



**BURMAPARTNERSHIP**

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Strengthening Cooperation for a Free Burma

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## Endemic Land Confiscation in Burma: A Major Challenge to the Reform Process

The issue of land confiscation has been and will continue to be one of the largest problems facing Burma. The increase in foreign investment, the liberalization of the economy, and lack of rule of law generally, including both appropriate legislation and an independent judiciary, have resulted in land confiscation on an endemic scale. The government of Burma has responded to this growing problem with inadequate laws and is currently viewed more as an obstacle than a part of the solution. This issue has affected both urban and rural communities across the country and has been perpetrated by the government, the Burma Army and businesses.

The confiscation and actions associated are in direct violation of numerous international standards, such as the UN Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights (ICCPR), the UN Declaration on the Rights of Indigenous Peoples and the Pinheiro Principles. The domestic laws meant to combat land confiscation have serious flaws and in many instances are legislatively aiding and abetting land confiscation. Furthermore, the parliamentary commission assigned to investigate illegal land confiscation has serious limitations.

Those human rights defenders who call for the respect of people's rights in the face of land confiscation have been physically attacked, harassed, detained and imprisoned, in contravention of their fundamental rights to freedom of expression, assembly and association as protected by the ICCPR. The land laws of the country need to be fundamentally amended in order to fully protect the rights of land holders. Finally an immediate halt of any confiscation by the government, the Burma Army or businesses needs to occur.

The international community must call on the Burma government to amend land laws to ensure compliance with international guarantees, cease the harassment of land activists and put an immediate end to arbitrary confiscation.

### International Law

There are numerous international provisions that seek to prevent the illegal confiscation of land. The right to own land is the foundation of many other basic human rights such as the ability to live and work in dignity, the availability of adequate food and water, and the right to an adequate livelihood. Land confiscation also has a direct connection to other forms of human rights violations. More specifically, the Universal Declaration of Human Rights provides protection for the improper seizure of land and the human rights violations associated with it.<sup>1</sup> Article 17 clearly states:

“Everyone has the right to own property alone as well as in association with others.”

<sup>1</sup>The Universal Declaration of Human Rights. <http://bit.ly/1arHbE>

“No one shall be arbitrarily deprived of his property.”

Additionally, there exists the right to adequate housing, which includes the right to be protected from forced eviction. This right has been expressed in various formulations in numerous human rights instruments, most notably the Universal Declaration of Human Rights<sup>2</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>3</sup>

Many of the land confiscation cases are and have been occurring in ethnic nationality areas, therefore the UN Declaration on the Rights of Indigenous People specifically applies:

“Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”<sup>4</sup>

“States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”<sup>5</sup>

“No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”<sup>6</sup>

Of particular importance is the respect and validity of traditional rights of ownership and land use. The current laws of Burma do not recognize customary land rights, and legislatively discriminate against those practicing traditional land use customs.

Furthermore, the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as the Pinheiro Principles, established the granting of compensation for lost homes and property in the case of eviction. In many instances once land has been confiscated, no or inadequate compensation is given. This is in direct conflict with the Pinheiro Principles, which state:

“All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.”<sup>7</sup>

Finally, the UN Guiding Principles on Business and Human Rights establish an international standard that has yet to be met. The first pillar of these principles states that:

“States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>8</sup>

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<sup>2</sup> Ibid, Article 25, Section 1.

<sup>3</sup> The International Covenant on Economic, Social and Cultural Rights, Article 11, Section 1. <http://bit.ly/XIL09z>

<sup>4</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 26, Section 2. <http://bit.ly/ccPiWt>

<sup>5</sup> Ibid, Article 26, Section 3.

<sup>6</sup> Ibid, Article 10.

<sup>7</sup> United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, Section 2.1. <http://1.usa.gov/19bsJcJ>

<sup>8</sup> UN Guiding Principles on Business and Human Rights. Pillar I Section A(1). <http://bit.ly/g5nG5z>

In the case of Burma, not only is the state failing to meet the international standards of protecting the people against such human rights abuses as land confiscation by third parties, but in many instances it is the state itself violating these principles. This is a flagrant violation of not only the first pillar of the UN Guiding Principles, but also the specific mention of the state's duty to protect abuses by state-owned or associated enterprises in Section B(2). Additionally, the Myanmar National Human Rights Commission (MNHRC) which should in theory be able to fill the role of achieving redress for such human rights violations is not independent or effective. The draft MNHRC Enabling Law says that the commission has no authority to demand documents or evidence as part of investigations into abuses where the release of those documents of evidence would affect national security.<sup>9</sup> Bearing in mind that it is the military-business axis that is driving much of the land confiscation, any investigation into the military would not be possible for the MNHRC under this broad clause.

The actions of the government, the Burma Army and businesses regarding land confiscation are clear violations of international human rights standards, and a severe barrier in the path to ensuring the people of Burma live in dignity.

### **Domestic Law**

The Burma government has recognized that its previous laws, or lack thereof, were inadequate and in 2012 enacted the Farm Land Law and the Vacant, Fallow and Virgin Land Law. Both have proved to be insufficient to stop the tide of land confiscation. They further weaken small holder farmers of land security and fail to incorporate crucial provisions protecting customary land rights and practices. On the whole, they benefit large-scale industrial farming at the expense of the more than 70% of the population that lives in rural areas, the majority of which subsists off small-scale farming. The fact that the current laws are insufficient is recognized by the government. Aung Thein Linn, Chairman of the Upper House of Parliament's Reform and Development Monitoring Committee, stated that the two new laws contained "mistakes, weaknesses and were incomplete" and that amendments would be discussed in Parliament.<sup>10</sup> Nevertheless, the current laws have serious shortcomings that represent a lack of protection for farmers.

The Farmland Law introduces Land Use Certificates (LUCs), which provide more land security than in the past, but still falls extremely short of providing any sort of reasonable land tenure. The process to obtain these LUCs is unclear. Additionally, the 2008 Constitution contains a provision that states that the government is the ultimate owner of the land and that it provides citizens only the right to use the land, resulting in very weak land tenure security. Another flaw is the lack of any mechanism in the Farmland Law that allows for a dispute, other than inheritance rights, to go before an independent judiciary.

The Vacant, Fallow and Virgin Land Law also has flaws. This law allows lands that have been deemed vacant, fallow or virgin to be allocated by a government body to the government, investors or individuals. A major lapse in the law is the lack of recognition of traditional or customary use of land, such as rotational agriculture, as productive use. Finally, similar to the Farmland Law, there is no access to an independent judiciary or any viable alternative dispute resolution mechanism.

As mentioned previously, the 2008 Constitution plays a large role in regulating actions taken regarding land and land confiscation. The most important aspect is the assertion that the State is the ultimate owner of all lands.<sup>11</sup> Contrarily to other instances of eminent domain in other countries, there is no stipulation in the

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<sup>9</sup> Myanmar National Human Rights Commission Enabling Law (Draft), The Mirror, 7 July 2013, Article 35(a). <http://bit.ly/18d0lkr>

<sup>10</sup> "Farmland Laws Should be Amended: Committee," The Myanmar Times, 1 July 2013, <http://bit.ly/MSfqvO>

<sup>11</sup> Constitution of the Republic of the Union of Myanmar, 2008, Article 37. <http://bit.ly/XGYvr7>

constitution that land may be confiscated by the government for uses of public good or a clear public purpose.

Looking regionally, it is imperative that Burma implement effective and sustainable land legislation. Laos, Cambodia and Vietnam have faced similar issues regarding land confiscation and improper land management. Rampant land confiscation coupled with inadequate legal protection of local land rights leads to environmental devastation, community destruction and the loss of peoples' ability to exercise fundamental human rights.

### **The Practice and Perpetrators**

Land confiscation occurs countrywide by numerous different perpetrators. The main three are the government, the Burma Army and businesses, many with close ties to both the government and military. The Burma Army was the first investigated by the Land Investigation Commission, a parliamentary commission tasked with determining the validity of land confiscation claims, and is one of the largest perpetrators. The Burma Army has confiscated land for military bases, to house troops or in association with its "live off the land policy" whereby soldiers are expected to provide food and accommodation for themselves. In other instances, the military would work with business interests to confiscate the land for commercial purposes or large-scale development projects. The military also confiscated land for no other motive than economic profit, such as taking land then selling it to businesses or forcing existing farmers to pay in order to continue working it.

A recent land confiscation commission report found that the military has confiscated over 250,000 acres of farmland in the country; this represents only lands that were taken after 1988 and is sure to represent only a fraction of the total land actually taken.<sup>12</sup> The military in response has agreed to return a small fraction of the seized lands, only 18,000 acres of the more than 250,000 that were confiscated. There is also concern that only a small percentage of the 18,000 acres identified will actually be returned to farmers.<sup>13</sup>

Additionally, the government itself is a large perpetrator of land confiscation. This is particularly problematic in that the 2008 Constitution is structured in way that essentially facilitates the taking of land without requiring transparency and accountability to the public. Government officials would take land for their own benefit, on behalf of outside interests, or to sell. Additionally, there is a problem with corrupt officials taking compensation payments meant for farmers.

Finally, land confiscation occurs from businesses. Many times it is in association with government or military officials. Confiscation would occur in association with large-scale development projects or even in instances as a pure investment where the business thought the land would increase in value.

A number of community based and civil society organizations from Burma, especially from ethnic areas, have for decades carried out research, documented and published accounts of land confiscation and its related issues and human rights violations. The Karen Human Rights Group report released in March 2013, "Losing Ground", examined land confiscation in Karen State.<sup>14</sup> They found that in all seven of their research areas, land confiscation, obstacles to land use, access directly resulting from natural resource extraction or development projects were present. In all research areas there were obstacles to obtaining fair compensation for land that was taken or damaged. And in six out of the seven research areas, displacement or resettlement had occurred as a direct result of natural resource extraction or development projects.

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<sup>12</sup>"Army MP Halts Talks on Military Land-Grabs in Burma's Parliament," The Irrawaddy, 16 August 2013, <http://bit.ly/19yiUFJh>

<sup>13</sup>"Ministry agrees to return meager fraction of land confiscated by military," DVB, 18 July 2013, <http://bit.ly/112YTKr>

<sup>14</sup>"Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar," Karen Human Rights Group, 5 March 2013, <http://bit.ly/19ODP76>

A report released in October by the Human Rights Foundation of Monland, "Disputed Territory," highlights not only the land confiscation that has occurred in the past, but the recent and ongoing confiscation that is occurring today.<sup>15</sup> This confiscation is perpetrated by both the Burma Army and the nominally civilian government, many times as a result of economic development. The report highlights two areas, Ye and Kyaikmayaw Townships, where villagers have experienced decades of land confiscation, inadequate compensation and inadequate legal protection under the current system. The report illustrates the devastating impact this situation has had on the villagers and community. In an unacceptably common sentiment a villager explained:

"I want to provide a livelihood for my family. So when my plantation was confiscated I was like a person with broken legs."<sup>16</sup>

## Recommendations

International community should:

- Note with concern the alarming and increasing reports of arbitrary confiscation of land by both state and non-state actors, and encourage the government of Burma to prioritize the drastic reform of its legal framework and system, including amending the 2008 Constitution and other laws, policies and regulations to address this long-standing challenge and meet international human rights standards. These policies should make special incorporation of customary land rights and traditional land use practices.
- Encourage the government to recognize and respect all legitimate tenure right holders and their rights, in line with international standards on the protection of tenure rights.
- Call on the government to end all forced evictions and introduce a moratorium on evictions until a legal framework and relevant policies are in place to ensure that evictions are conducted only in accordance with Burma's international human rights obligations and relevant international standards.
- Call on the government to engage in a judicial reform process as well as reconstituting the MNHR to be in line with the Paris Principles so that they are genuinely independent and effective in order to protect the rights of the people, promote rule of law and combat impunity.
- Call on the government to cease and refrain from all forms of intimidation, including arbitrary detention and judicial action, against those who are facing land confiscation, eviction or have been forcibly evicted from their land, and those human rights defenders who are supporting local people and communities.
- Call upon the government to become a State party to the ICCPR and the ICESCR and its Optional Protocol, and to agree to be bound by the individual communication and the inquiry procedures, at the earliest opportunity.

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<sup>15</sup>"Disputed Territory: Mon Farmers' Fight Against Unjust Land Acquisition and Barriers to Their Progress," Human Rights Foundation of Monland, 9 October 2013, <http://bit.ly/19QDS2B>

<sup>16</sup>Ibid, p.49