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HUMAN
RIGHTS
WATCH

“Nothing for Our Land”

Impact of Land Confiscation on Farmers in Myanmar



“Nothing for Our Land”

Impact of Land Confiscation on Farmers in Myanmar

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Summary

We don't even have enough for a daily meal. When we were farmers, if we didn't have any money, we could eat some corn or beans. But when we have no farm, we can't eat.

—Farmer, 66, Shan State, March 2017

We got nothing. We literally got nothing for our land.

—Thein Win, 61, Ayeyarwady Region, March 2017

Disputes over land remain one of the central challenges in Myanmar's evolving reform process. Land confiscations and forced evictions were a major feature of decades of military rule and internal armed conflict. Small farmers bore the brunt as government officials, military commanders, and their cronies seized land for personal and institutional enrichment; authorities promoted development plans without regard for those affected; and the military and ethnic armed groups took advantage of fighting and displacement to grab vast swathes of territory.

Despite some protections under the law, government officials frequently confiscated land while providing limited or no notice and no compensation, often instantly depriving farmers of their only source of income and regular source of food.¹ As a result, countless rural families struggled to pay for food, health care, and their children's education. While the National League for Democracy (NLD) government, which took power in March 2016, has redoubled efforts to address the issue, large numbers of farmers have been left in the lurch, their livelihoods taken from them and their family's future uncertain.

The total number of acres illegally confiscated in recent decades is unknown, but estimates are in the millions. In 2016, a government official, citing the findings of the Farmers Affairs Committee in the Upper House of Parliament, said "as many as 2 million acres of land across Burma could be considered 'confiscated.'"²

¹ See, for example, 1894 Land Acquisition Act.

² Htet Naing Zaw, "Gov't Committee to Settle All Land Grab Cases in Six Months," *The Irrawaddy*, July 1, 2016,

Myanmar's population remains concentrated in rural areas where farming is the primary means of obtaining a livelihood.³ Land confiscations have had a disproportionate impact on rural farmers, most of whom own modest plots of land. As Myanmar's larger reform process has led to increased media freedoms and less enforcement of laws restricting public protests, once-suppressed grievances have risen to the surface, leading to greater activism and widespread calls for land reform.

Recognizing the gravity of the problem, the Myanmar government has in recent years undertaken several initiatives to address land confiscations by investigating claims and recommending compensation or the return of land.

In 2012, the military-installed parliament established the Farmland Investigation Commission, an initiative seemingly begun with an eye on public opinion as the country moved toward multi-party elections. The commission investigated cases of land confiscation from as far back as 1988.⁴ In 2013, the Land Utilization Management Central Committee was established to implement the recommendations of the Farmland Investigation Commission.⁵ Both were dissolved in 2016, shortly after the NLD, led by Aung San Suu Kyi, took power after overwhelmingly winning national parliamentary elections on November 8, 2017.⁶

During its roughly four years of operation, the Farmland Investigation Commission claims to have received some 20,000 complaints, though estimates of the number of complaints received, reviewed, and left unresolved by the commission vary widely.⁷ According to the

<https://www.irrawaddy.com/news/Myanmar/govt-committee-to-settle-all-land-grab-cases-in-six-months.html> (accessed May 17, 2017).

³ United Nations Development Programme, "About Myanmar," <http://www.mm.undp.org/content/myanmar/en/home/countryinfo/> (accessed August 9, 2017).

⁴ Ibid.

⁵ Ibid.

⁶ U San Thein et al., "Transparency Under Scrutiny: information Disclosure by the Parliamentary Land Investigation Commission in Myanmar", Mekong Division Land Governance, February 2017, <http://www.Myanmarlibrary.org/docs23/MRLG-2017-02-Case-study-Parliamentary-Land-Investigation-MMR-red.pdf> (accessed May 17, 2017).

⁷ Whtut, "Solving land disputes: a crucial task in the next parliament," *Eleven*, January 26, 2016, <http://www.elevenmyanmar.com/local/solving-land-disputes-crucial-task-next-parliament>; see also Myanmar Ministry of Information, "Thousands of farmland confiscation cases unresolved by previous gov't," April 27, 2016, <http://www.moi.gov.mm/moi:eng/?q=news/27/04/2016/id-6871> (accessed August 9, 2017).

commission's secretary-general, as of June 2015, the commission had heard thousands of cases and returned over 335,000 acres of land, benefitting more than 30,000 families. But according to Namati, a local charity that works on land issues in Myanmar, of the cases the commission reviewed, many were reportedly "collective cases"—those in which claims were made on behalf of a group of people or a community—and just 4 percent of complainants were deemed entitled to compensation.⁸

By 2016, the number of acres reportedly returned rose to nearly 360,000. The number of cases reviewed by the commission also reportedly rose to over 12,000. However, at the end of January 2016, the commission had still not reviewed more than 6,000 claims, according to a government report.⁹

Several other reforms were also instituted in the years before the NLD took power. Two new land laws were passed in 2012: the Farmland Law and the Virgin, Fallow, Vacant Management Law.¹⁰ Under the 2008 Myanmar constitution, all land is officially the property of the state, yet together these laws created something akin to a private property system. However, protections against land confiscation were still relatively weak.¹¹ In January 2016, the outgoing cabinet adopted the National Land Use Policy. Although it is not binding, the policy could provide a partial roadmap for the reform of Myanmar's land laws.¹² So far, implementation of the National Land Use Policy has been scant, though in January 2018 the government established the National Land Use Council, which provides for the creation of committees to assist carrying out the land use policy.¹³

⁸ Namati, Returns of Grabbed Land In Myanmar: Progress After 2 Years, December 2015, http://www.Myanmarlibrary.org/docs21/Namati-2015-Myanmar-returns_of_grabbed_land-en.pdf (accessed May 17, 2017).

⁹ Whtut, "Solving land disputes: a crucial task in the next parliament," *Eleven*, January 26, 2016, <http://www.elevenmyanmar.com/local/solving-land-disputes-crucial-task-next-parliament>; see also Myanmar Ministry of Information, "Thousands of farmland confiscation cases unresolved by previous gov't," April 27, 2016, <http://www.moi.gov.mm/moi:eng/?q=news/27/04/2016/id-6871> (accessed August 9, 2017).

¹⁰ Food Security Working Group, "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law," November 2012, http://www.forest-trends.org/documents/files/doc_3274.pdf (accessed May 17, 2017).

¹¹ While these laws provide some forward-looking measures to protect farmers from land confiscations in the future, protections remain weak in some areas. See, for example, Food Security Working Group, "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law," November 2012, http://www.forest-trends.org/documents/files/doc_3274.pdf (accessed May 17, 2017); Human Rights Watch, "The Farmer Becomes the Criminal," November 2016, https://www.hrw.org/sites/default/files/report_pdf/Myanmar1116_web_o.pdf (accessed May 17, 2017).

¹² National Land Use Policy, January 2016. See Daniel Aguirre, "A Sound Basis for Land Reform," *Frontier Myanmar*, <http://frontiermyanmar.net/en/sound-basis-land-reform> (accessed May 6, 2016).

¹³ Formation of National Land Use Council, Notification No. 15/2018, January 17, 2018.

After taking office in March 2016, the NLD, which had made land issues a central plank in its 2015 election manifesto (saying that the party would “strive” to return “illegally-lost land” and make “payment[s] of compensation and restitution”) moved quickly to address land issues.¹⁴ On June 6, 2016, the government created the “Central Reinvestigation Committee for Confiscated Farmlands and Other Lands” (the “Reinvestigation Committee”). The government hastily declared that it would solve all land confiscation issues within six months.¹⁵ Since then, the government claims to have settled thousands of claims, though thousands more cases have been filed and remain unresolved in addition to the 5,000 or so cases left unresolved by the previous government’s commission.¹⁶

Since establishing the Reinvestigation Committee, the government has taken steps to reform the process of resolving land confiscation cases. One important feature of the Reinvestigation Committee is that it provides an opportunity for participation by civil society groups on committees established at different administrative levels. It has reserved seats on committees at each administrative level—state/region, district, township, and village tract—for nongovernmental representatives, including some for civil society groups. In doing this the NLD has signaled a commitment to a more inclusive and fair process for resolving often complex land issues.¹⁷ However, research conducted by civil society groups indicates that some of these committees remain ineffective or inactive, particularly the committees established below the township level.¹⁸ In February 2018, the government also formed four groups to monitor the activities of the Reinvestigation Committee, but those committees are comprised solely of government officials.¹⁹

¹⁴ National League for Democracy, 2015 Election Manifesto, http://www.Myanmarlibrary.org/docs21/NLD_2015_Election_Manifesto-en.pdf (accessed May 17, 2017).

¹⁵ Ibid.

¹⁶ Tin Htet Paing, “Parliament receives thousands of new complaints of confiscated lands,” *The Irrawaddy*, July 6, 2016, <https://www.irrawaddy.com/news/Myanmar/parliament-receives-thousands-of-new-complaints-of-confiscated-farmland.html> (accessed May 5, 2017); Htoo Thant, “Only 10pc of land seizure complaints settled,” *Myanmar Times*, December 12, 2017, <https://www.mmtimes.com/news/only-10pc-land-seizure-complaints-settled.html> (accessed June 14, 2018); “Over 2,000 land confiscation complaints resolved in one year,” *Global New Light of Myanmar*, December 6, 2017, <http://www.Myanmarlibrary.org/docs23/GNLM2017-12-06-red.pdf> (accessed June 14, 2017).

¹⁷ Namati, “Myanmar’s Foray Into Deliberative Democracy: Citizen Participation in Resolving Historical Land Grabs,” June 2017, https://namati.org/wp-content/uploads/2017/06/Reinvestigation-Committees_FINAL_external.pdf (accessed August 24, 2017).

¹⁸ Land in Our Hands et al., *A Promise Unfulfilled: A Critique of the Land Reinvestigation Committee*, December 2017, <https://www.slideshare.net/EthnicConcern/a-promised-unfulfilled-a-critique-of-land-reinvestigation-committeeenglish-version> (accessed June 14, 2017).

¹⁹ Formation of Land Acquisition Reinvestigation Activity Monitoring Groups, Notification No. 1/2018, February 13, 2018.

However, for many of those dispossessed of their land, there has yet to be any positive result. While tens of thousands of acres were released following the recommendation of the Farmland Investigation Commission to the various ministries, the actual return of land to small farmers and villagers has proven more complicated, leaving land and villagers in limbo. Hundreds of people have been arrested by the police, which remains under military control, for staging protests as they await the resolution of their claims.²⁰ Many protesters have been charged with trespassing and vandalism, among other crimes. In some cases, the courts have handed down prison sentences.²¹

It is not surprising that the NLD government has struggled to solve the myriad longstanding problems associated with Myanmar's confusing land laws and knot of competing claims. Many cases are extremely complicated, as military land confiscations were followed by sales to corporations and businesses, followed by additional sales to others, making it difficult to create a system that is fair to the original owners, subsequent tenants, and those who later bought the land in good faith. During different periods of Myanmar's history, dozens of laws were enacted, making the body of laws regulating land acquisition and sales a confusing web of overlapping, and sometimes contradictory, rules difficult to navigate by the vast majority of people it affects. And given the powerful individuals and institutions involved in past land transfers, many farmers and land rights activists have little hope the NLD can quickly solve the problem.²²

Since 2016, the NLD-led government has both ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and proposed several amendments to laws that affect ownership and use of land. Being a party to the ICESCR carries with it additional obligations under international law, particularly with respect to ensuring the rights to

²⁰ See, for example, Teza Hlaing, "350 Mandalay farmers facing court over land grabs," *Frontier Myanmar*, February 23, 2017, <http://frontiermyanmar.net/en/350-mandalay-farmers-facing-court-over-land-grabs> (accessed August 24, 2017); Wa Lone, "Freed Myanmar farmers renew fight against army over land," *Reuters*, January 20, 2017, <http://www.reuters.com/article/us-myanmar-military-land-idUSKBN1540QT> (accessed August 24, 2017).

²¹ Ma Mau Oo, Thein Tun, and Maung Win were among those who spent a month in jail after being charged and sentenced under trespassing laws. Human Rights Watch interviews, Shan State, March 12, 2017; see also Teza Hlaing, "350 Mandalay farmers facing court over land grabs," *Frontier Myanmar*, February 23, 2017, <http://frontiermyanmar.net/en/350-mandalay-farmers-facing-court-over-land-grabs> (accessed August 24, 2017); Wa Lone, "Freed Myanmar farmers renew fight against army over land," *Reuters*, January 20, 2017, <http://www.reuters.com/article/us-myanmar-military-land-idUSKBN1540QT> (accessed August 24, 2017).

²² Human Rights Watch interview with land rights activist, Irrawaddy Division, March 14, 2017.

adequate housing and an adequate standard of living, and protections against forced evictions.²³

The amendments proposed and discussed by the government include the cornerstones of a body of some 70 laws that regulate land use: the Farmland Law, the Vacant Fallow and Virgin Land Management Law, and the 1984 Land Acquisition Act. An attempt to reform the 2012 Farmland Law by the parliament in 2017 was met with widespread criticism from local and international nongovernmental organizations for failing to allow for proper consultation from communities. They also criticized the proposed amendments for failing to adequately protect land tenure security and for failing to conform with the National Land Use Policy, among other shortfalls.²⁴ The process of amending the Land Acquisition Act also continues. Amendments to the act circulated in 2017 were criticized for incorporating overly broad and ambiguous language pertaining to acquisitions for a “public purpose,” and for legalizing “urgent” acquisitions that can take place within 48 hours, which could facilitate international law violations.²⁵ A subsequent amended draft of the same law circulated in mid-2018 provides some additional clarity pertaining to “public purpose” but otherwise retains overly broad and ambiguous language, and similarly sanctions “urgent acquisitions” with few apparent protections for land holders.²⁶

²³ Myanmar: Ratification, International Covenant on Economic, Social and Cultural Rights, October 6, 2017, <https://treaties.un.org/doc/Publication/CN/2017/CN.624.2017-Eng.pdf> (accessed June 14, 2018).

²⁴ Su Phyo Win, “Objection to farmland law changes draft bill,” *Myanmar Times*, July 27, 2017, <https://www.mmtimes.com/national-news/yangon/26993-objection-to-farmland-law-changes-draft-bill.html> (accessed August 24, 2017); see also Global Witness, “Myanmar Government Backtracking On Land Law Threatens To Worsen Land Conflicts,” July 28, 2017, <https://www.globalwitness.org/en/press-releases/myanmar-government-backtracking-land-law-threatens-worsen-land-conflicts/> (accessed August 24, 2017).

²⁵ News conference, *Land in Our Hands*, Yangon, Myanmar, May 23, 2018; EarthRights International, “Myanmar’s 2018 Land Acquisition Bill – Key Issues,” (comments presented to Land Core Group, Yangon, Myanmar, April 6, 2018); Ruwani Jayewardene and Ananadalal Nanayakkara, Technical Review of the Draft Myanmar Land Acquisition Law 2017, February 2018, https://www.lift-fund.org/sites/ift-fund.org/files/publication/LAA_Review_FINAL%20by%20LCG.pdf (accessed June 14, 2018). The UN Committee on Economic, Social and Cultural Rights, the international expert body that interprets and monitors compliance with the International Covenant on Economic, Social, and Cultural Rights (ICESCR), has stated that the right to adequate housing in the ICESCR guarantees legal protection from forced eviction. In particular, it outlines due process procedures that are essential to ensure the legality of evictions, namely: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts. UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, art. 11.1.

²⁶ Draft Land Acquisition, Resettlement and Rehabilitation Law, 2018 (unofficial English translation on file with Human Rights Watch).

This long history of farmers being dispossessed of their land and livelihood without compensation has left countless people in Myanmar destitute, insecure, and frustrated. As Myanmar looks to modernize and attract foreign direct investment, it needs to clarify, harmonize, and streamline its laws and ensure that land tenure is protected. Solving historic land confiscations and disputes will not be easy, but the government, military, and civil society groups should work together to resolve this chronic source of instability and grievance. Myanmar's future depends on it.

Methodology

From October 2016 to March 2017, Human Rights Watch conducted interviews in Myanmar with farmers and laborers in Yangon and Ayeyarwady Regions, as well as with individuals in seven different townships in southern Shan State. We visited some townships multiple times.

Altogether, Human Rights Watch interviewed 39 farmers, laborers, and activists, 29 of them men and 10 of them women. Interviews were conducted in Myanmar with the help of interpreters. Local groups working on land rights helped to identify persons to interview. The names and other identifying details of some interviewees and villages have been withheld or changed to prevent possible reprisals. In each case where a pseudonym is used, we have so indicated in the relevant citation.

All participants were informed of the purpose of the interview, its voluntary nature, and the ways in which the data would be collected and used. All orally consented to be interviewed.

Most interviews were conducted in villagers' homes or at a mutually agreed upon location when there were concerns about security of the interviewees.

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

The areas researched by Human Rights Watch—southern Shan State, Yangon, and Ayeyarwady Regions—were selected in consultation with both civil society groups and nongovernmental organizations. Each area has experienced a large number of land confiscation cases, many of which are still unresolved.

In December, Human Rights Watch sought information from the Aye Yar Shwe Wah Company seeking information on alleged human rights abuses related to land confiscation (see Appendix I). Human Rights Watch did not receive a reply to this letter.

Inadequate Notice and Compensation

Most of the people who spoke to Human Rights Watch say they were given little or no notice and meager, if any, compensation for land they had long occupied that was taken from them by the government, army, ethnic armed groups, or private entities. Where compensation was offered, it was almost uniformly inadequate and did not even cover the cost of relocating. Substitute land was offered in a few cases in Shan State, but when it was offered, it was smaller plots or land of inferior quality, leaving farmers and tenants worse off than they had been before.

The principle that owners of land confiscated for public use should be notified and compensated has been widely recognized under Myanmar law for over 100 years. The Land Acquisition Act of 1894, adopted during British colonial rule, requires that in instances where land is determined to be needed for public purposes notice must be posted and compensation paid prior to the government taking possession.²⁷

However, this law has been widely ignored as a series of often-overlapping and contradictory laws and policies were subsequently adopted, most notably the so-called 1991 “Wasteland Instruction,” which stripped landowners of previous protections against confiscation. The instruction was adopted by the military junta in power at the time as a measure to increase exports. The law’s permissive terms allowed for the transfer of vast swaths of land to facilitate the growth and export of various cash crops, including rice, sugarcane, soy, and corn.²⁸

In many places, families believe they have the right to possess or use the land they live on or farm. Conflict erupts when the military claims the land, saying it has owned it all along but has been letting people use it.

²⁷ See Land Acquisition Act, 1894, parts II-V. Under the law, the amount to be compensated should take into account several factors, including the market value at the time notice was posted, the damage to the land, including any crops, and the value the land is likely to accrue. *Ibid.*, sec. 24. Additionally, under article 26 of the Farmland Law passed in 2012, confiscated lands are to be compensated without any loss. Farmland Law 2012, sec. 26.

²⁸ SiuSue Mark, “Are the Odds for Justice ‘Stacked Against’ Them? Challenges and Opportunities to Securing Land Claims by Smallholder Farmers in Myanmar,” paper presented at “Land grabbing, conflict and agrarian environmental transformations: perspectives from East and Southeast Asia,” Chiang Mai University, May 2015.

For example, in 2004, the military seized thousands of acres of land in Ye Bu village in Shan State under the auspices of a project created to grant military veterans land for farming. This included 12 acres of land from the family of Ma Mau Oo. While the family was allowed to continue farming on some of the land following the confiscation, they were forced to pay rent on the land for five years from 2010-2014.²⁹ When the land was taken from them, there was no offer to compensate and no other land was given to them. After years of filing complaints to all levels of the government, they still have received nothing, and the military claims the right to retain ownership of the land.

In January 2017, military officers began telling farmers still living on the land the military had confiscated that they had to leave by the end of March 2017. Farmers said that military officers delivered oral eviction notices, sometimes to children who were on the land while their parents were away.³⁰

In the Ayeyarwady Region, home to the delta basin of the Ayeyarwady River and known for its farmland and paddy fields, the military government seized thousands of acres in the early 1990s. The government said this was necessary to implement projects to increase farming yields and develop infrastructure, such as the Summer Paddy Program, the project to build the Patheingyi Road, and the building of fish ponds in the Delta. Farmers in the Region said they often worked as unpaid laborers. In 1992, the military government seized 12 acres of land from Thein Win, in Kyaunggon township, Ayeyarwady Region, to dig fish ponds. He said he received no notice and no compensation:

I didn't know, they just took it. It happened right after the [Patheingyi Road] construction. There was a rumor that said farmers who paid certain amounts of rice would not have their land seized, so I wasn't that worried. I learned about the land seizure when they started digging the fish pond. I had volunteered to build the road for a month. Then, after the road was built they started on the fish ponds. I tried to complain to the district and Regional offices because I was one of the people that paid the rice tax to the government. They gave me an appointment and didn't meet with me.

²⁹ Human Rights Watch interview (identity withheld), Shan State, March 12, 2017.

³⁰ Human Rights Watch interview with Thein Tun, Shan State, March 12, 2017; Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.



Thein Win, 60, a farmer from Kyaunggon Township in the Ayeyarwady Region.

© 2017 Patrick Brown for Human Rights Watch

They threatened to put me in jail. They kept digging so there was nothing to do. I had to volunteer to dig my own land.³¹

He said a military commander demanded that the paddy be dug six-feet deep instead of the normal four feet. The digging continued in the monsoon season and lasted for more than a month. When asked whether he was paid for his work, he said, “Not a cent.” For his land, “We got nothing. We literally got nothing for our land.”³²

Maung Win, 63, another farmer from the same township, says his land was also taken by the government in 1992 after his family had been working on the land for decades. Like the other villagers, the government required him to “volunteer” to dig fish ponds on the farmland. Eventually, he discovered that the government seized his land as part of the project. Maung Win said he did not receive any notice and was not made aware of any public announcement that his land would be confiscated:

³¹ Human Rights Watch interview (identity withheld), Shan State, March 12, 2017.

³² Human Rights Watch interview (identity withheld), Irrawaddy Division, March 16, 2017.

I just saw that there were tractors destroying the [farmland] and I saw them working on it. At the time, it was the military government, so there was no complaint I could make.³³

Maung Win said he was never given any compensation or offered any replacement land.

Six other farmers from Kyaunggon township told Human Rights Watch that they had received no compensation and no alternative land.³⁴

Dispossessed of Livelihoods

We don't know other trades. We don't know how to sell stuff. The only thing we know is farming.

—79-year-old farmer, Shan State, March 2017

I suffered great losses in every aspect of my life.

—La Win, 61-year-old farmer, Ayeyarwady Region, March 2017

In rural areas of Myanmar, farming is central to economic survival for families and communities. When people are deprived of farming income the consequences are far-reaching. One land rights activist from the Ayeyarwady Region said that these consequences include “health, children’s education, and daily survival.”³⁵

Once deprived of the ability to cultivate land and to sell crops, people are commonly forced into manual labor jobs that pay far less and ultimately diminish access to sources of food. Those deprived of the land they worked on for years, either as children or adults, described having to take various odd jobs, including working as porters, fishing, making thatch walls, working as security guards, or farming on the land of others. Others told Human Rights Watch that they resorted to selling goods, such as betel nut and cigarettes. Many referred to themselves as “parasites.”

³³ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 16, 2017.

³⁴ Human Rights Watch interviews (identity withheld), Irrawaddy Division, March 16, 2017.

³⁵ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 14, 2017.



Farmers wrap and transport crops from a field in the Ayeyarwady Region.

© 2017 Patrick Brown for Human Rights Watch

Wages for manual laborers are low. Men and women Human Rights Watch interviewed said they were paid no more than 5,000 kyat (US\$3.35) per day. Women said they were paid less because “men are stronger.”³⁶ The former farmers said this was not enough to live on.³⁷ Many had great difficulty affording food and potable water.³⁸

La Win, 61, from the Ayeyarwady Region, said he had 35 acres of land taken from him in 2004 by a corporation. He had been working the land for over 14 years after clearing the land and leveling it to make it viable farmland, a process that took him four years to complete. Unable to farm, he started working as a manual laborer, weaving together thatch walls, and occasionally fishing. He said he would sometimes make 4,500 kyat (\$US3.20) per day:

³⁶ Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

³⁷ Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

³⁸ Human Rights Watch interview (identity withheld), March 13, 2017.

It was never enough, but we had to make ends meet. It was better when we had our farm. After the land was taken, we struggled to afford our daily mean. We have to borrow money to eat food.³⁹

La Win is in serious debt and does not believe he can repay it.

Maung Win, whose case is described in the section above, told Human Rights Watch that he was a farmer before his land was taken. “My life got totally ruined so that I couldn’t even stand up,” he said. Now, he says, “I’m a parasite.” He works alongside his wife on the farms of others, planting beans and peas, but makes no more than 4,000 kyat (\$US2.84) per day; his wife makes 3,000 kyat (\$US2.13). He says the work is not steady and they do not always get hired. Sometimes, the wait for a new job can be as long as 15 days. “It’s not enough,” he said. “How could it be enough?”⁴⁰

Thein Win, 61, who had 12 acres of land in Kyaunggon township in the Ayeyarwady Delta, said that after his land was taken to establish a fish pond, he resorted to manual labor to try to support his family. He said that his family struggled to eat:

We were starved because we didn’t have any business or job to get any income. When we had the 12 acres, we could afford four meals. After it was taken, not even two regular meals.⁴¹

³⁹ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 14, 2017.

⁴⁰ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 16, 2017.

⁴¹ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 16, 2017.



Thein Myint, 44, a farmer from Hlaing Thayar Township in Yangon Region, had several acres of land taken from his family in 1991 by the State Law and Order Restoration Council (SLORC) military government. © 2017 Patrick Brown for Human Rights Watch

Thein Myint, 44, of Shwe Pyi Thar township, Yangon Region, was a young man when the government confiscated his family's six acres of farmland in 1991 after his family had owned and occupied the land for a generation. On their land they cultivated bananas, coconuts, guava, and mangoes, but it was all bulldozed when the land was taken. He said, "They just gave us a verbal order, like abracadabra, and destroyed everything."

With no land, Thein Myint took up manual labor. He began working as a porter, carrying rocks. As the eldest of eight siblings, he had to help support the family. "My brothers and sisters were too young," he said. "I had to struggle a lot."⁴²

⁴² Human Rights Watch interview (identity withheld), Yangon Division, March 17, 2017.

His work as a porter did not pay enough to sustain the life his family had known as farmers. “When the land was taken, I couldn’t support [my siblings’] education anymore, just one or two grades, that’s all.” Once out of school, his siblings helped with the family’s daily struggle to make a living, but work opportunities were limited. All three of his younger brothers became porters when they reached about age 16. To make matters worse, some of his brothers became ill and he helped to provide them medicine.

Now, he and one of his brothers struggle to make enough money to support their family. In the mornings, he rides his three-wheeled bicycle (*trishaw*) around, looking for grass to cut that he can sell as feed for livestock. The area around where his farmland used to be is a packed industrial zone with makeshift homes and dirt roads punctuated by new and old factories. Typically, he pedals for 20 or 30 minutes before he finds grass good enough to sell. He finds it between the lands and fences of others, next to power lines, and along the fences of factories that were previously farmlands.

On a good day, he and his brother can gather 26 bundles of grass. He is usually paid 1,000 kyat (\$US0.71) for every three bundles. “It’s not enough, but everyone’s trying to earn money and that’s how we survive in this family.”⁴³

Access to Health Care

Several farmers who lost their land told Human Rights Watch that they could no longer afford health care and had to resort to home remedies, even for serious medical problems such as strokes. “Farmers depend on the farmland,” said a land rights activist from the Ayeyarwady Region, “When it’s confiscated, they become jobless. Because manual laborers don’t make much money, they can’t go to the clinic when they get sick.”⁴⁴

⁴³ Human Rights Watch interview (identity withheld), Yangon Division, March 17, 2017.

⁴⁴ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 14, 2017.

One woman from Shan State told Human Rights Watch that after the family's land was seized her husband became sick and was unable to pay for treatment or government health care. He died at age 49, leaving behind his wife and eight children.⁴⁵

Loss of Education, Child Labor

Many of the individuals Human Rights Watch interviewed said that after their land was confiscated, they were no longer able to afford to send their children to school.

The right to a basic education has long been enshrined as a right in Myanmar.⁴⁶ Under the 1993 Child Law, every child has “the right to acquire free basic education (primary level) at schools opened by the State.”⁴⁷ Primary school in Myanmar only extends to fifth grade. Although primary school education is supposed to be free, parents have historically borne a high cost for schooling, including costs associated with building maintenance and school furniture.⁴⁸ The costs make it difficult for many families to afford, and the limited amount of free public schooling available past fifth grade makes continuing in school next to impossible.

A land rights activist in Ayeyarwady Region explained:

Most students dropped out of school whose land was taken and continue to work with their parents. For those children, there aren't many job

⁴⁵ Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

⁴⁶ The right to a basic education is found in both of Myanmar's most recent constitutions. The 1974 Constitution, which was suspended by the State Law and Order Restoration Council after the 1988 popular uprisings, enshrined the right to education in article 152, which states: “Every citizen shall have the right to education” and “[e]very citizen shall be given basic education which the State prescribes by law as compulsory.” Constitution of the Union of Burma (1974), art. 152(a), (c). In 2008, a new constitution was adopted after a referendum widely criticized as neither free nor fair, which also enshrined the right to education under article 366, which states that every citizen shall “has the right to education,” and “shall be given basic education which the Union prescribes by law as compulsory.” Constitution of Myanmar (2008), art. 366(a), (b). Several laws were promulgated, ensuring the right to education, including the 1973 Basic Education Law (amended in 1989) and the Child Law, enacted in 1993. Child Law (SLORC Law No. 9/93).

⁴⁷ The Child Law, (The State Law and Order Restoration Council Law No. 9/93), art. 20(a) (unofficial English translation provided by the International Labour Organization), http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=72890 (accessed August 9, 2017).

⁴⁸ Marwaan Macan-Markar, “Burma: Public Education a Drain on Family Incomes,” *Inter Press Service*, June 20, 2010, <http://www.ipsnews.net/2010/06/Myanmar-public-education-a-drain-on-family-incomes/> (accessed August 24, 2017).

opportunities. [In Ayeyarwady Region] men work as waiters. Women work as maids and servants in houses.⁴⁹

In other areas, when school was no longer an option and income was scarce, children would also look for work as manual laborers.⁵⁰ One woman in Shan State, 65, told Human Rights Watch that her children could not continue going to school after grade six and that soon after losing their land they had to start performing manual labor at an early age.⁵¹

Maung Win from Kyaunggon township in the Ayeyarwady Region said that when his 10 acres of land were taken to dig fish ponds as part of a government project, “My life was totally ruined.” He said that the education of each of his three children was curtailed. His daughter, now 29, was forced to stop school at grade five.⁵² Thein Win, 60, who is from the same township, says that his three eldest children were not able to continue to go to school beyond fifth grade. He told Human Rights Watch that following the confiscation of his land he had to stop their education because they could not afford to send children away to middle school, which was two hours away.⁵³

Thein Tun, 41, a farmer in Shan State, said he recently returned from serving a prison sentence for trespassing on land he says his family has owned for decades. The military asserts that the land is theirs and that he is a trespasser. Land rights activists told Human Rights Watch that the military confiscated at least 4,000 acres for a veteran’s project from Thein Tun and dozens of other farmers who had lived there for decades. Despite the confiscation, the military did not utilize all the land; it collected rents from farmers, allowing some to stay while evicting others. In January 2017, the military told Thein Tun and his family they had to move. Thein Tun said the impending eviction puts his children’s education in jeopardy:

If we are forced to move away, it will be a problem with my children’s education. If forced to move out, I’ll stop being able to send them to school.

⁴⁹ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 14, 2017.

⁵⁰ Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

⁵¹ Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

⁵² Human Rights Watch interview (identity withheld), Irrawaddy Division, March 16, 2017.

⁵³ Human Rights Watch interview with Thein Win, Irrawaddy Division, March 16, 2017.



Thein Tun, 41, a farmer from Shan State, was jailed for one month for trespassing on land he says his family has owned for decades. After his release, soldiers threatened to evict him and his family.

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We won't have extra money or cash income from the plantation to repay their debts.⁵⁴

Thein Tun said he could make as much as 2,815 kyat (US\$2) a day doing manual labor, but he needs about 14,000 kyat (US\$9.95) per day to send his three children to school. He has two daughters, one 17, the other 15, and a son who is 8. Because of the lack of income, he is worried that his children could be forced to do manual labor starting at an early age.⁵⁵

In Ye Bu village in Shan State, families who had been living and working on the land for decades were told by the military in 2017 that they had to move off their land, which the military claims they seized years ago. Other farmers living on the land said that if they lost their farms, it would be difficult to send their children to school because they would no longer be able to afford it. The threat to education for children is enduring as evictions

⁵⁴ Human Rights Watch interview (identity withheld), Shan State, March 12, 2017.

⁵⁵ Human Rights Watch interview (identity withheld), Shan State, March 12, 2017.

loom in other parts of the country. Already having difficulty surviving on the meager salary of a day laborer, many families simply cannot afford to send their children to school. One land rights activists said: “When farmers are struggling to afford their daily meals, how can they afford such a thing?”⁵⁶

Lack of Redress

I met with the government in 2014. No one wants to take responsibility.

—Thein Win, 61, Ayeyarwady Delta, March 2017

Most of the people Human Rights Watch interviewed had their land taken from them during military rule. Many confiscations took place decades ago. Particularly as military commanders and their cronies were often involved in the seizures, there was almost no chance of getting redress for the loss. Where mechanisms for redress did exist, people were usually too afraid to confront the military government.

Recently, the NLD government has created new institutions, such as the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands. But even when the government announced its intent to investigate and release land that had been confiscated, some of those affected still fear raising their voices. Those that have raised their voices have yet to receive responses from the government.

While land has been returned or compensation has been paid to some farmers, as noted at the outset of this report, many farmers have received nothing.⁵⁷ Even where the process has formally worked, it has sometimes failed in practice. In some cases, under the previous government, the national-level Farmland Investigation Commission recommended the release of land and the relevant government body or company returned

⁵⁶ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 14, 2017.

⁵⁷ Human Rights Watch did not interview individuals whose cases have been resolved, but various reports confirm that many farmers have received some resolution to their claims. See, for example, Win Naung Toe, “Myanmar Government to Return Seized Land to Farmers in Sagaing Region,” *Radio Free Asia*, June 25, 2016, <http://www.rfa.org/english/news/myanmar/maynamr-government-to-return-seized-land-to-farmers-in-sagaing-region-05252016162027.html> (accessed August 24, 2017); Htet Naing Zaw, “Gov’t Committee to Settle All Land Grab Cases in Six Months,” *The Irrawaddy*, July 1, 2016, <https://www.irrawaddy.com/news/Myanmar/govt-committee-to-settle-all-land-grab-cases-in-six-months.html> (accessed May 17, 2017).

the land, but the land was not returned to the affected farmers.⁵⁸ Instead, local officials may have kept the land or sold it to others.⁵⁹

In other cases, those who claim to be the original farmers and occupiers of the land are not the ones who receive the returned land and it is transferred to individuals who may have rented or worked on the land after the initial confiscation.

Activists and farmers have complained of corruption and conflicts of interests within the committees charged with investigating, releasing, and returning the land.⁶⁰

Most of the people who spoke to Human Rights Watch said that they just wanted their land back. “We have to apply to get my land back because we are farmers and farming is all we know how to do,” said one farmer from the Ayeyarwady Region.⁶¹ But others conceded that, at this point, all they could hope for was some compensation.

Ma Mau Oo, 46, and her family say that 12 acres were taken from them in 2005 by the military.⁶² Her father, Lu Thein, now 73, says he acquired rights to the land after he cleared it in the 1970s. The government provided him with tax receipts for six acres of land, one of which he still has. For a time after the military “captured” the land, she said they could do some farming for themselves, but were also forced to work for the military who, according to local land rights activists, confiscated over 4,000 acres of land in the area for a government project. For about five years after 2010, they also had to pay rent on the confiscated land to the military to continue to use any part of it.

⁵⁸ See, for example, Namati, “Streamlining Institutions to Restore Land And Justice To Farmers In Myanmar,” June 2016, https://namati.org/wp-content/uploads/gravity_forms/13-3ca85af2805f10d4544ebdf356299512/2016/07/Myanmar-Policy-Brief-3_Final-English.pdf (accessed Aug. 9, 2017).

⁵⁹ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 16, 2017.

⁶⁰ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 14, 2017; see also Htoo Thant, “Committee for solving land disputes accused of conflict of interest,” *Myanmar Times*, Sept. 28, 2016, <http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/22765-committee-for-solving-land-disputes-accused-of-conflict-of-interest.html> (accessed August 24, 2017).

⁶¹ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 14, 2017.

⁶² Ma Mau Oo said the land was taken by a Myanmar general. It was taken in a second, larger round of seizures. According to Ma Mau Oo and land rights activists, and documents reviewed by Human Rights Watch, the total land seized was nearly 4,000 acres. Human Rights Watch interview (identity withheld), March 12, 2017.



Ma Mau Oo, 46, a farmer from Shan State, said the military took 12 acres from her family in 2005. Since then, she has sent over a dozen letters to the government requesting that the land be returned to her family. “I keep sending letters because I want the higher ranks to know what’s happening,” she said.

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Ma Mau Oo says she’s sent numerous letters to the military, and showed Human Rights Watch copies of 16 separate letters she had sent since 2012. “I keep sending letters because I want the higher ranks to know what’s happening.”⁶³

Maung Win from Kyaunggon township in the Ayeyarwady Region, aspects of whose case have already been described above, said that in 2010 when the government of President Thein Sein announced that land confiscated by the military would be reviewed and land no longer being used would be returned, he started sending complaint letters to the various levels of government. He also sent a letter to the parliamentary land investigation committee. He said he sent complaint letters over the course of seven years.

Unlike many others, Maung Win received a response from the township and village administrators in 2014 telling him that the land would be released by the military.

⁶³ Human Rights Watch interview (identity withheld), March 12, 2017.



Thein Myint, 44, a farmer from Hlaing Thayar Township in Yangon Region, said he has been trying for years to get just a portion of the land his family farmed returned after it was taken in 1991 by the military government.
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However, the land was transferred not to him but to the people working on the fish pond that was built on the land. He has appealed to local authorities several times. “I just want my land back so that I can keep farming,” he said.⁶⁴

Others told Human Rights Watch that they were simply too afraid to deal with the authorities.⁶⁵ One woman said that after being displaced by a massive land seizure in Shan State, left landless, and even imprisoned for trespassing on land their family once owned, she was too scared to petition the government.⁶⁶

Thein Myint, the farmer from Hlaing Thayar township in Yangon Region whose case is profiled at the end of the “Dispossessed of Livelihoods” section above, has been trying for

⁶⁴ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 16, 2017.

⁶⁵ Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

⁶⁶ Human Rights Watch interview (identity withheld), Shan State, March 13, 2017; Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

years to get even just a portion of his land returned since it was taken in 1991. Thein Myint told Human Rights Watch that the land was taken by the village administrator and the housing department ostensibly to build a fire department. But nothing was ever built.

Eventually, he said, the government rented or sold some of the land to companies and factories, fencing off the unused portions to prevent anyone from using it. Following the installation of the Thein Sein government in 2011, he heard that there was a law saying that he could get some of his land back, so he sent the documents he had, including a tax receipt and photos he had kept. He sent a letter to the Farmland Management Committee and to President Thein Sein's office. At the time we interviewed him, none of his family's land had been returned and no offers of compensation had been made.⁶⁷

Thein Myint does not believe the land is being transferred to farmers, but local administrators are instead selling the land to companies. In 2016, a factory was built on what he said was the land his family owned.

Thein Myint expressed the frustration of trying to report the sale of the land to all levels of local government, including officials at the ward, township, and Yangon committee for development, also known as the Yangon City Development Committee (YCDC). He said that everyone he met with told him to talk to a different department.

La Win, 61, from Kyaunggon township, Ayeyarwady Region, whose case is also described above in the section "Dispossessed of Livelihoods," said that in 1991 he had 35 acres of land after spending four years clearing and leveling. He said that in 1999 the Ayer Shwe Wah Company Limited approached him and told him he had to cooperate with a farming arrangement or his land would be confiscated outright. He said the company provided farm supplies for one year but then stopped. In 2004, the company confiscated his land, providing no compensation or substitute land.⁶⁸ This was part of the up to 40,000 acres that the company reportedly confiscated in the Ayeyarwady Region.⁶⁹ According to the US

⁶⁷ Human Rights Watch interview (identity withheld), Yangon Division, March 17, 2017.

⁶⁸ Human Rights Watch interview (identity withheld), Irrawaddy Division, March 14, 2017.

⁶⁹ Ei Ei Toe Lwin and Noe Noe Aung, "MPs pressure govt to return farmland,"

Myanmar Times, July 7, 2014, <http://www.mmtimes.com/index.php/national-news/10923-mps-pressure-govt-to-return-farmland.html> (accessed August 24, 2017).

Treasury Department, Ayer Shwe Wah is managed by Aung Thet Mann, son of the former general and current head of the Commission for the Assessment of Legal Affairs and Special Issues, Shwe Mann.⁷⁰ Until October 2016, Aung Thet Mann remained on the list of individuals sanctioned by the US Treasury Department as the head of Ayer Shwe Wah and is currently sanctioned by the Canadian government.⁷¹ The company was formed as part of the “Htoo Group,” of which Tay Za is the chairman. Both Tay Za and the Htoo Group remain sanctioned by the Canadian government were sanctioned by the US Treasury Department until 2016.⁷²

La Win said that in 2012 he sent complaint letters to the parliamentary Farmland Investigation Commission established by the Thein Sein government seeking to get his land back. When he heard nothing, he sent more complaints to Thein Sein’s office. In 2015, he learned that the Ayer Shwe Wah had sent a letter to the Ayeyarwady Region Chief Minister, Thein Aung, in 2012 regarding the company’s possession of the land, but the government never informed La Win. A friend who worked for the company that purchased the land from Ayer Shwe Wah gave La Win the letter, in which the company said they were releasing all of the land to the cooperative farmers working on the land under the control of the company. La Win said that the cooperative farmers now in possession of the land have been unwilling to return it to him.

Arrests

The 2015 elections raised hopes of increased freedoms and justice for victims of unlawful land confiscation. In most cases, these hopes have not been met, and displaced farmers

⁷⁰ US Department of Treasury, Office of Foreign Assets Control, “Tay Za Financial Network: February 2008,” https://www.treasury.gov/resource-center/sanctions/Documents/tayza_02062008.pdf (accessed June 28, 2016); Htoo Thant and Ei Ei Toe Lwin, “Thura U Shwe Mann appointed to head own legislative commission,” *Myanmar Times*, February 8, 2016, <http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/18853-thura-u-shwe-mann-appointed-to-head-own-legislative-commission.html> (accessed August 24, 2017).

⁷¹ US Dept. of Treasury, “Unblocking of Specially Designated Nationals and Blocked Persons Resulting From the Termination of the National Emergency and Revocation of Executive Orders Related to Burma,” October 31, 2016, <https://www.federalregister.gov/documents/2016/10/31/2016-26124/unblocking-of-specially-designated-nationals-and-blocked-persons-resulting-from-the-termination-of> (accessed June 28, 2017); Government of Canada, “Special Economic Measures (Burma) Regulations,” SOR/2007-285, <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2007-285/FullText.html> (accessed July 3, 2018).

⁷² Ibid.

and other former landowners have grown increasingly frustrated with the stalled and flawed reform and return process.

Over the last several years land protests have increased and hundreds of farmers across Myanmar have been arrested and charged for staging them.⁷³ A common practice throughout the country has been to stage so-called plow protests, where farmers plow unused land that they say belongs to them or ought to be returned to them.

Human Rights Watch spoke with several farmers who had been charged in both Shan State and Ayeyarwady Region following such protests. Many of the farmers Human Rights Watch spoke with said that they were simply farming the land they believed was theirs. Those charged often endure lengthy trials, creating an additional and substantial financial burden.

Cases against farmers are often filed for trespassing or vandalism. Trespassing is a criminal offense under Penal Code section 447 and carries a penalty of up to three months in prison, a fine of “five hundred rupees,” or both.⁷⁴ The colonial-era offense of “mischief” resulting in damage to property “to the amount of fifty rupees or upwards” is chargeable under Penal Code section 427 and carries a sentence of up to two years, a fine, or both.⁷⁵

In one example, the authorities charged 96 farmers in Shan State with trespassing and property destruction. In December 2016, 72 were convicted, with some receiving a month in jail while others, including elderly defendants, paid fines.⁷⁶

⁷³ See, for example, Kyaw Ko Ko, “Over 1000 Mandalay farmers protest land seizure, suits,” *Myanmar Times*, June 30, 2017, <https://www.mmtimes.com/national-news/mandalay-upper-myanmar/26615-over-1000-mandalay-farmers-protest-land-seizure-suits.html> (accessed August 24, 2017); Teza Hlaing, “350 Mandalay farmers facing court over land grabs,” *Frontier Myanmar*, February 23, 2017, <http://frontiermyanmar.net/en/350-mandalay-farmers-facing-court-over-land-grabs> (accessed August 24, 2017); Wa Lone, “Freed Myanmar farmers renew fight against army over land,” *Reuters*, January 20, 2017, <http://www.reuters.com/article/us-myanmar-military-land-idUSKBN154oQT> (accessed August 24, 2017).

⁷⁴ Penal Code, sec. 447. The fine listed in the Penal Code is for up to 500 “rupees.” Rupees were the currency of British colonial India, of which then Burma was part. The monetary amount has never been formally updated. One individual sentenced under sec. 447 in Shan State told Human Rights Watch he paid a 20,000 kyat fine. Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

⁷⁵ Myanmar Penal Code, sec. 427.

⁷⁶ Wa Lone and Simon Lewis, “In Myanmar, profit clouds army pledge to return seized land,” *Reuters*, December 22, 2016, <http://www.reuters.com/article/us-myanmar-military-land-insight-idUSKBN14BoRH> (accessed May 17, 2017).

In the Ayeyarwady Delta, several farmers said that they had been charged for throwing seeds for various crops in fish ponds as a form of protest, since previously they farmed those lands and planted seeds there.⁷⁷ “The worst thing was being sued for trespassing,” said Maung Win, whose 10 acres of land were seized by the government without compensation in the Kyaunggon township in 1992.⁷⁸

Ma Mau Oo, 46, from Ye Bu village, Shan State, whose case is outlined above, was arrested after protesting the building of a hut by a local commander on land the military seized in 2004. She and several other farmers attempted to prevent the building of a structure by the military. They removed the wood placed on the land brought in to build the structure. Ma Mau Oo was charged along with the other farmers on December 7, 2015, for property destruction and trespassing. Over the course of the next year, she had to travel to court in Taunggyi – over one hour from her home – over 40 times with the 12 other defendants. Sometimes, they would spend all day at the court. She was convicted and sentenced on December 22, 2016 to one month in jail and released on January 22, 2017.⁷⁹

A 79-year-old farmer from Ye Bu village said he was just lying in bed when other farmers came onto the land but was charged anyway.⁸⁰ Sentenced in December along with Ma Mau Oo and 72 others, he paid a fine of 20,000 kyat (US\$14.21) to avoid serving jail time.

⁷⁷ Human Rights Watch interviews (identities withheld), Irrawaddy Division, March 14, 2017.

⁷⁸ Human Rights Watch Interview (identity withheld), Irrawaddy Division, March 16, 2017.

⁷⁹ Human Rights Watch interview (identity withheld), Shan State, March 12, 2017.

⁸⁰ Human Rights Watch interview (identity withheld), Shan State, March 13, 2017.

Recommendations

To the Government of Myanmar:

Displacements

- Establish local bodies composed of interested parties to ensure that all evictions and land-related displacements take place in accordance with international human rights law, including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and, for indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples. Ensure broad representation of farmers, women, and ethnic minorities in the local bodies.

Redress

- Make available all records of land ownership, recent decisions regarding the ownership of land, and the release of land by all committees.
- Ensure representatives of nongovernmental organizations have significant representation on all Land Reinvestigation Committees.
- Establish independent, impartial bodies at the national, state or region, township, and village levels to evaluate and monitor the process of land release and return; make recommendations to administrative bodies where allegations of conflicts of interest and abuse of process arise; and publish monthly reports on the release and return of land.
- Amend the Farmland Law to provide a clear procedure that allows individuals to challenge decisions made by Farmland Management Bodies to a court of law. Direct Farmland Management Bodies to implement an independent dispute resolution mechanism for land conflicts, ensuring that such bodies are linguistically and geographically accessible and contain representation of women and relevant ethnic groups.

Compensation

- Establish a transparent, impartial, and appealable process for determining the value of land at a given time to facilitate the dispensation of compensation to parties to whom it is owed following the lawful seizure of land.

- Provide prompt and adequate compensation for individuals who have lost their land, including by way of restitution, rehabilitation, and cash payments to those affected.

Access to Information

- Produce, make available, and actively disseminate all relevant information about plans, projects, and decisions of the government involving past or future major land acquisitions, especially to affected communities.
- Ensure that government monitoring systems collect land statistics, disaggregated by gender, showing the percentage of women and men with legally recognized and documented land rights, and make that information public.

Legal Aid

- Improve access to free or government-subsidized legal aid services for the rural poor for land and other legal disputes.

Arrests

- Ensure that the rights of farmers and land rights activists to protest are protected and respected in accordance with international law.

Education

- Ensure that everyone's right to education is respected, especially where the confiscation of land, even for lawful purposes, impacts children's ability to attend school and receive primary and secondary education.

Intimidation

- End threats and intimidation by private individuals and corporations, and government officials, including military personnel, to individuals occupying land. Discipline or prosecute as appropriate those responsible for abuses.

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Appendix I: Human Rights Watch Letter to Ayer Yar Shwe Wah Co., Ltd.

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By submission: <http://aysw.com.mm/contact/>

Phone: +95 (1) 860 42569

Re: Land Acquisition Issues in Irrawaddy Division

Dear Mr. Aung Thet Mann,

I am writing to you regarding land acquisition issues in Irrawaddy Division and alleged involvement of the Ayer Yar Shwe Wah Company Limited.

Human Rights Watch is an independent non-governmental organization that monitors and reports on human rights in more than 90 countries globally. Headquartered in New York, Human Rights Watch has worked on human rights in Myanmar for more than 25 years.

From March to April 2017, Human Rights Watch conducted research on land ownership, acquisition, and use in the Irrawaddy Division and Shan State. We will be publishing a report about human rights abuses connected with land issues in early 2018 based on that research. Once it is released, the report will be available on our website, www.hrw.org.

In the interests of ensuring that our reporting is accurate and comprehensive, we are writing to get your perspectives to the questions listed below as well as any other comments you might have so that we may accurately reflect your perspectives in our reporting. We request to receive a reply in writing from you or your representative by January 13, 2017.

In March 2017, we interviewed villagers in the Irrawaddy Division who alleged that they previously owned and worked on land that Aye Yar

Shwe Wah took from them and subsequently controlled. Human Rights Watch viewed a number of government tax documents confirming that they had used the land for a number of years for farming. Those documents appear to support their claims that they were lawfully using the land.

We understand from interviews with affected villagers that they were required to enter into an agreement with the company if they wanted to continue to farm the lands they claimed they had owned, occupied, and farmed. According to our research, these agreements stated that they would be provided with equipment and supplies sufficient for five years of farming. However, none of the individuals that Human Rights Watch interviewed said they received the promised support for five years. One man said that after one year, he received no more support. The individuals we interviewed said that after several years the company took over the land, and no longer allowed them to work on it. Instead, the company told them their land had been given to others to work on or sold.

We were unable to identify anyone who said they had received any compensation for the land taken from them. We also understand that the company allegedly did not provide original owners any opportunity to purchase the land from the company.

Human Rights Watch obtained a letter sent by your company to the Irrawaddy Division's Regional Chief Minister in December 2012, which indicated that it would release all the land it previously controlled, amounting to 41,200 acres. The letter sent from the company's chairman, Tay Za, stated the land will no longer be farmed by the company and that arrangements had been made to permit other farmers to use the land. There was no mention made of any owners, users or occupants of the land in any of these arrangements.

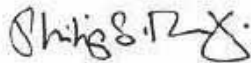
1. Can you please describe the legal process by which Ayer Yar Shwe Wah acquired the rights to develop and use the land in Kyaunggon Township and other townships in the Irrawaddy Division?
2. Can you please describe steps taken by the company and company management to identify which villagers were already living on or using that land prior to your development and use of the land, and what if any steps your company took to consult with those villagers?
3. Can you please describe the terms and conditions of the agreements between Ayer Yar Shwe Wah and the farmers using the land when the land was originally "explored" by the company in the late 1990s?
4. Can you please describe the role of the Irrawaddy Division government and/or local officials in providing the land to Ayer Yar Shwe Wah company?

5. In a letter dated December 26, 2012, from the Tey Za, chairman of the Ayer Yar Shwe Wah company, to U Thein Aung, Chief Minister of the Irrawaddy Division, the company stated it allowed farmers in a cooperative to use the land, and those who did not want to join a cooperative could continue farming their land. However, farmers told Human Rights Watch that the company took control of the land and then required farmers to farm in a cooperative or face outright confiscation of their land by the company. Did Ayer Yar Shwe Wah company require farmers to join cooperatives in order to maintain access to their lands controlled by the company? If yes, what was the company's rationale for this decision?
6. Farmers who participated in the cooperatives (referred to in question 5) told Human Rights Watch that Ayer Yar Shwe Wah took control over their land in 2004. Can you please comment on this allegation?
7. Can you please describe any offers made by the Ayer Yar Shwe Wah company or its agents to provide financial or other compensation to any individuals using the land the company took control over?
8. Does Ayer Yar Shwe Wah have written policies and procedures for acquiring land? If yes, can you please provide a copy of those written policies and procedures? If no, can you inform us how Ayer Yar Shwe Wah makes decisions to obtain or purchase land?

Thank you for your time and attention to our questions. We request replies in writing so that we can accurately reflect your company's views in our report. Please send any written responses to Seashia Vang at vangs@hrw.org in our San Francisco office.

Please feel free to contact me directly in Bangkok, Thailand at robertp@hrw.org or on my mobile phone +66-85-060-8406 at any time regarding these questions and information requests made in this letter.

Sincerely,



Phil Robertson
Deputy Director, Asia Division
Human Rights Watch

“Nothing for Our Land”

Impact of Land Confiscation on Farmers in Myanmar

Over several decades, successive governments in Myanmar have carried out confiscations of land that have had disastrous impacts for farmers across the country. Farmers have often received no notice that their land would be seized and little or no compensation. Following the transition to a quasi-civilian government in 2011 and promised reform, displaced farmers were hopeful they would finally see some justice. While new laws have been introduced with some positive provisions, problematic laws persist that could facilitate future abuses.

“Nothing for Our Land” focuses on the impact land confiscations have had on individual farmers in Shan State and the Ayeyarwady and Yangon regions. Farmers describe loss of livelihood, barriers to health care, and children no longer able to attend school. Many have not received compensation for the confiscated land. While farm families struggle to cope, many have spent years petitioning the government for compensation or the return of their land. Few receive any response, or learn their land has been transferred to corporations or other individuals. Some farmers protesting their loss of land and the failure of authorities to resolve their claims have been arrested, prosecuted, and imprisoned. Those returning from prison find that nothing has changed.

Human Rights Watch urges the Myanmar government to thoroughly, impartially, and transparently investigate all claims of confiscated land. For those whose land was seized without proper due process, the government should provide prompt redress. The government should actively monitor the progress of investigations and returns of land. To help guard against future unlawful confiscations, the government should repeal and replace or amend current laws and regulations to ensure that rights are safeguarded.



La Win, 61, a farmer from the Ayeyarwady Region, sits on a portion of the 35 acres of land he said was taken from him in 2004 by a company. When asked about the effect of the seizure of the land he said, “I suffered great losses in every aspect of my life.” La Win had been working on the land for more than 14 years before it was confiscated. Unable to farm, he started working as a manual laborer, weaving together thatch walls, and occasionally fishing. He said he now earns no more than 4500 kyat (US\$3.20) per day.

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