

Report Briefer

August 2018

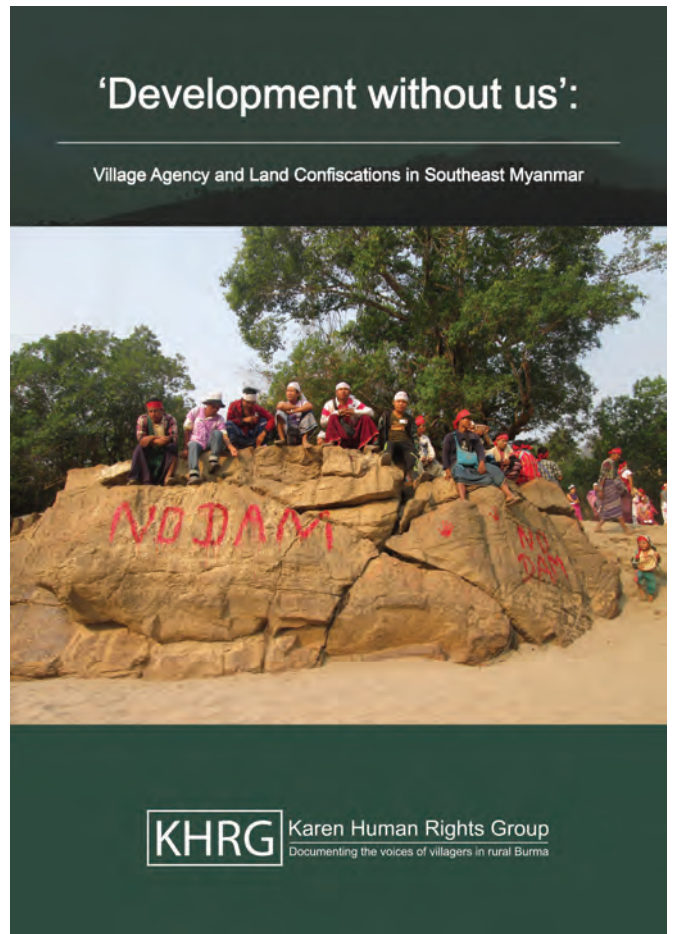
‘Development without us’: Village Agency and Land Confiscations in Southeast Myanmar

Land confiscations, the acquisition of lands that are already occupied or used by indigenous communities, are on the upswing throughout Myanmar. Current development practices in the country present a series of risks for the human rights of rural communities. In a region where 70% of the local population depends on land for their survival, land confiscations can threaten the livelihoods of entire communities. Because of the predominance of customary land tenure and the prevalence of weak and overlapping land governance systems, rural populations in Myanmar's ethnic border areas are particularly vulnerable to land confiscations.

The bilateral ceasefires of 2012 and the succeeding Nationwide Ceasefire Agreement of 2015 have ushered in a period of intensifying investment. Infrastructure development and natural resource extraction are on the rise in Southeast Myanmar. This has resulted in an increase in land disputes, as rural populations come face-to-face with local and international companies who intend to make a profit with little regard for the needs and grievances of the local communities.

Mining, hydropower, road construction and agribusiness are the predominant corporate development projects in Southeast Myanmar. The evidence in this report points to an extremely concerning trend: that stakeholders in these industries, including company representatives and government authorities, believe that the supposed benefits of corporate development projects cancel out the rights of local populations.

In contrast to the principles and standards enshrined in the UN Declaration on the Rights of Indigenous Populations and the UN Guiding Principles on Business and Human Rights, stakeholders fail to obtain the consent of local populations prior to confiscating land. Companies and local authorities prioritise corporate development projects with little regard for the long-term social and environmental impact on local communities. Villagers in Southeast Myanmar struggle to secure their land rights, with little recourse to justice or compensation. Today's land disputes are a threat to long-term peace in Southeast Myanmar, as they increase social and political instability. There is an urgent need for the establishment of a credible legal framework to prevent dispossession, and protect the human and land rights of rural populations.



The full report is available in English, Burmese and Karen for download at www.khr.org

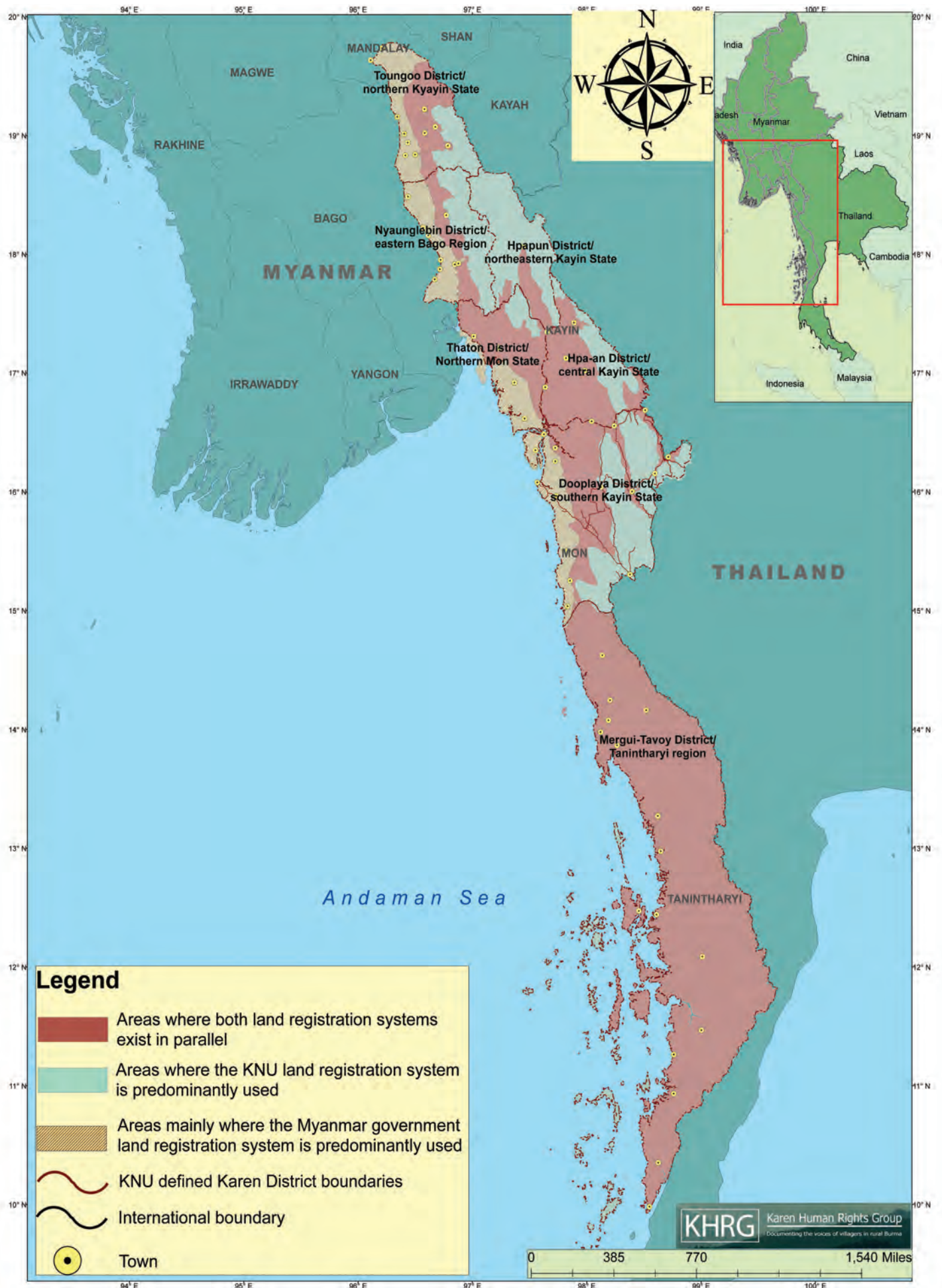
KHRG defines **village agency** as the capacity, strategies, and efforts taken by villagers to understand, confront, and prevent human rights abuses. Despite the many barriers they face, rural populations have responded in proactive and creative ways to land confiscations, by:

- writing complaint letters
- protesting and fencing land
- applying for land titles
- negotiating compensation
- contacting stakeholders
- forming village-level committees



This photo was taken by a KHRG researcher on January 12th 2016 in Toungoo Town, Htantabin Township, Toungoo District. It shows 200 local farmers protesting against land confiscations. Men and women from Ae---, Ad---, Ac--- and Ab--- villages in Htantabin Township marched to Toungoo Town and held a demonstration against the Kaung Myanmar Aung Company. KMAC had confiscated their lands for a teak plantation, so local villagers held a demonstration to reclaim their land. *[Photo: KHRG]*

Land governance in Southeast Myanmar



Land titles and Documentation

There are two parallel administrative systems governing land in Southeast Myanmar: one regulated by the Myanmar government, and the other by the Karen National Union (KNU). Both systems of land registration offer villagers the possibility of acquiring legal documentation of either land ownership (under the KNU) or land tenancy (under both the Myanmar government and the KNU). Since 2012, both governments have been proactive in mapping and registering land, as well as issuing land titles. Due to the increase in commercial development in Southeast Myanmar, villagers have increasingly tried to obtain land titles to protect their land from confiscation.

Key Findings:

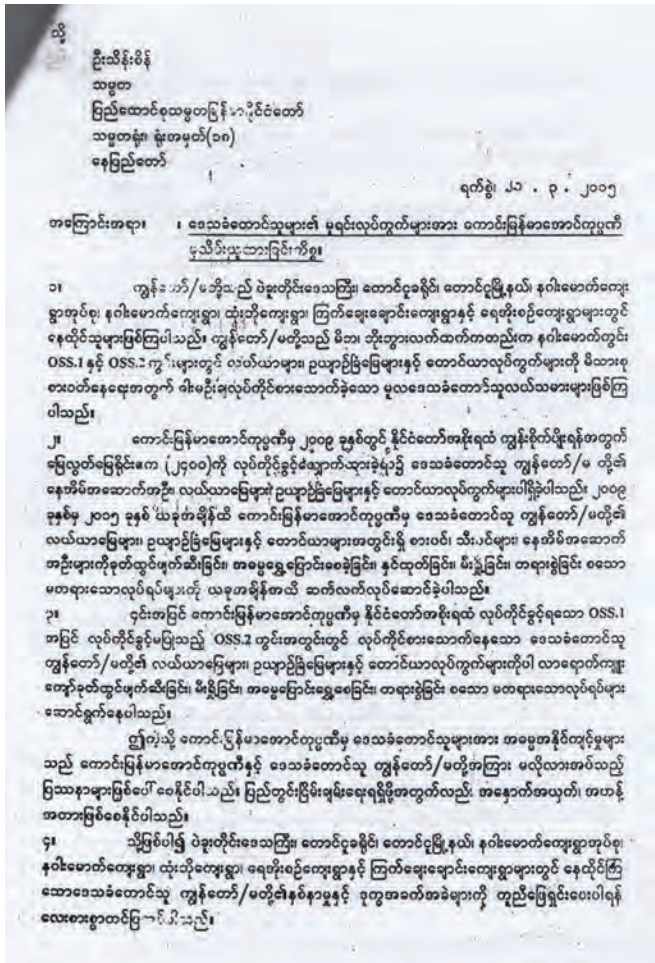
- Land titles are not traditionally used by villagers in Southeast Myanmar, especially in rural areas. For villagers attempting to seek a land title for protection from land confiscation, this situation is further complicated by the fact that two different systems of applying for a land title exist in Southeast Myanmar.
- Today, villagers are more aware of the importance of land titles, but there are significant gaps in villagers' understanding of how to apply for a land title, what the procedure is and how long it should take.
- Even when villagers are active in seeking land titles for legal recognition and protection from land confiscation, significant barriers exist. These include a lack of information about the land title application process, a lack of transparency in the system of measuring land and instances of corruption and bribery at a local level.
- The increase in commercial development projects in Southeast Myanmar puts villagers at risk of losing their land. Companies can access higher branches of government and obtain legal permission to use land before villagers even know that their land is up for consideration.

However, the strategy of relying on land titles as a form of agency to protect land from being seized or damaged can pose risks for villagers. Overall, this strategy is not reliable and does not guarantee sufficient legal protection for villagers trying to retain ownership of their land. Villagers in possession of KNU land titles are at risk of land confiscation and damage by development projects implemented by companies who have negotiated with the Myanmar government for permission.



These two photos were taken by a KHRG researcher from Mone Township, Nyaunglebin District in August 2014. They show a villager holding land titles from the KNU and Myanmar government. *[Photos: KHRG]*

Complaint Letters



KHRG received this complaint letter in November 2015. Villagers wrote a collective complaint letter to different policymakers and government bodies. They requested that the village authorities support their advocacy to the Kaung Myanmar Aung Company. The complaint letter contained a list of people whose land was confiscated, as well as pictures of the damage to their land and plantations. Villagers also requested more information than was provided on the signboard that was posted on the land. They advocated for increased transparency in the complaint letter. [Photos: KHRG]

From 2015 to 2018, complaint letters were one of the most common agency strategies used by villagers to confront land confiscations and property damage in Southeast Myanmar. However, these letters are often ignored by both KNU and Myanmar government bodies because they lack effective grievance mechanisms. In many cases, the lack of response leaves villagers waiting, delaying alternative agency strategies and undermining their ability to fight for their land rights.

Key Findings:

- KHRG found that during its reporting period, writing and submitting a complaint letter was one of the most common agency strategies used by villagers when confronting development-related concerns in Southeast Myanmar. This is in sharp contrast with the period prior to the 2012 preliminary ceasefire, when villagers were less likely to expose themselves to potential harm by writing complaint letters to decision makers.
- Complaint letters are one of the most flexible agency strategies used by rural populations. They are used both to respond and to prevent land confiscation and property damage.
- However, the vast majority of complaint letters did not result in any acknowledgement of receipt or any response from different stakeholders. Because of the lack of effective grievance mechanisms, these letters are often ignored by both KNU and Myanmar government bodies.
- The lack of response reduces the agency of impacted communities because they delay alternative agency strategies as they wait for a response.
- One factor that increases the success of complaint letters: the involvement of Community-based Organisations (CBOs) in the process of writing and submitting complaint letters to relevant stakeholders.

Legal Knowledge and Access to Justice

“When we report a case [of land confiscation] to the court, the jury and police do not take action. All of the jury and police are under the control of the Myanmar government. We cannot rely on police and jury. Because of that, only business companies and wealthy individuals will benefit from development projects but not villagers.”

Ma K---, Tavoyan Women Union, Dawei Town, Mergui-Tavoy District/
 Tanintharyi Region (interviewed in January 2018)

Key Findings:

- Villagers believe that land laws in Southeast Myanmar are ambiguous and opaque. There is a lack of consistency in the application of the law at the local level. This, along with a lack of understanding of land law, leaves many villagers feeling that they lack security when it comes to land ownership.
- At the community level, there is a lack of accessible information about the legal process, and how villagers can contest cases of property damage, land loss and environmental damage caused by development projects.
- Significant financial barriers restrict villagers' access to justice. Legal cases dealing with land confiscation and property damage can represent a financial burden for villagers. Because they depend on agriculture and daily wages for their livelihoods, many struggle to afford the cost of lawyers and transportation to court.
- Villagers perceive that the Myanmar legal system is systematically corrupt. The unequal application or upholding of the law is understood by villagers as protecting companies, government officials and other powerful actors.
- Villagers have been threatened with arrest and taken to court for their occupation of traditional lands now claimed by companies for private development projects. This experience has led villagers to express hesitancy about engaging with the law, perceiving that it may be used to punish rather than protect them.
- Villagers that face land confiscation for corporate development projects are limited in their ability to access justice because of security risks due to the behind-the-scenes involvement of influential authority figures, including the Myanmar government and military.



This photo was taken on 19 October 2015. It shows a meeting between KHRG researchers and Saw Q--- and Saw Cz---, two villagers who are involved in a lawsuit related to land confiscation in Htantabin Township, Toungoo District. According to the villagers, a husband and wife were sued under three different laws. When the villagers involved in the lawsuit were in court, the judge was biased in favour of the company. The villagers faced livelihood problems, as they had [to spend time and money] to go to court. Saw Da--- from the KNU, who is working on land issues, asked what KHRG could do to help. [Photo: KHRG]

Consultation and the Importance of Free, Prior and Informed Consent (FPIC)

According to the principle of Free, Prior and Informed Consent, private companies should consult local populations before implementing development projects. Government authorities and companies can do this by providing information, opportunities for negotiations, and advance notice of the development project. This principle is stipulated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and referenced in the Nationwide Ceasefire Agreement (NCA) signed between the Myanmar government and the Karen National Union.

In Southeast Myanmar, meaningful consultations between companies, government authorities, and villagers rarely take place. Consultations do not meet international standards and best practices. KHRG found that the lack of meaningful consultations erodes trust and cooperation between all relevant stakeholders. Consultations are necessary for inclusive and sustainable development to occur.

Key Findings:

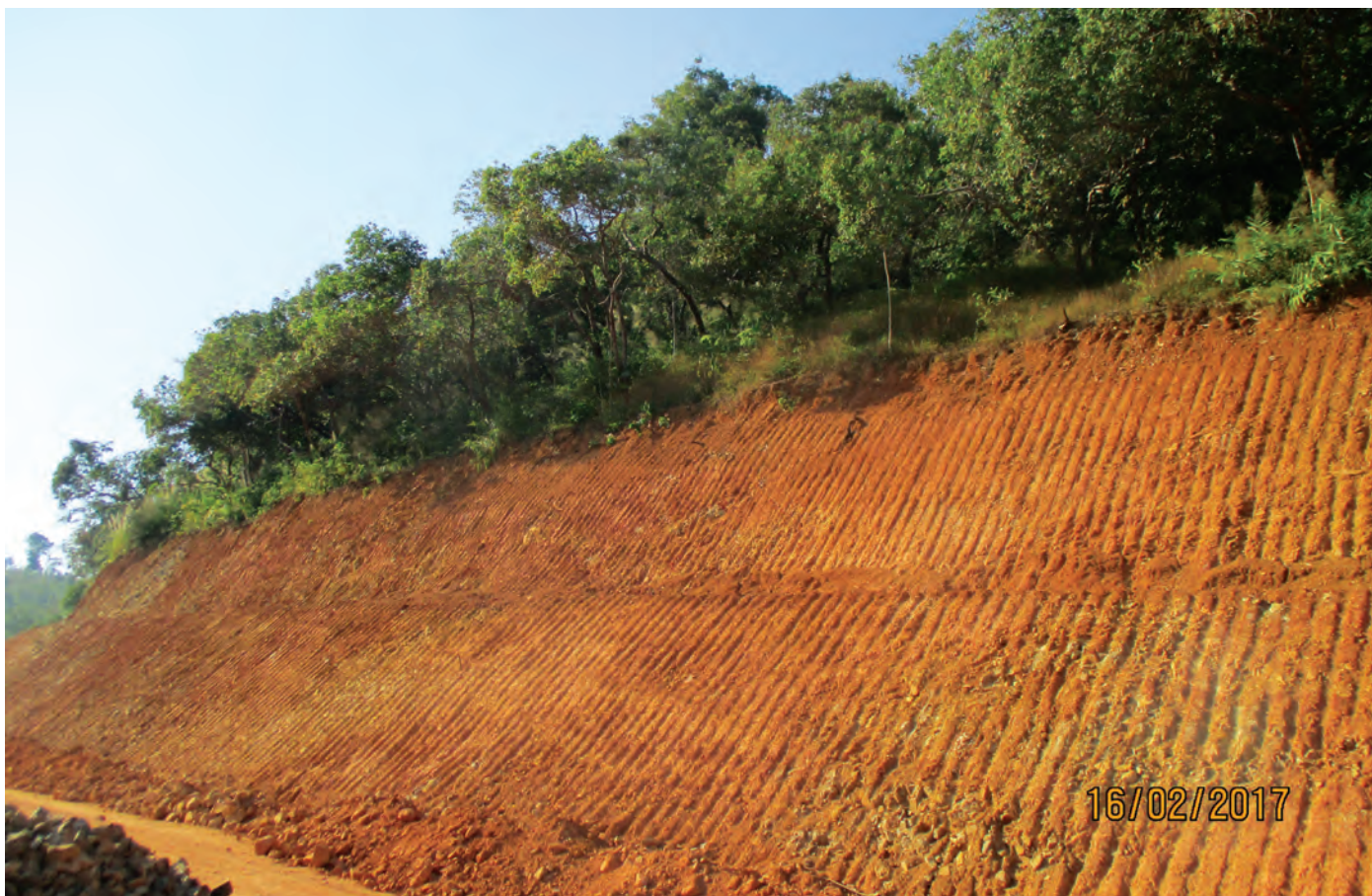
- In the majority of cases reported to KHRG since 2012, villagers and village representatives were excluded from consultation processes that took place between private companies and government authorities prior to the implementation of commercial development projects in Southeast Myanmar.
- In situations when villagers were invited to consultation meetings, these meetings often took place at times and locations that were inconvenient or inaccessible to villagers.
- In the absence of consultation meetings, villagers took steps to contact decision makers and access information about corporate development projects. The absence of consultations made it difficult for villagers to negotiate the outcomes of development projects.
- KHRG found that when villagers attempted to engage in negotiations to reclaim confiscated land, company representatives and government authorities typically retreated from negotiations and became difficult to access.



This photo was taken on February 9th 2017, in Tanintharyi Town Hall, Tanintharyi Town, Ler Muh Lah Township, Mergui-Tavoy District. It shows the consultation meeting that was held by GMS Power Company regarding the proposed hydropower dam on the Tanintharyi River. During the consultation meeting, villagers expressed their disagreement with the project, and they protested against the project. They held signs that said 'Do not destroy Tanintharyi River' and 'No Dam'. [Photo: Local villager]

"For me, I do not recognize that a project is conducted with dignity without consultation with villagers... The best way to conduct the development project by either companies or others is to have meaningful consultation with villagers."

Saw Q--- (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in December 2017)



This photo was taken on February 17th 2017 in Ba--- village, Ta Naw Th'Ree Township, Mergui-Tavoy District. It shows construction workers building a road on the land of Saw Az---, the local villager shown in the photo below. Because the construction workers dumped soil and rocks on his land, they damaged 300 cashew trees and 500 rubber trees belonging to Saw Az---. The road construction threatened Saw Az---'s livelihood. [Photo: KHRG]



This photo shows Saw Az--- from Ba--- village, Ta Naw Th'Ree Township. Saw Az--- reported to KHRG the damage to his plantations caused by the road construction. The Myanmar government is responsible for building this road. [Photo: KHRG]

Compensation

“We can only support ourselves for two months with the amount of money they give but they [the company] can support themselves for 100 years if they get money from this mountain [...] What I mean is that money is nothing for us. We could not support our lives with the money they give [as compensation]. Even if they give me 1,000,000 kyats, I could not exchange it with this mountain. We could not support our lives for 100 years with 1,000,000 kyats.”

U Bq---, (male, 58), Br--- village, Pein Nel Taw village tract, Thaton Township, Thaton District/northern Mon State (Interview received in May 2015)

Although rural communities used agency strategies to pressure companies and government authorities to address their grievances, they were rarely compensated for confiscated land or property damage. Although KHRG has received reports of companies proactively engaging with villagers to provide compensation for land confiscations, this is a rare occurrence in Southeast Myanmar.

Key Findings:

- Most villagers reported to KHRG that they did not receive any form of compensation for land confiscation or environmental damages caused by corporate development projects since 2015.
- Private companies and government authorities were least likely to offer compensation packages to villagers when implementing road construction projects.
- In cases where villagers were offered monetary compensation for land lost, they found it to be unfair or inadequate. This is because they felt that monetary compensation could not recompense for the loss of their ancestral land and their long-term livelihoods. When land was confiscated, most villagers would rather get their land back, rather than receive a compensation package offered by the company.
- In cases where companies offered compensation packages, villagers were at times coerced to accept the compensation terms set forth by the companies.
- In many instances of commercial development projects, villagers did not know how to access formal grievance mechanisms to request compensation.
- In certain cases, villagers were made to believe that they would receive compensation for land lost or damaged by a commercial development project, but companies failed to follow-through by providing adequate compensation.
- In cases where compensation was provided for land lost or damaged by a commercial development project, the lack of transparency and the ad hoc nature of compensation brought about a sense of injustice and inequality at a village-level. Often, villagers did not understand why households received different compensation packages.

Protests and Confrontation

Throughout the reporting period, villagers arranged prayer ceremonies and demonstrations to protest instances of land confiscation and property damage. They also fenced their land, put up signs, constructed buildings and blocked roads when they perceived their land was under threat or once their land was already confiscated. However, rural communities still believe that there are considerable limits to their ability to protect their interests from private development actors.

Key Findings:

- Throughout the reporting period, villagers in Southeast Myanmar exhibited greater confidence organising and participating in different types of protests.
- Villagers in Southeast Myanmar are more likely to protest commercial development projects that involve land confiscations, because of the serious impacts on their long-term livelihoods and their ability to access ancestral lands.
- According to KHRG reports, villagers were more likely to protest in situations where they perceived that other agency strategies, such as writing complaint letters, negotiating, and documenting, were ineffective in garnering the attention of government authorities and private companies.
- KHRG found that villagers still face challenges in organising and participating in protests. They must obtain permission to protest from government authorities, and often lack the knowledge or skills to protest against commercial development projects to protect their land.



These photos were taken on June 5th, 2015 in Kyaukkyi Township, Nyaunglebin District. The photo on the left shows local villagers in a prayer ceremony. More than 150 people from around Kyaukkyi Township gathered together to pray and demonstrate against the mining project. The local community was not consulted before the KNU gave permission to the Yadana Sai Kaung Myat Company to mine in this area. The photo on the right shows how people piled up prayer stones. *[Photos: KHRG]*

Community Support

“Local villagers formed a committee by their own with 30 people because the companies did not hold a consultation and advanced discussion regarding the mining process. The Sit Toung Than Zin Social Network is leading the process [to handle the mining case between companies and stakeholders] for the committee.”

Situation Update written by a KHRG researcher, Thandaunggyi Township, Toungoo District/northern Kayin State (Received in November 2015)

Villagers throughout Southeast Myanmar frequently reported that they are more comfortable facing companies and government authorities as a group rather than as individuals. This is because at the community level, development is understood to affect all members of the community. The land and the surrounding natural resources are also understood as being collectively used, protected and owned.

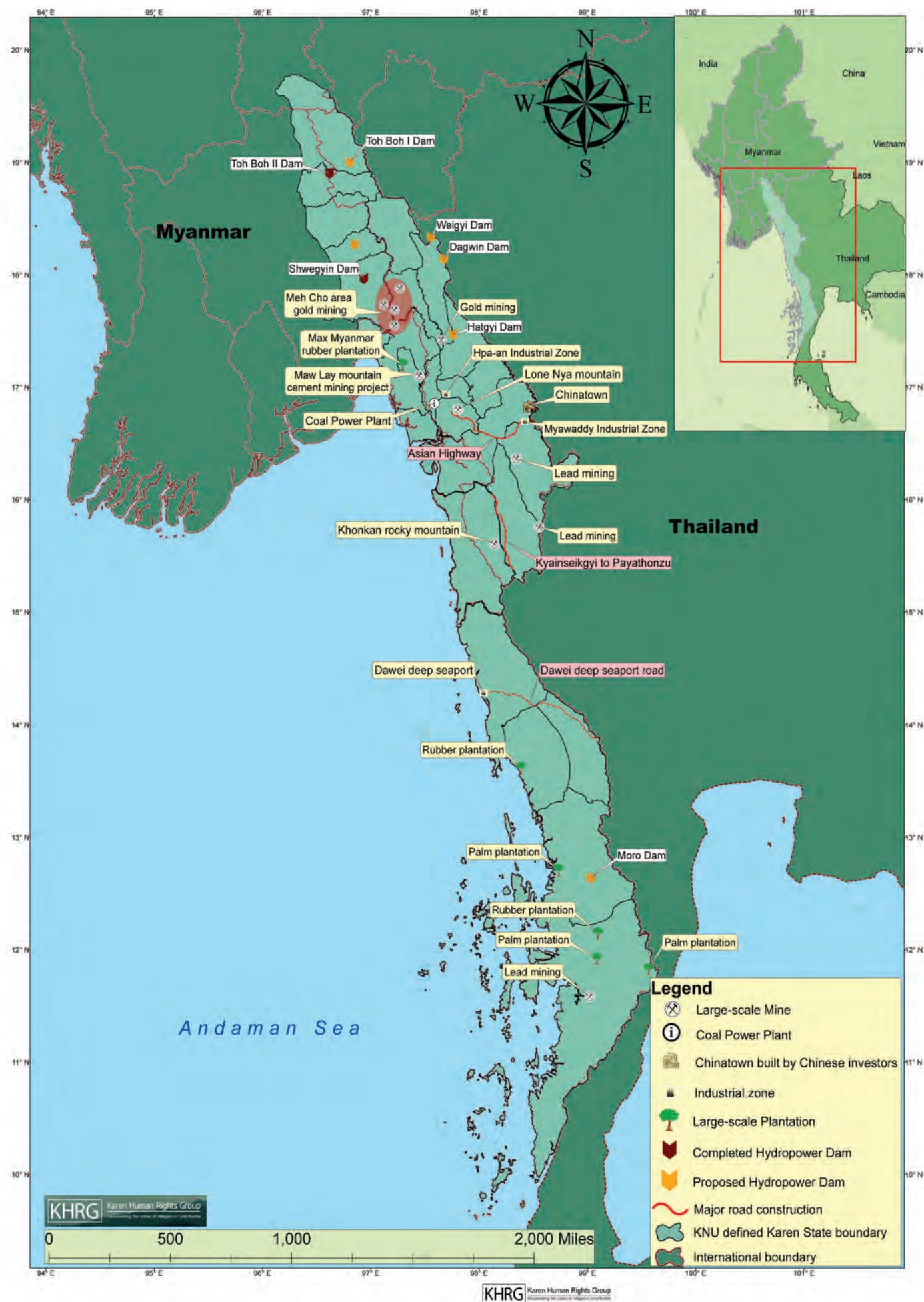
Key Findings:

- KHRG found that community support bolstered the ability of rural populations to advocate for their land rights and offset the negative impacts of corporate development projects.
- KHRG found that villagers formed committees at the local level to confront companies operating in their areas. They reported feeling more comfortable working in a group rather than working individually.
- Compared to the pre-2012 ceasefire period, villagers were more likely to form village committees to advocate for their rights.



This photo was taken on January 19th 2018 in Thandaunggyi Township, Toungoo District. It shows a workshop organised by Land In Our Hands (LIOH), Karen Environment and Social Action Network (KESAN) and Karen Human Rights Group (KHRG) in Cu--- village. Local community members and local CBOs/CSOs were present at the workshop. There were around 210 participants in total. The workshop focused on land law. Workshop facilitators explained the implications of the Myanmar Government's Land Acquisition Act, Farmland Act and Vacant, Fallow, Virgin Land Management Act to the local population. [Photo: KHRG]

Large-scale corporate development projects in Southeast Myanmar



Recommendations

Recommendations to the Government of Myanmar and/or the Karen National Union

- To improve access to the land registration system, the Myanmar government, the KNU and local authorities should take the following steps:
 - a. enact measures to harmonise both land acquisition systems to protect the rights of formal and customary landowners.
 - b. increase transparency in the process of applying for a land title by raising awareness of the documentation needed, and the administrative units responsible for measuring land and issuing land titles.
- To ensure access to justice, the Myanmar government, the KNU and local authorities should:
 - a. apply the law equally to the local population, without bias with regards to the rights of different ethnic groups.
 - b. develop the capacity of government bodies responsible for monitoring and resolving disputes relating to land confiscation and property damage.
 - c. strengthen the implementation of the Myanmar National Land Use Policy, the KNU Land Policy, and the 2015 EIA Procedures, to increase access to information about the environmental and social impacts of projects.
- To improve the access of the local population to grievance mechanisms including domestic complaint and adjudication bodies, the Myanmar government should:
 - a. ensure that land dispute mechanisms are community-based and established according to customary practices.
 - b. bring the Myanmar National Human Rights Commission in line with the Paris Principles by providing them with the autonomy and the tools necessary to resolve disputes.
 - c. improve the functioning of the Central Committee for Rescrutinising Farmlands and Other Lands by:
 - i. conducting a public awareness campaign to ensure that the public knows how to access the committee.
 - ii. ensuring that the committee provides regular and timely updates to its claimants.
 - iii. building the capacity of the Committee to conduct fair and quality investigations.
 - iv. ensuring that land confiscation cases are settled at the regional level, as intended.
- To improve the access of the local population to grievance mechanisms including domestic complaint and adjudication bodies, the KNU should:
 - a. fast-track the establishment of its Human Rights Commission.
 - b. ensure that the Commission is established in accordance to the Paris Principles.
 - c. conduct a public awareness campaign to ensure that local populations know how to lodge a complaint to the Human Rights Commission.
- To improve the land tenure security, the Myanmar government should:
 - a. withdraw the proposed Land Acquisition Act (2017), in order to allow the National Land Use Council to resume its work on land law reform. In its current form, the bill would be harmful to farmers and rural communities.
 - b. withdraw the proposed 2017 amendments to Farmland Law (2012). Section 37 (a) of the proposed amendments enables the predatory prosecutions of rural communities.
 - c. withdraw the proposed 2017 amendments to the Vacant, Fallow and Virgin Lands Management Law (2012). Sections 22 and 27 of the proposed amendments increase the tenure insecurity and the predatory prosecution of rural communities.

- To improve accountability, the Myanmar government, the KNU and/or local authorities should:
 - a. strengthen mechanisms to fight corruption and bribery in the process of land acquisition.
 - b. commit to addressing accusations of corruption and bribery in the legal system.
 - c. empower the Myanmar Anti-Corruption Commission to investigate systemic corruption involving land issues.
- To ensure that the corporate development projects do not increase the risk of violent conflict, the Myanmar Investment Commission should:
 - a. develop a strict definition of 'conflict-affected area'.
 - b. increase transparency in its decision making-process about granting investment permits for 'conflict-affected areas'.
 - c. require investors to undertake comprehensive conflict sensitivity assessments before issuing an investment permit for 'conflict-affected areas'.
- To ensure that best practices for business and human rights are upheld in Myanmar, the Myanmar government and the KNU authorities should:
 - a. strengthen the legislative framework to enshrine international standards for information and consultation processes are upheld in Myanmar, based on FPIC and the United Nations Guiding Principles for Business and Human Rights.
 - b. work with companies intending to develop projects in Myanmar to ensure that communities affected by these projects have:
 - i. access to clear and advance information.
 - ii. meaningful consultations.
 - iii. access to grievance mechanisms.
- To ensure that villagers are not coerced when advocating for their land rights, the Myanmar Government should:
 - a. ensure that authorities abide by the 2016 Peaceful Assembly Law which does not require for villagers to obtain a permission to organise and participate in peaceful demonstrations.
 - b. amend the 2016 Peaceful Assembly and Peaceful Processions Law to remove vague rules that allow for its arbitrary use.
 - c. retract the 2018 proposed amendments to the 2016 Peaceful Assembly and Peaceful Processions Law. The proposed amendments would further reduce the civic space available for villagers to raise their concerns.
- To ensure that civil society is protected in Myanmar, the Myanmar government and the KNU authorities should:
 - a. remove barriers for civil society actors working to help local communities advocate for their land and human rights.
 - b. acknowledge and work with village committees formed at a local level to advocate for villagers' land rights.

Recommendations to Companies working in Southeast Myanmar

- Considering the lack of a uniform system establishing land ownership in Southeast Myanmar, and the heavy reliance on customary ownership, companies intending to acquire or lease land for their operations should:
 - a. conduct assessments to understand the customary land practices, and recognise the rights of both formal and customary landowners in the area.
 - b. follow relevant international best practices, including the International Finance Corporation (IFC) Performance Standards, by conducting environmental and social impact assessments.
- Before implementing a commercial venture, companies should consult with local communities based on the principles of good practice put forward in FPIC, which include:
 - a. holding consultations early, to ensure that the concerns of the local community are taken into account prior, during and following project implementation.
 - b. providing relevant information on the nature, size, reversibility and scope of the project, tailored to the local linguistic and cultural contexts.
 - c. guaranteeing consent and transparency throughout the consultation process by documenting issues raised by the local population.
 - d. facilitating the participation of groups traditionally excluded from decision-making processes, including women and minorities.
 - e. meaningfully engaging in negotiations by taking steps to formalise and follow-through with commitments made to local community members.
 - f. ensuring that no manipulation or coercion occurs during the implementation of the project.
- In providing compensation for populations impacted by property damages and land loss, companies should:
 - a. account for the long-term consequences of development projects on the livelihoods of the local population.
 - b. negotiate with the impacted community to define adequate compensation, considering different types of remedies, such as monetary compensation, offering land of equal value, or alternative compensation packages.
 - c. follow through on compensation commitments by formalising agreements between the company and affected villagers.
 - d. ensure that the type and amount of compensation provided will be distributed in a transparent and fair manner to different community members.
 - e. take into account that compensation packages do not replace an open and fair consultation process with the local community.
 - f. ensuring that villagers are not coerced or threatened into accepting compensation packages that they deem unfair or inadequate.

Recommendations to local and international civil society organisations working in Southeast Myanmar

- Community-based Organisations (CBOs) and Civil Society Organisations (CSOs) should provide trainings and educational resources to villagers to help them:
 - gain a better understanding of land law.
 - learn how to apply for a land title.
 - understand how to bring land issues to domestic complaint and adjudication bodies.
- CSOs and CBOs should support the different agency strategies used by villagers and assist them to advocate more effectively for their land rights, by providing them with financial, technical and legal support.
- Where possible, CBOs and CSOs should acknowledge and cooperate with committees formed at the local level by villagers to advocate for their land rights.
- International civil society organisations should support CBOs and CSOs with funding and technical assistance to enhance their capacity to support communities advocating for their land rights.



Founded in 1992, KHRG is an independent local organisation committed to improving the human rights situation in Myanmar by training and equipping local people to document their stories and gather evidence of human rights abuses; disseminating this information worldwide; and working directly with local villagers to enhance their strategies for protecting themselves from abuse and the effects of abuse. Examples of our work can be seen online at www.khrg.org