 2014 the Customary Land Protection Committee, comprised of representatives from more than thirty civil society organizations and farmers' networks, joined together in an Ethnic Community Development Forum to review and analyze Burma's draft national land use policy. From their discussions, the committee produced a statement identifying aspects of the policy that the ethnic community considered flawed and undemocratic. Just over a week later, representatives from Mon civil society organizations and land users held their own consultation to analyze the government's draft policy, specifically from the Mon community's perspective. Sixty-one participants from 30 organizations and four land experts participated in the Mon workshop, which again resulted in the release of a statement identifying concerns and providing recommendations for the draft policy.

Overall, Burma's ethnic community found the government's draft policy to be severely flawed, and to have been drafted in disregard of ethnic communities' grievances, opinions and concerns regarding national land policy. Firstly, The Customary Land Protection Committee found the draft policy to be developed through an undemocratic process, failing to include public participation, with specific exclusion of small-scale

²⁷ Burma Partnership, '27 October – 3 November: New National Land Use Policy Must Reflect the Concerns of those Affected', November 4, 2014 (Accessed December 1, 2014).

farmers, ethnic representatives, and other peoples and communities that will, undoubtedly, be most affected by the national land use policy.²⁸

The committee also found that the draft neglected to prioritize and protect Burma's small-scale farmers and ethnic peoples, rather favoring, through special privileges, business investors. The Mon consultations similarly concluded that, with national reconciliation in mind, land should be prioritized for the social justice and sustainable development of the people, rather than for business investment purposes.²⁹

Of particular concern to The Customary Land Protection Committee, those attending the workshops also criticized the policy for failing to mention the protection of customary land practices of ethnic groups or legally recognize the customary collective land ownership, use, or management of ethnic groups. The committee rejected the government's land classification of "vacant, fallow, virgin lands", as they considered that there is no "vacated", "fallow", or "virgin" land in ethnic territories.

Finally, The Committee found that measures in the draft policy to resolve current land disputes were not satisfactory from the ethnic community's perspective, nor were there any clear methods included to address previous military land grabs. In particular, they considered the draft policy to disregard ethnic peoples' own perspective on their land rights by refusing to provide specific measures bestowing ethnic minority individuals and communities decision-making power over questions of land ownership, use and management. They clearly concluded that this issue could delay the national reconciliation and peace-building process, as well as creating new land conflicts.³⁰

In light of these issues, the member organizations of the Ethnic Community Development Forum and the Customary Land Rights Protection Committee have called for a re-draft of the national land policy, which, the ethnic organizations stipulate, must include participation of representatives of small-scale farmers, ethnic groups, as well as parliamentarians and independent experts.

²⁸ Burma Partnership, 'Statement of Ethnic Community Development Forum and the Customary Land Protection Committee Concerning Myanmar's National Land Use Policy (Draft)', November 6, 2014.

²⁹ HURFOM, 'The Statement of Mon Civil Society and Land Users on the Current Government National Land Use Policy', November 11, 2014 (Accessed November 18, 2014).

³⁰ Burma Partnership, 'Statement of Ethnic Community Development Forum and the Customary Land Protection Committee Concerning Myanmar's National Land Use Policy (Draft)', November 6, 2014 (Accessed November 13, 2014).

B. Failure of Government Bodies and Authorities

Further to concerns over the current legal and policy framework governing land disputes, and a lack of openness from policy-makers to ethnic concerns, Mon State's victims of HLP abuse expressed worries to HURFOM about the conduct of government bodies and authorities administering formal complaint procedures.

I. Unclear Complaint System

Farmers reported experiencing constant disappointment in their search for justice, as an acute lack of transparency was considered to provide no clear structure denoting to which authorities or government bodies victims should appeal regarding their land disputes, while responsible authorities were held to have consistently deflected responsibility.

For example, when Nai Kyaw Soe's land in Yebyu Township was confiscated by Navy Troop No. 43, he asked the senior monk of his village to assist in obtaining a meeting with the Navy troop. The Navy troop sent him away, telling Nai Kyaw Soe that "if [he] wanted to know the facts regarding [his confiscated] plantation, [he] needed to reach the Maw Rawaddy Navy Troop Department, based in Moulmein".³¹

Overall, farmers expressed that they remained unclear as to whom they should inform about land rights violations. Farmers were reported to have sent letters of appeal to the Mon Democracy Party (MDP) and other Mon organizations, the central government in Nay Pyi Daw, as well as the land investigation committees established to resolve such cases, receiving only a deafening silence in return. One Thanbyuzayat resident said:

*"As we don't know who we should inform about this issue, we submitted a letter of appeal to the Mon Democracy Party (MDP) and other Mon organizations regarding our land issue. We also submitted letters of appeal to the Nay Pyi Daw department ourselves, but we have not received any response."*³²

³¹ Case 1, HURFOM interview with Nai Kyaw Soe, Kan Taw/Kywe Thone Nima Village, Yebyu Township, July 22, 2014.

³² Case 5, HURFOM interview with U Khin Mg, Panga Village, Thanbyuzayat Township, August 15, 2014.

II. Failure of Authorities to Address Land Disputes Connected to the Military

Although legal channels have developed through which farmers may appeal for the acknowledgement and recognition of their land rights, not only were authorities seen to have proved incapable of acting in accordance with the law, but they were largely considered supportive of military interests.³³ As the military has committed the majority of land rights abuses, relevant authorities were reported to have ignored their duties to the victims, leaving farmers unable to access legal redress and ignored by the very channels created to deal with this issue.

This was profoundly demonstrated through HURFOM’s research in Mon areas. While farmers are now appealing to the legal channels set up to address cases of land dispute, such appeals were reported to have remained unanswered. Nine victims interviewed for this report confirmed that they had sent a total of over fifteen letters of appeal regarding land disputes to the appropriate government bodies. In all cases, the victims received no response and were categorically ignored by the authorities.

Thanbyuzayat rubber plantation landowners appealed multiple times to the central government regarding confiscated lands, sending letters of appeal through the Mon State Land Investigation Commission to the office of President Thein Sein in Nay Pyi Daw, only to be repeatedly ignored.³⁴ According to a local source who previously assisted in collecting land data and submitting farmers’ appeals to the Mon State Land Investigation Commission, “In 2013 landowners



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 ရက်စွဲ ၊ ၂၀၁၄ ခုနှစ်၊ အေပြီလ ၂၉ ရက်

အကြောင်းအရာ။ အစည်းအဝေးဖိတ်ကြားခြင်း

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Invitation letter to landowners, whose land were confiscated by Military Advanced Training School No. 4, to attend meeting.


 ကျောင်းအုပ်ကြီး (ကျိုင်းစာ)

³³ Asian Human Rights Commission, ‘Courts, Cops, Cronies Driving Farmers to Ruin’, May 2014 (Accessed October 3, 2014).

³⁴ HURFOM, ‘Thanbyuzayat Farmers’ letters of Appeal for Land Rights Ignored by Central Govt’, June 16, 2014 (Accessed December 1, 2014).





recommendations to the Ministry of Defense (MOD), the very body which houses the military and all of its battalions; this system results in a clear conflict of interest, essentially placing power over the resolution of land disputes back in the perpetrators' hands, with the return of land and designated compensation up to the MOD's discretion.

Furthermore, although the Farmland Law states that the military must return unused confiscated lands⁴¹ and adequately compensate farmers for seized lands, the Central Land Management Committee, chaired by Minister of the MoAI, has failed to properly implement the law.⁴¹ As the military ultimately controls the MoAI, the minister and land management committee have not pressured the military to uphold its responsibility under the law.

On all levels, the system for resolving land disputes appears compromised by government authorities and land commissions' refusal to respond to the victims' pleas for justice. It is suspected that the authorities tasked with solving land disputes, including land commissions and village and township administration, refuse to act because, in doing so, they would be acting in direct opposition to military interests.

III. Corruption

Furthermore, farmers expressed concerns to HURFOM that corruption within Burma's governance systems allows for, and contributes to, the continued denial and abuse of civilians' land rights. While Burmese military battalions take advantage of the rising value of land by confiscating lands from civilians and progressively increasing land use taxes levied against original landowners, they are seen as working hand-in-hand with government authorities to exploit farmers. Case Study 3 of this report illustrates several such cases in Mon State's Ye Township.

Detrimental to farmers seeking justice for HLP violations, such corruption has also been noted to have infiltrated authorities mandated to resolve land disputes. Daw Ngwe Pin recounts a case of collusion between local military battalions and the Farmland Investigation Committee, where investigation and reporting practices were reportedly obstructed:

"This year, the cost per rubber tree was very expensive because we had to buy a work permit from a private company in order to work our land, but to get this chance we had to appeal to the Military Operation Command No. 19 (Sa-Ka-

⁴¹ Article 26, Chapter IX, Farmland Law, 2012.

Kha). Light Infantry Battalion (LIB) No. 586 has granted work permits to work on the confiscated plantation to other private business persons, and we had to buy the work permit from the private companies, under the recommendation of MOC No. 19. We had to pay twice; we paid 3 million kyat the first time, and 2.5 million kyat the second time...we already paid 5.82 million kyat for this year. The Farmland Investigation Commission knew that we had to pay 1,500 per rubber tree and came to investigate the problem. The commander [of the Farmland Investigation Commission] called and ordered me to testify that we had paid only 900 kyat per rubber tree...We had to pay the fees, and were also forced to tell a lie.”⁴²

C. Independent Structure of the Military

Further barriers to justice can be located within the military’s own culture and judicial structure.

I. Military Culture of Impunity

From the days of the former military regime, continuing under the current quasi-civilian government, the Burmese military has acted with impunity as regards the forcible seizure of farmers’ land, considering itself outside the rule of law. While, as mentioned above, the 2008 Constitution endows the State with the right to acquire any lands deemed to be “of interest to the State”, in reality, the military has often taken advantage of small-scale farmers weak and unprotected land rights by confiscating land, not for State interests but for the personal interests of military personnel.

U Ba San, 80, Kon Du village, Ye Township, told HURFOM:

“Our plantation that had been confiscated was actually located very far away from the LIB 343’s base. They just confiscated our land because they wanted to defeat and abuse us; our plantation was not connected to their base at all.”⁴³

⁴² Case 27, HURFOM interview with Daw Ngwe Pin, Sakhangyi Village, Thanbyuzayat, September 2, 2014

⁴³ Case 36, HURFOM interview with U Ba San, Kon Du Village, Ye Township, July 26, 2014

In many cases the military has worked closely with government cronies and other business interests to confiscate land for large-scale development, agricultural, and industrial projects, reaping lush financial benefits from such deals.⁴⁴

It is important to emphasize that even in the event that the military obtained a signed document representing the transfer of land from the original landholder to the State, often through practices of intimidation and force (see Case Study 1), these land confiscations remained illegal, as the military would usually have failed to compensate farmers with proper land rates.⁴⁵

Yet, in response to the Farmland Investigation Committee's 2013 report identifying the military as the primary perpetrator of land confiscation, military leaders acquiesced only that the army "is thinking about providing farmers with compensation" for seized lands.⁴⁶ It seems telling that only now, when their crimes are exposed, will the military begin thinking of acting in accordance with the rule of law. However, the military neglects to mention whether or indeed when they will provide farmers with adequate compensation. The military has acknowledged only the vague idea that it will entertain providing some sort of compensation to its victims.

II. Independent Judiciary

This culture of impunity has been institutionally reinforced by the lack of any independent judicial power to dispute military infractions. Soon after Burma gained independence from Britain in 1948, the military became the most powerful institution in the country, and remains so to this day. Though Burma has been experiencing a recent transition from military authoritarianism towards democracy, the military remains independent from civilian rule and oversight, allowing personnel to continue to enjoy impunity for past and current abuses.

⁴⁴ The Irrawaddy, 'Army MP Halts Talks on Military Land-Grabs in Burma's Parliament', August 16, 2013.

⁴⁵ Radio Free Asia, 'Myanmar Military's Land Grabs 'Cast Doubt' on Commitment to Reform', December 17, 2013 (Accessed November 8, 2014).

⁴⁶ Burma Partnership, 'Rampant Land Confiscation Requires Further Attention and Action from Parliamentary Committee', March 12, 2013 (Accessed November 8, 2014).



intervening in land disputes or protecting farmers land rights when abuses have involved the military.⁴⁹ Burma’s judicial institutions have, for decades, ruled in accordance with military interests, leaving victims of military abuse virtually powerless to access justice. Daw Khin May from An-na-war Ward, Ye City, Kaw Ka Line Village Track, told HURFOM:

“We had been able to pluck the lemons [on our plantation] for one year and then the military confiscated the plantation. They marked the land with flags, and authorities and officials from the Land Department came to survey the land. My children stayed at the plantation, and when they came home my fourth son said, “Mom, the military confiscated our plantation.” I replied, “Let them do as they like; we have no power.”⁵⁰

D. Lack of state-level advocacy

I. Mon State Government

With land conflict a complex and decades-long issue, a satisfactory resolution will likely require systematic efforts on the level of both State and Union governments. Yet while Mon State has initiated a number of measures to tackle land issues, it has been found by residents to fall short in providing adequate advocacy and protections for its farmers’ land rights.

There are serious limitations inhibiting the Mon State government from holding any real authority over local land disputes. State and regional governments, such as Mon State, have limited autonomy over the agriculture industry, which is managed at the Union level. State-level ministries and administrative bodies are run by the General Administration Department (GAD) of the Ministry of Home Affairs, which was created by the former regime and continues to be controlled by the military.⁵¹ With power centralized in the hands of the military, “the state minister has [essentially] no ministry and little to no authority on running state or regional management bodies”, including the management of regional agricultural lands.⁵²

⁴⁹ Win, Kanbawza, *Burma- A Subtle Way of Ethnic Cleansing and Marginalizing People*, Eurasia Review, May 13, 2013.

⁵⁰ Case 7, HURFOM interview with Daw Khin May, An-na-war Ward, Ye Township, August 7, 2014

⁵¹ Burma News International, *Economics of Peace and Conflict*, September 2013, p.22.

⁵² *Ibid.*





lands to private parties and must immediately halt its abuse of farmers' rights by returning all such lands to its original owners.

It is also imperative that the MOD consider the effect the Ministry's response to land issues will ultimately have on national reconciliation. By refusing to acknowledge responsibility, or provide adequate resolution for the majority of land disputes fueling land conflict in Burma, the MOD drives the wedge of division deeper between authorities and the local people. The Ministry must work towards changing the mindset of distrust towards government authorities by behaving in a lawful manner. The return of unused lands will provide a crucial first step towards building trust between military battalions and local communities.

III. CBOs and NSAGs

Recently, Mon farmers have accessed greater knowledge of their land rights and Burma's land laws, but remain in need of community-level advocacy for HLP rights. In particular, Mon farmers have cited their desire for increased support and advocacy from Community-Based Organizations (CBOs), Civil Society Organizations (CSOs), and Non-State Armed Groups (NSAGs) located within their communities, whom victims believe have not focused enough attention on the land issue.

Mon State farmer, U Nyein, a 62 year-old retired government servant from Thanbyuzayat Township, expressed to HURFOM that CBOs and CSOs should increase their advocacy activities by collaborating with land victims to fight for their rights and fulfill the need for justice in Mon State. Interviewees suggest that farmers remain in need of expertise, human resource and guidance regarding Burma's complicated land laws and the legal process. Thanbyuzayat farmer Nai Kyaw Naing identified, "in order to fight for [our] farmers' land rights, we [are in great] need [of] activists and expertise, as well as capacity. Without legal familiarity, the laws on land are very complicated, so I would like to urge the CBOs and CSOs based in Mon State to help".⁵⁶

Currently, Mon State community groups' and NSAGs' voices are weak in regards to land conflict, failing to lend their full support for farmers' land rights and victims' appeals for justice. Mon State CBOs, CSOs, and NSAGs are advocating for other issues, such as

⁵⁶ HURFOM, 'Thanbyuzayat Farmers' Letters of Appeal for Land Rights Ignored by Central Government', June 16, 2014 (Accessed December 1, 2014).



7. Case Study 1: U Kyal, Thanbyuzat Township

U Khin Mg, a.k.a. U Kyal, a 57-year-old rubber farmer from Panga Village, Thanbyuzayat Township, was exposed to HLP rights abuse by the unjust confiscation of 2.3 acres of land and 500 mature rubber plants by AR No. 315 in 2004. U Kyal's story represents a common experience of land confiscation by local battalions throughout Mon State.

U Kyal initially bought virgin land, on which he worked tirelessly to clear the shrub and prepare for cultivation, as well as investing a large amount of money in 500 small rubber plants. U Kyal dedicated herself to the plantation for nine years until the rubber plants matured and were ready to tap.

In 2004, after tapping his plants for just two years, U Kyal, along with a number of other plantation owners in Panga Village, was summoned to a meeting with Burmese military battalion AR No. 315. At this meeting, all plantation owners were told that, from that point on, their lands officially belonged to the government. The villagers were offered the option to pay the military tax if they wanted permission to continue working their lands and tapping their rubber. U Kyal agreed to pay the tax, and was permitted to do so at 120 kyat per plant for two years. After two years, the military steadily increased the tax year by year, until, after nearly five years, U Kyal could no longer afford to meet the military's demands and was evicted from her land.

Once he could no longer pay tax, AR No. 315 summoned U Kyal's daughter, Mi Cho, to sign an agreement handing their land over to the military. Mi Cho refused to sign and was detained by the military. The military seized U Kyal's lands nonetheless; U Kyal's land was officially confiscated by AR No. 315 in 2008. Although U Kyal has not received any response to appeals sent to appropriate authorities, he continues to draft and send his petitions to Mon organizations and government offices in Nay Pyi Daw.⁵⁷

⁵⁷ Case 44, U Khin Mg, Appeal #2.

A. Failure to Obtain Free, Prior, Informed Consent (FPIC)

The military infringed upon U Kyal's property rights, ignored his tenancy, and took his lands. Throughout this process, AR No. 315 failed to obtain free, prior, and informed consent (FPIC) from U Kyal to turn his lands over to the military. The military did not communicate with U Kyal prior to taking her lands, opting, rather, to seize the lands without the landholder's knowledge. Beyond the military's failure to obtain FPIC it is clear that the military did not seize U Kyal's lands for a specific purpose deemed to be "of interest of the state", as they allowed U Kyal to pay tax to continue working on his land, rendering the confiscation illegal under Burma's 2012 land laws.

B. Violations of Civil Rights

From 2004-2008, the MOD's AR No. 315 continually violated Panga villagers' civil rights through arbitrary taxation and detention. When farmers agreed to pay for permission to continue working on their confiscated lands, they were provided a specific rate per plant they would be taxed, with no mention of future increases. Many farmers reported that they had little choice but to sign an agreement to pay tax because farming is the only livelihood available in the region to provide a stable income. After considering that casual work did not provide for her family's daily needs, U Kyal recalls, "We agreed [to pay tax to the military], as we didn't care about paying as long as we got to work on our rubber plantations. We were charged 120 kyat per plant at that time, and could not work on our plantations unless we paid them".⁵⁸

After two years, without any consultation with the villagers, the battalion increased the tax per plant by 50%, and by the fifth year the tax had more than doubled from its original rate. U Kyal reports a common conviction amongst victims that "the military tried to deceive us purposefully...they charged us with a price that we could not afford and, at that point, we assumed that they were trying to expel us from our land".⁵⁹ It is believed by many victims interviewed for this report that battalions intentionally raised taxes to unreasonable rates in order to force farmers off their lands, to lease or sell confiscated lands to private businesses.

Victims' civil rights were further violated by incidents of arbitrary arrest. When Mi Cho met with AR No. 315, she refused to sign an agreement handing over her mother's land to the military. Though pregnant at the time, Mi Cho, along with all other Panga villagers

⁵⁸ Case 5, HURFOM interview with U Khin Mg, Panga Village, Thanbyuzayat Township, August 15, 2014.

⁵⁹ *Ibid.*

who refused to sign the contract, were arrested and detained, despite having committed no crime nor having been charged with one.

U Kyal explained, “The military summoned my daughter, Mi Cho, and others...They said the land was confiscated, so the owners needed to sign. My daughter, Mi Cho, was pregnant at the time, but she went there to sign on my behalf. However, the military said the signature was for an agreement between land owners and the military to give our land away. My daughter refused to sign and [the military] detained her and others who did not sign. They released my daughter in the evening, as she was pregnant”.⁶⁰ Although Mi Cho was released within 24 hours of her arrest, it is unclear how long the remaining victims were kept illegally detained.

⁶⁰ *Ibid.*

8. Case Study 2: Nai Shoke, Thanbyuzayat Township

Nai Shoke's land in Wae Rat Village, Thanbyuzayat Township, was confiscated by a local Burmese Military battalion during the previous military regime, and then sold off to twenty-four individual parties. Nai Shoke appealed for his ownership rights to be recognized and, in October 2014, the Thanbyuzayat Township Farmland Management Commission (Thanbyuzayat FMC) initiated an investigation into Nai Shoke's claims and the competing claims of the twenty-four new 'owners'. Ruling that Nai Shoke failed to provide strong evidence proving his legitimate right to the land in question, the Thanbyuzayat FMC released its official judgment in favor of the new landowners.

A. Dueling Domains of Land Policy Prevent Justice For Ethnic Farmers

This case study demonstrates how Burma's long and contentious history surrounding access to land has resulted in tremendous confusion in determining legitimate owners' rights to land. Where, as in many instances, land has been transferred or sold to multiple parties since original confiscation, this results in multiple competing claims to ownership and tenancy rights, exacerbating the difficulties encountered when attempting to repossess or re-affirm ownership over confiscated lands.⁶¹ Rendering the case even more problematic, Nai Shoke had been originally granted ownership of his lands solely through customary law, wherein his legitimate authority over the lands was known, accepted, and understood by all members of his community. When his land was seized by the military, ostensibly on behalf of the State, Nai Shoke was forced to appeal to the bodies of a legal system which were foreign to him and did not accept the way his community has governed itself for generations with regards to land tenure. Responding to Nai Shoke's land dispute, the Coordinator of the Farmland Education Project expressed a common frustration throughout ethnic communities that "There are two

⁶¹ Displacement Solutions, *Bridging the HLP Gap; the Need to Effectively Address Housing Land and Property Rights during Peace Negotiations and in the Context of Refugee/IDP Return: Preliminary Recommendations to the Government of Myanmar, Ethnic Actors and the International Community*, June 2013, p. 13.

[methods] of judgment [regarding] land dispute. The first one is the government deciding [upon a case] according to their own laws; the other one is that that decision is made according to local tradition [customary law]”.⁶² Original landowners who do have legitimate rights, but do not have recognized documentation to prove their claims, such as Nai Shoke, are at an inherent disadvantage when disputing ownership rights regarding land that has been seized by the military and sold off to private businesses or individuals. Although new landowners may not have legal documents proving their ownership either, as in this case, FMCs notoriously rule in favor of the new owners because of their connections to the military.

B. Failure of the Thanbyuzayat FMC to Act According to State Laws

Furthermore, the Thanbyuzayat FMC failed to uphold its responsibilities under the law. While, according to Mon State Members of Parliament, the President has instructed that an MP must be present at the investigation and court proceedings of any land dispute, in Nai Shoke’s case, the Thanbyuzayat FMC failed to call upon any MP to monitor the farmland investigation process.

According to one Mon State MP, “Including this time, the FMC has called the landowners four times already [to discuss land disputes], [but] the body has never informed us [Members of Parliament]. I contacted them [the FMC] after I heard the news of the investigation, but they didn’t call me. They judged the case as they liked. We can’t accept this condition; the landowners can’t accept the decision”.⁶³

⁶² HURFOM, ‘Thanbyuzayat original landowners fight for justice’, November 5, 2014 (Accessed November 9, 2014).

⁶³ *Ibid.*

9. Case Study 3: Assorted Cases, Ye Township

HURFOM's research over the years has revealed that Ye farmers were often exposed to the corruption of their village administrators, who worked in cooperation with local military battalions to confiscate residents' land, marking it out as 'government land'. Three such cases are explored below:

- 4.54 acres of land confiscated from 50 year-old Ah Baw Village resident Nai Myint Sein, by Village Administrator U Thein Zaw in conjunction with the military.
- Land confiscated from Duya Village resident Nai Thet Cho, by Village Administrator Nai Thet Cho, in cooperation with the military.
- 10 acres of land confiscated from 73 year-old Sein Kyi Village resident Daw Ye by Village Administrator U Soe Win.

I. Relevant Authorities Ignore Appeals

Representative of Ye Township victims of HLP rights abuse, Nai Myint Sein and Nai Win submitted multiple letters of appeal concerning their land confiscations to relevant authorities, only to have their pleas ignored. As Nai Myint Sein explained, "We submitted appeal letters two times to Mon senators, as well as to [the] government, but there was no response from them".⁶⁴

Nai Win also attempted to submit personal letters of appeal on two or three separate occasions, receiving no response from the government. Following his fruitless efforts to obtain recognition of his plight from government authorities, Nai Win went on to present his case to Mon senators.

⁶⁴ HURFOM, 'Authorities Repeatedly Ignore Ye Township Landowners' Appeals, July 15, 2014 (Accessed November 25, 2014).

II. Inadequate Offers of Compensation

Even in cases where Ye Township victims of land confiscation have received responses to their appeals, this has been considered far from satisfactory, with authorities offering sums of compensation far below the market value of their land.

Daw Ye, 73, of Sein Kyi Village, Ye Township, has submitted multiple letters of appeal to the authorities, in efforts to reclaim 10 acres of land previously confiscated by Village Administrator U Soe Win. In response to her letters, U Min Thant, of the Ye administration crew, told Daw Ye that, instead of returning her land, the administration would issue her a reimbursement of 200,000 kyat per acre for the ten acres of confiscated land. The administration crew has presented this offer four times, to which Daw Ye has continually refused. If she were to accept an inadequate offer, Daw Ye would have lost her land, a means for future income, and would not be sufficiently positioned to support herself and her family.

Daw Ye told HURFOM:

“The price was too low. Today’s market price is 3 million [kyat] per acre, so it’s better not to take their compensation if it’s just 200,000 kyat. If they do not pay at market price, we [Ye Township landowners] won’t take any compensation from them”.⁶⁵

⁶⁵ *Ibid.*

10. Conclusion: Importance of Resolving the Land Crisis for National Reconciliation

Burma has only recently emerged from a decades-long civil war in which land has endured as a highly contentious issue. With the access and acquisition of land paramount to advancing the Burmese army's previous strategy to quell minority forces and devastate ethnic communities, access to land has fueled violent conflict, the severe abuse of fundamental human rights, and the destruction of rural livelihoods. Considering the extremely dividing effect the history of land has had on the people of Burma, issues surrounding land rights are considered by HURFOM as a critical element in the country's peace-building efforts. The protection of Burma's small-scale farmers' HLP rights is essential for successful national reconciliation and the fortification of sustainable peace; peace negotiations must establish a fair and equitable process for addressing land confiscations by the former military regime, military bodies and crony businesses.

Endemic fighting and severe human rights abuses have crippled Burma's ethnic communities, resulting in poverty, displacement and profound distrust of the central government. Burma's underdeveloped ethnic states have the nation's highest rates of poverty, exacerbated by widespread land confiscations, and are home to ethnic communities who have systematically been denied social, political, cultural and legal rights. To ensure a more just future, Burma's ethnic communities must be sufficiently developed. The protection and promotion of HLP rights are an integral precondition for poverty reduction, individual self-determination and the ultimate unity of Burma as a nation.

International law widely identifies HLP rights as a fundamental human right, and asserts that ruling regimes are obliged to respect and protect the HLP rights of its citizens, including the right to restitution, the right to adequate housing, the protection against forced eviction, the right not to have one's property arbitrarily seized, and the right to freedom of movement.⁶⁶ Peace negotiations between the Burmese government and ethnic negotiating partners must adequately address the nature and scale of the land rights issue, with appropriate measures taken to provide remedy in a just and equitable manner, as a foundation of lasting peace.

⁶⁶ Displacement Solutions, *Bridging the HLP Gap*, June 2013, p 9.

HURFOM considers fundamental institutional, legal and policy reform surrounding HLP rights, to address all remaining obstacles to justice for the dispossessed, crucial to future prospects for reconciliation within Mon regions and beyond. When Burma's ethnic farmers are ensured the protection of their property rights, receive appropriate redress for past abuses, and are protected under the law from future abuse, trust may begin to be develop between the Burmese government and Burma's ethnic minority populations; only then will national peace be possible and maintainable.

11. Recommendations

1. To President Thein Sein and the Union Government:

- To recognize and respect the tenancy rights of all legitimate landholders.
- To comprehensively acknowledge ethnic concerns regarding Burma's land law and policy, and immediately insatiate legal and institutional reforms to provide more secure HLP rights for Burma's small-scale farmers. In particular:
 - To clearly state recognition and support of customary land tenancy practices in government law and policy.
 - To decentralize power over land use and management from the MoAI.
 - To remove ultimate judicial power over HLP rights disputes from FMBs, establishing an independent mechanism to resolve land disputes, which must be accessible to all farmers.
 - To abolish the constitutional act that creates a separate Courts-Martial structure to adjudicate military infractions, reestablishing military violations as within the jurisdiction of civilian courts.
- To undertake comprehensive investigation and action regarding land disputes throughout the country.
- To immediately cease all forms of intimidation towards those demanding the recognition of their own HLP rights, or those defending and advocating on the behalf of local people and communities.

2. To the MOD:

- To immediately halt all land confiscations.
- To provide guarantees that, in cases of prior military land confiscations, unused land will be returned to Mon farmers, or alternatively that farmers will be adequately compensated for land confiscated in the past, at a rate considered acceptable by the previous landowners.

3. To the Mon State Government:

- To show greater support for Mon farmers' HLP rights. In particular, by appropriately documenting all confiscation cases, responding to letters of appeal and supporting victims throughout the appeals process.

4. To all NSAGs, INGOs, CBOs, CSOs and legal experts in Mon regions:

- To take a more concerted focus on HLP rights violations, working with Mon farmers to advocate on their behalf and provide support to farmers' appeals for justice.

12. Appendices

APPENDIX 1: Summary of Burma's Land Law and Policy

A. Post-Independence Land Law and Policy

Land policy in post-independence Burma followed a socialist model under which the State maintained ultimate ownership over all land, while allowing for the protection of farmers' rights to cultivate land and hold land use rights.⁶⁷ After the military coup in 1988, the ruling State Law and Order Restoration Council (SLORC) abandoned previous socialist land policies, declaring that all land in Burma belonged to the State and was controlled by the regime. Under the SLORC, farmers were denied authority over their lands, while the regime stipulated what crops they could grow, and how and when to cultivate their land; failure to comply exactly as the regime ordered could result in the confiscation of land.⁶⁸

From 1988 to the current civilian government, the SLORC regime employed a capitalist approach towards land policy, which targeted economic growth and encouraged domestic and foreign investment. The SLORC's experiments with capitalism sparked a wave of land grabs across the country, perpetrated primarily by the Burmese army, with the SLORC allocating nearly 2 million acres of land confiscated from civilians and transferred to the burgeoning private sector.⁶⁹

⁶⁷ Food Security Working Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law; Improving the Legal and Policy Frameworks Relating to Land Management in Myanmar*, November 2012, p. 9.

⁶⁸ Hudson-Rodd, Nancy, et al., *The impact of the confiscation of land, labor, capital assets and forced relocation in Burma by the military regime*, 2005, p. 6.

⁶⁹ Eleven Myanmar, 'Union of farmers and agriculture workers made a statement', 12 August, 2014 (Accessed November 9, 2014).

B. Current Government and Recent Land Policy Reform:

With the 2011 induction of President U Thein Sein's quasi-civilian government, the administration announced its intentions to make Burma more attractive to foreign investment, in order to develop the country and its people. With land representing the country's largest asset, reform of the land sector was central to the President's agenda and, in 2012, the administration initiated reform of the country's land policy in order to open Burma up to foreign investment for large-scale agriculture and development projects.

The government has recognized the agriculture sector as an important component of the country's growth strategy, which aims to transfer agricultural land to companies associated with the military regime.⁷⁰ The government's primary strategy includes the increase of industrial agriculture production through large-scale foreign investment, with large areas of farmland seized in order to be made available to private companies and foreign investors.⁷¹ This trend has been aided by the recent 2012 land legislation, and has had profound implications on the security of land tenure for Burma's small-scale farmers.

Burma's land is governed by overlapping and often contradictory legislation. The country's domestic laws aimed to reduce land confiscation are inherently flawed and work to legislatively aid continued land confiscation⁷², while recent 2012 reforms retain inadequate policy and allow for increased government authority to seize land from its citizens.⁷³ Recent reforms have proven to favor the private sector, resulting in increased threats to the livelihoods of Burma's small-scale farmers.⁷⁴

The current government, backed by the 2012 land reforms, works hand-in-hand with military cronies and their companies to gain access to Burma's biggest and most valuable asset; land. Burma's 2012 land policy reforms have allowed the government

⁷⁰ Henley, Giles, "Case Study on Land in Burma", March 2014, p.6.

⁷¹ Prosterman, Roy, 'Land to the Tillers of Myanmar', The International Herald Tribune, June 14, 2012 (Accessed October 9, 2014).

⁷² Burma Partnership, *Endemic Land Confiscation in Burma: A Major Challenge to the Reform Process*, November 13, 2013 p.1.

⁷³ Karen Human Rights group, *Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar*, March 2013, p. 18.

⁷⁴ Transnational Institute, *Access Denied: Land Rights and Ethnic Conflict in Burma*, May 2013, p. 5.

and crony businesses to acquire land ‘legally’, in what is being regarded as ‘legal land grabs’, attained through the disorganized and improperly applied 2012 land laws.⁷⁵

C. Laws that support and aid ‘legal’ land confiscation

I. 1894 Land Acquisition Act

The Land Acquisition Act, passed in 1894, is an archaic law which affords the State the right to appropriate any and all lands throughout the country, leaving citizens vulnerable to forced displacement, with no mechanism to access justice.⁷⁶ Notably, the law does give provisions for appropriate procedures which shall be followed during events of land confiscation, including the delivery of compensation. However, these requirements have been found to be widely disregarded.

II. 2008 Constitution

According to Burma’s constitution, all land and natural resources in Burma ultimately belong to the State. The 2008 Constitution upholds the 1974 State Constitution’s assertion that the State maintains ultimate ownership over all land, allowing citizens only the right to use the land, resulting in weak land tenure security.⁷⁷

Article 17 of the 1974 State Constitution states that, “The State is the ultimate owner of all natural resources above and below the ground, above and beneath the waters and in the atmosphere, and also of all lands”. The 2008 Constitution reiterates the 1974 Constitution when it maintains, in Section 37, Sub-Section (a) in Chapter 1 of the Basic Principles of the Union of the State Constitution (2008), 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”.

⁷⁵ Myanmar Times, ‘A Political Anatomy of Land Grabs’, March 3, 2014 (Accessed November 25, 2014).

⁷⁶ Alternative ASEAN Network on Burma, *Land Confiscation in Burma: A Threat to Local Communities and responsible Investment*, May 5, 2014, p.2.

⁷⁷ Burma Partnership, *Endemic Land Confiscation in Burma: A Major Challenge to the Reform Process*, November 13, 2013 p.3.

Burma's 2008 Constitution thus facilitates the seizing of land without providing the public with adequate transparency or accountability.

D. Recently Enacted Land Laws

I. 2012 Farmland Law

The Farmland Law, enacted in August 2012, replaces previous laws governing the management of land categorized by the government as farmland, and allows for the development of a formal land market with the introduction of a formal land registration system. The Farmland law is intended to provide improved land security for Burma's farmers, but fails to provide true gains for Burma's small-scale landholders.⁷⁸

This law introduces an official system for legally registering land, allowing for private land use rights in which the citizen may sell, exchange, inherit or lease land, which may strengthen rural landholders' tenancy. The Farmland Law mandates that all landholders must apply for, and register their lands with, Land Use Certificates (LUCs). However, upon obtaining an LUC, farmers' agency over their land remains restricted, as the government still preserves the right to restrict what crops a farmer may grow, as well as confiscating land if farmers grow crops that are not categorized as 'regular' crops. The law also aids legal land confiscation of civilian farmland as it allows the government to confiscate land for infrastructure projects, development projects, and business interests deemed to be "of interest to the State". While the law does recognize that government must provide compensation in the event of land acquisition, it is hardly ever enforced.

Under the Farmland Law, landholders may apply to the Farmland Management Committee (FMC) for approval of an LUC, and legally register their land with the State Land Records Department (SLRD) in order to obtain formally recognized land rights. However, the Farmland Law works to limit farmers' access to justice, as the process through which farmers must apply for an LUC and register his or her land use-rights is not clearly indicated in the Law,⁷⁹ procedural fees demanded are excessively high, and

⁷⁸ *Ibid.*

⁷⁹ Food Security Working Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law; Improving the Legal and Policy Frameworks Relating to Land Management in Myanmar*, November 2012, p. 19.

agencies within the Ministry of Agriculture and Irrigation (MoAI) are appointed full jurisdiction over land disputes, over the courts.

II. 2012 Vacant, Fallow, and Virgin Lands Management Law

The Vacant, Fallow, and Virgin Lands Management Law (VFV Law), passed in March 2012, brought the management of land categorized as cultivable, fallow, and wasteland into a single legal framework enforced and administered by the Central Committee for the Management of Vacant and Fallow Lands.

The VFV Law gives the Central Committee the authority to categorize a piece of land as vacant, fallow, or virgin, allowing for the legal seizure and reallocation of villagers' farmlands and forestlands to the government, investors, or individuals for domestic activities or foreign investment, under the agreement of the Myanmar Investment Commission (MIC). The law also permits the government to seize land that is found to house natural resources, or lands that are needed for a project deemed to be 'in the interest of the State'. The Central Committee may grant up to 5,000 acres of land at one time, up to a maximum of 50,000 acres (*Article 10*), with lease periods of up to 30 years (*Article 11*).

However, VFV land is often actively being cultivated, lying fallow for a specific period of time in relation to shifting cultivation, and seized lands categorized as "vacant" or "wasteland" have, in reality, been cultivated for generations by communities who do not possess formal land documents from the government.⁸⁰ Under this law, community-managed resources such as village forests, waterways, and grazing lands, which are crucial to livelihoods and food security of the community, are also in danger of confiscation. As with the Farmland Act, the VFV Law allows for investors to acquire any lands not formally registered with an LUC, overriding claims to land based on customary land tenancy practices. If farmers do not hold official LUCs for VFV land, they are denied the right to compensation and their consent is disregarded during State acquisition of their lands.

The Central Committee, chaired by the Minister of Agriculture, is responsible for the allocation and management of VFV lands, following recommendations from various government bodies. The VFV Law prohibits landowners from transferring land without

⁸⁰ Transnational Institute, *Access Denied: Land Rights and Ethnic Conflict in Burma*, May 2013, p. 5.

the committee's approval, as well as laying out rules as to how these lands are managed by the State. With the Central Committee endowed sole responsibility in handling land disputes, the law fails to provide a mechanism through which victims may access independent legal recourse.

III. 2012 Foreign Investment Law

The Foreign Investment law, passed in November 2012, enforced and administered by the Myanmar Investment Commission (MIC), allows foreign investors to band together with a Burmese counter-part to lease land from the State or authorized private owners. The law stipulates a fifty year maximum lease for investment projects, which may be extended another twenty years with permission from the central government (*Article 31*). Decades of ensured profits from such leases have motivated military, government authorities and local cronies to seize civilian land to engage in such deals. Under this law, farmers whose land is confiscated and sold to private investors are vulnerable to eviction and dispossession of their land for up to seventy years.

IV. Centralization of Power of the MoAI and Parliamentary Bodies Under its Control

The Ministry of Agriculture and Irrigation (MoAI) is responsible for implementing national agriculture policy and houses various government agencies established to implement the Farmland, VFV, and Foreign Investment laws. Housing all of the bodies authorized to grant land use rights, as well as the allocation and management of Burma's lands, under the 2012 land laws the MoAI is conferred an overwhelming domination of power over Burma's land and farmers' land use rights.

1. Farmland Management Committee

Designated under the Farmland Law, and located within the MoAI, the Farmland Management Committee (FMC) is a government-appointed body (*Article 15*) which replaces existing land committees, and is replicated throughout various administrative levels of government, from Ward/Village tract, Township, District, Region, and State.

The FMC is responsible for reviewing and formally approving applications for landholders' rights to use farmland, submitting approved land use rights to the SLRD for registration, annulling landholders' use rights if conditions for use specified in the LUC are not met (*Article 19*), and resolving any disputes that may arise over the allocation and use of farmland rights.⁸¹

Land disputes may be brought to the FMC, and appealed to higher-levels within the FMC structure, up to the State and Regional level. With final decision-making authority granted to the State or Regional level FMC, FMC rulings may not be appealed in a court of law (*Article 25C*), denying small-scale farmers their right to an independent appeal process.

2. State Land Records Department (SLRD)

Located within the MoAI, the SLRD is responsible for updating and maintaining land records, and issuing LUCs to farmers who have received approval from the appropriate FMC for use of farmland.

3. Central Committee for the Management of Vacant, Fallow, and Virgin Lands (CCVfV)

The Central Committee for the Management of Vacant, Fallow, and Virgin Lands (CCVfV) is a state-level, government-appointed committee under the control of the MoAI, which is mandated with the oversight of granting VFV land use rights.

The CCVfV receives recommendations from Ministries, Regional and State Governments, and applications from public citizens, private investors, government bodies and NGOs for the use of VFV land, and maintains the power to cancel or modify rights to use VFV land.

The committee works in coordination with other government departments and agencies to resolve disputes related to the use of VFV land, and submits semi-annual reports monitoring the use of VFV land to the Union Government.

⁸¹ Food Security Working Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law; Improving the Legal and Policy Frameworks Relating to Land Management in Myanmar*, November 2012, p 11.









