

'Development without us':

Village Agency and Land Confiscations in Southeast Myanmar



Karen Human Rights Group
Documenting the voices of villagers in rural Burma

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Karen Human Rights Group
August 2018

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I. Introduction

Executive Summary

Land confiscations are instances in which the government, military, Ethnic Armed Groups or private individuals claim ownership over land that is already occupied or used by another person or/ and community via legal or illegal means.

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.¹ 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 recent murder of the Karen indigenous rights activist Saw O Moo² by the Tatmadaw highlights the rising tensions surrounding the land rights of indigenous people in Southeast Myanmar.

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.

Ten years since our report on '*Village Agency: Rural Rights and Resistance in Militarised Karen State*', KHRG's agency approach is as important as ever to understanding the experiences of local communities in Southeast Myanmar. Instead of focusing on the ways in which villagers are victimised and left vulnerable by companies and government authorities, KHRG has decided to focus on how rural communities are using agency to protect themselves from land confiscations and corporate development-related human rights abuses. KHRG defines village agency as the capacity, strategies, and efforts taken by villagers to understand, confront, and prevent human rights abuses. KHRG aims to amplify the different strategies villagers use to defend their land: getting involved in consultation processes, negotiating with private actors, defending their land

¹ "Myanmar at a glance," Food and Agriculture Organisation, 2017.

² See "A Karen Community Leader, Saw O Moo, Was Murdered by Tatmadaw forces in Hpapun District, April 2018," KHRG, June 2018; and "A Tribute to Saw O Moo: *Karen Indigenous Rights Defender Gunned Down by Burma Army Soldiers in Mutraw District, Karen State*," KESAN, 10 April 2018.

rights through documentation, sending complaint letters, requesting fair compensation, and organising and attending protests.

This report also highlights the factors that can empower or disempower villagers from acting, including access to information, access to decision makers, an understanding of the legal framework, and the ability to project their voices as a community.

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. Through this report, KHRG hopes to project the voices of villagers impacted by land confiscations to influence decision makers, private companies and other stakeholders to take a step towards inclusive development.

Structure of the report

The report is divided into five chapters. In the introductory chapter, the Executive Summary, Rationale, Recommendations, and Methodology are presented.

The second chapter provides readers with background information on development trends and the land governance system in Myanmar from the 1980s to the present. It highlights the persistence of development-related abuses and land confiscations during Myanmar's transition from a military to a quasi-civilian government. In Southeast Myanmar, both the KNU and Myanmar government land governance systems are used. This complex system makes local populations particularly vulnerable to land confiscations. Finally, this chapter provides an overview of nascent industries in Southeast Myanmar, including hydropower projects, agribusiness, road construction, and mining. These industries have the potential to make land tenure insecurity more acute in the region.

Chapter 3 analyses how rural populations in Southeast Myanmar are attempting to access the Myanmar government and KNU land governance and court systems to protect their ancestral lands. The agency strategies highlighted in this chapter include: obtaining land titles, documenting property damage and submitting complaint letters to the Myanmar government and KNU, as well as using the court system to challenge land confiscation and property damage caused by corporations.

1. *Land Titles and Documentation*: this section analyses how rural populations are attempting to protect their ancestral lands by obtaining a land title. Because two different land governance systems exist in Southeast Myanmar, local populations face a number of challenges in registering their land. These communities overwhelmingly practice customary land tenure, and are often unsure of how to apply for a land title. Additional barriers include a lack of transparency in the process of measuring land, and systemic corruption in the land registration process. Because companies can access higher branches of government in Myanmar, they can obtain legal permission to use land for corporate development projects long before rural populations know that their land is up for consideration.
2. *Complaint Letters*: throughout Southeast Myanmar, rural populations are responding to land confiscations by writing complaint letters. This chapter analyses the composition and intentions behind these letters, and the barriers to getting a response. Because of a lack of an effective grievance mechanism in Myanmar, populations affected by land confiscations are appealing to a wide range of local, regional, and national level authorities for help. These letters invariably go unanswered, demonstrating the lack of accountability prevalent in Southeast Myanmar.

3. *Legal Knowledge and Access to Justice*: this section analyses how villagers in Southeast Myanmar have limited confidence in the ability of the law to protect their land rights. Because of a lack of consistency in the application of land laws, financial barriers, and systemic corruption in the court system, rural populations face difficulties accessing justice in the aftermath of land confiscations.

Taking a Land Dispute to Court: the Case of Kaung Myanmar Aung Company: when the Kaung Myanmar Aung Company (KMAC) confiscated 2,400 acres of land for a large-scale teak plantation in Toungoo District, the local community attempted to get justice. This case study analyses the court cases that occurred between the KMAC and local villagers. It outlines the challenges that rural populations face when attempting to address land confiscation through the Myanmar government legal system.

Chapter 4 analyses how rural populations advocate for their land rights with the companies implementing corporate development projects in Southeast Myanmar. This chapter stresses the importance of consultation processes between companies, government authorities and villagers and of the principle of Free, Prior and Informed Consent (FPIC). In the absence of consultations, rural populations are at a disadvantage. Without access to information about the impacts of corporate development projects, it is more difficult for local communities to advocate for their rights and negotiate compensation for land loss and property damage.

1. *Consultation and the Importance of Free, Prior and Informed Consent (FPIC)*: this section analyses the prevalence of consultations in Southeast Myanmar. From 2015 to 2018, villagers were frequently excluded from consultation processes, and did not have the opportunity to negotiate the outcomes of development projects before they were implemented. The lack of meaningful consultations reduced the ability of local populations to protect themselves from the negative impacts of corporate development projects.

Building a Hydropower Dam on Tanintharyi River: this case study examines how local communities advocated against a hydropower dam on the Tanintharyi River that would have flooded their land. The consultations that occurred between the Greater Mekong Subregion Power and local villagers were a crucial source of information on the negative impacts of the dam on villages bordering the Tanintharyi River.

2. *Compensation*: this section details how between 2015 and 2018, villagers were rarely compensated for land confiscations, despite the fact that they used different agency strategies to pressure private companies to address their grievances. It analyses the barriers that rural populations face in reclaiming their land from private companies.

Chapter 5 looks into how rural populations in Southeast Myanmar have mobilised on a community-level to respond to land confiscations. By organising protests, forming village committees, and cooperating with local civil society organisations, villagers have banded together to advocate for their land rights.

1. *Protests and Confrontation*: this section puts forward the confrontation and defiance-based strategies that villagers used to oppose land confiscations between 2015 and 2018. According to KHRG findings, villagers organised and participated in prayer ceremonies, demonstrations, and protests when they perceived their land was under threat or once their land was already confiscated. Through these activities, villagers aimed to garner the attention of company representatives or government authorities.

2. *Community Support*: this section analyses how community-based advocacy helps local populations fight for their land rights. Rural populations throughout Southeast Myanmar have formed 'village committees' to advocate for their rights. These committees help them build a stronger case when writing complaint letters, requesting consultation processes, claiming compensation, or protesting the negative impacts of a commercial development project. Community-based Organisations (CBOs) also play a crucial role in helping villagers advocate for their land rights more effectively.

Mining for Limestone on Communal Land: the Case of Khonkhan Rocky Mountain: this case study analyses the strategies that a rural community used to advocate against the development of a limestone mine on a communal forest on Khonkhan Rocky Mountain. It highlights the importance of community support and civil society involvement when addressing development-related human rights concerns in Southeast Myanmar.

The Appendix Section³ includes all published and unpublished KHRG data that has been referenced in this thematic report. This is to ensure that the information presented in this report is verifiable and transparent.

³ The full Appendix is available in PDF form for download at www.khrg.org

Rationale: The Importance of Agency

For over 25 years, KHRG has documented how rural populations in Southeast Myanmar have used agency to advocate for their rights. KHRG focuses not only on explaining what types of abuses affect rural populations in Southeast Myanmar, but also how these populations respond to the challenges they face. Past successes or failures, evolving relationships with stakeholders, and changing motivations and desires all are influential in determining how rural populations seek to secure their human rights. By using a village agency lens, KHRG's human rights reporting continues to challenge narratives that frame rural populations as passive victims incapable of advocating for their rights without outside intervention.

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 respond in proactive, creative and adaptive ways to resist human rights abuses and land confiscations. In this report, KHRG has identified a number of village agency strategies, including applying for land titles, contacting and sending complaint letters to stakeholders, negotiating compensation, protesting and fencing lands, and reaching out to community members and civil society actors.

However, although the agency approach foregrounds the role and impact of villagers, it is important not to dismiss the important role that other actors have. Both the international community and national actors must be held accountable to uphold villagers' human and land rights. Consequently, KHRG combines human rights reporting with advocacy that aims to complement existing village agency. Rather than merely criticising powerful actors, KHRG promotes bottom-up solutions, building on the advocacy efforts of rural communities in Southeast Myanmar.

As village agency is always context-dependent, it is important to recognise how the context in Southeast Myanmar has changed over the past 25 years of KHRG reporting. The 2012 and 2015 ceasefires between the Myanmar government and Karen ethnic armed organisations have reduced violence in the region. They have also led to an increase in corporate development projects by national and international companies, including hydropower projects, agribusiness, road construction and mining. Unfortunately, the development of Southeast Myanmar has resulted in an upsurge in land confiscations, severely undermining the livelihoods of rural communities.

Throughout the region, rural populations are fighting for their human rights by challenging, confronting and engaging with corporate development actors and government authorities. Too often, their perspectives are ignored. For this reason, KHRG's village agency approach remains a crucial tool to promote inclusive development in Southeast Myanmar.

Recommendations

The following recommendations are derived from the villagers' perspectives on land and development collected by KHRG from 2015 to 2018. KHRG has designed our recommendations in a way that voices their needs and ideas first and foremost. This section is also informed by KHRG field research, informal interviews with key informants, and input from KHRG field and advocacy staff.

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 on 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:
 - a. gain a better understanding of land law.
 - b. learn how to apply for a land title.
 - c. 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.

Methodology

Field research

KHRG trains and supports local people throughout Southeast Myanmar to document the human rights issues that affect their communities. KHRG's recruitment policy does not discriminate based on gender, ethnic, religious background or political affiliation. We train anyone who has local knowledge and is motivated to improve the human rights situation in his or her community.

Verification

KHRG researchers follow a verification policy that includes gathering data from multiple sources, assessing the credibility of sources, and comparing the information with their own understanding of local trends. Due to the vast quantity of data collected by KHRG, KHRG uses an information-processing procedure to assess each individual piece of information prior to translation in order to ensure that the quality and accuracy of the information. Recognising that everyone has competing viewpoints and interests, KHRG filters all information received with an awareness of reporting biases.

Analysis for this report

KHRG uses a qualitative approach to collect and analyse reports received from the field in order to identify the human rights concerns of rural populations. This report analyses how rural communities in Southeast Myanmar have responded to instances of land confiscations from November 2015 and March 2018. The information received from the field in this period reflected a growing concern about land confiscations, and other development-related human rights abuses.

This report is based on an initial analysis of 586 reports. In the final report, KHRG has directly referenced 44 published reports and 46 unpublished reports.

KHRG has analysed this data to identify the various agency strategies that villagers use in order to prevent, mitigate and confront human rights abuses in their areas. KHRG defines a village agency strategy as the actions villagers take to protect their rights, such as:

- Writing complaint letters
- Protesting and fencing lands
- Applying for land titles
- Negotiating compensation
- Contacting stakeholders
- Forming village-level committees

Specialist feedback

Informal interviews were conducted with experts on land issues in Southeast Myanmar during the analysis phase of this report. These included representatives from Myeik Lawyer Network, Tavoyan Women Union, Southern Youth, Karen MATA and Karen River Watch. These interviews are referenced where relevant in the report. A draft of this report was also reviewed by a number of local and international experts. KHRG is grateful for the feedback that all stakeholders generously offered throughout this process.

Research areas and Geographical Terminology

KHRG is operational in seven research areas in Southeast Myanmar: Thaton, Toungoo, Nyaunglebin, Mergui-Tavoy, Hpapun, Dooplaya, and Hpa-an. When KHRG receives information from the field, it organises data according to these seven areas. They are commonly referred to as 'districts' and are used by the Karen National Union (KNU), as well as many local Karen organisations, both those affiliated and unaffiliated with the KNU. KHRG's use of the district

designations in reference to our research areas represents no political affiliation; rather, it is rooted in the fact that many rural communities commonly use these designations. In mixed control areas, KHRG attributes quotes according to the location names predominantly used by the local population: some communities mostly refer to location names defined by the Myanmar government, while others use the KNU designated location names listed above. Additionally, KHRG uses the following terminology: Burma/Myanmar government when quoting local populations, and Myanmar government in its analysis. The country was officially named Burma until the military regime changed the name to Myanmar in 1989.

Censoring of names, locations, and other details

Where quotes or references include identifying information that KHRG has reason to believe could put villagers or KHRG researchers in danger, particularly the names of individuals or villages, this information has been censored. Village and personal names have been censored using single, double or triple digit letters beginning from A--- and running to Z---. The censored code names do not correspond to the actual names in the relevant language or to coding used by KHRG in previous reports. The censored names in the body of this report also do not necessarily correspond to the censored names in the *Appendix: Raw Data*. All names and locations censored according to this system correspond to actual names and locations on file with KHRG.

Independence, obstacles to research, and selection bias

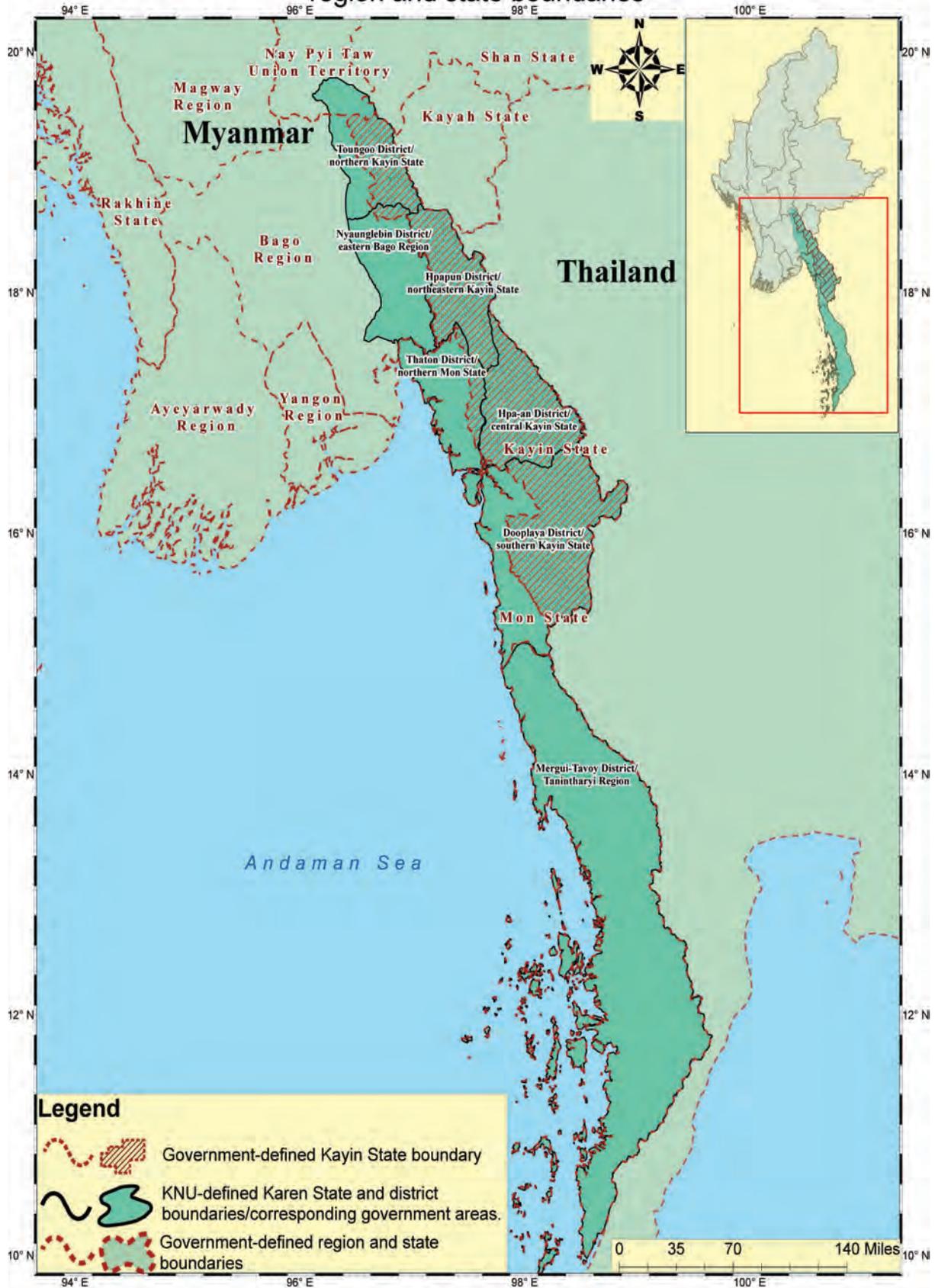
KHRG is independent and unaffiliated. Access to certain areas has sometimes been facilitated by the KNLA, particularly in cases where documentation activities required crossing vehicle roads near Tatmadaw army camps or in areas that were likely to be mined. Other groups were not willing to facilitate research by KHRG. During our reporting period, a number of armed groups, including the Tatmadaw, BGF, and DKBA (Benevolent), were obstacles to the safety of our researchers.

KHRG researchers and local people who have provided information to KHRG do so with an understanding that there are many risks to conducting human rights research in Southeast Myanmar. Due to this limitation, this report avoids making conclusions that are not supported by the data set or in areas where research was not conducted. For this reason, KHRG is unable to draw definitive conclusions about all aspects of operations by corporations or authorities. Instead, this report focuses on sharing the concerns raised by local villagers that relate to events they have directly experienced during the reporting period. Regardless of these research limitations, KHRG's methodology and documentation practices ensure the accuracy of information regarding abuse and associated impacts for villagers during this reporting period.

Sources and referencing

The information in this report is based directly on the testimonies of villagers collected during the reporting period, and on documentation analysed and collected by KHRG researchers. In order to make this information transparent and verifiable, all examples have been footnoted to 90 source documents, which are available in *Appendix: Raw Data* when previously unpublished, or via their report title and hyperlink to the KHRG website if previously published.

KNU-defined Karen State and Myanmar government-defined region and state boundaries



Karen Human Rights Group (KHRG)

Terms and Abbreviations

BGF	Border Guard Force
CBO	Community-based Organisation
CSO	Civil Society Organisation
DKBA	Democratic Karen Benevolent Army
EAOs	Ethnic Armed Organisations
EIA	Environmental Impact Assessment
FPIC	Free, Prior and Informed Consent
GMS Power	Greater Mekong Subregion Power Company
ITD	Italian-Thai Development Public Company Limited
KESAN	Karen Environmental and Social Action Network
KHRG	Karen Human Rights Group
KMAC	Kaung Myanmar Aung Company
KNLA	Karen National Liberation Army
KNU	Karen National Union
KNU HRC	Karen National Union Human Rights Commission
KRW	Karen River Watch
KWO	Karen Women Organisation
LIOH	Land In Our Hand
MNHRC	Myanmar National Human Rights Commission
NCA	Nationwide Ceasefire Agreement
NGO	Non-governmental Organisation
NLD	National League for Democracy
SEZ	Special Economic Zone
SPDC	State Peace and Development Council
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Currency

Baht	Currency of Thailand. Currency conversions in the text vary depending on the date of the original source report.
Kyat	Currency of Myanmar. Currency conversions in the text vary depending on the date of the original source report.

Burmese Language Terms

Bamar	The majority ethnic group in Myanmar, also known as ethnic Burmese or Burman.
Daw	Female honorific title for a married woman or a woman of a higher social position.
Ma	A female honorific title used before a person's name.
Maung	A male honorific title used before a person's name.
Tatmadaw	Tatmadaw refers to the Myanmar military.
U	Male honorific title for a married man or a man of a higher social position.

Sgaw/Pwo Karen Language Terms

Naw/Nan	Female honorific title.
Saw/Mann/Sa	Male honorific title.

II. Open for Business: Land and Development in Myanmar

Development: a nationwide priority

Economic development has been a long-standing priority of the Myanmar government. From the 1980s onwards, the State Peace and Development Council (SPDC) saw development as instrumental for building security, stability and gradual peace. Projects promoted by the SPDC included hydropower dams, roads, plantation agriculture, industrial zones and healthcare facilities. They were aggressively introduced into mixed control and conflict-affected areas with little regard for the fair treatment of ethnic minorities present in the areas. They resulted in land confiscations, extortion, forced labour, and displacement of civilians.⁴

The SPDC expanded its administrative reach into contested border areas by implementing development initiatives under the 1990s and 2000s ceasefires, capitalising on the political and economic relationships between its officials, Ethnic Armed Organisations (EAOs), and local business leaders. Newly constructed roads became access points for Myanmar's armed forces, businesses and officials to the areas. The centralisation of natural resources further enabled the state to exert dominance and diminish economic links between different EAOs.⁵ As a result, the SPDC was able to introduce and consolidate its administrative authority and eventually shift more tax revenues away from the EAOs.

The appetite for development was high for the signatories of the 1990s and 2000s ethnic ceasefires. For EAOs, ceasefires offered an opportunity to draw tax revenue from the growth of new and pre-existing businesses.⁶ Many of them established their own companies for natural resource extraction.⁷ Higher revenues enabled EAOs to strengthen their governance presence by providing more and better services and strengthening their administrative capacities.⁸ Some EAOs were able to significantly benefit from the availability of new business arrangements. However, by the 2000s, the majority of ceasefire signatory EAOs experienced a decline in their territory and political power, or were disbanded altogether.⁹

The bilateral ceasefires of 2011 and 2012 had a similar emphasis on economic development, with an emphasis on rapid administrative and social services expansion in the mixed control areas. Following these ceasefires, EAOs, such as the KNU, had renewed confidence in their ability to develop their tax base and the economic and social development of their populations. It is becoming clear that for certain EAOs, despite creating the risks of Myanmar government advancements, socioeconomic development is increasingly seen as essential in order not to leave their people and, therefore, their governed territories behind economically.

The development projects implemented after the 2012 ceasefires largely consisted of large-scale natural resource extraction, agribusiness and hydropower schemes. These schemes enhanced the profits of the Tatmadaw, EAOs and private companies, yet yielded little benefits for local communities.¹⁰ As documented in KHRG's 2013 report, *Losing Ground: Land conflicts and*

⁴ "Development by Decree: The politics of poverty and control in Karen State," KHRG, April 2007.

⁵ "Development by Decree: The politics of poverty and control in Karen State," KHRG, April 2007.

⁶ "Natural Resources and Subnational Governance in Myanmar, Key Considerations for Wealth Sharing," Subnational Governance in Myanmar Discussion Paper Series, No. 4, June 2014.

⁷ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

⁸ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

⁹ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

¹⁰ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

collective action in eastern Myanmar' and 2015 report *'With only our voices, what can we do?': Land confiscation and local response in southeast Myanmar*', these large-scale economic developments often occurred without consultation or compensation and resulted in large-scale land confiscations, forced displacement, informal taxation, forced labour and military recruitment, and other severe human and social rights violations, including violence and, in some cases, killings.¹¹

Ever since the opening up of the country in 2011, rapid economic growth has been a top priority for the Myanmar government. A number of laws were passed that enabled and eased foreign and domestic investment, as well as eased the implementation of large-scale development projects.

National League for Democracy era: a slow transition

When the NLD came to power, the *de facto* leader Aung San Suu Kyi adopted a very different point of view on economic development from her predecessors, prioritising the parallel pursuit of economic development and peace.

*"The peace process is our priority," she said. "Some people may say that peace will only come about after we undertake a process of economic development, but I disagree. This country cannot develop without peace."*¹²

During a 2018 sustainable development forum for ethnic nationals that was held in Nay Pyi Taw, Vice President U Henry Van Thio noted that:

*"While striving towards sustainable socio-economic development, one must remember that development and peace go together. Development is achieved when there is peace, and peace can be sustained only when there is development. Good road infrastructure and adequate power supply are the basic requirements for socio-economic development. [...] If learned persons from all sectors and the people work together, the socio-economy of our ethnic national brothers and sisters will develop quickly, together with internal peace."*¹³

However, the power transition and new policy implementation continues to move at a rather slow pace. The changes in the government's rationale are not necessarily reflected in or are yet to take hold in the ethnic areas. Continuous legal reforms indicate of little prioritisation of ethnic populations' wellbeing over economic growth. Thus, in the third year of NLD's government, development continues to bring many of the same human rights issues and abuses outlined in this chapter.

Development in Southeast Myanmar

The peace process in Southeast Myanmar dates back to the 2011 backroom talks between the KNU and the Thein Sein government.¹⁴ The bilateral ceasefire agreement between the two stakeholders was formalised on January 11, 2012.¹⁵ The signing of the agreement brought significant changes to the security situation in Southeast Myanmar, and transformed the relations between the KNU and Myanmar government.

¹¹ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

¹² "Peace process is priority, not development: Suu Kyi" Democratic Voices of Burma, 11 August 2017.

¹³ "Sustainable development forum for ethnics held in Nay Pyi Taw," The Republic of the Union of Myanmar President Office, 18 January 2018.

¹⁴ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

¹⁵ "The Karen National Union Negotiations 1949-2012," Burma Centre for Ethnic Studies Working Paper 2 (June 2012).

Following six decades of conflict, there was little trust in the Myanmar government.¹⁶ The commercial, infrastructure and social development that occurred in the post-ceasefire period has become heavily associated with the Myanmar government's expansion into the previously EAOs governed areas.

"The new military government uses development as a weapon to destroy and wipe out the resistance groups and to persuade ethnic groups to forget about their struggle."

Naw Zipporah Sein, Former Vice Chairperson of KNU¹⁷

Economic development, therefore, would not make the list of the KNU's priorities before the peace talks were settled with the Myanmar government. This would run in direct contrast to the strong alignment of the relationship between development and peace expressed by the Thein Sein government. However, feelings emerged within the Central KNU that the economic opening up of Southeast Myanmar has become inevitable.¹⁸ The KNU leadership felt the responsibility to establish and solidify its role in the economic and infrastructure development processes that are set to take place.

Since 2012, the KNU has become a proactive actor in the economic development of Southeast Myanmar. The KNU authorities own and grant permission to business ventures that operate in the region. The KNU is also involved in infrastructure, hydropower and mining projects.¹⁹ However, this alignment with private interests has caused tensions within the KNU, which has become increasingly factionalised since 2012.²⁰ In addition, KHRG has found since 2012 that the KNU's eagerness to engage in business ventures at the expense of rural communities has eroded trust between the KNU and some local villagers.²¹ Villagers sometimes question whether the KNU works in their best interest, as their land and livelihoods are increasingly placed at risk due to KNU-backed projects in rural areas.²²

Overall, successive Myanmar governments and the KNU have identified the economic development of Southeast Myanmar as a necessity. Because of the gradual reduction in armed clashes, the region has become more attractive to business. Both the KNU and Myanmar government have been proactive in bringing business to Southeast Myanmar, and in establishing their own enterprises.

The following section will analyse how the current KNU and Myanmar land governance systems leave villagers vulnerable to land confiscation and development-related human rights abuses.

¹⁶ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

¹⁷ 'Japan's gamble to help Myanmar's Peace Process: Donor resettlement projects aims to support ceasefire,' Nikkei Asian Review, 20 March 2017; "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

¹⁸ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

¹⁹ See Source #62: "Proposed Hydropower Dam Project in Tanintharyi Region, Mergui-Tavoy District, 2017," KHRG, June 2017; and Source #86: "Mining development damages farms and irrigation infrastructure in Papun District," KHRG, August 2013.

²⁰ "A New Chapter for the Karen Movement," Frontier Myanmar, 26 April 2017.

²¹ "Dooplaya Field Report: A quasi-ceasefire? Developments after the Nationwide Ceasefire agreement, from January to December 2016," KHRG, September 2017.

²² 'Toungoo Field Report: Fighting Grounds: land disputes, militarization and development challenges in a time of 'peace,' December 2015 to December 2016,' KHRG, April 2018.

Land Governance in Myanmar

Southeast Myanmar presents a particularly complex case for securing both civic and land tenure rights. The region is comprised of areas that are controlled by either Myanmar government, Karen National Union or mixed control areas where both parties operate parallel administrations. This configuration makes land governance, the process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled,²³ particularly complex in Southeast Myanmar.

The Myanmar legal framework: a barrier to land tenure security

“The Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union.”

Constitution of the Republic of the Union of Myanmar (2008)²⁴

Land governance in Myanmar is regulated by a complex framework of over 70 laws, some of which date back to the British colonial era.²⁵ The Thein Sein government started a process of reforming land laws to enhance civilian land rights and to foster domestic and foreign investment.

The Farmland Law (2012) introduced Land Use Certificates (commonly known as Land Form 7). The new certification process has been widely adopted. It is now one of the main ways that villagers attempt to secure their tenure rights. Land Use Certificates formalised the Myanmar farmland market by allowing the certificate holders to perform legally authorised land transfers and sales.²⁶ In addition to the Farmland Law (2012), the Land Acquisition Act (1894) provides Myanmar citizens with a way to acquire land deeds in the form of a land grant under the Land Acquisition Act (1894).²⁷ However, the Myanmar Constitution (2008) imposes severe limitations on tenure rights. In Myanmar, land is not available for ownership, but permission is granted to occupy and/or use land as prescribed by the Myanmar government.²⁸ The Land Acquisition Act (1894) enables the Myanmar government to reclassify and reassign land for ‘public purpose’, a loosely defined term. Therefore, the newly adopted laws provide only limited tools to challenge the state’s authority to reallocate land.

Moreover, the Myanmar land governance architecture fails to account for customary land use practices such as shifting cultivation²⁹ and communal land³⁰ ownership. For example, Land Use Certificates issued under the Farmland Law (2012) prevent crop rotation by disallowing the cultivation of crops other than prescribed in the LUC. The discontinuation of land use is further penalised by LUC clauses and bears the risk of restricting the tenure rights of the LUC in question. Under the Vacant, Fallow and Virgin Lands Management Law (2012), land use without a formal registration is not recognised and land may, therefore, be reassigned to another

²³ Babette Wehman, *Land Conflicts: A Practical Guide to Dealing with Land Conflict*, 2008.

²⁴ See Article 37 (a), “Constitution of the Republic of the Union of Myanmar (2008)”.

²⁵ Myanmar was a British colony between 1824 and 1948. At the time, the country was referred to as Burma.

²⁶ See “Farmland Law (Pyidaungsu Hluttaw Law) No. II of 2012” 30 March 2012.

²⁷ “The Land Acquisition Act (1894)”.

²⁸ “Constitution of the Republic of the Union of Myanmar (2008)”.

²⁹ Shifting cultivation is a form of agriculture practiced in order to maintain the quality of the soil. In shifting agriculture a plot of land is cleared and cultivated for a short period of time; then it is abandoned and allowed to revert to its natural vegetation. The period of cultivation is usually terminated when the soil shows signs of exhaustion. This type of agriculture is widely practiced by the local communities of Southeast Myanmar.

³⁰ Communal land is a territory where land is collectively owned, controlled and administered by a community, rather than individual or company.

party.³¹ Thus, roaming tenure not only lacks legal recognition but is also subject to distinct risks. The Forest Law (1992) prohibits any land that has been designated as a forest land to be used for other purposes. Many smallholder farmers who have settled in lands designated as 'Reserved Forest land' are in technical violation of the Forest Law (1992) and run the risk of being evicted.³²

The land governance reforms of the Thein Sein and the succeeding NLD governments failed to secure tenure rights in a meaningful way. The reforms did not reduce the prevalence of land confiscations within Myanmar, and are often criticised for prioritising economic gains over the rights of citizens. While precise land administration data in Myanmar is scarce, analysts have argued that under the new legal framework nearly 50 percent of all land in the country could be classified as technically 'fallow'.³³ Reports published by the Myanmar Ministry of Agriculture and Irrigation and the Myanmar Ministry of Environment and Conservation of Forestry suggest that about 20 percent of Myanmar's land has been granted to foreign or joint venture investors for 30 to 70 years.³⁴

What makes a land acquisition a land confiscation?

According to Oxfam, land acquisitions become land confiscations when they do one or more of the following:

- violate human rights, particularly the equal rights of women;
- flout the principle of free, prior and informed consent (FPIC) – under which affected communities are informed about and are able to give or refuse consent to a project;|
- are not based on a thorough assessment of, or disregard social, economic and environmental impacts, including the way they are gendered;
- avoid transparent contracts with clear and binding commitments on employment and benefit-sharing;
- eschew democratic planning, independent oversight and meaningful participation.

Land rights remain at risk with the series of regressive amendments proposed in 2017 to the Farmland Law (2012) and the Vacant, Fallow and Virgin Lands Management Act (2012), currently under consideration in Nay Pyi Taw. In its current form, the proposed Land Acquisition Act (2017) also has the potential to increase land tenure insecurity in Myanmar.³⁵ Furthermore, the Myanmar legal system creates significant barriers for affected people to challenge injustices. Sections of the Myanmar Penal Code exert significant threats to civic space. Its criminal trespass clause has been used throughout Myanmar, including in KHRG research areas, to prosecute villagers who may seek to resist land confiscations. In addition, the Right to Peaceful Assembly and Peaceful Procession Act (2011) contains a number of vague provisions under which people can be imprisoned or fined for partaking in protests without obtaining prior permission.

³¹ 'Vacant, Fallow and Virgin Lands Management Rules' The Republic of the Union of Myanmar Ministry of Agriculture and Irrigation Notification No. 1/2012, 31 August 2012.

³² 'Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law: Improving the Legal & Policy Framework Relating to Land Management in Myanmar,' Food Security Working Group's Land Core Group, November 2012; 'Guidance Notes on Land Issues: Myanmar,' UN Habitat.

³³ "Land Acquisition Law and Practice in Myanmar," Displacement Solutions, 2015.

³⁴ "Myanmar: Land Tenure Issues and the Impact on Rural Development," Food and Agriculture Organization, May 2015.

³⁵ "Technical Review of the Draft Myanmar Land Acquisition Law 2017," Land Core Group.

Land governance in Southeast Myanmar

Much like the Myanmar government, the KNU inherited its land and forestry laws from the British colonial era. Initially, customary land practices were not recognised under the KNU's land governance framework. However, through decades of civil war, the KNU land governance system adjusted to recognise the customary land use and informal land administration practices prevalent in Southeast Myanmar.³⁶

In 2005, KNU began to overhaul its land governance system, in accordance to widespread consultation with communities and KNU personnel in all KNU governed districts.³⁷ In the same year, Karen Agriculture department under KNU began registering land and issuing land titles.³⁸ In 2012, in response to Myanmar government expansion in Southeast Myanmar, KNU introduced a new and more systematic land titling system in all of its seven districts.³⁹ In September 2016, the KNU demarcated and issued 61,765 land titles for 354,512 acres of land in Southeast Myanmar. Mixed control areas were prioritised for the process with intentions to protect land from acquisition by government, business and private actors that come from outside of KNU governed territories.⁴⁰ In contrast to the Myanmar Constitution (2008), the provisions of the KNU Land Policy (2015) recognise private land ownership rights. In addition, it sets out rights to temporarily occupy and use land.⁴¹ According to the Karen Agriculture Department, about 65 percent of issued land titles provide ownership rights. The rest provide the permit to use and occupy lands.⁴² The KNU land governance system provides stronger individual protections for its land title holders.

Moreover, the KNU Land Policy (2015) sets out a number of protections for customary land use practices present across Southeast Myanmar. KNU recognises and sets to protect communal land ownership and practices, as well as informal tenure. Moreover, KNU land administration accommodates the changing communal arrangements for land. The policy also sets out protections from investments that may damage community livelihoods or environment.⁴³ Overall, KNU's land governance system is better suited to protect villagers' human, socioeconomic and property rights. However, flaws remain as the 2015 KNU Land Policy primarily protects ethnic and indigenous peoples in Southeast Myanmar, specifically 'residents of Kawthoolei since before 1988' and people who have moved to the area since 1988 and have performed 'public services in benefit of indigenous people of Kawthoolei'.⁴⁴ Moreover, the KNU Land Policy excludes previously convicted persons from the 'right of occupation or use' of land.⁴⁵ Therefore, the policy fails to provide inclusive and non-discriminatory tenure rights.

³⁶ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

³⁷ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

³⁸ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

³⁹ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

⁴⁰ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

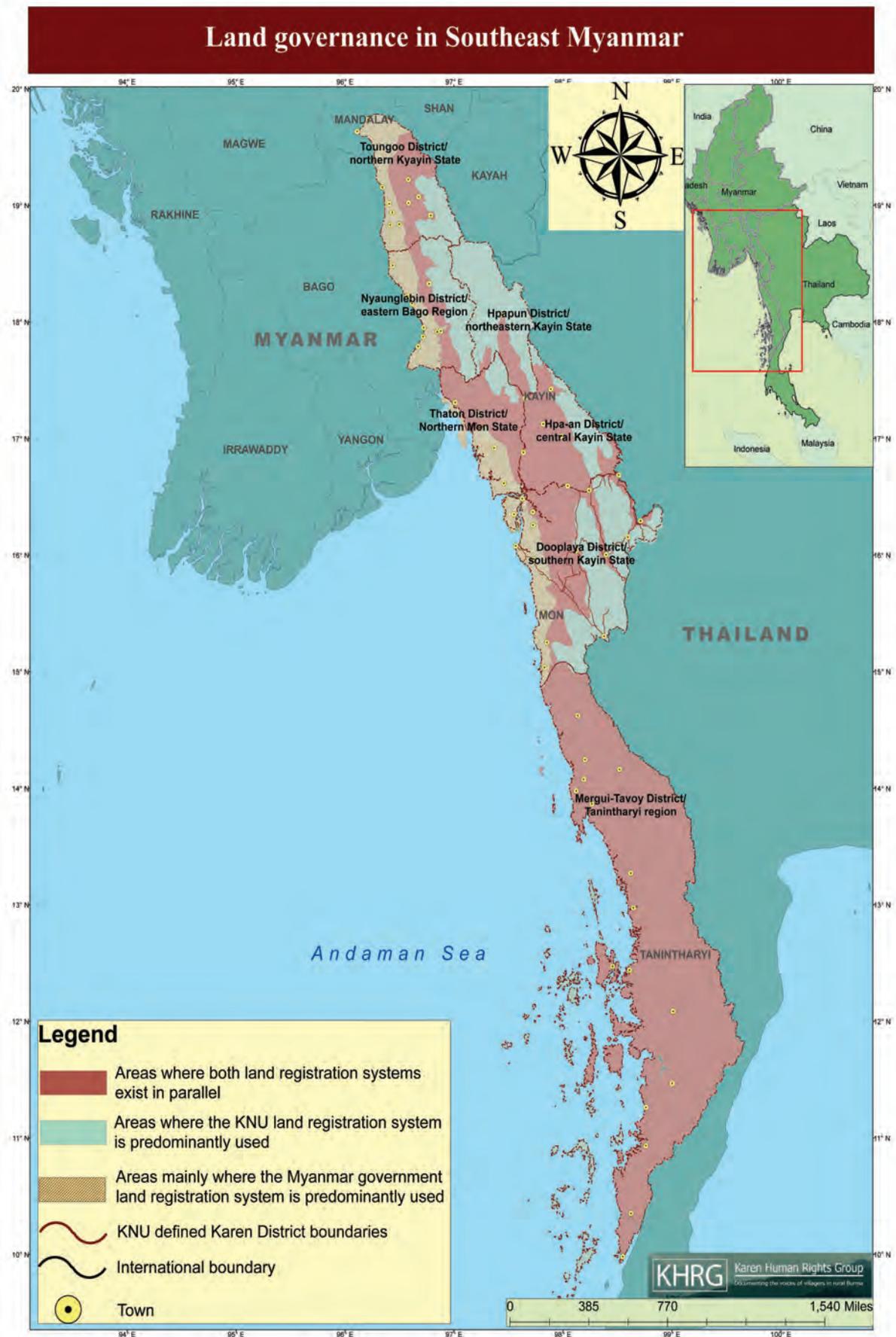
⁴¹ "Karen National Union – KNU Land Policy," December 2015.

⁴² "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

⁴³ "Karen National Union – KNU Land Policy," December 2015.

⁴⁴ The term Kaw Thoo Lei refers to Karen State as demarcated by the Karen National Union (KNU), but the exact meaning and etymology is disputed; see: Jonathan Falla. *True Love and Bartholomew: Rebels on the Burmese Border*, Cambridge University Press: 1991.

⁴⁵ "Karen National Union – KNU Land Policy," December 2015.



When two land governance systems collide: mixed control areas in Southeast Myanmar

Since the 1950s, the KNU has been operating as a one-party government, administering in parallel to a number of successive Myanmar Governments. The KNU governed territory is structured as a decentralised federation granting significant governance and fiscal autonomy to its seven administrative districts.⁴⁶ The central KNU government has a well-defined governance architecture with an elected decision-making body, the KNLA armed wing, and 14 departments that administer everything from foreign affairs and defence to land and social services.⁴⁷ However, in practice, the governance of Southeast Myanmar largely depends on the armed actors present on the ground. Therefore, the territory of Southeast Myanmar can be grouped into KNU, Myanmar government and mixed control areas.⁴⁸ This governance arrangement has persisted through the ceasefire to the present day. However, as tensions subsided following the ceasefire agreement, the area size of mixed control territories has grown. At present, all seven KNU defined districts have some form of parallel administrative structures.

The expansion of both the Myanmar government and KNU administration has meant that some village tracts were administered by both parties. In effect, this expansion meant that some village tract leaders acted as administrators for both the KNU and Myanmar Government, or at times, two village tract leaders operated in parallel with overlapping duties and levels of authority. This created a complex system of overlapping authority within a complicated administrative system. Resources, such as land, would fall under the dual jurisdiction. In some cases, legacy junta government practices were not yet eliminated. As noted by a KHRG field researcher:

*"[...] For instance, there are mixed control areas of KNU and Tatmadaw, in other way, some areas are only controlled by a group of authority such as Tatmadaw or KNU. In this case, the local people in government-controlled areas are becoming stronger as the new governments are chosen by the local people but there was not much confrontation yet. However, some areas are still practising dictatorship."*⁴⁹

The presence of two parallel administrations complicates matters for people seeking to secure their rights in the form of a land title. Both the KNU and Myanmar government have been proactive in demarcating lands in Southeast Myanmar and issuing land titles. However, both actors fail to recognise one another's land registration systems. As analysed in the section on '*Land Titles and Documentation*', villagers who live in mixed control areas are inclined to register their land within both administrative systems. Failure to do so may result in further land tenure challenges.

Cases where land is confiscated by using law in a predatory way or by disregarding evidence of tenure rights are prevalent in Myanmar. Registering for a 'land title' does not ensure protection for villagers in Southeast Myanmar, whether land is registered with the KNU or the Myanmar government. Systemic corruption remains an issue in the land registration and land measurement process. In 2017, Myanmar ranked 130th out of 180 countries in 2017 in the Transparency International Corruption Perception Index.⁵⁰ This leaves villagers throughout Southeast Myanmar at risk of land confiscations, as well as damage to plantations and private property.

Falling through the cracks: land disputes in the absence of effective grievance mechanisms

⁴⁶ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

⁴⁷ Karen National Union Headquarters, http://www.knuhq.org/language/en_gb/#, (accessed 1 June 2018).

⁴⁸ "Ceasefires, Governance and Development: The Karen National Union in Times of Change," The Asia Foundation, 2017.

⁴⁹ See Source #24.

⁵⁰ "Corruption Perception Index," Transparency International, February 2018.

Myanmar laws often fail to adequately protect land, socioeconomic and human rights. Courts typically provide limited access to remedies. The World Justice Project ranks Myanmar as one of the poorest performers in the field of civil justice.⁵¹ The Myanmar court system is perceived to be discriminatory, plagued with unreasonable delays, special party interests and a general lack of enforcement.⁵²

Both the Myanmar government and KNU have official land dispute resolution mechanisms. The Myanmar government's Central Committee for Rescrutinising Confiscated Farmlands and Other Lands is present at all administrative levels. It was established to address land disputes in a multi-layered and transparent setting. In practice, the mechanism suffers from over-centralisation with the majority of decisions being made on Union level.⁵³ Because of this, the Committee was only able to settle 543 out of 5,735 cases by November 2017.⁵⁴

Land confiscation cases in KNU administered territories are handled by Land Conflict Resolution Committee in collaboration with KNU's Justice Department and any other department that has a mandate over the type of land under dispute. The Land Resolution Committee is supposed to utilise KNU's courts and KNU Civil Law.⁵⁵

Both of these land dispute mechanisms are inefficient in handling land disputes and lack transparency and accountability.

⁵¹ "Rule of Law Index," World Justice Project, 2018.

⁵² "Rule of Law Index 2017 – 2018," World Justice Project, 2017.

⁵³ "Land Committees: An opportunity for inclusion," Frontier Myanmar, June 2017.

⁵⁴ "Report of the Special Rapporteur on the situation of human rights in Myanmar," United Nations Human Rights Council, 2018.

⁵⁵ "Ethnic Armed Actors and Justice Provision in Myanmar," The Asia Foundation, October 2016.

Economic Development and Land Confiscations in Southeast Myanmar

Myanmar is one of the most underdeveloped countries in Asia.⁵⁶ Since the opening up of its economy in 2012, Myanmar has repeatedly been placed among the ten best performing economies worldwide in terms of GDP growth averaging 7.25 percent annually.⁵⁷ Achieving sustainable and inclusive economic growth, however, has remained a challenge. Poverty levels in Myanmar remain high with 19.4 percent of the population living under the national poverty level in 2015. Myanmar further remains predominantly rural with approximately 50 percent of the national labour force employed in agriculture.⁵⁸ In Southeast Myanmar in particular, an estimated 80 percent of the population works in agriculture or engages in casual employment.⁵⁹ Although the region is well positioned for economic growth, development in Southeast Myanmar has been plagued by widespread land confiscation. These abuses are set to continue in the absence of wide-ranging reforms in land law.⁶⁰

Since the beginning of 2015, KHRG received 151 reports from the field that documented cases of land confiscation in Southeast Myanmar. During the same reporting period, KHRG received 70 reports that documented property damage and human rights abuses linked to business interests. In 24 reports, profit-motivated resource grabbing was identified as the main cause of land confiscations and property damage.

Hydropower

Electrification rates in Myanmar are low, with only 37 percent of Myanmar's population having access to electricity.⁶¹ In Southeast Myanmar, electrification rates are estimated to be among the lowest in the country, particularly in rural conflict-affected areas near the border of Thailand.⁶² Given the current and growing demand for electricity in Myanmar, large electricity generating projects such as hydropower dams are prioritised by the Myanmar government. The KNU also supports the construction of some hydropower dams, notably the Baw K'hta dam. At the time of this report, 266 potential hydropower dams have currently been identified in Myanmar, with 56 being in Southeast Myanmar (21 Kayin, 14 Tanintharyi, 10 Mon, 11 Shan).⁶³ However, as the majority of planned hydropower dams are located in the ethnic areas, ethnic communities will be overwhelmingly affected by their construction. Hydropower dams in Myanmar have been associated with forced displacement of local populations due to flooding and environmental damage that disrupts agriculture and fisheries, and affects the livelihoods of farmers and villagers.⁶⁴ Moreover, historically, there has been a lack of impact assessments, local consultations,

⁵⁶ "Myanmar: A Political Economy Analysis," Norwegian Institute of International Affairs, 6 February 2018.

⁵⁷ "World Development Indicators," The World Bank, 2018; "These are the world's fastest-growing economies in 2017," World Economic Forum, 2017.

⁵⁸ "Agriculture in Myanmar," Embassy of the Kingdom of the Netherlands.

⁵⁹ "Situation Analysis of Southeast Myanmar," Myanmar Information Management Unit Peace Support Fund, September 2016.

⁶⁰ "Situation Analysis of Southeast Myanmar," Myanmar Information Management Unit Peace Support Fund, September 2016.

⁶¹ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

⁶² "Situation Analysis of Southeast Myanmar," Myanmar Information Management Unit Peace Support Fund, September 2016.

⁶³ "Hydropower development in Myanmar and its implications on regional energy cooperation," International Journal of Sustainable Society.

⁶⁴ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

and coordination with local communities prior to dam construction.⁶⁵ The fact that electricity generated by hydropower dams is exported to neighbouring countries such as Thailand, India and China further makes hydropower dam construction unpopular among communities and local organisations.⁶⁶ Our case study, *Building a Hydropower Dam on Tanintharyi River*, will discuss how local communities advocated against a hydropower dam proposed by the Greater Mekong Subregion Power Company that would have flooded their land.

Road construction

Infrastructure development, including road construction, ranks high on the list of both the Myanmar government's and KNU's priorities. Both the density and the quality of Myanmar roads are poor. Myanmar road density is approximately 0.23 kilometres of road per square kilometre. Quality wise, only 53 percent of 40,000 km of truck roads are paved, and only 5 percent of rural roads are paved. The low quality of roads means that certain areas become inaccessible during the rainy season.⁶⁷ The Asian Development Bank estimates that about 20 million people in Myanmar do not have basic road access, and that Myanmar needs to add 63,000 km of roads to connect all the villages.⁶⁸ To update its road network, the Myanmar government has announced plans to build around 34,400 km of roads over the next 20 years with foreign aid and loans.⁶⁹ However, as previously reported by KHRG, road construction tends to be subjected to a lack of proper consultations, forced displacement, environmental damage and coercion to accept unfair compensation.⁷⁰ Infrastructure development-related abuses ranked second in our received reports. Land confiscations for road constructions remain prevalent in Southeast Myanmar.

Mining

While the majority of the Myanmar government's mining-based revenues come from jade and gemstone extraction, mining operations for limestone and gold are increasingly being developed in Southeast Myanmar.⁷¹ Mining in ethnic areas remains highly controversial, as resources extracted from mining are usually exported to either central Myanmar or abroad with local populations seeing a limited share of the profits. According to KHRG reports, mining projects are linked to displacement in Southeast Myanmar.⁷² Much like in the case of hydropower, the inhabitants based around mining sites see the least positive socioeconomic outcomes.⁷³ Instead, there has been a widespread documentation of environmental, property, health and social abuses tied to mining. Mining projects lead to acute land erosion, deforestation and biodiversity loss. Water pollution is a major issue, especially in gold mining, due to high and prevalent use of mercury and other chemicals. The case study *Mining for Limestone on Communal Land: the*

⁶⁵ "Development or Destruction? The human rights impacts of hydropower development on villagers in Southeast Myanmar" KHRG 2018.

⁶⁶ "Rethinking hydropower in Myanmar," Myanmar Times, 30 August 2017.

⁶⁷ "Strategic Environmental Assessment of the Hydropower Sector in Myanmar," International Finance Corporation, 2017.

⁶⁸ "Myanmar Transport Sector Policy Note: Summary for Decision Makers," ADB 2015.

⁶⁹ "Myanmar's Road Construction Plans: Potholes Ahead: Turning Myanmar into a transit hub will be a serious challenge for the country," The Diplomat, 4 November 2016.

⁷⁰ "Beautiful words, ugly actions: The Asian Highway in Karen State," KHRG, 2016.

⁷¹ "Sector Wide Impact Assessment of Limestone, Gold and Tin Mining in Myanmar," The Myanmar Centre for Responsible Business, May 2018.

⁷² "Strategic Environmental Assessment of the Hydropower Sector in Myanmar," International Finance Corporation 2017; 'Contested Areas of Myanmar: Subnational Conflict, Aid, and Development,' The Asia Foundation, 2017.

⁷³ "Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, 2017.

Case of Khonkhan Rocky Mountain analyses the strategies a rural community used to advocate against the negative impacts of a mine on their communal forest.

Agribusiness

Myanmar is predominately rural. The agricultural sector is set to remain the primary sector for employment and income generation throughout Myanmar.⁷⁴ Overall, the agricultural sector has struggled in recent years due to fluctuations in demand and supply of main crops such as beans and sugar.⁷⁵ Nonetheless, the sector is widely recognised as having great potential for growth.⁷⁶ However, since 2010, the Myanmar Government has allocated large land concessions to agribusiness companies and foreign investors. And while some agribusinesses have been commercially successful, others have ostensibly obtained land rights for speculation purposes or to rent land to smallholder sharecroppers.⁷⁷ Furthermore, in many instances, these land concessions have amounted to land confiscation, as they have resulted in the displacement of small-scale farmers and villagers. In Southeast Myanmar, where land confiscated prior to the ceasefires continues to be converted into large-scale teak, palm oil, and rubber plantations, small-scale farmers and villagers continue to lose their primary source of income and access to their land and cultural heritage.⁷⁸ The case study, *Taking a Land Dispute to Court: the Case of Kaung Myanmar Aung Company*, discusses the negative impacts of land confiscation for a large-scale teak plantation in Toungoo District.

The rest of this report will analyse how rural populations throughout Southeast Myanmar advocate for their land rights. The analysis of village agency strategy will refer back to the political, economic and legal dynamics discussed in this chapter.

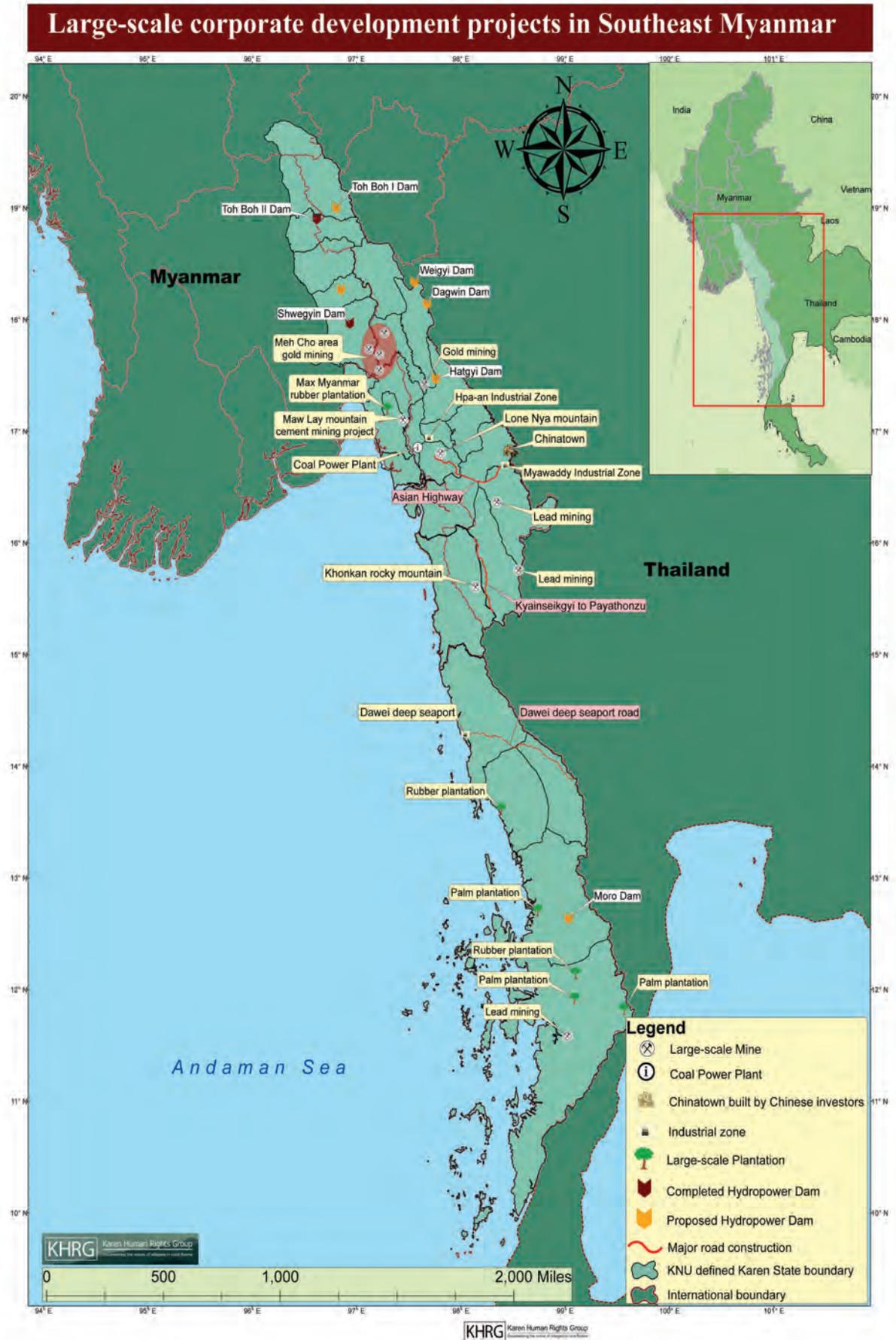
⁷⁴ “Agriculture Factsheet: Agriculture in Myanmar,” Netherland Ministry of Foreign Affairs,” 2015.

⁷⁵ “Struggle in the agriculture sector,” The Myanmar Times, September 2017.

⁷⁶ “Agriculture Factsheet: Agriculture in Myanmar,” Netherland Ministry of Foreign Affairs,” 2015.

⁷⁷ “Agriculture Factsheet: Agriculture in Myanmar,” Netherland Ministry of Foreign Affairs,” May 2015.

⁷⁸ “Thematic Report on Labour Force, The 2014 Myanmar Population and Housing Census,” June 2017.



III. Accessing the State: Village Agency Strategies used to respond to Land Conflicts

Land Titles and Documentation

This chapter analyses how rural populations are attempting to register their ancestral land to protect it from confiscation or damage. Because of the parallel land governance systems of the Myanmar government and KNU, a lack of transparency in the land registration process, and systemic corruption, villagers face significant barriers when they try to obtain a land title.

Key findings

1. 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.
2. 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.
3. 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.
4. 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.

Obtaining a land title: a potential agency strategy

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. 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 and damage. According to KHRG findings, villagers perceive that having a land title is a way to legally protect themselves from land confiscations.⁷⁹

For example, according to KHRG reports, villagers in areas impacted by land confiscations by the Kaung Myanmar Aung Company began to seek and apply for Land Form #7 as early as 2012. A villager from A--- estimated that villagers in the area began to seek Land Form #7⁸⁰

⁷⁹ See Source #18.

⁸⁰ Application process for Land Use Certificate/Form 7 should take 65 days from the submission of the application (Form 1) to the issue of Land Use Certificate.

between 2012 and 2014, but could either not afford to pay for it, or if they did apply for it, they had not received it by 2017.⁸¹

According to an interview conducted in 2016 in Thaton District, more villagers tried to obtain a land title after they heard that a corporate development project would be implemented in their area:

“Villagers paid 20,000 or 30,000 kyat [\$14.76 US to \$22.14 US] to the officer [of land records department] to get the title. However, only some villagers got the land titles and some villagers did not get the land titles from the government side. The villagers heard that the project would be implemented so they also made the titles for their lands so that they will get confirmation from KNU side.”

Saw B---, (male, 42), At--- village, Thaton Township,
Thaton District/northern Mon State (Interviewed in April 2016)⁸²

Having a land title also gives villagers a feeling of security, as another villager from Toungoo District stated:

“We only have a land leasing agreement that the government provided. The land form #7 has not applied to us [villagers] yet but the land was already measured. We really want land form #7 in order to work in the plantation properly”

U C---, (male, 51), Na Ga Mauk village tract, Toungoo Township,
Toungoo District/northern Kayin State, (Interviewed in November 2017)⁸³

Villagers commonly want to obtain a land title as a form of agency strategy. However, based on KHRG analysis, there are many barriers for villagers who seek to legally protect their land with land titles.

In KHRG's analysis, three main concerns were raised by villagers. They perceived that the land title system is not historically rooted in local practices of land ownership, that the land registration system is obscure, and that having a land title is not enough to guarantee protection from land confiscation or damage. Combined, these factors make it difficult for land registration to be used in Southeast Myanmar as a way to protect villagers from land confiscation and property damage.

Lack of legal recognition of customary land practices

Traditionally, especially in rural areas under KNU control, villagers have practised a customary and communal land tenure system. Land in Southeast Myanmar was usually administered on a local or village tract level with a high degree of variation among different villages. The system in place responded to local customs, environment and conflict dynamics. In the past, villagers were not required to hold government-issued documents proving land ownership. Most of the villagers along the border do not have land titles or other forms of legal documentation for their land.⁸⁴

⁸¹ See Source #22; and Source # 29.

⁸² See Source #79: “Thaton Interview: Saw Be---, April 2016,” KHRG, February 2018.

⁸³ See Source #29.

⁸⁴ See Source #63: “Dooplaya Situation Update: Kawkareik Township, January to October 2016,” KHRG, July 2017.

Land tenure has been maintained through generations by relying on customary practices, as Saw D--- explains:

“My grandfather worked on this plantation. [When he died], my uncle inherited the plantations and [when he died], I inherited [the plantations]. Therefore, my family has owned this land since a long time ago.”

Saw D---, (male, 50), Ta Naw Th’Ree Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in February 2017)⁸⁵

However, since 2012, profit-driven economic development has become systematically prioritised over livelihood support in Southeast Myanmar. Thus, land registration has become essential to secure stronger tenure rights.

Nonetheless, Myanmar law does not recognise customary land use practices, including shifting cultivation and communal land ownership. This further disadvantages rural populations. Land titles issued by the Myanmar government fail to provide the protections necessary to ensure that economic development does not damage the livelihoods of local villagers.

This quote from Saw F--- of E--- village discusses the extent to which villagers are dependent on communal land. In the case of Khonkhan Rocky Mountain, villagers use the mountain as communal land, using its resources to supplement their livelihoods and build shelters:

“The reason for my disagreement [with the stone mining] is because the bottom of this rocky mountain is full of gardens and land owned by villagers. The gardens, the land and the plants also depend on the shade from this Kon Hkaw [Khonkhan in Burmese] Mountain. If this mountain is removed [destroyed or reduced by stone mining] all the gardens and plants will be destroyed. The local people also use the bamboo and trees from this mountain to build their houses. They would have big problems finding the trees and plants to build their houses [if the mountain is destroyed by mining]. [Also,] there are many animals that live on this mountain; these animals will disappear when the mountain is destroyed.”

Saw F--- (male), Win Yay Township,
Dooplaya District/southern Kayin State (Interviewed in August 2017)⁸⁶

In contrast, KNU land policy recognises customary tenure rights under the concepts of *Kaw* – communal land tenure and *Ku* – rotational farming.⁸⁷ However, by early 2017, no *Kaw* land areas were officially recognised by the KNU – currently its Central Land Committee is tasked with moving the process forward. However, at the moment, there are no guarantees that the KNU will fully approve and respect *Kaw* land registration.⁸⁸

⁸⁵ See Source #68: “Mergui-Tavoy Interview: Saw A---, February 2017,” KHRG, September 2017.

⁸⁶ See Source #39.

⁸⁷ “KNU Land Policy,” Karen National Union, December 2015.

⁸⁸ “Ceasefires, Governance and Development: The Karen National Union in Times of Change,” The Asia Foundation, 2017.

Systemic Difficulties in obtaining land titles

The KNU government has only recently started to document land ownership in areas under its control and in mixed control areas. The KNU continues to work towards revising their land policy.⁸⁹ In one Situation Update from Hpapun District, a KHRG researcher reported that the KNU's Karen Forestry Department stated that all farms which are located in the Reserved Forest⁹⁰ will be issued a land title, but the KNU will increase the tax for this. Because this policy change was verbally announced, villagers lacked clear information or understanding about the process.⁹¹ This discouraged villagers from taking action to protect their land based on the lack of access to reliable information.

Additionally, when villagers consider applying for a land title, it is difficult for them to navigate the land registration process because of the existence of two separate administrative systems governing land. In mixed control areas of Southeast Myanmar, villagers were not sure which government land title to apply for:

“Regarding land titles, there are two different types of land titles from the Burma/Myanmar government and the KNU government. So there is a difference between the Right to Act, granted by the Burma/Myanmar government, and the Right to Possess, granted by the KNU government. Therefore, some local residents want to ask the question which [government] side has effective assurance [guarantees] for their lands?”

Situation Update written by KHRG researcher, Kyonedoe Township, Dooplaya District/southern Kayin State (Published in January 2016)⁹²

In other areas, villagers are unsure whether the land title is even available to them:

“We never had land titles in our area because the [KNU] does not make land titles in our area. We do not know how to get land titles.”

Saw G---, (male, 42), Win Yay Township, Dooplaya District/southern Kayin State, (Interviewed in September 2016)⁹³

Moreover, villagers face barriers to access to information about the process of applying for a land title. There is a lack of clear instructions and information available for villagers about the land registration process, including the fee for both surveying lands and acquiring a title, how long the process will take in order to get a land title, and the relevant department or local representative who is responsible for issuing land titles. This lack of information acts as a significant barrier for villagers who intend on using a land title as a way to protect their land.

According to one interview with a secretary of the Karen Women Organisation (KWO) from Dooplaya District:

“Regarding the land title, I want to know about how much we have to pay if we want to make a land title, how much we have to pay for land measurement fee, how much we have to pay if we sign a land agreement letter. I want to know about these things because there are a lot of villages

⁸⁹ For the basic principle of KNU land policy in Chapter 1 (Article 1.1.1 to 1.1.9 please see; “KNU Land Policy,” Karen National Union, December 2015.

⁹⁰ A reserved forest is an area demarcated for environmental conservation purposes, that is legally considered off-limits to farming and development projects.

⁹¹ See Source #53: “Hpapun Situation Update: Bu Tho Township, March to May 2016,” KHRG, September 2016.

⁹² See Source #54: “Dooplaya Situation Update: Kyonedoe Township, September 2015 to December 2015,” KHRG, January 2017.

⁹³ See Source #59: “Dooplaya Interview: Saw A---, September 2016,” KHRG, June 2017.

who have to make a land title. As you know, villagers here are afraid to talk or act. Therefore, I want to know if anyone used to make land titles. How much did he or she have to pay for that? If I know the amount of money needed to make a land title, I might be able to help other villagers by giving some money.”

Ma H---, (female, 44), Win Yay Township,
Dooplaya District/southern Kayin State (Interviewed in September 2016)⁹⁴

KHRG registered a number of instances when villagers requested to obtain a land title from the KNU, and did not get any response from local authorities. Although Community-based Organisations (CBOs) have attempted to help villagers get legal recognition for their land, the lack of transparency has greatly inhibited efforts to obtain land titles:

“We reported it to get land titles in the meeting. They [KNU] said they will give us land titles. However, it has already been three years. We have not received any land titles until now.”

Ma H---, (female, 44), Win Yay Township,
Dooplaya District/southern Kayin State (Interviewed in September 2016)⁹⁵

Villagers from areas under Myanmar government control have also faced challenges in attaining land titles. In some cases, previously existing formal ownership documents were lost or destroyed during conflict and displacement. When villagers have taken steps to have these documents replaced or to apply for new documents, their attempts to obtain a land title were not always successful.

“Some villagers have their Burma/Myanmar government land title, but some people lost their land when they fled [during conflict] and some of their land titles were burned in a fire. Some people would like to get the Burmese [Burma/Myanmar government] land title, but they have not received them yet. I have also tried to get the land title, but I haven’t got it yet.”

Saw I---, J--- village, Ta Naw Th’Ree Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in 2017)⁹⁶

Open to misuse: Land Registration Systems in Southeast Myanmar

The system has also been misused by the authorities who are responsible for the land administration. Corruption and bribery remain endemic.

“There are some villagers from some villages who used to flee due to the conflict in the past in Dawei area. Their lands from those villages were confiscated by some rich men because they approached the KNU to be able to sell and buy local villagers’ lands. As you know the situation in Burma, if you know someone or some people from land measurement department, you can get a land title. If you also have money, you can buy land titles easily. In fact, villagers only have the land without a land grant and land title.”

Ma K---, (female), Central Executive Committee of Tavoyan Women’s Union,
Mergui-Tavoy District (Interviewed in January 2018)⁹⁷

⁹⁴ See Source #18.

⁹⁵ See Source #18.

⁹⁶ See Source #72: “Mergui-Tavoy Interview: Saw A---, February 2017,” KHRG, September 2017.

⁹⁷ See Source #43.

The lack of preexisting systematic land use documentation puts villagers at a further disadvantage in cases where companies have taken early steps to utilise the new legal environment ahead of the villagers. Actors intending to implement both for-profit and non-profit development projects tend to obtain legal permission⁹⁸ and official land documents⁹⁹ through government channels. Because they are negotiating at a higher administrative level, land use and project implementation permits are often already settled before the information about the project reaches the village level.

In the case of Kaung Myanmar Aung Company [KMAC],

“They [KMAC] registered 30 years’ land grants from the Burma/Myanmar government. So they confiscated the lands but they had to pay taxes to the Burma/Myanmar government.”

U L---, (male, 65), Htantabin Township,
Toungoo District/northern Kayin State (Interviewed in October 2016)¹⁰⁰

This example reveals a systemic injustice in the land use system: companies are able to obtain legal permission to develop land at administrative levels that villagers do not have access to. Moreover, the information does not trickle down to the villagers – they do not know that their land is up for consideration.

Lack of uniformity in the land measurement process

Villagers face a number of barriers when they try to obtain land titles to protect their land from confiscation and damage. After starting the land registration process, villagers need to have their land measured before a land title is issued. Whether land is measured by the KNU or Myanmar government, this process lacks transparency, and is prone to misuse and corruption. According to KHRG findings, the process of measuring land was often not transparent and not streamlined in accordance with the required institutional guidelines. Villagers reported situations where they were visited many times by a variety of government and even private actors intending to measure the land, including administrators from the Township level Settlement and Land Record Department, representatives of KMAC and Division level staff.

In response to this, villagers report feeling confused by and disappointment with the land measurement process. There have been many instances where local populations did not receive the measurements in a transparent way, and where there was a significant discrepancy between the measurements obtained by the government and the actual size of the land that villagers claim customary ownership over.

Therefore, even when villagers take steps to be involved in land measurements to secure land titles, they face exclusion because they do not fully understand the system and are not involved in the process as mandated by the procedural requirements for land demarcation. This disempowers villagers from taking ownership of the process:

“They measured the land with machine [land measuring tools] so we do not understand about the measurement process. So I asked them ‘why are you guys are measuring the land, it was already measured last week’ and then they replied that ‘we just re-measure it again because

⁹⁸ KHRG does not have evidence of the type of permission KMAC received as the information has not been made public.

⁹⁹ According to the interviewee, KMAC obtained a 30 years land grant that contains a permission to exploit the land for business activities.

¹⁰⁰ See Source #19.

the measurement was not precise.’ They also told me that “just believe us, we will measure for you.” The village head U XX--- and Chairperson of land record department U Maung Zaw, these two men told me to let them measure the land so that I will get the land form #7. The last time when the land was measured by the people from division level, the result of land measurement was not released. After they measured the land I asked them, ‘are you done measuring the land? And how many acres of my land exist?’ and they just replied to me that, ‘we don’t know how many acres would it be but please keep in the mind the point first [original measurement] because we may only know when we review the measurement with computer’.

But up ‘till now, I don’t know the result and also if they have reviewed the measurement with the computer or not.”

Daw M---, (female, 50), Htantabin Township,
Toungoo District/northern Kayin State, (Interviewed in December 2015)¹⁰¹

In addition, the measurement system also lacks uniformity and is subject to corruption. Villagers have gone as far as paying for measurements prior to land titles being issued, without receiving the relevant documentation afterwards. Based on a Situation Update from Dooplaya District, villagers reported that:

“In 2014 U Win Naing Shwe, Burma/Myanmar land measurement surveyor in Kawkareik Township, had to measure the land in A--- village, Tha Main Dwut village tract, Kyonedoe Township. So he took a list of the lands and the payments, 3 million kyat [in total] [US \$2180.25], for measuring the lands before he measured the lands. He said he would come and measure later but as of 2015, he had not measured any land for land titles yet. Thus, the villagers did not completely trust the land title [system] from the Burma/Myanmar government.”

Situation Update written by KHRG researcher in Kyonedoe Township,
Dooplaya District/southern Kayin State, (Published in January 2017)¹⁰²

Obtaining a Land title: An Insufficient Step to Protect Villagers’ Land

Problematically, 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. The dual system of land ownership used by the KNU and the Myanmar government can lead to difficulties for villagers in KNU controlled areas because the land title that was issued by the KNU is not recognised by the Myanmar government or by private companies intending to develop a project. 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.

The overlap of the two systems puts villagers at a disadvantage:

“Villagers want land titles from the Burma/Myanmar government but the local KNU authorities do not permit anyone to measure land [in order to obtain the Burma/Myanmar government’s land titles]. In Kyainseikgyi Township, the unknown company confiscated villagers’ lands along the road which goes to Three Pagodas Pass for the road construction project. Villagers’ lands and plantations were also damaged. This road construction project was drawn by the Burma/Myanmar government. The company approached the Karen National Liberation Army [KNLA]

¹⁰¹ See Source #4.

¹⁰² See Source #54: “Dooplaya Situation Update: Kyonedoe Township, September 2015 to December 2015,” KHRG, January 2017.

to provide security for them when they constructed the road in order to prevent villagers from trying to act against them. As the owners of the land that was impacted by road construction only possess KNU land titles, villagers wanted to know why the Burma/Myanmar government does not recognise their KNU land documents. Villagers remain silent until now because they are afraid to say anything related to the land confiscation case due to the involvement of the KNLA in it."

Situation Update written by KHRG researcher in Win Yay Township, Doooplaya District/southern Kayin State, (Published in February 2018)¹⁰³

According to KHRG findings, villagers in possession of titles have also had their documentation rejected by companies that acquired their permits from the Myanmar Government under its land administration system:

"Villagers reported to the company that the land is owned by the villager and showed them their land titles, but the company [leaders] replied to them that, "The land [that we construct the road] is virgin land. Your land titles are antique because your land titles are old land titles [in the formal government] so it is currently useless."

Saw N---, (male), KHRG researcher in Ta Naw Th'Ree Township, Mergui-Tavoy District/Tanintharyi Region, (Interviewed in November 2017)¹⁰⁴

The fact that KNU land titles are not recognised by Myanmar land laws puts villager at risk.

KHRG finds that obtaining a land title is often not a strong source of protection for villagers trying to retain control of their lands. Villagers were not successful in using agency strategies to obtain land titles because of the administrative barriers they faced, the lack of transparency and uniformity in the process, and systematic corruption.

Documentation

Since land titles do not guarantee that land will be protected from confiscation or damage, villagers have also turned to documentation as an agency strategy to advocate for their land rights.

KHRG defines documentation as the information that villagers record and collect to show the destruction of and damage to their land by infrastructure and corporate development projects. These include: recording the names of villagers who have lost land, taking a photo of company workers, and keeping documents such as land tax receipts and permission letters of authorities granted to companies.

Documenting the abuse: land destruction and damage

In instances where land confiscations took place to build a road or to clear land for a corporate development project, villagers have attempted to get access to information about the construction and to record the damage that was done to their property. When their land and plantations were being cleared, villagers attempted to document the loss of their property by counting the number of trees cut down in plantations.

¹⁰³ See Source #41.

¹⁰⁴ See Source #26.

In the case of road construction in Mergui-Tavoy District that led to the destruction of plantations, villagers recorded the exact number of damaged plantations as noticed by Saw O---;

“The road construction cuts across the centre of my plantations and my land. The road construction has damaged more than 300 of the cashew trees and 500 of the rubber trees on my land. Around ten villagers’ plantations have been damaged by the road construction. The road construction damaged [other villagers’] betel nut, cashew and rubber plantations, but it mostly damaged mine [my rubber and cashew plantations] because of the road construction that cuts across the centre of my plantations.”

Saw D---, (male, 50), Ta Naw Th’Ree Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in February 2017)¹⁰⁵

Likewise, villagers from Win Yay Township, Dooplaya District also explained how they responded to the road construction that affected their land and plantations.

“Based on [KNU] leaders’ permission, we made [documented] a list of what [lands and plantations] have been affected due to the road construction. In order to be able to address this issue, we reported it [a list of damaged areas] to the Burma/Myanmar Ministry of Construction”.

Saw P---, (male, 54), Win Yay Township,
Dooplaya District/southern Kayin State, (Interviewed in September 2016)¹⁰⁶

In the case of the Asian Highway road construction in Kyainseikgyi Township, Dooplaya District, the KNU officer from the Ministry of Transportation and Communication worked together with villagers to document the damage done to the local land. They documented the areas of land destroyed, the numbers of trees destroyed and the areas destroyed around the plantation. They also recorded the names of the landowners.¹⁰⁷

Collecting Photographic Evidence of Land Confiscations and Property Damage

When villagers realised they could not stop the Kaung Myanmar Aung Company [KMAC] from seizing land for a large-scale teak tree plantation in Toungoo Township, they started taking photos of company workers in order to document their activities.

According to a KHRG researcher from Thandaunggyi Township, Toungoo District:

“We do have villagers that have faced this kind of experience in places like Htoe Boh/Na Ga Mauk. At first, they stopped the company from coming in, but they could not [prevent the company from using villagers’ lands] so villagers took pictures of them [company workers] as evidence. They recorded the company name, people who lead the project, incident date and other relevant information and they submitted it to CBOs/CSOs who are working on documentation like KHRG. They also give information about their concerns and how they feel about it to every CBOs/CSOs that come to their areas.”

Saw Q---, (male), KHRG researcher in Thandaunggyi Township,
Toungoo District/northern Kayin State (Interviewed in November 2017)¹⁰⁸

A villager from Na Ga Mauk village tract, Toungoo Township, Toungoo District also reported that:

¹⁰⁵ See Source #68: “Mergui-Tavoy Interview: Saw A---, February 2017,” KHRG, September 2017.

¹⁰⁶ See Source #61: “Dooplaya Interview: Saw A---, September 2016,” KHRG, August 2017.

¹⁰⁷ See Source #25.

¹⁰⁸ See Source #22.

“Yes, they [company] damaged a lot of plants; I also took the photo of the plants damaged by the company. We [villagers] could not protect the company as we are only a few people; we just take the photos of how they [company] damaged the plants.”

U C---, (male, 51), Na Ga Mauk village tract, Toungoo Township, Toungoo District/northern Kayin State (Interviewed in November 2017)¹⁰⁹



This photo was taken by local villagers who were documenting how KMAC company workers came to destroy their plantations. KHRG received this photo from a villager on June 2017. On 26th October 2016, KMAC company workers cut down the banana trees planted by local community members in Na Ga Mauk village tract, Htantabin Township, Toungoo District. Villagers are facing livelihood difficulties because of the loss of their plantations. [Photo: local community member]

Documenting Land Ownership by Villagers

Furthermore, KHRG found that villagers in KNU controlled areas keep their land tax receipts as evidence of their land ownership.¹¹⁰ However, as mentioned earlier, keeping a land tax receipt is not always sufficient in helping villagers claim compensation for land seized or damaged by private development projects, because the KNU and even Myanmar government land tax receipts are not recognised as proof of ownership by the Myanmar government.

A villager from Ta Naw Th'Ree Township, Mergui-Tavoy District also experienced a rejection when claiming compensation for the destruction of a plantation by the road construction.

“I have a land title¹¹¹ and a map that I showed to them [the road construction workers] but they just said, ‘It is impossible [to get compensation with your document]’. Therefore, I could not do anything else [for my damaged plantations]. I showed them my land title but they just told me, ‘It is impossible’.”

Saw D---, (male, 50), Ta Naw Th'Ree Township, Mergui-Tavoy District/Tanintharyi Region (Interviewed in February 2017)¹¹²

In many reports related to land titles, KHRG found that villagers in KNU controlled areas have to pay land tax every year to the KNU. This is problematic because villagers assume that having a land tax receipt is enough to prove land rights. Yet, this is not sufficient to claim compensation for damage or land confiscations in KNU controlled areas.

¹⁰⁹ See Source #29.

¹¹⁰ See Source #89; photos of land receipts for documentation.

¹¹¹ In a follow up interview, KHRG researchers learned that Saw D--- incorrectly referred to his land tax receipt as a 'land title.'

¹¹² See Source #68: “Mergui-Tavoy Interview: Saw A---, February 2017,” KHRG, September 2017.

In addition to keeping land tax receipts, villagers collect relevant paperwork to strengthen their case, including letters¹¹³ from private companies requesting permission to use land from the local authorities, permission letters by authorities granting companies the right to implement the project, as well as maps showing the development areas.¹¹⁴

Having this type of document as proof can help villagers construct a case showing how companies and local authorities have negotiated the development of a road or a commercial project in their area.

Conclusion

KHRG finds that villagers are proactive in utilising land registration as an agency strategy. However, villagers' efforts are challenged by systemic irregularities and corruption present within both systems. The lack of mutual recognition between the two parallel administrative systems, and the legal limitations of land titles further reduce the impact of this form of village agency.

This has led many villagers to document the abuses and injustices that are perpetrated against their lands. Documentation is often collected with the intent to use it as evidence in the pursuit of justice and compensation.

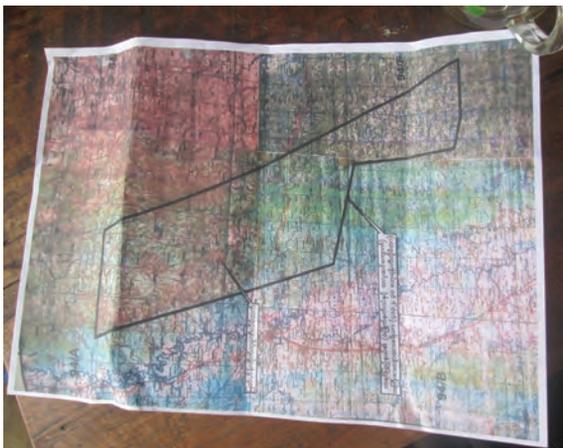
¹¹³ See Source #20 and Source #88.

¹¹⁴ See Source #88 and Source #90.

Photos: Land Titles and Documentation



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



The photo on the right was taken on June 15th 2016 in Thandaung Myo Thit Town, Thandaunggyi Township, Toungoo District. It shows a map of the trade zone that will be established in Southeast Myanmar.

The photo on the left was taken by a KHRG researcher on January 19th 2017 in Cy--- village, T'Kher Klo village tract, Kyainseikgyi Township, Dooplaya District. It shows a road that was widened by the Burma/Myanmar government in 2017. The road expanded into the houses and plantations of the local community. As a result, the villagers were not happy about the road expansion. However, the villagers did not dare to say anything against the Burma/Myanmar government. In most cases, local communities do not have the knowledge and awareness of how to report property loss and destruction. They are also worried about potential repercussions to if they submit a complaint. [Photos: KHRG]

Complaint Letters

According to KHRG’s analysis from 2015 to 2018, complaint letters were one of the most common agency strategies used by villagers confront land confiscations and property damage in Southeast Myanmar. During this reporting period, KHRG received copies of 39 complaint letters written by villagers to confront land confiscations. This is a notable increase from the years prior to the 2012 preliminary ceasefire, when villagers were less likely to expose themselves to potential harm by writing complaint letters to decision makers.¹¹⁵ The increase in complaint letters shows an increase in the confidence of local communities to advocate for their rights. However, these letters are often ignored by both KNU and Myanmar government bodies because they lack effective grievance mechanisms.¹¹⁶

Key findings

1. 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.
2. 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.
3. 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.
4. The lack of response reduces the agency of impacted communities because they delay alternative agency strategies as they wait for a response.
5. 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.

Complaint letters: a grassroots tool for petitioning land disputes

Most often, complaint letters are a community-based agency strategy. Based on the complaint letters that KHRG has received, there are two main reasons villagers submit a complaint letter: to obtain fair compensation for lost land or the destruction of personal property and to voice their concerns about an instance of land confiscation to relevant stakeholders. During this reporting period, complaint letters were submitted in reference to all types of corporate development projects: road and bridge construction, agribusiness, and gold and stone mining.

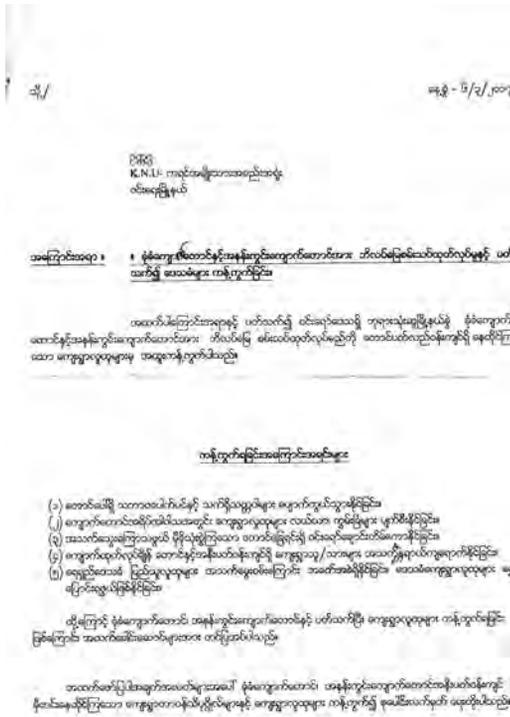
Most complaint letters include detailed information on the negative impacts of corporate development projects. Many letters use documentation as support, including lists of lands and the names and addresses of villagers affected by a development project;¹¹⁷ a list of concerns

¹¹⁵ For more on avoidance as an agency strategy, see “Foundation of Fear: 25 years of villagers ‘voices from southeast Myanmar,” KHRG, October 2017.

¹¹⁶ See Open for Business: Land and Development in Myanmar.

¹¹⁷ See Source #33.

over the negative impacts of development projects, petitions with villagers' signatures or thumbprints, information about the perpetrator, a map of the impacted land or property, and documents showing land tenure (land titles¹¹⁸ or a claim to customary land).



This photo shows a complaint letter submitted to the KNU chairperson in Win Yay Township, Dooplaya District on March 6, 2017. KHRG received this document on May 23, 2017. Villagers also sent a request to KHRG, via a local KHRG researcher in Win Yay Township, to advocate to the KNU headquarters.

In this letter, villagers from the areas surrounding the Khonkhan Rocky Mountain stated that they are against the examination of the mountain for mining purposes. They give five main reasons for their objection. 1) The biodiversity of the mountain, including plants and animals, is at risk. 2) The extensive shade provided by the mountain is beneficial for local farmers' plantations. Plantations may, therefore, suffer if this shade is lost. 3) The Win Yaw [Win Yay] River at the bottom of the rocky mountain is used by villagers as their main water source. It may dry up or become unusable if mining activities interrupt or block the river, or pollute it with dirt and dust. 4) There may be potential stone falls caused by mining. Villagers who live close to the rocky mountain feel unsafe. 5) Villagers predict that they will face livelihood problems because of the disruption to their land and community. They also fear that this may eventually lead to their displacement. [Photo: KHRG]

In addition to stating the rights of local communities, many complaint letters include recommendations for remedial measures. In some cases, villagers submitted a complaint prior to a development project, stating their veto over the project and recommending that the project stops.¹¹⁹ In cases where a development project has negatively impacted a community, complaint letters include villager recommendations or demands, including for compensation,¹²⁰ remediation, and for the return of confiscated land.¹²¹ When a villager's plantation was damaged by stone deposits from a road construction, the affected villagers wrote to the Chief Minister of the Tanintharyi Region government to request compensation and a change in the situation on the ground:

"This report is to ask for accountability of the compensation for 1400 damaged plants and to stop damaging plantations in the future by throwing ground waste in proper place."

Complaint Letter written by Saw R--- (male,) S--- village, Kyunsu Township, Mergui-Tavoy District/Tanintharyi Region (Received in March 2017)¹²²

¹¹⁸ See Source #21; Source #1.

¹¹⁹ See Source #17; Source # 6.

¹²⁰ See Source #34.

¹²¹ See Source #6.

¹²² See Source #33.

In other cases, villagers use complaint letters as a mobilisation tool, calling on authorities to support their concerns¹²³ or calling on authorities to look into their cases and confirm that the land in question is traditional villager land.¹²⁴

Complaint letters are a flexible agency strategy. Any villager can choose, in theory, to use this format and submit a complaint to anyone they feel bears responsibility for their situation. This agency strategy does not incur financial costs, nor does it involve direct contact with decision makers, which means it is a low-risk agency strategy. It is accessible to villagers in all locations and with all levels of education. These factors incentivise villagers to choose complaint letters as an agency strategy.

KHRG has also found a number of cases of villagers writing complaint letters many years after an instance of land confiscation and property damage, often dating back years before the ceasefire. This shows how, in recent years, communities feel more confident to advocate for their rights. Most of the complaint letters about incidents that occurred in the period preceding the ceasefire refer to cases of military land confiscation. Throughout Southeast Myanmar, villagers expected that the different militaries would return land to their original inhabitants due to the peace process. Like most complaint letters dealing with development-related abuse, these complaint letters were usually also unsuccessful.

Complaint letters are therefore interpreted by villagers as one of the most flexible agency strategies with regard to time, as it is an agency strategy which can be exercised even years after the original abuse, if a person decides that the time is now more opportune to raise a complaint. This was noted by a KHRG researcher in Thandaunggyi Township, Toungoo District:

“After 2012 [preliminary ceasefire], villagers whose land has been arbitrarily confiscated have started writing a complaint letter to Burma/Myanmar government authorities and fencing their land as they believe it is the period of transparency.”

Situation Update written by KHRG researcher from Thandaunggyi Township, Toungoo District/northern Kayin State (Received in November 2017)¹²⁵

Advocating to a variety of authorities in the absence of clear grievance mechanisms

Because of a lack of an effective grievance mechanism for cases of land confiscation and damage, villagers submitted complaint letters to a number of stakeholders including the Myanmar government,¹²⁶ specific Myanmar government departments¹²⁷ and government ministers,¹²⁸ the KNU,¹²⁹ local Township office, village tract leaders, company managers, and media.¹³⁰ Although the Myanmar National Human Rights Commission (MNHRC) and Central Committee for Rescrutinising Farmlands and Other Lands have a mandate to deal with this type of grievance, KHRG has not received any report of villagers sending a complaint letter to them.

A KHRG researcher from Thandaunggyi Township, Toungoo District explained why villagers impacted by land confiscation by KMAC appealed to higher and higher levels of authority after not receiving a response:

¹²³ See Source #1.

¹²⁴ See Source #6.

¹²⁵ See Source #65: “Toungoo Situation Update: Thandaunggyi Township, August to November 2017,” KHRG, May 2018.

¹²⁶ See Source #21.

¹²⁷ See Source #26.

¹²⁸ See Source #34.

¹²⁹ See Source #22.

¹³⁰ See Source #24.

“Villagers also tried to submit complaint letters not only through different levels of Myanmar government departments but also Myanmar president office. Villagers also submitted the case to relevant departments of Myanmar government. However, no action has been taken yet.”

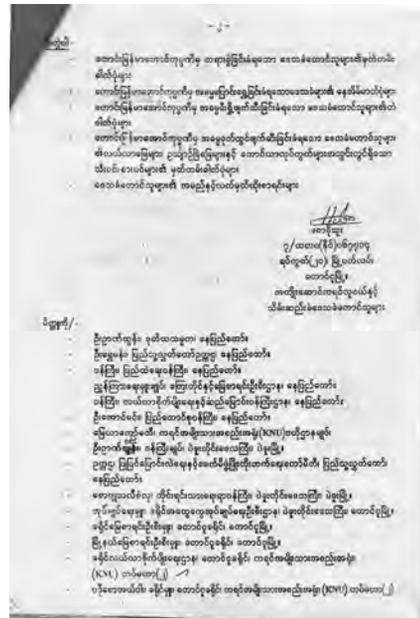
Saw Q--- (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in December 2017)¹³¹

Villagers also contacted multiple stakeholders to get their cases acknowledged. Naw T--- in Shwegyin Township, Nyaunglebin District describes appealing to different government authorities and civil society organisations to advocate against gold mining in their area:

“We have responsible people [local leaders] in the community. They wrote a letter to the Township leader but there was no response from the Township leader. I heard that local villagers also reported it [goldstone mining] to the District leader but there was no reply so they [villagers] thought that [it was because] the information they wrote in the letter was not systematic or formal. Local villagers have already written this [complaint] letter [to the District leader]. KWO also tries to be active to protect the rights of the community. KWO also reported to the Township leader that the local villagers do not agree with the goldstone mining project.”

Naw T---, (female, 27), Shwegyin Township, Nyaunglebin District/eastern Bago Region (Interviewed in November 2016)¹³²

The following complaint letter by villagers in Toungoo Township, Toungoo District, appeals to different levels of authorities including the Myanmar government, the KNU and the Myanmar president to take action against a case of land confiscation by the Kaung Myanmar Aung Company [KMAC].



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, 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]

¹³¹ See Source #23.

¹³² See Source #48: “Nyaunglebin Interview: Naw A---, November 2016,” KHRG, September 2017.

Effectiveness of complaint letters

Whilst complaint letters were one of the most common agency strategies, the vast majority of complaint letters did not result in any acknowledgement of receipt or any response from different stakeholders. This lack of response in many cases leaves villagers waiting, delaying alternative agency strategies and undermining preventative agency strategies.

For example, Naw U---, from Kyaukkyi Township, Nyaunglebin District explains:

“We strongly forbid them while they build the buildings and we claim [submitted complaint letters] but no response came back to us.”

Naw U---, (female, 42), Kyaukkyi Township,
Nyaunglebin District/eastern Bago Region (Interviewed in December 2015)¹³³

This suggests a persistent lack of accountability in cases of land confiscations and property damage.

In many cases, it leads to a continuation of the development-related abuse itself, such as:

“My son submitted a complaint letter to them [Candle Light Group], but we have not gotten any answer [response] from them. I also reported it to [Mergui-Tavoy] Ethnic Administrator Hoby, but I have not gotten any answer [response] from him either. Furthermore, they [the road constructors] recently repaired and widened the road so it damaged [my land and my plantations] more [than before]. They dumped the large rocks [from the road construction] into my plantation, so those rocks damaged my rubber trees’ bark and some rubber trees were broken down by those large rocks. Therefore, I cannot extract latex [from the damaged rubber trees]. The road construction project damaged [my plantation and land] more than the first time [the road constructors visited].”

Saw D ---, (male, 50), Ta Naw Th’Ree Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in February 2018)¹³⁴

There are significant barriers that limit the effectiveness of complaint letters in voicing villagers’ concerns. Firstly, the lack of a clear process for how to submit a complaint letter, such as the relevant authority level or person to direct the complaint towards.¹³⁵ This is further aggravated by the lack of transparency in the development process, such as clear information available to villagers about who the company or decision makers are, or who holds responsibility for monitoring a project or enforcing the relevant rules and law. The stakeholders with whom villagers have relationships often lack decision-making power and can only pass complaints further up the authority structure. For example, in one case from Noh Taw Pla village tract, Kyainseikgyi Township:

“At the beginning of 2017, villagers reported the case [of a Border Guard Force selling villager and KNU reserved forest land for palm oil plantations] to the KNU’s village tract leaders but the village tract leaders could not solve the issue therefore, they suggested villagers to write a complaint letter to the KNU’s township office. Following this, villagers whose lands are included for the confiscation wrote the complaint letter with their signatures and submitted to the KNU’s

¹³³ See Source #17.

¹³⁴ See Source #68: “Mergui-Tavoy Interview: Saw A---, February 2017,” KHRG, September 2017. This was the company’s third visit to the area as part of the road construction project. When the company first came, it constructed, yet did not pave the road. On its visit in 2017, they paved and widened the road.

¹³⁵ See Source #61: “Doooplaya Interview: Saw A---, September 2016,” KHRG, August 2017; Source #62: “Doooplaya Situation Update: Win Yay Township, January to October 2016,” KHRG, February 2018.

township office. The authorities of the KNU's township office responded to the villagers that villagers could work on their land as usual and that they could not help villagers to process the case."

Short Update written by a KHRG researcher, Kyainseikgyi Township, Dooplaya District/southern Kayin State (Received in July 2017)¹³⁶

In other cases, complaints were not dealt with in a neutral manner because local decision makers and higher-level authorities had vested interests in the corporate development projects, or were swayed by bribes.

According to a KHRG researcher,

"Firstly, they [villagers] submit a complaint letter to the village administrator, but the cases cannot be solved by the village administrator because the companies influence the village administrator. Then, villagers submit again to the township and regional authorities to solve their problem. However, their problems are usually ignored; moreover, villagers are even sued by the companies. They submitted the letter a long time ago but there is no one out there to help them solve the problem. When no one was taking action, villagers started fencing their land before they were sued [by the companies]. They submitted the letter but they are ignored and there has not been any compensation received. They submitted the letter because they want to get back their land. The companies and relevant authorities have not taken any action on the cases to protect the villagers."

Saw Q---, (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed November 2017)¹³⁷

Although they were proactive in sending complaint letters to different bodies, the lack of response reduces villager's confidence in their ability to advocate for their rights. Instead of being disappointed by the lack of an effective grievance mechanism, villagers believe they may not have written the relevant information in the complaint letter, as shown in this example:

"They wrote a letter to the Township leader but there was no response from the Township leader. I heard that local villagers also reported it [goldstone mining] to the District leader but there was no reply so they [villagers] thought that [it was because] the information they wrote in the letter was not systematic or formal. Local villagers have already written this [complaint] letter [to the District leader]."

Naw T---, (female, 27), Shwegyin Township Nyaunglebin District/eastern Bago Region (Interviewed in November 2016)¹³⁸

Impact factors

One factor which notably increased the success rate of complaint letters was the involvement of CBOs in the process. The involvement of CBOs in processing villagers' complaint is an effective strategy because, at a local level, villagers do not have sufficient knowledge of the law or know which decision makers are most suitable to submit a complaint letter to. Villagers have also frequently requested that CBOs and CSOs support them in filing complaint letters, since they have wider connections and advocacy networks. At the same time, villagers requested that CBOs and CSOs build their knowledge of what to document and include as evidence to make

¹³⁶ See Source #38.

¹³⁷ See Source #22.

¹³⁸ See source #48: "Nyaunglebin Interview: Naw A---, November 2016," KHRG, September 2017.

their complaint letters more impactful. Local CBOs are already on the ground to build the villagers' capacity and understanding of different village agency strategies.

An additional factor which increases the response rate to complaint letters is when they are combined with other agency strategies. In a case involving a CBO supporting villagers facing land confiscation by the Malaysian company Surisuban company in Tanintharyi Region, Sa Ayar Win from the Myanmar Lawyer Network/ Myeik Lawyer Network explains how CBOs can help coordinate village agency strategies to be more effective:

“For the MSPP case, there was the protesting. First, we submitted the complaint letter. And when it was under investigation, some procedures that the officials used were not correct and because of their unfairness, there was protesting. Regarding the protest, it was not a big protest but a peaceful protest in front of the company. And the protest resulted in negotiations made by the [government] departments. There are groups formed in the area with the purpose that other people will also become involved and start knowing about their problems, and the villagers did those things. There are many ways to confront companies, like forming CBOs to work on these things more.”

Sa Ayar Win (male), coordinator from the Myanmar Lawyer Network/
Myeik Lawyer Network, Tanintharyi Region (Interviewed in January 2018)¹³⁹

Although complaint letters are a common tool used by villagers, the impact of complaint letters as an agency strategy is yet to be seen.

¹³⁹ See Source #13.

Legal Knowledge and Access to Justice

How villagers perceive the justice system influences their choice of agency strategy. This section will analyse what factors determine whether villagers can access justice in cases of land confiscations or property damage by corporate development projects.

Key findings

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. Villagers that face land confiscation for corporate development projects are also 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.

Introduction

This section looks into villagers' perspectives on the law to identify barriers to justice. The goal of this analysis is to understand how villagers can use the law to mitigate the negative impacts of corporate development projects on rural communities. KHRG reports show that throughout Southeast Myanmar, although villagers have some knowledge and awareness of the law, they continue to have limited confidence in the ability of the law to protect them.¹⁴⁰ KHRG researchers reported that while existing laws are meant to protect citizens and uphold their rights, villagers face barriers to justice. First, there is ambiguity and a lack of protection and consistency in land laws and their application. Financial obstacles and systemic corruption in the Myanmar court system also makes it more difficult for villagers to access justice. These considerations are reviewed in detail below.

¹⁴⁰ This finding echoes key findings from KHRG's report which showed limited access to justice following cases of abuse. See "Foundation of Fear: 25 years of villagers' voices from southeast Myanmar," KHRG, October 2017.

Legal knowledge among rural communities in Southeast Myanmar

Throughout KHRG's reporting period, the law was used against villagers who confronted company representatives and government authorities about land confiscation and property damage. Company representatives were able to use Myanmar's land laws in order to sue villagers who refused to vacate land confiscated for corporate development purposes.¹⁴¹ In addition, both company representatives and government authorities utilised Myanmar's laws to restrict freedom of speech and freedom of assembly in order to intimidate villagers to impede their efforts to take action against companies that confiscated their land or damaged their property. In fact, KHRG only received one report between 2015 and 2018 that indicated that local villagers took a company to court.

Nonetheless, while villagers did not actively use the court system to confront company actors or government authorities about abuses related to development projects, villagers exhibited some knowledge and awareness of the law and made certain that they followed the law when undertaking different agency strategies. In 2016, when the Kaung Myanmar Aung Company began confiscating land for a large-scale plantation in Toungoo district, villagers obtained legal permission to protest from the police station and ensured they protested in accordance with Section 19 of the Peaceful Assembly and Peaceful Procession Act. As Saw V--- stated:

"We are going to keep doing [protest] in accordance with the law [to regain our land]."

Saw V---, (male, 36), W--- village, Htantabin Township,
Toungoo District/northern Kayin State (interviewed in January 2016)¹⁴²

In addition, villagers also had perspectives on national and international law and appealed to common values of legal protection and justice. Villagers felt that in principle, the law should be applied to all equally:

"They should conduct the projects which are in compliance with international standards for whatever project they are doing. The implementation of the projects also should be in line with laws and should not be above the laws."

Saw Q---, (male), KHRG researcher in Thandaunggyi Township,
Toungoo District/northern Kayin State (interviewed in November 2017)¹⁴³

Barriers to accessing justice

Despite villagers having some awareness of the law and legal system in Southeast Myanmar, rural communities reported to KHRG that they face substantial barriers in using legal avenues to address land confiscation or property damage caused by corporate development projects. These include 1) ambiguity in the law due to overlap in Myanmar government and KNU government systems, 2) lack of legal knowledge and access to legal experts, 3) cost of the court system, 4) corruption in the legal system.

¹⁴¹ See for example the following case: "Ministry of Industry No.(1) confiscated villagers' land in A---village, Sauk Pin Chaung village tract, Toungoo Township in 1996 in order to build a reservoir on the confiscated land. However, no compensation was provided to local villagers. In 2014, local villagers opened the case in a court in order to reclaim their ancestral land and won the case. Nevertheless, in 2017, Ministry of Industry No.(1) sued villagers and reopened the land case in court. The villagers did not win the [reopened land] case." See Source #78: "Toungoo Situation Update: Thandaunggyi Township, June to August 2017," KHRG, January 2018; and also see Source #47: "Toungoo Situation Update: Thandaunggyi Township, November 2015 to February 2016," KHRG, November 2016.

¹⁴² See Source #45: "Toungoo Interview: Saw Bx---, January 2016," KHRG, February 2018.

¹⁴³ See Source #22.

Legal ambiguity

KHRG reports suggest that there is ambiguity in regards to what laws apply to villagers in mixed Myanmar government and KNU controlled areas, which hinders their ability to use either legal system to seek redress for development-related abuses.

Both the KNU and Myanmar governments assert that their laws and policies should be the ones adhered to in Southeast Myanmar. Commonly, when villagers abide by the KNU system and apply for a KNU land title in order to protect their land from private development, they discover that the Myanmar government does not recognise their land title.¹⁴⁴ Companies also tend to act in line with the Myanmar government system, gaining permission to exploit land at a higher administrative level through the Vacant, Fallow and Virgin Act (2012) and therefore overriding KNU-issued land grants or recognition of ancestral land rights in some areas.

In other cases, villagers remain confused about which authority to seek justice under and what law should be applied in their case. For villagers affected by large-scale road construction in Kyainseikgyi Township, the ambiguity over legal protection and authorities limited their agency:

“The place [along the Asian Highway] does not look like a town or village [it is between the two in size] and it is in a mixed controlled area as well. If the villagers do it [respond to road construction issues] according to the law, which law will they apply? We have to consider that if they do it according to the law, is there a guarantee that the law will acknowledge it?”

Saw X---, (male, 38), Y--- village, Kyainseikgyi Township,
Dooplaya District/southern Kayin State (interviewed in November 2017)¹⁴⁵

Legal capacity

Because the Myanmar government and KNU land laws coexist, rural populations do not feel confident in using the law as a way to protect their lands. The lack of consistency in the application of the law also makes it more difficult for villagers to use legal avenues to protect themselves. The following quote details villagers' perceptions of justice during an instance when two villagers were sued in 2015 for trespassing on land claimed by the Kaung Myanmar Aung Company:

“We are looking for people who are able to help [work for] us according to the law.”

Ko Z--- (male, 48), Ab--- village, Na Ga Mauk village tract, Htantabin Township,
Toungoo District/northern Kayin State (interviewed in November 2015)¹⁴⁶

Villagers have some awareness of the general principles of law, but there is a general lack of understanding of land laws.¹⁴⁷ When KHRG interviewed CBO representatives about their work helping villagers access justice in cases of land confiscations, many of them stated the importance of legal knowledge and its application for communities to avoid risk when planning agency strategies such as networking or protesting.

¹⁴⁴ “KNU reaffirmed that any companies operating in areas under KNU control should abide by its policies.” See Source #56: “Toungoo Situation Update: Thandaunggyi Township, June to August 2016,” KHRG, March 2017.

¹⁴⁵ See Source #25.

¹⁴⁶ See Source #3.

¹⁴⁷ This finding is supported by additional Myanmar-based research. According to Displacement Solutions, “In practical terms, in the vast majority of cases of land acquisition there are at the moment very few effective judicial remedies available to those wishing to halt land acquisition, to enforce compensation rights for those whose land has been acquired or to enforce restitution claims for land acquired in the past.” See “Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations,” Displacement Solutions, May 2015.

Land law remains ambiguous and unclear to many local communities because they do not have access to legal knowledge or legal experts. Villagers tend to gain legal knowledge through word-of-mouth, suggesting their legal knowledge may not be detailed or accurate. Because villagers do not know how to reference relevant laws in their agency strategies, they do not have sufficient legal knowledge to utilise the court system.¹⁴⁸

Financial Barriers

There are significant financial barriers that limit villagers' ability to access justice. When villagers are involved in legal battles with companies over their ancestral land,¹⁴⁹ they report that they struggle to pay legal fees, which sometimes amount to more than 1 million kyat [\$750.00 US]¹⁵⁰. Villagers supported each other by pooling financial resources and requesting additional support from organisations to cover large costs related to court cases but were often still unable to raise enough money to hire and pay lawyers. U C---, a 51-year-old plantation worker faced significant financial difficulties when Kaung Myanmar Aung Company sued him not only at the Toungoo Township level, but took him to court again after he won that case at the Toungoo District level.

At the time of his interview with KHRG, he had yet to repay his legal fees:

"The company confiscated the villagers' land, and then accused the villagers as land invaders. The prosecution [of the company] has already happened for two years that started in 2015.

How did the company accuse the local people [regarding land]?

They [company] brought the local people in the court of Toungoo Township level but the local people won the court case. Then, the accusation brought up [by the company] again in the court of District level which had the same result that the local people won. Finally, the accusation brought up again to the regional level. Therefore, the villagers are facing a big challenge to go to the court at the regional level because of the cost and transportation.

What are the challenges you face in the court?

The challenge is that we [villagers] have to hire the lawyers 150,000 kyat [\$111.37 US] per each which cost 1,100,000 kyat [\$816.62 US] for overall lawyers' payment.

Have you already paid for the lawyers' cost?

We [villagers] have not paid for all yet but only 300,000 Kyat."

U C--- (male, 51), Na Ga Mauk village tract, Toungoo Township,
Toungoo District/northern Kayin State (interviewed in November 2017)¹⁵¹

¹⁴⁸ See Source #59: "Dooplaya Interview: Saw A---, September 2016," KHRG, June 2017.

¹⁴⁹ See *Taking a Land Dispute to Court: the Case of Kaung Myanmar Aung Company*.

¹⁵⁰ All conversion estimates for the kyat in this report are based on the 30th March 2018 official market rate of 1,338 kyat to US \$1.

¹⁵¹ See Source #29.

As U C--- explains, the transportation fees to and from court hearings were an additional financial barrier for villagers. High transportation fees can lead to negative outcomes for rural community members, as this example put forward by a KHRG researcher from Thandaunggyi Township, Toungoo District highlights:

"But, one thing we clearly know from this circumstance is that villagers could not pay for a lawyer's fees. Worse than this, one of them, who is an old lady, could not even pay for the transportation fees so she walked from her home to Toungoo [the location of the court], which is around 15 miles between, to attend court meeting. Actually, transportation only cost 500 kyat [\$0.37 US]. She walked a long distance to reach to the court and she was late. She apologised for being late but she was rejected and she lost the trial. Actually, she won in the first time she faced trial but she lost in the second time. After they lost the trial this second time, they cannot do anything."

Saw Q---, (male) KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (interviewed in November 2017)¹⁵²

Additional costs on top of legal fees and transport fees create significant burdens on complainants, such as in the case of plantation farmer U C---:

"For instance, when I [interviewee] go to the office [the court], I took only 1000 kyat [\$0.74 US] for motorbike petrol oil. I just stay hungry during the day [in the court] and only eat dinner when I get home. The reason is that we only secured our livelihoods in our plantation which is ancestral land. As our generation has handed over the land, we also have to hand over it to our children."

U C---, (male, 51), Na Ga Mauk village tract, Toungoo Township, Toungoo District/northern Kayin State (interviewed in November 2017)¹⁵³

Because rural populations are reliant on subsistence farming and daily labour, it makes it difficult for them to access justice. They often cannot take time off work to attend court cases and meetings to take action against development projects.¹⁵⁴

This situation can put villagers in a precarious economic situation and threaten their livelihoods, such as in this example with the Kaung Myanmar Aung Company (KMAC) where Daw M--- and other villagers were repeatedly called to court only for the company not to attend:

"First of all, when the case was submitted to the court, we, the farmers follow to the court and that day was gone for that process. In the next week, they did not come to the court and we got the repeated court notice that we have to go to the court again. So only from their side failed to come to the court, we, the farmers were not failed to come to the court. They [KMAC] just came in the last time."

¹⁵² See Source #22, which refers to an on-going battle that villagers in x village have been involved in since 2007, when their land was initially confiscated by the Burma/Myanmar government for an industrial zone, known as Industrial Zone #1. According to the interviewee, after villagers were taken to court and won the first round, the Forestry Department and Land Department sued the villagers again in 2017.

¹⁵³ See Source #29.

¹⁵⁴ See Source #50: "Toungoo Interview: Naw A---, November 2015," KHRG, February 2017, which states the challenges for villagers if they are called away from their daily work: "Villagers are unable to meet with each other because they can't take time off from working on their land or as daily labourers, or else they will face food shortages."

So how many times have you gone to the court?

Already five times.

So what was the result for five times of going to the court?

The case has not been reviewed yet because they [company] failed to come to the court. KMAC sued the farmers and they failed to come to the court.”

Daw M--- (female, 50), Na Ga Mauk village tract, Toungoo Township, Toungoo District/northern Kayin State (interviewed in December 2015)¹⁵⁵

The company’s failure to attend court hearings negatively impacted the defendants, Daw M and others, who had to pay for additional transport and take further time away from their daily work in order to attend court hearings.

Corruption in the legal system

Villagers also perceived that the Myanmar legal system was systemically corrupt. They view that systematic corruption privileges wealthy individuals and companies by helping them access government officials and influencing justice through the court system.¹⁵⁶ For example, according to one member of a women’s CBO in Southeast Myanmar:

“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---, (female), Tavoyan Women Union, Dawei Town, Mergui-Tavoy District/Tanintharyi Region (interviewed in January 2018)¹⁵⁷

Specifically, villagers perceived that the court system was biased towards companies.¹⁵⁸ Villagers view that the law applies to and protects companies, government officials and other powerful actors.¹⁵⁹ According to Daw X, a female villager attending court cases for trespassing on her ancestral land, which became a teak plantation under KMAC:

“They are the people living above the law. They are rich people, that is why they stay above the law but for us, we are the poor people who have to live under the law. [...] The law cannot influence [limit] them. The law doesn’t influence [limit] the rich people but only the poor people.”

Daw M---, (female, 50), Na Ga Mauk village tract, Toungoo Township, Toungoo District/northern Kayin State (Interviewed in December 2015)¹⁶⁰

¹⁵⁵ See Source #4.

¹⁵⁶ See Source #14 and Source #43.

¹⁵⁷ See Source #43.

¹⁵⁸ See Source # 11.

¹⁵⁹ See Source #51: “Mergui-Tavoy Short Update: K’ Ser Doh Township, June 2015,” KHRG, July 2016: Government of Myanmar staff are still involved in logging; Source #74: “Thaton Situation Update: Bilin Township, March to May 2017,” KHRG, November 2017. KNU staff are involved in logging, despite restrictions on local communities from logging.

¹⁶⁰ See Source #4.

Intimidation by companies and authorities

According to KHRG reports, villagers do not feel legally protected or safe enough to take cases of land confiscation to court. This is a significant restriction on villagers' ability to access justice. Villagers have reported that they feel personally at risk due to the involvement of armed actors with private companies,¹⁶¹ the close links private companies have with the Myanmar government,¹⁶² and KNU, and violent threats issued directly to villagers who attempt to resist land confiscation.¹⁶³ Land confiscations to develop large-scale plantations were perceived as most dangerous for the safety of local communities. This hampers the ability of local communities to seek justice. In the case of the CKB Company confiscating land for palm oil plantations in Mergui-Tavoy District:

"Villagers feel insecure [unsafe] to ask for their land back from the CKB Company because the company has cooperated with the Burma/Myanmar government. Therefore, villagers stay silent because of security concerns."

Saw N--- (male) KHRG researcher in Ta Naw Th'Ree Township, Mergui-Tavoy District/Tanintharyi Region (interviewed in November 2017)¹⁶⁴

For example, in Mergui-Tavoy District, villagers reported that they have faced harassment from other companies conducting palm oil plantations on their land, such as the Anawa Soe Moe Company. These experiences suggest that some companies are 'above the law', leaving villagers with little legal recourse to raise their concerns:

"Anawa Soe Moe Company did not consult with villagers and get agreement from any villagers for their palm oil plantation project which is on villagers' land that they confiscated. They once tried to organise village heads to make villagers sell their lands. However, village heads tried to refuse the request. In some places, some village heads cannot refuse the demand so they have to cooperate and work with the company. In fact, villagers do not allow the company to do business in their lands but the company has the military on their side so some affected villagers have to relocate their homes."

Situation Update written by KHRG researcher in Ler Doh Soh Township, Mergui-Tavoy District/Tanintharyi Region (published in February 2018)¹⁶⁵

¹⁶¹ See Source #2: the interviewee Saw A--- reports that Shwe Swann Inn collaborated with Tatmadaw prior to the 2015 NCA in order to access area for private development. For a detailed analysis of the role of armed actors in the private development sector see Chapter 6: Development of "Foundation of Fear: 25 years of villagers voices from southeast Myanmar," October 2017.

¹⁶² This perception is echoed in other Myanmar-based findings. According to Displacement Solutions, *"The land sphere is increasingly seen as one of the most visible sectors of society where a collusion of economic and political elites linked to the government, military and the corporate sector find a continuing source of power and control."* See "Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations," Displacement Solutions, May 2015.

¹⁶³ See Source #19. In Myanmar, authorities use various methods to arbitrary arrest, detain and charge villagers in regards to land confiscations. These actions have been conducted by referring to both Myanmar Administrative and Criminal laws. For the former, the use of section 17(1) of the *Unlawful Associations Act (1908)*, section 43(a) of the *Forest Law*, section 68 of *Yangon City Development Committee Law*. For the later, articles 427 under *Mischief*, 448 under *Criminal Trespass* and 477 under *Offences Relating to Document to Trade of Property Marks* of Myanmar Penal Code.

¹⁶⁴ See Source #26.

¹⁶⁵ See Source #80: "Mergui-Tavoy Situation Update: Ler Doh Soh Township and K'Ser Doh Township, February to April 2017," KHRG, February 2018.

This quote illustrates how villagers 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.

Conclusion

The laws used to punish villagers exerting agency against corporate development projects include laws on trespassing, defamation and peaceful protest.¹⁶⁶ This experience has led villagers to express a hesitancy to engage with the law, perceiving that it may be used to punish rather than protect them. The result is that legal avenues are not the first choice of agency for villagers, who prefer to act first at the local level, where local leaders work to settle disagreements and negotiate informally, without reference to legal rights or responsibilities.¹⁶⁷

¹⁶⁶ See Source #4.

¹⁶⁷ See Source #61: “Dooplaya Interview: Saw A---, September 2016,” KHRG, August 2017.

Photos: Legal Knowledge and Access to Justice



These photos were taken on 19 October 2015. They show 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. [Photos: KHRG]



The photo on the left was taken on January 31, 2016 in Toungoo Town, Toungoo District. It is a photo of Saw V---, a local farmer who led villagers in a demonstration. He was arrested and was asked to sign a pledge in the arrest warrant. In addition, he was asked to hand over the loudspeakers that he used during the demonstration to the police office in Toungoo Township. As shown in the photo, he handed over the loudspeakers to the Number 2 Police station in Toungoo Town at 5:00 PM on January 31, 2016.

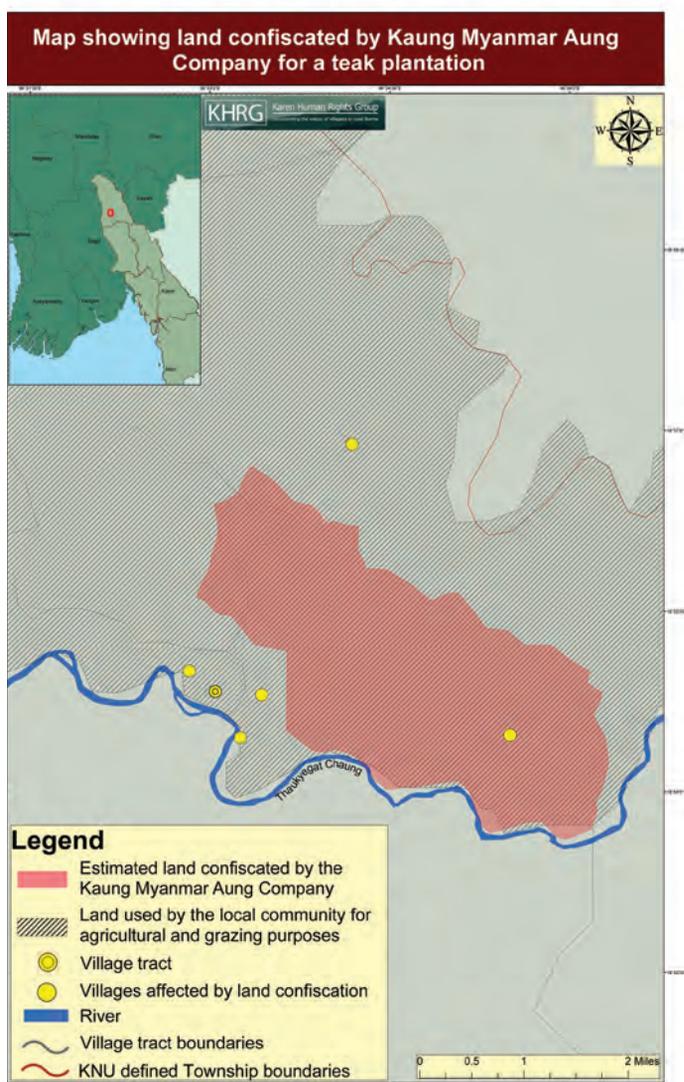
The photo on the right was taken on January 22nd 2017 in Db--- village, Na Ga Mauk village tract, Htantabin Township, Toungoo District after the interviewee was interviewed by a KHRG researcher. His name is U Dc---. He is 30 years old and a labourer for the Kaung Myanmar Aung Company. He told a KHRG researcher about his experiences and how Kaung Myanmar Aung Company's workers were asked to cut down banana plantations owned by local villagers. [Photos: KHRG]

Case Study: Taking a Land Dispute to Court: the Case of the Kaung Myanmar Aung Company

Introduction

The large-scale plantation project that Kaung Myanmar Aung Company (KMAC)¹⁶⁸ intends to develop in Toungoo District is a good case study to showcase the human rights abuses caused by corporate development projects. KHRG received 39 reports about KMAC in this reporting period. The main reason for choosing KMAC’s plantation project in Toungoo District as a case study is to highlight the difficulties accessing justice in the face of land confiscation. Therefore, readers can have a better understanding of how villagers try to protect their lands due to the negative impacts of this corporate plantation project.

Most of the villagers in Toungoo District work as farmers and plantation workers, and are dependent on their land for their livelihoods. KMAC’s plantation project will continue to impact villagers from Ab--- village, Ac--- village, Ad--- village, Ae--- village as well as other villages in Thandaunggyi Township and in Htantabin Township.



Company Profile

KMAC is a Myanmar-owned business group founded in 2005. It has investments in teak plantations in Toungoo District, and mining, agriculture, shipping, construction and real estate development across Myanmar. KMAC has been implicated in land confiscation cases in Southeast Myanmar that have led to threats to villagers who were customary owners of the land, and legal cases against villagers accused of trespassing on the confiscated land.¹⁶⁹ The chairman of KMAC,

¹⁶⁸ Also known as Kaung Myanmar Aung Group of Companies.

¹⁶⁹ For more information about Kaung Myanmar Aung Company, see “Chapter 6: Development, “Foundation of Fear: 25 years of villagers’ voices from southeast Myanmar,” KHRG, October 2017; For an interview with a KMAC day labourer, see Source #71: “Toungoo Interview: U A---, 2017,” KHRG, November 2017; For a villager sued for trespassing, see Source #44: “Toungoo Interview: Htantabin Township, November 2015,” KHRG, June 2017.

Khin Maung Aye, is also currently the chairman of the Myanmar Bank Association, chairman of the Central Co-operative Society, chairman of the Myanmar Investors Development Association, chairman of the Co-operative Bank, chairman of the Myanmar Microfinance Bank, chairman of the Citizen Business Insurance, and chairman of the CB Securities.¹⁷⁰

Background of the development project

In 2009, KMAC requested legal permission from the Myanmar government to use 2,400 acres of uncultivated and virgin lands in Toungoo District to plant commercial plantations. On December 22nd 2009 KMAC was granted a permission letter granting them use of this land for 30 years. With this permission letter, KMAC confiscated 2,400 acres of land used by villagers in Na Ga Mauk village tract, Toungoo Township.¹⁷¹ According to members of the local community, this land was not uncultivated or virgin. This community uses a form of customary land tenure, and has passed this land down generation to generation:

“These lands were ours in the past, before the British people went back to their country. We, the Karen, helped the British people to fight the Japanese coloniser. So the Karen people were asked what they wanted. The British would give whatever we, the Karen, wanted. We are Karen. We like to work on farms. As you know, in the past, most of the Karen people on the mountain used these lands for hill plantations, to support their livelihoods.”

Saw Al---, (male, 46), Ac--- village, Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin State (Interviewed in November 2015)¹⁷²

Aside from confiscating 2,400 acres of lands, KMAC continued to seize additional land. It also destroyed the villagers' plantations by cutting and burning them, dismantled villagers' houses, and forced villagers to relocate or leave. For these reasons, villagers started to protest against KMAC to protect and reclaim their lands. Until now, according to the measurement surveys by villagers, the KNU and Myanmar government, the company has confiscated approximately 5,000 acres of villagers' land.¹⁷³

In the beginning, villagers did not know about KMAC's teak plantation project or that their lands would be confiscated. They suddenly learned that their lands would be confiscated when KMAC workers came to clear vegetation on their lands. Since then, villagers have been protecting their lands by using many different agency strategies. Because of their advocacy efforts, compensation was provided to villagers and mid-project consultation meetings were arranged for the local population. However, villagers said they did not want compensation from the company because they thought that retaining access to their land was more valuable than any form of monetary compensation.

KMAC used many different methods to evict villagers from their land after local community members refused to leave. One of the main ways KMAC confiscated land was by intimidating villagers and taking them to court.

¹⁷⁰ Bauing Group, 2018, <http://en.szby.cn/news-1009.html>, (accessed 1 June 2018).

¹⁷¹ Because the local community in this area uses the location names as defined by the Myanmar government, this case study follows suit. (For more information about this, please refer to the Methodology section).

¹⁷² See Source #44: “Toungoo Interview: Htantabin Township,” KHRG, June 2017.

¹⁷³ See Source #29.

Settling land disputes in the court: the case of KMAC

KMAC threatened villagers with court cases, and said, *“If you [villagers] go to court, you will surely lose the case. If you lose, you will be in jail.”* KMAC proceeded to sue villagers for criminal trespass under Article 447 of the Myanmar Penal Code. The company sued many villagers starting from 2014.¹⁷⁴

KMAC sued villagers in 2014 for trespassing on company land. *“U Af--- and Saw Ag---, they are father and son, were sued by KMAC. KMAC argued that they were trespassing and working on the company’s land. [...] The company suing them is like a threat because the company wanted other villagers to see this and to be afraid of them.”*¹⁷⁵ Consequently, villagers faced financial hardship when they had to attend court cases. Because every day in court was a day without income, they were unable to support their families for the duration of the court case.

Repeated absences by KMAC staff exacerbated their financial difficulties:

“They left their jobs and tried to go to court at the appointed time. They went to court every time without absence. However, responsible staff from Kaung Myanmar Aung Company did not regularly go to court if the appointment was set. If the appointment date was set three times, KMAC just came to court one time. That is why villagers faced livelihood challenges because they have to pay lawyer fees, transportation fees and other service costs as well.”

Saw Q--- (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in December 2017)¹⁷⁶

Despite these challenges, villagers won the first two cases against KMAC with outside help. U Ah---, a general secretary of the Independent Labour Union, represented the villagers to help them reclaim their land.

“Both the Toungoo Township officer and company ignored it [villagers’ confrontation] the authority [Township officer] is biased towards the company and not the villagers. Villagers were then faced with a challenging situation as we do not know who to depend on. Fortunately, when we met with U Ah---, he knew our challenges and was willing to help us.”

U C--- (male, 51), Ac--- village, Na Ga Mauk village tract, Toungoo Township, Toungoo District/northern Kayin State (Interviewed in November 2017)¹⁷⁷

According to a letter submitted to KHRG, the ten individuals were sued twice at the Thandaunggyi Township Court level on April 8th 2014 and October 14th 2015. They were then sued a third time at Toungoo District Court level on March 13th 2017, and then again at the Bago Division Court level on November 21st 2017. KMAC continued to appeal this decision to pressure rural populations to give up on their lands.

“They [company] brought the local people to court at the Toungoo Township level but the local people won at court. Then, the accusation was brought up [by the company] again at the District level court that had the same result, that the local people won. Finally, the accusation was

¹⁷⁴ See Source #44: “Toungoo Interview: Htantabin Township,” KHRG, June 2017.

¹⁷⁵ See Source #22.

¹⁷⁶ See Source #23.

¹⁷⁷ See Source #29.

brought up again at the regional level. Now, villagers are facing a big challenge to go to court at the regional level because of the cost and transportation."

U C--- (male, 51), Ac--- village, Na Ga Mauk village tract, Toungoo Township, Toungoo District/northern Kayin State (Interviewed in November 2017)¹⁷⁸

Village Agency Strategies

According to KHRG reports, villagers have used a number of different agency strategies to advocate for their land rights, including documentation, complaint letters, fencing lands and protesting against KMAC's corporate development project.

Documentation

As noted in the *Land Titles and Documentation* section, villagers whose lands were impacted by KMAC activities were often unaware or unsure about land ownership systems in their areas. Villagers from Toungoo District mostly knew about customary land practices, and therefore believed they owned the land that they worked on.¹⁷⁹ Some villagers reportedly had land leasing agreements with the Myanmar government. This meant that they had tenure rights, but did not necessarily own the land.¹⁸⁰ The villagers affected by the land confiscations saved their land tax receipts as a form of documentation. These were disregarded by KMAC company workers and government representatives, and therefore did not serve as a legal protection.

Protests

Villagers in Toungoo District protested against KMAC in order to protect their land in many different ways. In 2015, villagers held a protest during which an estimated 200 villagers organised themselves to fence off their lands.¹⁸¹ Police arrived at the protest with guns. They arrested local community members and made them sign a 'promise document' that stated that KMAC had permission to use their lands, and that villagers had to leave their plantations.

Villagers protested again on December 5th 2015 and January 12th 2016. In accordance with Section 19 of the Peaceful Assembly and Peaceful Procession Act at the time, villagers applied at police stations to gain permission to protest and used pre-approved chants and slogans.¹⁸² To gain permission for the January 12th protest, villagers had to apply four times with the police to hold the protest, which they were only allowed to conduct for three hours in the early morning.

After the January 12th 2016 protest, local community members were arrested by the police and sued by KMAC for breaking laws pertaining to disturbances of the public peace.¹⁸³ In one case, a villager was sued by police and was asked to bring his loudspeakers into court as evidence. Since the villager had borrowed the loudspeakers at the protest, he was made to purchase new loudspeakers in order to be sued in the Township Court. The villager suspected that he was singled out because he led the demonstration against KMAC in January 2016. According to him, even though the loudspeakers were not his, he was told by police *"Although you just borrowed it [the loudspeakers] from someone you have responsibility for it because you led this demonstration. So you have responsibility and accountability."*

¹⁷⁸ See Source #29.

¹⁷⁹ See Source #23.

¹⁸⁰ See Source #29.

¹⁸¹ See Source #44.

¹⁸² See Source #45: "Toungoo Interview: Saw Bx---, January 2016," KHRG, February 2018.

¹⁸³ See Source #46: "Toungoo Interview: Saw A---, January 2016," KHRG, February 2017.

When villagers were demonstrating against KMAC, other community members supported them financially, or by hiring transportation trucks to and from protest sites.¹⁸⁴ After the protest, villagers reported that KMAC agreed to hold consultation meetings with the local community. However, when these meetings took place, they were between KMAC company representatives and the Farmer's Development Party, a party that the local community does not recognise as their representation.¹⁸⁵ After holding different protests, the demonstrations motivated other villagers to participate and turn to community-based advocacy strategies.

Complaint letters

To demand the return of confiscated lands, villagers also wrote complaint letters to pressure stakeholders as a form of agency. Complaint letters were sent to various Myanmar government departments and local authorities including the Myanmar State Counsellor Office. However, the villagers did not receive any response thus far. It seems unlikely that their perspectives will be recognised. In this situation, the lack of clear grievance mechanisms limited the efficiency of this agency strategy.

Barriers and Challenges

When villagers used agency strategies to advocate for their land rights, they faced a number of barriers. The biggest challenge to rural communities in this case study was the close relationship between KMAC, the Myanmar government, and former Tatmadaw soldiers.¹⁸⁶ This power imbalance between KMAC and the villagers made it more difficult for villagers to advocate for their rights.

The CEO of KMAC Khin Maung Aye has a close relationship with the Myanmar government. He was previously an advisor to President U Thein Sein and a member of the National Economic and Social Affairs advisory committee.¹⁸⁷ The power imbalance between KMAC and rural communities relying on subsistence agriculture has influenced the implementation of corporate development projects.¹⁸⁸ For example, when villagers protested against KMAC, local Myanmar government police came to stop villagers' activities, while allowing KMAC to hold a counter-protest without proper permission.¹⁸⁹

KMAC is viewed by villagers as being affiliated with the Tatmadaw because the company hires former Tatmadaw soldiers to provide military training to their workers.¹⁹⁰ According to one company worker interviewed by KHRG, the purpose of this military training is to learn how to fight by using small weapons such as sticks and knives in order to protect the company. These workers are also made to take a vow to make sure they are loyal to the company. The vow is to protect the company, to look after the company without betraying it, and to act against those who disturb the company. This military-like training threatens villagers' security and safety.¹⁹¹

In addition to this, the power imbalance made it more difficult for villagers to advocate to local decision makers. KMAC further exploited their powerful position by failing to appear at court

¹⁸⁴ See Source #22.

¹⁸⁵ See Source #45: "Toungoo Interview: Saw Bx---, January 2016," KHRG, February 2018.

¹⁸⁶ See Source #29.

¹⁸⁷ 'CB Bank boss sues farmers over dispute', the Myanmar Times 2018: <https://www.mmtimes.com/national-news/mandalay-upper-myanmar/8051-cb-bank-boss-sues-farmers-over-dispute.html>

¹⁸⁸ See Source #2.

¹⁸⁹ See Source #45.

¹⁹⁰ See Source #29.

¹⁹¹ See Source # 29.

hearings, knowing that it was difficult for villagers to finance the transportation to the hearings and to take time from their work. KMAC's frequent absence from court cases increased the financial burden of villagers impacted by land confiscations.¹⁹²

Negative Impacts of the teak plantation project

KMAC's teak plantation projects affected the livelihoods and shelters of local communities.

Because KMAC did not provide adequate compensation to impacted villagers, many community members are facing livelihood challenges. In addition, villagers who were sued by KMAC faced severe financial issues due to legal fees and travel costs to attend court hearings.¹⁹³ The land of this rural population is still being confiscated, little by little, creating insecurity in this community.

After being evicted by KMAC, some households left the area, while others rebuilt their houses in nearby vacant land. They were disadvantaged because they faced repeated evictions as KMAC expanded the area of land under their control. As one villager described: *They move from place to place if the company arrives. So how can they make money [business]? How can they build their house with wood? They can only build their house with bamboo*".¹⁹⁴

In Southeast Myanmar, bamboo is used for temporary housing. This reflects how this local community feels: unable to make plans for their future, because of the unresolved land dispute with KMAC.

Outcome of Agency Strategies

Rural communities in Toungoo District have used many different types of agency strategies to reclaim their lands, such as sending complaint letters, fencing lands and protesting against the company project. Compensation was provided and a consultation meeting was arranged for the affected villagers at the village level after the protest. The company workers also stopped destroying villagers' plantations for a while after villagers organised an activity to fence their lands. However, no proper response has been received after villagers submitted complaint letters to Myanmar government authorities and company representatives. Moreover, KMAC continues to confiscate land in the area.

Recommendations of the local population

For the Myanmar government

-Increase transparency in the process of applying for a land title and ensure that grievance mechanisms are available to local communities impacted by land confiscations:

"The Myanmar government should make land law policy that can give a guarantee for villagers' lands. They should make an official and recognised land document for villagers such as rights to own lands. They should take actions to get justice for villagers."

Saw Q--- (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in December 2017)¹⁹⁵

¹⁹² See Source #23.

¹⁹³ See Source #44.

¹⁹⁴ See Source #44: "Toungoo Interview: Htantabin Township, November 2015" KHRG, June 2017.

¹⁹⁵ See Source #23.

For the Kaung Myanmar Aung Company

-Conduct meaningful consultations with local populations, based on the principles of good practice put forward in FPIC:

“In order to maintain their company’s dignity and image, they have to consult with villagers. They have to cooperate with villagers. They have to say “sorry” to villagers for what they have done. They have to return the land to villagers. If they do it for villagers, the company’s dignity will not be dishonoured and their business reputation will be increased. According to villagers, they will never give up until they get their land back. That is why Kaung Myanmar Aung Company should take into consideration villagers’ feelings, villagers’ lives and villagers’ future.”

Saw Q--- (male), KHRG researcher in Thandaunggyi Township,
Toungoo District/northern Kayin State (Interviewed in December 2017)¹⁹⁶

-Provide compensation for populations impacted by land damages and land loss:

“KMAC should negotiate with villagers and fulfil villagers’ needs and demands. They cannot promise that they will return land to villagers by words. They have to make their words become actions. They have to make legal documents for villagers if they want to return land to villagers.”

Saw Q--- (male), KHRG researcher in Thandaunggyi Township,
Toungoo District/northern Kayin State (Interviewed in December 2017)¹⁹⁷

¹⁹⁶ See Source #23.

¹⁹⁷ See Source #23.

Photos: Taking a Land Dispute to Court: the Case of Kaung Myanmar Aung Company



The photo on left was taken by a KHRG researcher on April 5th 2015 in Ab--- village, Htantabin Township, Toungoo District. The photo shows a signpost that was set up by the Kaung Myanmar Aung Company on villagers' lands. This signpost is a warning sign for villagers. It says “Do not burn anything in the plantation, do not cut bamboo and tree, do not look after cows and buffalos, do not cultivate the land, do not trespass on the land and if anyone does not follow the warnings above, the action will be taken according to the existing law”.

The photo on right was taken on April 19th 2017 in Htantabin Township, Toungoo District. It shows agricultural lands that the Kaung Myanmar Aung Company has arbitrarily confiscated. They planted a signboard which indicated that no one is allowed to enter the area. [Photos: KHRG]



These photos were taken by a KHRG researcher on December 5th 2015 in Aj--- section, Na Ga Mauk village tract, Htantabin Township, Toungoo District. They show a demonstration against Kaung Myanmar Aung Company because of land confiscations in Ak--- village, Ab--- village, and Ac--- village. The local villagers who were protesting had the following demands:

1. The Kaung Myanmar Aung Company has illegally trespassed and confiscated inherited land that we have been working on for generations. They should leave immediately.
2. The Kaung Myanmar Aung Company should return the land that our ancestors have worked on [for generations];
3. The Kaung Myanmar Aung Company should solve land problems according to the law;
4. We do not want [Myanmar] Farmers Development Party [to operate in our land];
5. We do not want the Kaung Myanmar Aung Company [to operate in our land]. [Photos: KHRG]



This photo was taken on December 5th 2015 by a KHRG researcher. It shows a house that was destroyed in Ab---village, Htantabin Township, Toungoo District. The Kaung Myanmar Aung Company [KMAC] forced the villagers themselves to destroy their own houses. In Ab---village, Htantabin Township, Toungoo District Kaung Myanmar Aung Company is turning the local forest into a timber plantation, with permission from the government. This [forest] land belongs to the local populations who inherited it from their ancestors. To develop a timber plantation, KMAC forced the villagers to relocate. The villagers did not know where to go so they moved to the forest land. KMAC sued the villagers for living on the [forest] land. Then, they forced the villages to relocate a second time. This has caused serious difficulty for the local population. *[Photo: KHRG]*

IV. Village Agency Strategies used to negotiate with companies

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

"For me, I do not recognise 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)¹⁹⁸

Key findings

1. 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.
2. 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.
3. 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.
4. 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.

Introduction: the Importance of Consultations

Consultations are essential for companies and government authorities to obtain consent to implement large-scale extractive, infrastructure, or plantation agriculture projects in or near local communities. They are forums where villagers are able to gain detailed information about projects, and negotiate with relevant stakeholders to alleviate the potential negative impacts caused by development projects. Furthermore, consultations clarify who is accountable, who the decision makers are, and where responsibility lies for projects.

According to the principle of Free, Prior and Informed Consent (FPIC),¹⁹⁹ private companies should consult local populations to seek their consent before implementing development projects. Government authorities and companies can do this by providing information, opportunities for negotiations, and advance notice of development project. This principle is stipulated in the UN

¹⁹⁸ See Source #22.

¹⁹⁹ The principle of Free, Prior, and Informed Consent (FPIC) is defined as a 'a process undertaken free of coercion or manipulation, involving self-selected decision-making processes undertaken with sufficient time or effective choices to be understood and made, with relevant information provided and in an atmosphere of good faith.'

Declaration on the Rights of Indigenous Peoples (UNDRIP), and referenced in the Nationwide Ceasefire Agreement (NCA)²⁰⁰ signed between the Myanmar government and Karen National Union (KNU).

In Southeast Myanmar, however, meaningful consultations between companies, government authorities, and villagers rarely take place. Consultations with villagers are either of poor quality and do not meet international standards and best practices, or else exclude villagers entirely. Nonetheless, KHRG found that villagers undertake various agency strategies both during consultations and in the absence of consultation processes. Villagers take steps to access information, to access decision makers, and to initiate negotiations in order to obtain compensation or offset the potential negative impacts of certain activities. While villagers' agency is apparent, KHRG found that lack of meaningful consultations erode trust and cooperation between all relevant stakeholders, and are necessary for inclusive and sustainable development to occur.

Meaningful consultations: A tool to support the agency of rural populations

KHRG has found that when meaningful consultations took place between private companies, government authorities and villagers, projects were generally less controversial.²⁰¹

Villagers from Thandaunggyi Township, Toungoo District reported to KHRG that the Ngwe Sin Phyo Company consulted with them and KNU authorities before beginning road construction. The company made it clear what the potential damages from the project would be through consultation meetings between villagers, the KNU, and company representatives. As a result, although the plantations of local villagers were destroyed, the community members gave their consent:

“The company conduct this road construction, they consult with villagers and discuss what villagers need. They also ask permission from KNU local authorities to conduct road construction. The villagers’ plantations and lands were destroyed but we already consulted with landowners who might lose their lands if the road is constructed. We tried to help them by giving some compensation from our road project’s fund.”

Saw Am--- (male, 44), An--- village, Thandaunggyi Township, Toungoo District/northern Kayin state (Interviewed in April 2017)²⁰²

Ngwe Sin Phyo Company held consultation meetings where they shared detailed information with villagers regarding the advantages and disadvantages of the project. The company held open, transparent consultations that all villagers could freely participate in to negotiate for fair

²⁰⁰ On October 15th 2015, after a negotiation process marred with controversy over the notable non-inclusion of several ethnic armed groups and on-going conflicts in ethnic regions, a Nationwide Ceasefire Agreement (NCA) was signed between the Burma/Myanmar government and eight of the fifteen ethnic armed groups originally invited to the negotiation table, including the KNU, see “Myanmar signs ceasefire with eight armed groups,” Reuters, October 15th 2015. The signing of the NCA followed the January 12th 2012 preliminary ceasefire agreement between the KNU and Burma/Myanmar government in Hpa-an. Karen civilians and the KNU have more recently expressed their concerns about the lack of progress in moving from a ceasefire towards genuine political dialogue. See KNU Chair Highlights Weaknesses In The NCA During Anniversary Celebrations, Karen News, October 2017 and NCA signatories urge govt to reboot peace process, DVB, October 2017. In February 2018, two additional armed ethnic groups signed the NCA under pressure from the Burma/Myanmar government.

²⁰¹ See Source #79: “Thaton Interview: Saw Be---, April 2016,” KHRG, February 2018; Source #9; Source #34; Source #69: “Mergui-Tavoy Interview: Saw A---, March 2017,” KHRG, September 2017; Source #78: “Toungoo Situation Update: Thandaunggyi Township, June to August 2017,” KHRG, January 2018.

²⁰² See Source #36.

compensation with the company. By discussing the road construction in a transparent way, the consultation contributed to building trust between Ngwe Sin Phyo Company and villagers. Local villagers were also employed as day labourers to build the road. They were then able to help villagers who were negatively impacted by the road construction seek compensation.

According to a person involved in the consultation,

"In the meeting, we consulted with them and we discussed the amount of money for compensation that we can give. We gave them some compensation and they were also satisfied with it... We gave them compensation based on how much they demanded."

Saw Am--- (male, 44), An--- village, Thandaunggyi Township, Toungoo District/northern Kayin state (Interviewed in April 2017)²⁰³

As discussed in our case study, *Building a Hydropower Dam on Tanintharyi River*, consultations were a platform for local community members to voice their opposition to the hydropower dam that, if constructed, would flood 18 villages.

When FPIC is meaningfully applied through consultation meetings before corporate development projects are implemented, villagers are able to make informed decisions about whether and how these projects benefit them and use appropriate agency strategies to engage with company workers and government authorities.

Development without Consent: Inadequate Consultations

However, KHRG received numerous reports indicating that in the period between 2015 and 2018, companies and government authorities did not conduct meaningful consultations with villagers before implementing development projects. This limited the ability of rural populations to advocate for their land rights.

Exclusion from consultation

According to KHRG findings, villagers were generally excluded from consultations because they were not recognised as relevant stakeholders. Company representatives intending to develop business ventures in the area, as well as government authorities responsible for development initiatives, bypassed local communities.

For example, villagers in Toungoo District testified that villagers were not satisfied with the decision-making process:

"Only relevant local Myanmar governors and local responsible people made a decision for office construction. However, the local villagers were not satisfied with it but they could not do anything."

Photo Note written by a KHRG researcher, Thandaunggyi Township, Toungoo District/northern Kayin state (Received in May 2016)²⁰⁴

In cases where consultations took place, they were often designed in a way that was neither accessible nor inclusive of local populations.

Consultation meetings were also held in locations that were inaccessible to villagers. In the case of Saw Ao---, (male, 28), who lives in Ap--- village, Ler Muh Lah Township, Mergui-Tavoy District:

²⁰³ See Source #36.

²⁰⁴ See Source #87.

“Some village [representatives] could not reach the meeting because the meeting was held in a town which is very far from their villages. Some villagers [from certain villages] have never been to the town so they didn’t know where to go for the meeting and some of them do not have money [to pay the taxi fee to get to the meeting].”

Saw Ao--- (male, 28), Ap--- village, Ler Muh Lah Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in March 2017)²⁰⁵

A representative from a local women’s labour union explains the factors that limit the participation of women in consultation meetings:

“...when we held a meeting some women needed to cook for their breakfast or dinner so they had to leave the meeting immediately. This is a kind of custom in this rural area. Some women attended the meeting but they are not the persons who can make decisions in their families so the meeting did not go very well. This is a challenge for us.”

Ma K--- (female), Tavoyan Women Union,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in January 2018)²⁰⁶

Because women are not considered as decision makers in their communities, their voices and perspectives are often ignored:

“I mean, as we are women union, we would like to hear suggestion and voices from female villagers but some congressmen just consulted with male villagers and they just made decisions without the inclusion of women.”

Ma K--- (female), Tavoyan Women Union,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in January 2018)²⁰⁷

Absence of meaningful dialogue

Villagers reported that they were not always given the opportunity to voice their concerns about corporate development projects. This betrays the purpose of a consultation – to have a dialogue between a company and the local community. As one villager stated,

“We were invited to attend a meeting but we have never had a chance to discuss land and plantation destruction”

Naw Aq--- (female, 44), Ar--- village, Win Yay Township,
Dooplaya District/southern Kayin state (Interviewed in September 2016)²⁰⁸

If consultations are not designed in a way to encourage dialogue between the project company and its stakeholders, they will not meaningfully involve local communities in a way that will enable them to voice their concern and have their issues heard.

Villagers also reported that during consultation meetings, companies pressured them to sign agreement letters without providing them information about the negative impacts of their projects.²⁰⁹ KHRG has received reports of companies making false promises of compensation or threats to persuade local communities to consent to projects.²¹⁰

²⁰⁵ See Source #69: “Mergui-Tavoy Interview: Saw A---, March 2017,” KHRG, September 2017.

²⁰⁶ See Source #43.

²⁰⁷ See Source #43.

²⁰⁸ See Source #18.

²⁰⁹ See Source #79: “Thaton Interview: Saw Be---, April 2016,” KHRG, February 2018.

²¹⁰ See Source #43.

Agency in the absence of consultation

KHRG found that in 35 of 69 cases received, no consultations took place between government authorities, company representatives and villagers. In the absence of consultations, villagers still exerted agency in order to gain information, access decision makers, and negotiate the outcomes of corporate development projects.²¹¹

Accessing Information

According to KHRG research, proactive efforts to access information before the beginning of a private development project are not the norm since villagers often only hear about development projects after the beginning of their implementation. This limits the ability of rural communities to advocate for their land rights.

KHRG received many reports of higher authorities failing to relay information about corporate development projects to local communities. Villagers often only find out about projects once their land is confiscated or damaged. For this reason, villagers worry and are wary of future development projects.

“Au--- village is the...village which could possibly be destroyed if the dam is implemented. Further, I worry that many villagers’ plantations and farms will be destroyed. However, I cannot say exactly which village will be destroyed because we do not know where they [dam constructors] will construct the dam. Now they are constructing the road on the mountain.”

Daw Av--- (female, 43), Aw--- village, Pyay Ma Nar Township, Nay Pyi Taw/northern Kayin state (Interviewed in February 2017)²¹²

Consultations are an important platform to encourage transparency among all stakeholders.

In cases where villagers were able to access information prior to the implementation of a project, there was a severe lack of consistency in the information distributed. The lack of access to credible information led to divisions in the community. In our case study, *Mining for Limestone on Communal Land: the Case of Khonkhan Rocky Mountain*, the Asian Falcon Company attempted to divide the local community to gain consent for its limestone mine:

“They pass misleading information to villagers in order to divide villagers apart. Now, villagers mistrust each other. So, I asked them to get true information. When the villagers asked other villagers about that, they got to know and understood that the information they received is not true. However, there is a still lack of trust in each village.”

Saw X--- (male, 38), Y--- village, Kyainseikgyi Township, Dooplaya District/southern Kayin state (Interviewed in November 2017)²¹³

Without consultations, rural communities lack the information necessary to advocate for their land rights.

Accessing and Negotiating with decision makers

²¹¹ See Source #11; Source #7; Source #4; Source #12; Source #35; Source #68: “Mergui-Tavoy Interview: Saw A-- -, February 2017,” KHRG, September 2017; Source #75: “Toungoo Situation Update: Thandaunggyi Township & Htantabin Township, January to March 2017,” KHRG, January 2018.

²¹² See Source #70: “Nay Pyi Taw Interview: Daw A---, February 2017,” KHRG, November 2017.

²¹³ See Source #25.

During our reporting period, local communities have expressed increased confidence in their ability to negotiate and engage with decision makers. In the absence of consultations, villagers attempted to access decision makers, including the KNU, Myanmar government, local authorities and company representatives. KHRG has received many reports of individual villagers approaching company representatives in informal settings to advocate for their land, often showing them their land titles as proof of ownership over land that was confiscated or damaged. However, most of their attempts to advocate for their land rights outside the context of a consultation were unsuccessful.

When decision makers turn a blind eye to land confiscations

In the absence of consultations, villagers have trouble identifying which stakeholders have decision-making power. KHRG research indicates that this impedes village agency because villagers are unsure of whom to contact. KHRG has received reports of villagers advocating for their land rights to decision makers who do not have a say in the implementation of corporate development projects.

This inhibits villagers from effectively advocating for their land rights, since they are unable to target the appropriate decision maker. A testimony by Saw Al--- demonstrates the impact of this barrier,

“We reported to village leader. The village leader asked us to report to the army camp [officer]. When we reported to the army camp [officer], they said that U Khin Maung Aye is a gentle man. He was U Thein Sein’s business advisor.²¹⁴ Even though we tried to talk to them, they did not listen to us as they got permission from the government.”

Saw Al--- (male, 46), Ac--- village,
Toungoo District/eastern Bago region (Interviewed November 2015)²¹⁵

KHRG has also received many reports of villagers complaining about local authorities shirking their responsibility towards the communities they represented. In Phyu Township, the village head did not actively protect or represent his community:

“This pasture land is owned by the village community so our village heads should be responsible for protecting this community land [pasture land]. However, our village heads are not currently taking any responsibility to protect the community land [pasture land].”

Ko Ax--- (male, 57), Ay--- village, Phyu Township,
Nyaunglebin District/eastern Bago Region (Interviewed in May 2017)²¹⁶

²¹⁴ Thein Sein was the 8th President of Myanmar.

²¹⁵ See Source #44: “Toungoo Interview: Htantabin Township, November 2015,” KHRG, June 2017.

²¹⁶ See Source #76: “Nyaunglebin Interview: Saw A---, May 2017,” KHRG, December 2017.

Local authorities often disregard villagers' concerns about land confiscation and land damage, claiming that in the long run, they will benefit from the development. For example, when farmers complained about land confiscations due to road construction in Win Yay Township, Dooplaya District, they were told to simply "donate" the land for the public benefit.²¹⁷ In Hpa-an Township, villagers faced a similar situation after their rubber trees and farmland were destroyed by a road constructed by Mi Zaing Taung Company and funded by the Myanmar government. According to a KHRG researcher, villagers did not feel confident to engage in negotiations in order to gain compensation because they were told that the road "was for village development and it was implemented according to your [village] needs to make your travelling easier."²¹⁸

In addition to this, villagers have attempted to negotiate with company representatives, who have often refused to engage with them. KHRG data shows that companies and government authorities put forward many reasons to avoid negotiating with villagers. Companies often claim they are not responsible to provide compensation, that they have already negotiated an agreement with government authorities, or that no compensation is necessary because villagers do not have land titles.

A villager from Ba--- village, Ta Naw Th'Ree Township, Mergui-Tavoy District attempted to negotiate with construction workers from the Road Construction Department of Myanmar government to receive compensation for the destruction of his land and plantation. The construction damaged more than 300 of the cashew trees and 500 of the rubber trees:

"When I went and talked to them [the road construction workers about my damaged land and plantations], they replied to me, "[The Burma/Myanmar] government ordered us to do it [construct the road on your land]. Therefore, you should not complain to us.... because we are just workers [we don't have the power to change the construction project plans]."

Saw Az--- (male, 50), Ba--- village, Ta Naw Th'Ree Township, Mergui-Tavoy District/Tanintharyi Region (Interview received in March 2017)²¹⁹

In the absence of consultations, it is difficult for villagers to access the decision makers with the necessary authority to settle their land dispute. Companies often retreat from negotiations when rural populations make claims for compensation. In an interview with a KHRG researcher, one community member in Meh Klaw village tract, Bu Tho Township, explains that the company ceased negotiating with villagers when they raised the issue of the loss of their ancestral land:

"In the first time their [development project workers] negotiation; they did not inform the village leaders. After negotiation, they started the project but they pause it for a while due to damaged places. During the negotiation process, the development project workers told the villagers that they will pay the compensation for every damaged land and prepare a place for those [villagers] who have to move their home. Then the village head said that we [villagers] lost our ancestral land even though you [development project worker], pay for the compensation and find another place for us. From then on, the development project manager, [U Myo Win] never negotiates with them [villagers]."

Saw Bb--- (male), KHRG researcher in Bu Tho Township, Hpapun District/northeastern Kayin state (Interviewed in December 2017)²²⁰

²¹⁷ See Source #59: "Dooplaya Interview: Saw A---, September 2016," KHRG, June 2017.

²¹⁸ See Source #16.

²¹⁹ See Source #68: "Mergui-Tavoy Interview: Saw A---, February 2017," KHRG, September 2017.

²²⁰ See Source #30.

No seat at the table: the impact of crony capitalism on rural populations

The influence of companies over government authorities is a barrier to land rights in Southeast Myanmar.

According to KHRG findings, when decision makers are already involved in the development project, they often benefit from it, leaving villagers with no real access to impartial, unbiased decision makers. Rural communities have no means of obtaining justice and redress. When land is confiscated by large companies, retaliation by decision makers to quash villagers' claims is not uncommon.

As discussed in our case study, *Taking a Land Dispute to Court: the Case of Kaung Myanmar Aung Company*, victims were not able to get justice for land confiscations and property damage by the Kaung Myanmar Aung Company (KMAC). This was because both the village head and the Myanmar police had a close relationship with KMAC:

"We went to the police station and report on their activities. But, polices replied to us that farmers cannot sue company workers; however, the company can sue the farmers. Therefore, we went back to Ko Soe Win [village chairman] and informed him about how what polices have told us. And then he [Ko Soe Win] said that 'that's right, only U Khin Maung Aye [Owner of KMAC] has the right to work on the 2400 acres of the land but for the farmers, they do not to work on it'. So, we have to ignored [all about the incidents related to the land issues]."

Daw M--- (female, 50), Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin state (Interviewed in December 2015)²²¹

KHRG has also received reports of local leaders meeting resistance from higher levels of authorities, when they try to help villagers advocate for their lands:

"They did not consult with villagers but our [KNU] leader told them that they had to consult with villagers before they started processing the goldstone. If our villagers agreed to their project, we would be able to allow them to do it. Our [KNU] leader explained this to them. However, another [KNU] leader said that they did not need to consult with villagers. [KNU said] if we [KNU] make a decision, villagers have to follow [accept] the decision made. There are many [KNU] leaders who agreed with this. That is why the [local] leader who supports villagers [by trying to disagree with the gold mining] could not make the decision."

Naw T---, (female, 27), Shwegyin Township, Nyaunglebin District/eastern Bago Region (Interviewed in November 2016)²²²

The belief that decision makers do not act according to villagers' interests and desires is based on the prior lived experiences of villagers. KHRG reports show that decision makers have intimidated villagers by using court cases, fines, and arrests. When villagers fear retribution, they are dissuaded from advocating for their land rights:

²²¹ See Source #4.

²²² See Source #48: "Nyaunglebin Interview: Naw A---, November 2016," KHRG, September 2017.

“The local people have to be afraid of the KNU, the military and the government. They also have to be afraid of the company. In the past, they didn’t need to be afraid of the company but now, they have to be afraid of the company as well. The reason is that KNU, military and government are supporting them behind. As those three groups firmly stand for them. The company is standing in the first place and government is behind them, at the back, the military is standing behind them.”

Naw Bd--- (female), secretary of Min Lwin Region Environmental Conservation Group, Thaton Township, Thaton District/northern Mon state (Interviewed in January 2018)²²³

Local power dynamics make it difficult for rural communities to advocate for land rights in Southeast Myanmar. Despite this, villagers are using creative and proactive strategies to protect their land.

Conclusion

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 the few instances where villagers were meaningfully consulted about the development project, projects were generally less controversial. In fact, many villagers acknowledged and appreciated the benefits that development projects could bring after consultation meetings. Effective consultations are necessary to mitigate the adverse impacts of development on the local community. With this in mind, KHRG urges both companies and government authorities to organise meaningful consultations in accordance with Myanmar Laws and the standards for FPIC enshrined in the United Nations Guiding Principles on Business and Human Rights.

²²³ See Source #42.

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



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 and held signs that said 'Do not destroy Tanintharyi River' and 'No Dam'. [Photo: Villager]



This photo was taken on May 2nd 2016 in Kyaukkyi Township, Nyaunglebin District, at Saw Htee Assembly Hall in Myay Ta Section. It was taken during a consultation meeting between Thoo Lei Company, the KNU Central Economic Committee and villagers, as well as relevant CBOs and CSOs. During the meeting, Thoo Lei Company and the KNU Central Economic Committee discussed issues pertaining to the Baw K'Hta Dam and the results of the survey assessment and informed everyone about how the dam construction project would proceed. [Photo: KHRG]



This photo was taken on February 17th 2017 in Ba--- village, Ta Naw Th'Ree Township, Mergui-Tavoy District. It shows construction workers build a road on the land of Saw Az---, a local villager shown in the photo on the right. Because the construction workers dumped soil and rocks on his land, they damaged 300 cashew trees and 500 rubber trees on Saw Az---'s land, threatening his livelihood. [Photo: KHRG]²¹³



This photo was taken by a KHRG researcher who interviewed a local villager, Saw Az--- in Ba--- village, Ta Naw Th'Ree Township, Mergui-Tavoy District on February 17th 2017. Saw Az--- reported to the KHRG about the damage done to his land and his plantations from the Myanmar government's road construction, shown in the photo on the left. [Photo: KHRG]²¹⁴

²²⁴ See Source #68: "Mergui-Tavoy Interview: Saw A---, February 2017," KHRG, September 2017.

²²⁵ See Source #68: "Mergui-Tavoy Interview: Saw A---, February 2017," KHRG, September 2017.



This photo was taken on June 22nd 2016 in Win Yay Township, Dooplaya District. This photo shows a signpost that was set up between Bg--- village and Bh--- village, Win Yay Township, Dooplaya District. This signpost states that the Ministry of Construction of the Myanmar government plans to build [the Asian Highway] between Thanbyuzayat and Three Pagoda Pass 230 feet wide. Most villagers do not know about the road construction, even though their lands will be impacted. A local organisation reached out to inform the Township and District leaders about the potential negative impacts of this road construction on local communities. [Photo: KHRG]



This photo was taken on February 16th 2017 in Ba--- village, Ta Naw Th' Ree Township, Mergui-Tavoy District. It shows a signpost erected by the Road Construction Department of Myanmar government. The signboard states: *The Myanmar Government Department of Road Construction is responsible for leading the road construction project; the project budget is 80,500,000 kyat [US \$59,278.35] for paving the road and 220,640,000 kyat [US \$162,474.22] for dumping the soil from the construction; the period of the project is 2016-2017; the distance of the road is between 22.5 km and 24.5 km.* The signpost also lists the names of the engineers, township administrators, village tract administrators, Department of Development administrator and village leaders involved in the road construction project. [Photo: KHRG]



This photo was taken on September 23rd 2015, in Bi area, in Bj--- village, Kawkareik Town, Dooplaya District. It shows a phone signal tower built by Nokia, Ooredoo, and Pan Ei Sa company. The land is owned by two villagers, U Bk--- and U Bi---. The companies gave 200,000 kyat [\$149.38 US] per month to U Bk--- and 20,000 kyat [\$14.94 US] per month for U Bi---, because his land is smaller. Before the tower was constructed, the companies and the owners met with the regional authority and a commander from Infantry Battalion (IB) #18. Because of the consultation meeting, fair compensation was provided and the company was also able to use 60 square feet of land. The signal tower is 200 feet tall. The total cost is over 60,000,000 kyat [\$44,813.83 US]. [Photo: KHRG]



This photo was taken on November 15th 2016 in Bl--- village, Thandaunggyi Township, Toungoo District. The Myanmar Fiber Optic Communication Network Co Ltd (MFOCN) came to the area to build an underground communication cable. They did not consult the local population prior to building this cable. Because the MFOCN was granted permission by the Myanmar government, they started building the underground communication cable, digging up local land. However, some local villagers were not satisfied because their lands and plantations were destroyed due to digging. [Photo: KHRG]



This photo was taken on June 6th 2017, in Be--- village, Kawkareik Township, Dooplaya District. It shows a meeting of the local authorities, village heads, Battalion Commander and a company commander from an unidentified armed group, as well as the chief road construction worker. They were consulting villagers and village leaders from Be--- village, prior to the construction of a road in the area. This meeting was held to gain the consent of local villagers and share information about the road construction. The villagers enthusiastically accepted this development, because they believed that it will benefit them. [Photo: KHRG]



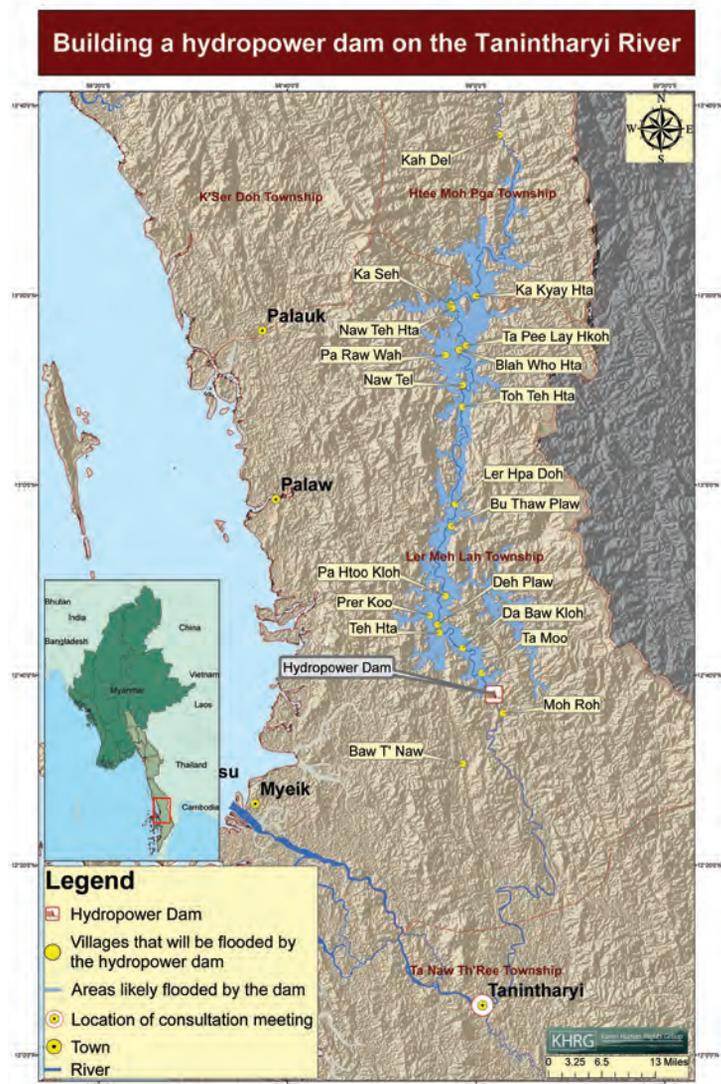
This photo was taken on October 23rd 2015, in Bf--- Monastery, Maw Lay village tract, Thaton Township, Thaton District. The photo shows the director of the Pyu Min Htun Company, Oo Thein Htun, holding a meeting with villagers in Bg--- monastery. This meeting took place before the implementation of a stone mining project on Maw Lay Mountain by the Pyu Min Htun Company. [Photo: KHRG]

Case Study: Building a Hydropower Dam on the Tanintharyi River

Introduction

This case study examines how a rural community responded to a plan to build a hydropower dam over the P'Yo Kwee (Na Ga Aaing) main stem of the Tanintharyi River. This plan was spearheaded by the Greater Mekong Subregion Power Company (GMS Power) and the Myanmar Government Ministry of Electricity and Energy. If constructed, this hydropower project will flood 18 villages along the banks of the Tanintharyi. In March 2017, KHRG received 6 reports from community members worried about the negative impacts of this hydropower dam.

To protect their land from flooding, villagers have employed a number of different agency strategies, including holding protests, voicing their perspectives in consultation meetings, and reporting their complaints to KNU authorities. This case study highlights the importance of consultation for communities impacted by development activities. The consultations that occurred between the GMS Power Company and local villagers were a crucial source of information on the negative impacts of the dam on villages bordering the Tanintharyi River. Having access to information helped this rural community mobilise to advocate against the dam.



Company Profile

GMS Power is a private Thai power company established in 1991. GMS Power aims to become a regional independent power developer. The company's focus is to promote regional development by integrating power within six countries in the Greater Mekong Sub-region in China, the Lao People's Democratic Republic, Thailand, Vietnam, and Cambodia and Myanmar. In order to build the dam, GMS intends to cooperate with other private companies in Myanmar under public-private partnerships.

Background of the development project

Tanintharyi River has been marked as a potential location for the construction of a hydropower dam for over three decades. In 1997, the Nippon Koei Company was the first to assess the possibility of building a hydropower dam in this location. Between 2011 and 2012, the Italian-Thai Development Public Company Limited (ITD)²²⁶ conducted an evaluation to assess how a hydropower dam would impact local residents. According to interviews with local community members, ITD conducted tests on the quality of the soil and stone in the area.²²⁷ After the 2012 preliminary ceasefire agreement was signed, the Myanmar government retracted their permission for ITD Company to operate in Tanintharyi region. This put the dam project on hold until 2017, when the GMS Power Public Company re-started the project. On February 9th 2017, GMS Power arranged a consultation meeting with local community members regarding their plan to build a hydropower dam.

GMS Power Company presented their plans to build a hydropower dam during consultation meetings between company representatives, villagers, civil society organisations and the Myanmar government. The hydropower dam would have the capacity to produce 1040 megawatts (MW) of electric power. The construction site of the dam will be 2.7 kilometres away from Moh Roh village. If it is constructed, the dam will flood an area of approximately 585 square kilometres, including 250 square kilometres of plantation land.

No.	Village name
1.	Moh Roh
2.	Da Baw Kloh
3.	Ta Moo
4.	Pa Htoo Kloh
5.	Ler Hpa Doh
6.	Deh Plaw
7.	Teh Hta
8.	Per Kuh
9.	Bu Thaw Plaw
10.	Ta Peeh Lay Koh
11.	Naw Tel Hta
12.	Toe Tel Hta
13.	Maw Hta
14.	Kah Del
15.	Ka Sel
16.	Ka Chey Hta
17.	(name unknown)
18.	(name unknown)
Total number of households: 879	

There are conflicting estimates of the number of households that would be displaced by the hydropower dam. According to the GMS Power Company's calculations, 14 villages would be destroyed based on the research and feasibility studies conducted earlier by ITD Company. In 2017, community members conducted their own assessment and estimated that the project could flood 18 villages in Ler Muh Lah Township, Mergui-Tavoy District. 16 of these village names are listed in the table provided while two are unknown to KHRG. According to local community estimates, over 879 households could be displaced by the flooding of the hydropower dam.

²²⁶ Italian Thai Development Public Company Limited (ITD) is a Thailand-based company with investments in the construction of highways, railway, dam and industry in Myanmar and other parts of Asia. ITD construction projects have resulted in relocation of villagers, the destruction of plantations and a lack of compensation for affected villagers in southeast Myanmar, see Source #85: "Mergui-Tavoy Interview: Saw E---, July 2012," KHRG, March 2013. ITD also have investments in the Dawei Special Economic Zone (SEZ) which began as a joint venture with Max Myanmar Company; Max Myanmar have since withdrawn their economic involvement in this SEZ. The Dawei SEZ has resulted in threats and forced evictions of villagers, imprisonment of villagers who refused to relocate, destruction of livelihoods through environmental damage, villagers being forced to accept inadequate compensation, and much more. See "Dawei SEZ Fact Sheet," Mekong Watch, December 2016.

²²⁷ See Source #77: "Mergui-Tavoy Interview: Naw A---, August 2017," KHRG, December 2017.

Consultations: An Essential Tool for Village Agency

As highlighted in the *Consultation* section of this report, consultations are important for villagers to gain detailed information. They are also valuable forums for local community members to voice their concerns to relevant stakeholders. Through consultation meetings, villagers are able to make informed decisions about whether or not to give consent to corporate development projects. In this case study, villagers were able to pursue various agency strategies during consultations with the GMS Power Company, CSOs and Myanmar Government.

Villagers' concerns over the potential impact of the project

Many hydropower projects in Southeast Asia have resulted in the widespread displacement of rural communities. For this reason, the company's plan to build a hydropower dam on the Tanintharyi River worries local villagers. As explained by this local community member,

"If the dam is constructed, there will be flooding over all the villages, including villagers' land, farms and plantations around that area. They [villagers] do not want it because the dam construction project will cause flooding. The flooding will drown all of their land and farms. Because of this, we will not have land to farm for our livelihoods."

Pu Bm---, (male), Bn--- village, Ler Muh Lah Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in March 2017)²²⁸

Flooding would also damage the investments that villagers made in their longer-term plantations, including coconut trees, durian trees, and betel nut trees in the Kloh Hkoh area. In addition to this, they would lose the grazing land necessary for their domestic animals and cattle.²²⁹

For a community that has been affected by the decades-long armed conflict in Southeast Myanmar, the proposed hydropower dam represents a great risk, as described by this testimony:

"I want to express that, if the proposed dam project is implemented, it can cause a worse displacement for local people in Htee Moh Pga, Tanawthri river [Tanintharyi] area. The displacement because of the dam project will be worse than armed conflict displacement that we experienced in the past. Therefore, we want to share this to the world so that the world will know and consider for local people who live in Htee Moh Pga, Tanawthri river area because every village in the local area will face with trouble."

Pu Bm---, (male), Bn--- village, Ler Muh Lah Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in March 2017)²³⁰

"If the dam project is implemented, the plants in plantation such as coconut trees, durian trees, betel nut trees and other agriculture that we used to work on Kloh Hkoh area will be damaged. Moreover, we will lose the place to grow domestic animals and cattle. We cannot estimate how much cost will be worth for these resources as it will be a large amount of damage... Even though the company claims that they will provide compensation for all damaged lands, the compensation can benefit local people for short-term only but our plantations are beneficial for the long term."

Pu Bm---, (male), Bn--- village, Ler Muh Lah Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in March 2017)²³¹

²²⁸ See Source #32.

²²⁹ See Source #32.

²³⁰ See Source #32.

²³¹ See Source #32.

Furthermore, villagers do not want to relocate, and worry about the quality of land if relocation is proposed. Even if villagers are relocated to sites of comparable size, there is a valid concern that the relocation sites will not be of equivalent value in terms of agricultural production necessary for subsistence and income generation. In a rural context, villagers are solely dependent on farming for their livelihoods. There are no alternative means of employment in this area, which limits the resilience of rural communities. Villagers are acutely aware of this vulnerability:

“I have no idea about the benefits of the dam project, but there will be many negative consequences such as flooding over all our land [farms, plantations, villages] that we rely on. As we are native people from this [Mo Ro] area, we get free vegetables such as bamboo shoots and fruits from the forest seasonally. We have to buy food [fruits and vegetables] after the dam project. Even if we get compensation money for our destroyed land and plantations, we will face [livelihoods] difficulties after we use up the money. As a result of this, we are ordinary villagers from the rural area and we do not have the knowledge to do business with the amount of the money we get. We will get some support during we still have [compensation] money, but we will be in trouble [livelihoods situation] when our money is gone.”

Naw Bo---, (female), Ap--- village, Ler Muh Lah Township,
Mergui-Tavoy District/Tanintharyi Region (Interviewed in August 2017)²³²

Should the hydropower dam be constructed without providing adequate compensation, it would severely affect the local communities living on the banks of the Tanintharyi River.

Village Agency Strategies

Local community members have voiced their opposition to the hydropower dam since 2012. Their ability to voice their concerns was initially limited by the involvement of powerful actors, including the Tatmadaw and Myanmar government. To amplify their voices, villagers on the banks of the Tanintharyi used community-based advocacy strategies.

Consultation meetings were a crucial source of information for local communities that would be impacted by the hydropower dam. Having adequate information helped villagers choose different agency strategies to voice their opposition to the dam. Consultation meetings were used as a space to protest on February 9th 2017, when villagers demonstrated in a consultation meeting in Tanintharyi City Hall:

“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 that they do not agree with the project, and they protested against the project, holding signs that say ‘Do not destroy Tanintharyi River’ and ‘No Dam’.”

News Bulletin written by KHRG staff,
Mergui-Tavoy District/Tanintharyi Region Kayin state (Published in June 2017)²³³

Local community members also showed their opposition to the hydropower dam through protest signs, including ‘Let the Tanintharyi River flow freely’ and ‘No Dam’. They also wrote complaint letters to government authorities and civil society organisations to voice their concerns about the hydropower dam:

²³² See Source #77: “Mergui-Tavoy Interview: Naw A---, August 2017,” KHRG, December 2017.

²³³ See Source #67: “Proposed Hydropower Dam Project in Tanintharyi Region, Mergui-Tavoy District, 2017,” KHRG, June 2017.

"They [villagers] reported it to the CBOs and CSOs and said 'If you meet with higher authorities, please inform them that we do not want the dam project for us'. We do not know where we have to go and report this case [to stop the project]."

Saw Ao--- (male, 28), Ap--- village, Ler Muh Lah Township, Mergui-Tavoy District/Tanintharyi Region (Interviewed in March 2017)²³⁴

Local communities asked civil society organisations to help them advocate against the hydropower dam. In April 2017, 200 villagers came together to participate in an environmental conservation event organised by a community-based organisation. This community event took place in Moh Roh, one of the villages that would be flooded by the hydropower dam.

This section shows how a rural community came together to oppose a hydropower dam that would flood their lands. Although they used many different agency strategies, they faced a number of barriers and challenges in getting their perspectives heard.

Barriers and challenges in the Consultation Process

One of the biggest challenges to village agency was the fact that the information provided in the consultation meeting with the GMS Power Company was out of date. Most of it was based on assessments conducted years previously by ITD Company. Local community members were not sure whether to trust this information.

In addition to this, local community members found it difficult to access consultation meetings. One barrier was logistics: the consultation meeting was held in Tanintharyi City Hall, far away from the villages that would be flooded by the hydropower dam. The distance and cost of travelling to the consultation meeting prevented members of the community from attending:

"...some village [representatives] could not reach the meeting because the meeting was held in a town which is very far from their villages. Some villagers [from certain villages] have never been to the town so they didn't know where to go for the meeting and some of them do not have money [to pay the taxi fee to get to the meeting]. Some villagers had money for the taxi fee and could attend the meeting."

Saw Ao--- (male, 28), Ap--- village, Ler Muh Lah Township, Mergui-Tavoy District/Tanintharyi Region (Interviewed in March 2017)²³⁵

During the course of the consultation meeting, local community members felt pressured to consent to the hydropower dam. Representatives of the GMS Power Company and the Myanmar Government Ministry of Electricity stressed how the hydropower dam would benefit the region, while downplaying the negative impacts of the project.²³⁶ A local community member present at the consultation meeting explains:

²³⁴ See Source #69: "Mergui-Tavoy Interview: Saw A---, March 2017," KHRG, September 2017.

²³⁵ See Source #69: "Mergui-Tavoy Interview: Saw A---, March 2017," KHRG, September 2017.

²³⁶ The promise that hydropower will bring economic benefits and employment to the local community was made by *Asia World Company* during the building of Toh Boh dam, which resulted in large scale displacement and economic damages to the villagers. The company did not follow up on its promises. For more information see Source #84 : "Toungoo Interview: Saw H---, April 2011," KHRG, September 2012.

“Their presentation was on the voltage of electricity that the dam will produce, who in Tanintharyi Region will get electricity, how they will share the electricity to the foreign countries and finally how they will generate a lot of money quickly, which will be beneficial for the whole [Burma/ Myanmar] country.”

Saw Ao--- (male, 28), Ap--- village, Ler Muh Lah Township, Mergui-Tavoy District/Tanintharyi Region (Interviewed in March 2017)²³⁷

Because the electricity produced by hydropower dams in Myanmar is typically exported to neighbouring countries, villagers were not convinced that the hydropower dam would benefit the communities living the banks of the Tanintharyi River.



These two photos were taken on February 25th 2017. The photo on the left shows the stretch of the Tanintharyi River, known locally as A--- pool, where GMS Power Company intends to build a hydropower dam. The photo on the right shows a protest sign pinned to a tree over the Tanintharyi River that says, ‘Let Tanintharyi River flow freely’ in Burmese and ‘No Dam’ in English. [Photos: KHRG]

²³⁷ See Source #69: “Mergui-Tavoy Interview: Saw A---, March 2017,” KHRG, September 2017.

Outcomes of Agency Strategies

Since this consultation meeting, the construction of a hydropower dam on the Tanintharyi River has been put on hold. It is not clear whether this is permanent, because many companies have expressed interest in building a hydropower dam in this location.

Recommendations of the local population

For the Myanmar Government

-Ensure that local populations are adequately consulted if they will be impacted by large-scale corporate development projects:

"[...] some village [representatives] could not reach the meeting because the meeting was held in a town which is very far from their villages."

For the Greater Mekong Subregion Power Company

-When providing compensation for populations impacted by hydropower dams, consider the long-term impacts on the local population:

"Even if we get compensation money for our destroyed land and plantations, we will face [livelihoods] difficulties after we use up the money."²³⁸

²³⁸ See Source #32.

Compensation

Compensation is a form of remedy offered by states and business enterprises to recompense for the negative impacts of private development projects on communities. In accordance with UNDRIP²³⁹ and the United Nations Guiding Principles on Business and Human Rights,²⁴⁰ both states and corporations are responsible to ensure that individuals and groups have access to effective remedies to address the grievances that may result from ventures implemented without the Free, Prior, and Informed Consent (FPIC) of local populations. In this section, a grievance is defined as a perceived injustice (based on law, promises by authorities, or customary notions of fairness in the community).

Key findings

1. 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.
2. Private companies and government authorities were least likely to offer compensation packages to villagers when implementing road construction projects.
3. 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.
4. In cases where companies offered compensation packages, villagers were at times coerced to accept the compensation terms set forth by the companies.
5. In many instances of commercial development projects, villagers did not know how to access formal grievance mechanisms to request compensation.
6. 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.
7. 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.

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. In instances where villagers were compensated, they often found compensation to be inadequate or unfair. Monetary compensation was seen as inadequate, since it could not

²³⁹ Article 10, “United Nations Declaration on the Rights of Indigenous Peoples”: “Indigenous people shall not be forcibly removed from their land or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return”; Article 11(2) “States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions, and customs”.

²⁴⁰ “Guiding Principles on Business and Human rights”. United Nations High Commissioner for Human Rights 2011.

rectify the loss of livelihoods and security, particularly in cases of land confiscation. Given the significant barriers villagers faced in reclaiming their land, they often found it easier to accept compensation in lieu of pursuing strategies to reclaim their land.

Agency and compensation

Although KHRG has received reports of companies proactively engaging with rural communities to provide compensation for land confiscations, this is a rare occurrence in Southeast Myanmar.

In most cases where villagers received compensation, villagers had to take action to gain the attention of private companies and authorities to request compensation. In one example, villagers appealed to the KNU, who then arranged for villagers to be compensated 2,000,000 kyat [\$1,482.56 US] per acre for land damaged by gold mining.²⁴¹ In another case, villagers were invited to a meeting to discuss compensation with the Kaung Myanmar Aung Company (KMAC) after they organised a large-scale protest against KMAC's plantation project. KMAC met with villagers and provided 50,000 kyat [\$37.06 US] to 300,000 kyat [\$222.39 US] per acre to the villagers affected by their project.²⁴² By using various agency strategies, villagers were successful in prompting negotiations and obtaining compensation.

Private telecommunication companies are an exception to this trend. They were particularly proactive in approaching villagers to rent their land or provided compensation to villagers for land used to build signal towers.²⁴³ For example, it was reported that in Kyonedoe Township, Win Ka village tract, Bp--- village, the Telenor Company built phone signal towers. They paid 150,000 kyat [\$111.19 US] per month to each landowner for the use of 50 square feet of their land.²⁴⁴

Inadequate and unfair compensation

Between 2015 and 2018, KHRG received many reports that villagers perceived that the compensation provided by companies was inadequate or unfair. There are two key reasons for this. Firstly, companies often offered compensation packages that were not nearly equal to the value of the plants or the land lost or damaged as a result of corporate development projects. For example, in the case of Asia World Company, one of the affected villagers from Thandaunggyi Township explained:

"They never say that they are going to pay the compensation. We also do not want to get the compensation that they will pay to us. They [company] said that a rubber tree worth 200 kyat [\$0.19 US]. What can we do with 200 kyat!"

Ko Z---, (male, 21), Ab--- village, Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin State (Interviewed in November 2015)²⁴⁵

Secondly, the compensation provided by companies was not always evenly distributed to affected villagers. Companies often failed to provide clear explanations as to why they distributed compensation to some villagers, and not to others.²⁴⁶ This is exemplified by a case received by

²⁴¹ See Source #64: "Mergui-Tavoy Situation Update: K'Ser Doh and Tanintharyi Townships, August to October 2017," KHRG, February 2018; Source #8; Source #23; and Source #27.

²⁴² See Source #49: "Toungoo Situation Update: Thandaunggyi and Htantabin townships, November 2015 to January 2016," KHRG, July 2016.

²⁴³ See Source #40 and Source #88.

²⁴⁴ See Source #88.

²⁴⁵ See Source #3.

²⁴⁶ See Source #57: "Dooplaya Situation Update: Kawkareik Township, June 2015 to August 2016," KHRG, December 2016.

KHRG, where a road construction company decided to compensate villagers who lost a large swath of their long-term plantations but did not do anything for villagers who lost a small portion of their long-term plantations.²⁴⁷ For example, in a road construction case from Dooplaya District, one village elder from Kawkareik Township explained why he felt it was unfair that road construction companies provided compensation to some affected villagers.

“If we look at this situation, companies should also give compensation to those people who lost a small number of long-term plantations. According to a local elder, “[if] we have many children, we still want our children even if some of them die. [If] we have only a few children, can you imagine how much we want them if they die? So consider this for people who lost a small number of their long-term plantations and how badly they feel [because of their increased dependency on a small number of plantations].”

Situation Update written by a KHRG researcher, Kawkareik Township, Dooplaya District/southern Kayin State (Received in November 2016)²⁴⁸

Companies made the distinction between villagers who required compensation and villagers who did not. This distinction was perceived by villagers as unfair, because they believed all individuals affected by the road construction should be compensated equally regardless of the size of their plantations.

The value of land: beyond financial compensation

KHRG found that in many instances, receiving monetary compensation was not the intended outcome of village agency strategies. Rather, monetary compensation was offered to villagers by companies, as a next-best option to villagers reclaiming their land. For example, KHRG found that villagers did request monetary compensation in cases of road construction, which caused short-term damage to crops and land that could be remedied through monetary compensation.²⁴⁹ In contrast, in cases where land confiscation occurred, monetary compensation was often more controversial and not the initial or intended outcome of villager’s agency strategies. For example, in the KMAC case, villagers held a protest against KMAC to try to get back their lands, but KMAC responded by offering to negotiate monetary compensation to satisfy villagers. KHRG found that monetary compensation was typically sought after by villagers in cases where property damage occurred, but not in cases where land confiscation happens.

In fact, villagers frequently reported to KHRG that they found monetary compensation in cases of land confiscation to be unfair or inadequate. There are two reasons for this. First, villagers found they could not sustain their livelihoods on the monetary compensation they received from companies in the long-run. For example, in Min Lwin Mountain case, one villager from Thaton District explained why he could not take compensation for potential property damage.

“As I told you before, 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 kyat, I could not exchange

²⁴⁷ See Source #63: “Dooplaya Situation Update: Kawkareik Township, January to October 2016,” KHRG, July 2017.

²⁴⁸ See Source #63: “Dooplaya Situation Update: Kawkareik Township, January to October 2016,” KHRG, July 2017.

²⁴⁹ See Source #63: “Dooplaya Situation Update: Kawkareik Township, January to October 2016,” KHRG, July 2017.

it with this mountain. We could not support our lives for 100 years with 1,000,000 kyat. I do not know if most people agree with it but I do not want to sell this mountain."

U Bq---, (male, 58), Br--- village, Pein Nel Taw village tract, Thaton Township, Thaton District/northern Mon State (Interview received in May 2015)²⁵⁰

As exemplified above, villagers not only found monetary compensation to be inadequate in comparison to the benefits of accessing the mountain in the long-run, but they also found it to be unfair. The villager perceived that the company ultimately benefits more from the use of the mountain than the villagers would benefit from the compensation offered, thus reaffirming the villager's sense of unfairness and injustice in this case.²⁵¹

Rural communities value their land more than money, because their ancestral land is important for villagers to maintain for future generations.²⁵² For example, when CKB Company case established a commercial plantation, villagers ultimately wanted their land instead of demanding monetary compensation:

"Villagers really want their ancestral land back to use for their livelihood and the new generation. Villagers will be satisfied if they get 50,000 kyat [US\$36.64] per acre as compensation. However, villagers really want their legacy [ancestral land]."

Situation Update written by a KHRG researcher, Ta Naw Th'Ree Township, Mergui-Tavoy District/Tanintharyi Region (Received in June 2017)²⁵³

Land is more to villagers than just a source of livelihood. Land is also crucial to retaining their heritage for future generations.

Accepting or rejecting compensation

In some instances reported to KHRG, villagers rejected compensation because of their perception that the land they lost is worth more than monetary compensation.²⁵⁴ However, some villagers reported to KHRG that they felt they had no choice but to accept compensation even if they perceived it to be inadequate or unfair. Companies often insisted that villagers accept compensation, and told villagers: *"Your land will be confiscated. You have to accept the compensation which is provided by the government now. If you don't accept it now, you will not get it in the end."* In these instances, villagers felt that they had few options but to accept the compensation offered by companies, even though they did not consent to the development projects.

²⁵⁰ See Source #52: "Thaton Interview: U A---, 2016," KHRG, December 2016.

²⁵¹ See Source #3: *"Even though they want to pay me money, I don't want to take it. I just want to get my land back. We cannot do anything with money. The money that they pay me is not as worth as my fruit [banana]. If we take their money, my whole life [will be in trouble]. If I have land, not only myself but also my family can depend on [our land for livelihoods]. I do not interest their money; We do not want our lands to be lost [confiscated]. As the farmers, we need our lands in order to survive."*

²⁵² See Source #30: *"The dam project is a big process; therefore it can widely affect the local people when the problems arise in the process. The development project workers claim that they would pay for the compensation of damaged land and migration. However, we want our generation stay in the ancestral lands with the natural resources that our generation has been staying through. We [villagers] do not want that the nature environment that we live in will be damaged or harmful to us."*

²⁵³ See Source #73: "Mergui-Tavoy Situation Update: Ta Naw Th'Ree Township, 2017," KHRG, July 2017.

²⁵⁴ See Source #49: "Toungoo Situation Update: Thandaunggyi and Htantabin townships, November 2015 to January 2016," KHRG, July 2016.

“If they [Kaung Myanmar Aung Company] give 50,000 kyat [\$36.31 US] to each villager as compensation, we have to take it even though we are not satisfied with it. It is not that we want to take their compensation, but it is because we are afraid of them. They used police officers and soldiers to threaten the villagers into taking their money. It is not because we were afraid to lose our lands, but it was because we were afraid of them. Where can we buy new land with only 50,000 kyat? We were afraid of their dictatorship [Kaung Myanmar Aung] so we took their money. In fact, we just want our lands back.”

Saw A---, (male, 46), A--- village, Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin State (Interviewed in November 2015)²⁵⁵

In certain cases of land confiscation, the majority of villagers are unwilling to accept the compensation offered by companies because they perceive that land is the most important thing for their livelihoods. For example, according to KHRG information received in 2017, many villagers from K'Ser Doh Township, Mergui-Tavoy District rejected compensation provided by Anawa Soe Moe Company because they perceived it as inadequate.

“Anawa Soe Moe Company provided some compensation for the villagers’ land but the compensation was not adequate. Some villagers accepted all the compensation paid by the company, some accepted half and some did not accept any. The villagers are hoping for fair compensation of their damaged lands and plants. Most of the villagers did not accept compensation because they want their lands back more than money, as it is the main foundation for their livelihoods.”

Situation Update written by a KHRG researcher, K'ser Doh Township, Mergui-Tavoy District/Tanintharyi Region (Received in November 2017)²⁵⁶

Barriers to receiving compensation

In the majority of reports received by KHRG, villagers did not receive compensation from companies or government authorities for damages caused by development projects.²⁵⁷ This is particularly true in cases that involved road construction.²⁵⁸ Rural communities reported that companies argued that they do not need to compensate them because they received permission from authorities.²⁵⁹ Companies also denied responsibility for environmental damages caused by corporate development projects.²⁶⁰ Villagers impacted by corporate development projects preferred getting their land back instead of asking for compensation. The lack of compensation often leaves villagers with limited means to cope with the negative impacts of corporate development projects. As the following KHRG report demonstrates,

“The worst thing I have ever heard... They confiscated around 50 acres of Daw Bs---’s land and hustled her to leave. She is widowed and she found a place where she has only a little space for herself. She does not have her house anymore. It was broken down by the company and

²⁵⁵ See Source #44: “Toungoo Interview: Htantabin Township, November 2015,” KHRG, June 2017.

²⁵⁶ See Source #64: “Mergui-Tavoy Situation Update: K'Ser Doh and Tanintharyi Townships, August to October 2017,” KHRG, February 2018.

²⁵⁷ See Source #56: “Toungoo Situation Update: Thandaunggyi Township, June to August 2016,” KHRG, March 2017; Source #15 and Source #58: “Dooplaya Interview: Saw A---, October 2016 KHRG, September,” KHRG, September 2017.

²⁵⁸ See Source #55: “Dooplaya Situation Update: Kyonedoe Township, April 2016 to July 2016,” KHRG, February 2017; Source #16; Source #37; Source #33; Source #75: “Toungoo Situation Update: Thandaunggyi Township & Htantabin Township, January to March 2017,” KHRG, January 2018 and Source #25.

²⁵⁹ See Source #11 and Source #66: “Toungoo Situation Update: Thandaunggyi Township, November 2016 to January 2017,” KHRG, September 2017.

²⁶⁰ See Source #91.

she was hustled to leave....As she did not have her house anymore, she returned back to her place and she was later on hustled by the KMAC staff. At that time she was sobbing and saying "I have this amount of land. Just give me 500,000 kyat per acre of land as compensation. Instead, I do not even have enough space for myself." U Khin Maung Aye wanted to see her in order to pay compensation but his staffs did not want him to meet her. His staff said that 'it will be problematic if he goes to see you'."

Saw Q--- (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in November 2017)²⁶¹

Although villagers attempted to demand compensation from companies for land confiscation, there are fewer options to receive compensation because of potential abuse or threat.

Lack of standards for compensation

Rural communities also reported to KHRG that they were unsure of how to approach company representatives to request compensation. This suggests that companies either lacked formal grievance mechanisms,²⁶² or that villagers did not know of their existence. Furthermore, there was a lack of understanding among villagers of what compensation is, whether they are entitled to compensation and how much compensation they should receive.²⁶³

Rural communities base their understanding of what compensation is and what the standards of compensation should be off of their past experiences with corporate development projects. They are also informed by what is happening in other villages.²⁶⁴ This has led rural communities to believe that they are not able to obtain compensation from companies in instances where other villages were not given compensation for land confiscation or property damage.²⁶⁵

Lack of accountability and transparency

Of concern, when villagers did exert agency through negotiations and stakeholders responded with promises of compensation, these promises were often not kept.²⁶⁶ Companies have used promises of compensation to persuade villagers to consent to development projects. This is best shown in the case involving Phyu Min Htun Company, which promised to compensate villagers affected by their stone mining project on Maw Lay (Min Lwin) Cliff in order to obtain their consent to implement the project.²⁶⁷ As one villager explains,

²⁶¹ See Source #22.

²⁶² See Source # "Sector Wide Impact Assessment of Limestone, Gold and Tin Mining in Myanmar".

²⁶³ See Source #60: "Dooplaya Interview: Saw A---, September 2016," KHRG, May 2017.

²⁶⁴ See Source #61: "Dooplaya Interview: Saw A---, September 2016," KHRG, August 2017. *"Some local villagers heard that they [other villagers] did not receive compensation although they [leaders] gave compensation. Actually, this is just a rumor because we have never heard that the money [compensation] will be distributed to villagers. We have never known if [leaders] will give money to local villagers as compensation."*

²⁶⁵ See Source #59: "Dooplaya Interview: Saw A---, September 2016," KHRG, June 2017. *"Some villagers, anyhow, raised their concerns that they will not get compensation due to a new road construction project because they knew that the compensation was not paid to them for their land damage because of the old road construction in the past. As a consequence, villagers perceive that they do not benefit much from current development project due to the past experience they had regarding a lack of access to compensation."*

²⁶⁶ In other cases, authorities, such as local leaders and the KNU, told the villagers that the compensation will be provided for the property damages due to road construction by the companies. However, villagers were not compensated despite the long way. For more examples of lack of accountability, see 'Compensation' section.

²⁶⁷ See Source #79 "Thaton Interview: Saw Be---, April 2016," KHRG, February 2018.

“Before the villagers knew the advantages and disadvantages [if the project is implemented], there were more villagers who do not live near the cliff who signed [the document] as they thought they were going to get 1,000,000 kyat for free soon. When they [company] first came to hold a meeting with the villages before the villagers know anything [about the project], they said that each person [from each house] would get 1,000,000 kyat if they agreed to the project. Many villagers went to the meeting and signed [the agreement]. They [company] did not say anything in relation to the pros and cons [of the project]. Later, most of the villagers who live in the west of the cliff which is about 400 households objected to the project.”

Saw B--- (male, 42), At--- village, Thaton Township,
Thaton District/northern Mon State (Interviewed in April 2016)²⁶⁸

In this situation, the Phyu Min Htun Company was offering a large sum of money for compensation, with the goal of getting villagers’ consent, without fully explaining to them the negative impacts of the stone mining on Maung Lay (Min Lwin) mountain. In addition, they targeted villagers who live far away from the mountain, and who would not be impacted by the project as much, in order to get more signatures to help implement their stone mining project.

²⁶⁸ See Source #79 “Thaton Interview: Saw Be---, April 2016,” KHRG, February 2018.

Photos: Compensation



This photo was taken on August 10th 2017, between Kaw Bat Chan village and Than Moe Taung village, Than Moe Taung village tract, Leik Tho Town, Thandaunggyi Township, Toungoo District. It shows the route between Kaw Bat Chan village and Than Moe Taung village. The agricultural lands of local villagers were damaged when electricity poles were built along this road. The villagers did not receive any compensation for the damage. [Photo: KHRG]



This photo was taken by a KHRG researcher on October 14, 2015 in By--- village, Thandaunggyi Township, Toungoo District. Companies are doing more and more business in Thandaunggyi Township. However, villagers do not have enough information [since no prior notification was given to villagers]. Heavy machinery, including bulldozers, have been seen in the area, as shown in this photo. Some villagers accept these developments, but others are weary because they have concerns about the impact of natural resource extraction on their lands, especially if companies cooperate with the regional authorities. The [companies] do not pay compensation for the land that is destroyed by corporate development projects. Villagers feel that these projects will bring more disadvantages than advantages to the community. [Photo: KHRG]



These photos were taken on November 29th 2015 on the crossroad between Ka Yin village to Tha Main Dwut in Kyonedoe Township, Dooplaya District. They show the rubber plantations and agricultural lands of local populations being destroyed because of the road construction by the Khin Zaw Company. A Township Campaign Officer told the local population that because villagers had requested a better road, there is no need to document the destruction to their agricultural lands. The villagers have not received any compensation. [Photos: KHRG]



These photos were taken on October 27th 2015 in Bt--- village, Thandaunggyi Township, Toungoo District. They show a road being built from northern Bt--- village to Bu--- village and Bv--- village by the Ngway Sin Phyo Company. The group that is responsible for the road construction is Na Ta La [the Ministry of Progress of Border Areas and National Races and Development Affairs]. According to the budget for 2014 and 2015, Na Ta La has to construct the road from Thandaunggyi Town to Bw--- village. The company and Na Ta La met with the leaders from KNU Brigade #2 [Toungoo District] to discuss the road construction. They did not receive permission from the District and Headquarter level of the KNU Brigade #2. The road was built with the permission of the Base level [of KNU Brigade #2] The road construction has damaged the agricultural lands of the local population. [Na Ta La and the Ngway Sin Phyo Company] did not take responsibility for the damage and did not provide information to the local population. The villagers were not provided with compensation. The company and the Na Ta La told the villagers that the KNU gave permission for them to build the road. [Photos: KHRG]



These photos were taken on October 19th 2016 in Bz--- village tract, Win Yay Township, Dooplaya District. They show a rocky mountain that is being mined for stone by the local village tract heads. They said that they will not be liable for any damage [to the agricultural lands of local villagers]. The rubber plantation and agricultural lands of Saw Ca--- and Naw Cb--- are next to this mountain. A KHRG researcher collected information on this issue. He met with the KNU's Win Yay Township head, Tee Dah Maung Shwe, as well as Saw Ca--- and Naw Cb---. Those responsible for the stone mining are the village tract head Kyaw Hla Moe, Saw A' Pleh and Saw Aung Ko Let. [Photos: KHRG]



These photos were taken on September 10th 2017 in Dawei Hkee area, Ler Doh Soh Township, Mergui-Tavoy District. They show a palm oil plantation owned by the U Paing Company Limited in Dawei Hkee area. The daughter of the former Prime Minister Nay Win cooperated with some government officials to confiscate the lands of the local population [to establish this palm oil plantation]. The landowners were not given any compensation. This instance of land confiscation has affected people from Cc--- village, Cd--- village, Ce--- village and other villages. A palm oil production factory was built and recruited workers from the local area. The name of the factory is shown on the photo on the left: “Myanmar Economy U Paing Limited Palm Oil Factory”. [Photos: KHRG]



This photo was taken on September 4th 2016 in Three Pagoda Pass Town, Win Yay (Waw Raw) Township, Dooplaya District. It shows a local villager who was interviewed about a road construction in his area. He is holding a pamphlet about the Asian Highway. He said that “As far as I know, there is one old road in this area, which was constructed to make travelling easier. Therefore, the Township leader, the [KNLA] Battalion [commander] and companies formed a committee to monitor the road construction to make sure that local villagers got compensation if their lands, houses and plantations were destroyed [because of the road construction]. However, local villagers did not get any compensation after the road was constructed. Now a new road is being built, and local villagers worry that they will not get anything.” [Photo: KHRG]

V. Community Mobilisation at a Village Level

Protests and Confrontation

Introduction

Between 2015 and 2018, villagers reported they were more confident in organising and participating in protests and demonstrations. Villagers used these strategies to convey their disagreement or dissatisfaction with corporate development projects in their areas. 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. Through these activities, villagers aimed to garner the attention of company representatives or government authorities in order to have their concerns acknowledged and addressed. While KHRG found that villagers were more confident to participate in protests in recent years, rural communities still believe that there are considerable limits to their ability to protect their interests from private development actors.

Key findings

1. Throughout the reporting period, villagers in Southeast Myanmar exhibited greater confidence organising and participating in different types of protests.
2. 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.
3. 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.
4. 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.

Prayer ceremonies

In Southeast Myanmar, individuals and religious groups use inter-faith prayer ceremonies as a way to pray for peace, by bringing together Buddhists, Christians, Muslims, and Animists.²⁶⁹ KHRG received 6 reports of villagers gathering to pray for their ancestral lands, to have a good harvest²⁷⁰ or to protect land threatened by corporate development projects.

²⁶⁹ 2,000 Karens gather on the Salween to call for a halt to dam plans', KESAN, 15 March 2013.

²⁷⁰ See Source #54: "Doooplaya Situation Update: Kyonedoe Township, September 2015 to December 2015," KHRG, January 2017. "This Atayan rocky mountain is connected to people who live in M'Yan Kon village, Bu Ya Kon village, Hlwa Sin Kon village and Kyo Kwel village because they earn their living from agriculture, cultivation and farming. So they gather together and they go to worship and pray at Atayan rocky mountain in order to have a good harvest when they celebrate their traditional festival once a year, as they firmly believe."

Prayer ceremonies are an inclusive and unique form of agency used by villagers in Southeast Myanmar to protect their communities and natural resources.²⁷¹ One Muslim villager from Thaton District expressed his perspective on prayer ceremonies in the interview excerpt below.

"I heard they [E--- village and other villages] will celebrate the traditional religious praying ceremony on the mountain on the 29th [of this month]. What do you think about that?"

I was born here. I am a villager in this area. If they do like that [hold a traditional ceremony], we and they have the same heart. If they do not want to do, we also do not want to do. If they think it is good, we will think it is good because we all live in the same village and drink the same water. This is my attitude.

If you are invited to go to the traditional religious praying ceremony on the mountain, will you go there?

Of course, I will go because it is our village. We will definitely go if we are invited to go."

U Bq--- (male, 58), Br--- village, Pein Nel Taw village tract, Thaton Township, Thaton District/northern Mon State (Interview received in May 2016)²⁷²

KHRG also found that villagers are more likely to hold traditional prayer ceremonies when their long-term access to land is under threat, such as in cases of commercial plantations and hydropower dams. As highlighted in *Mining for Limestone on Communal Land: the Case of Khonkhan Rocky Mountain*, prayer ceremonies are also used in cases where mountains or rivers are threatened by corporate development projects, because they are spiritually significant for local communities.

For example, in 2014, the Yadanar Sai Kaung Myat Kyaw Mining Company was granted permission to mine a limestone mountain near Cf--- and Cg---, Ch---, Ci---, and Cj--- villages in Ler Doh Town by the Myanmar government and KNU Central Committee. In the same year, the company began testing the mountain for stone, building a cement processing factory, and constructing roads to their project sites. In response, the villagers who lived near the project site gathered to hold a prayer ceremony on June 5th 2015. As part of the prayer ceremony, villagers wrote their names on stones and collected them all together. The prayer ceremony involved both Karen Animists and Christians who prayed not to lose their indigenous land and villages. In addition, local villagers formed a committee of 30 people to voice their concerns, since the company did not hold consultations regarding the mining process. The committee was supported by the Paung Ku Foundation and Environmental Conservation team [KESAN], Karen River Watch, Land in Our Hands [LIOH].

²⁷¹ In another example, "*Villagers in Kaeng Sua Ten communities believe strongly in spirits, just like many people in Thailand do, and they use spirits as a strategy to fight against dams. For example, they pray to the spirits to protect them and to guide them before they do any dam-related activity. Afterwards, they come back to the spirit house and thank the spirit for listening to their prayers. These communities believe that they were able to fight against the dam projects for many years because the spirits were with them.*" See "Thirty Years of Resistance: Stopping the Kaeng Sua Ten Dam on the Yom River"; A villager from Hpa an District said, "*We are concerned that the cement project will harm our local environment, health, sustainable livelihoods, and traditional way of life. We pray that the company will respect the voice of the local community, and that our natural resources will be protected for future generations.*" Source: *Karen News: Karen Villagers Pray for Mountain's Protection, Health and Environment as 5,000-Tons Cement Plant Proposal is Revived by Militia Leader and Chinese Investors*

²⁷² See Source #52: "Thaton Interview: U A---, 2016," KHRG, December 2016.

Prayer ceremonies became an agency strategy used by villagers to protect their land. Prayer ceremonies are a unique form of agency: they are non-confrontational, rooted in local cultural practices, and reaffirm traditional connection to land, even without voicing clear demands relating to international standards such as FPIC.

Impact of prayer ceremonies

Prayer ceremonies, similar to other forms of protest, usually occur after villagers become aware of development projects but are unsure of how to access decision makers. One reason that villagers choose to conduct prayer ceremonies as opposed to other forms of protest is that prayer ceremonies involve less confrontation. Prayer ceremonies are not included in laws regulating demonstrations, or other forms of assembly. Prayer ceremonies are most effective when combined with other strategies, especially when villagers reach out to environmental advocacy groups and civil society organisations.

Protests

KHRG received 29 reports of villagers organising protests against companies to express their disagreement with corporate development projects. They were held because villagers wanted companies to return their lands, organise fair and open consultations, and provide compensation for damages. KHRG found that protests happened when other agency strategies were unsuccessful.

As put forward in the *Taking a Land Dispute to Court: the Case of Kaung Myanmar Aung Company* case study, villagers protested in order to reclaim lands confiscated by KMAC in Toungoo district. One villager explains the details of the protests below,

“[The fact that] The company sued them is like a threat because the company wanted other villagers to see this and to be afraid of them. When this happened several times, in 2015, villagers started to know that it is not effective to face the company alone. Therefore, community members tried to organise around five or six neighbouring villages which included Ad---, Ab---, Ac---, Ck---, Ae--- villages and protested against KMAC. They demonstrated three times. The first time, they demonstrated on their land. In their slogan, they stated that “No KMAC”, “Return our land”. They shouted out loud to get back their land while walking around their land. They did the same thing and the same place in the second time their demonstration. For the last time, they marched to the place KMAC located in Toungoo Town to ask to return their land.”

Saw Q--- (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in November 2017)²⁷³

In this case, multiple protests were held by the local community to make their demands clear.²⁷⁴

Impact of protests

Villagers often protest after using other agency strategies such as submitting complaint letters or using resistance strategies such as fencing their land. They often choose to protest in cases of land confiscations, because of the impacts on their long-term livelihoods and their ability to

²⁷³ See Source #22.

²⁷⁴ See Source #8: “As the villagers were united in confrontation, the company workers held meeting with them and negotiated about buying the lands as well as to release those land. However, the action [of company] did not make villagers satisfy yet. Therefore, villagers declared that they will continue demonstration until they get their land back.”

access ancestral lands. Protests are difficult for villagers to organise considering the laws that deter public demonstration in Myanmar. Villagers often apply multiple times to gain permission to protest from authorities. Nonetheless, villagers find that demonstrations are often effective in garnering the attention of stakeholders to their concerns. They have resulted in increased opportunities for villagers to access decision makers and negotiate for compensation.

Barriers and Challenges

"In 2015, villagers held a demonstration against Kaung Myanmar Aung Company three times. Villagers from three or four villages gathered for a demonstration. In a demonstration, they demanded that, "We do not want Kaung Myanmar Aung Company, We want Kaung Myanmar Aung Company to return our lands, we want Kaung Myanmar Aung Company to stay out of our lands". However, Kaung Myanmar Aung Company workers still stay in villagers' lands."

Saw Q--- (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in December 2017)²⁷⁵

As a result of large-scale protests, villagers were at times afforded opportunities to attend meetings, negotiate with development actors, and gain compensation for damage caused by development projects.²⁷⁶ In one case, a development project related to gold mining was halted after a prayer ceremony was held. Nonetheless, villagers faced many barriers when they wanted to organise demonstrations. These included: having to gain permission to protest, and direct intimidation by company representatives and authorities when organising or participating in a protest. KHRG found that in some cases, villagers were even sued by companies for protesting against corporate development projects.

During the reporting period, villagers had to gain permission from local authorities to protest. They also had to obtain approval for chants and slogans used in a protest, in accordance with Section 19 of the 2011 Peaceful Assembly and Peaceful Procession Act.²⁷⁷ KHRG found that when villagers went to police stations and applied for permission to protest, police officers often did not give local communities formal permission to protest. They also delayed the villagers' applications. For example, in the KMAC case, the police did not give the local community permission to protest at first. Local villagers had to be persistent in order to obtain a permission to protest.²⁷⁸ As one villager explains,

"I applied for the [permission letter] from the #2 police station [in order to] protest. I applied for it more than three times. When I applied [for it] for the fourth time, I was given permission [to protest]."

Saw V--- (male, 36), W--- village, Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin State (Interviewed in January 2016)²⁷⁹

²⁷⁵ See Source #23.

²⁷⁶ See Source #8: In one case, KMAC did not consult villagers before the project, but decided to hold a meeting with villagers after they protested. KMAC arranged for villagers to get compensation of 300,000 kyat per acre. The negotiation also occurred after villagers protested.

²⁷⁷ In 2016, the Right of Peaceful Procession and Peaceful Assembly Law was amended to no longer require permission from authorities in order for groups for protest. However, groups are still required to notify authorities prior to protest, and still must use pre-approved signs and chants during a protest.

²⁷⁸ See Source #44: "Toungoo Interview: Htantabin Township, November 2015," KHRG, June 2017.

²⁷⁹ See Source #45: "Toungoo Interview: Saw Bx---, January 2016," KHRG, February 2018.

In KHRG reports, police officers gave different reasons for denying or delaying villagers' protests. For example, in the KMAC case, villagers reported that police officers were reluctant to accept villagers' applications to protest. Instead, they encouraged villagers to approach the company directly, as one villager explains below:

"I have reported it to them [the Burma/Myanmar government], in order to hold a demonstration for the first time, but they said it is time for an election and they did not give us the rights to hold a demonstration. After the 2015 election, I, again, reported it to police station #2 for a second time on November 18th 2015, in order to get the rights to hold a demonstration, and we planned to hold a demonstration on December 3rd 2015. The police officer in charge of police station #2 told me "However, bring back your report letter, I promise that you can demonstrate on December 3rd 2015 for sure. So you have to report it again on November 27th 2015. If you could negotiate with Khin Maung Aye, from Kaung Myanmar Aung Company, between November 18th 2015 and November 27th 2015, then you will not need to hold a demonstration".

Saw AI--- (male, 46), Ac--- village, Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin State (Interviewed in November 2015)²⁸⁰

Villagers often reported to KHRG that although they were interested in protesting against company actions, they were not always sure how to organise a demonstration. As one villager explains,

"Villagers disagree with the dam project, but have not protested it. "I want to report that, even though we don't want the dam project, we do not know how to act on this [in order stop the project]. Therefore, what should we [villagers] do if the dam project occurs in our community? If it occurs, we will not be able to do anything and we just have to face it. Therefore, we need knowledge and awareness of how to go and tell them to [stop] the dam project, where we have to report this case to and how to appeal against them in order for the project to be ceased."

Saw CI--- (male, 28), Ap--- village, Ler Muh Lah Township, Mergui-Tavoy District/Tanintharyi Region (Interviewed in March 2017)²⁸¹

Resistance strategies

KHRG also received reports of villagers conducting small-scale demonstrations and using individual resistance strategies to protest company actions. Individual villagers directly confronted company representatives in cases of land confiscation, property damage, and compensation.

KHRG found that villagers used these strategies to demonstrate their physical ownership of land, make companies recognise and respect their land through indirect means, and show that their lands are not vacant, virgin, or fallow land.²⁸² This strategy differs from prayer ceremonies and demonstrations because they are most often carried out by individuals and not by groups. They are often informal activities used to assert villagers' rights to land in the absence of documentation, consultation and negotiation meetings.

²⁸⁰ See Source #44: "Toungoo Interview: Htantabin Township, November 2015," KHRG, June 2017.

²⁸¹ See Source #69: "Mergui-Tavoy Interview: Saw A---, March 2017," KHRG, September 2017.

²⁸² Villagers demonstrate against the confiscation and use of their land, and to combat provisions in the Vacant, Fallow, Virgin Land Management Law (2012) that enables "uncultivated land" or "wasteland" to be legally transferred to private entities to be used economic purposes.

Resistance strategies: direct confrontation with company workers

KHRG reports show that individual villagers directly confronted company representatives when they encountered them on their land.²⁸³ Villagers asked company workers to not plant seeds on their land, demanded that company workers pay villagers compensation for property damage,²⁸⁴ and attempted to negotiate with company workers to let villagers remain on their land.²⁸⁵ In certain cases, local community members destroyed the property of the company to garner the attention of company representatives.²⁸⁶

Villagers are able to take advantage of brief interactions with company representatives to convey their disagreement with different projects. In addition, they were sometimes able to gain access to decision-makers to negotiate compensation or to remain on their land. For example, U Cm-- destroyed a bean plantation owned by KMAC to retaliate the confiscation of his land by the Kaung Myanmar Aung Company:

“Actually he [‘U F---] just wanted to discuss the problem [of land confiscation] face to face with the person who is in charge of the company worker group. [...]The company went to negotiate with ‘U F--- so that the bean plantation would not be destroyed next time.”

U Cm--- (male, 30), Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin State (Interviewed received in June 2017)²⁸⁷

Resistance strategies: fencing and continuing to use confiscated land

As outlined in the *Taking a Land Dispute to Court: the Case of Kaung Myanmar Aung Company* case study, villagers in Toungoo District participated in a ‘Plow Protest’²⁸⁸ on two different occasions. Also known as *lel tha mar tun tone taik pwel*, local community members gathered to fence their lands, build huts on plantations, plant seeds in confiscated lands, put up signs, and arrange roadblocks to disrupt development projects.²⁸⁹ One benefit of using the strategy of clearing and fencing land, as opposed to more organised forms of demonstrations, is that villagers are able to implement it as soon as a development-related abuse occurs. As one villager explains,

“Right after, the company left [after planting and clearing], we [villagers] went into the plantation [cleared by the company] and restored the damaged plants [...] I am now planting in the plantation, I wait and see whether the company will cut it off or not but they did not dare to do it at all.”

U C--- (male, 51), Ac--- village, Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin State (Interviewed in November 2017)²⁹⁰

These strategies can be implemented by villagers with minimal disruption to their daily lives and little threat to their personal security. Villagers are able to defy company orders to vacate their land by continuing their livelihood activities.

In many cases, however, these resistance strategies did not change the course of development projects. As one researcher explains,

²⁸³ See Source #4.

²⁸⁴ See Source #35.

²⁸⁵ See Source #4.

²⁸⁶ See Source #29.

²⁸⁷ See Source #71: “Toungoo Interview: U A---, 2017,” KHRG, November 2017.

²⁸⁸ A ‘Plow Protest’ is a form of resistance where villagers gather together to fence their agricultural lands and plant seeds on their fields, to prove that they are the legitimate owners of this land.

²⁸⁹ See “Local Residents Block Farm Road to Lun-Nya Mountain,” Karen News, January 2018.

²⁹⁰ See Source #29.

“Firstly, villagers fenced their lands for not growing plantation by the company. It was not effective. Then, they made an activity where they fenced their lands in order to make a protest and it was also not effective.”

Saw Q--- (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in December 2017)²⁹¹

Similar to the use of prayer ceremonies and demonstrations, villagers chose resistance strategies in situations where they lacked options to meaningfully engage with stakeholders about corporate development projects. As one villager explains in an interview:

“You said that the capability of villagers is fencing their land. Can you explain why you chose to take these types of action? Why didn’t you choose an alternative?”

We can only have this so we just do this way. We have once already reported the case to [Burma/Myanmar] authorities but there has not been any response from them. The case has been reported since 2012 but they have not taken any action on addressing the issue until now. As our reporting strategy did not work, we finally decided to fence and clean the bushes in our land.

You said that the issue or the case has been reported since 2012 but no response has been heard from the authorities. Why did not they take any action?

The letter was sent to them but none of the township, district, or region authorities took action.

Did you fence your land alone or did you act with your community?

We fenced our land with our community as a whole. All villagers cooperated and helped fencing each villager’s land.

What have been the difficulties or risks of your actions? (eg. Interrupted, threatened)

The project implementers did threaten us but they destroyed our fence. However, we fenced again after they destroyed it.”

Saw Cn--- (male, 70), Co--- village, Shauk Pin Chaung village tract, Htantabin Township, Toungoo District/northern Kayin State (Interviewed in November 2017)²⁹²

As evidenced above, these defiance-based strategies and protests can generate a reaction from stakeholders, notably from the companies themselves. However, they may have negative impacts on local community members. KHRG has received reports of company representatives destroying fences constructed by villagers. Villagers are typically aware of the weaknesses of this agency strategy, as one individual explains below:

²⁹¹ See Source #23.

²⁹² See Source #28.

"Villagers responded to this in a wrong way because they did not know the strategy. They blocked the way by fencing with bamboos and set signboard which demonstrated "ye yint thu a pweh" [meaning "courageous people group"].

Saw X--- (male), Y--- village, Kyainseikgyi Township,
Dooplaya District/southern Kayin State (Interviewed in November 2017)²⁹³

"It was like a sign of protest but a protest without people. This was led by Saw Cp---. There were also other two leaders who led this protest but I forget their names. After they did like this, KNLA Battalion #16 ordered to arrest those people. Then they were brought to the Battalion #16 and they were verbally threatened and warned, according to local villagers. Since local people experienced this happening, no one dares to protest against this project until now."

Saw X--- (male), Y--- village, Kyainseikgyi Township,
Dooplaya District/southern Kayin State (Interviewed in November 2017)²⁹⁴

Impact of resistance strategies

While acts of resistance such as fencing land, building huts on land, and planting seeds on land, are strategies that are immediately available to villagers, they are often ineffective. Defiance-based strategies and protests can be an important step to further community mobilisation.

The ultimate goal of resistance strategies is to access decision makers to negotiate land disputes and obtain compensation for confiscated land.

²⁹³ See Source #25.

²⁹⁴ See Source #25.

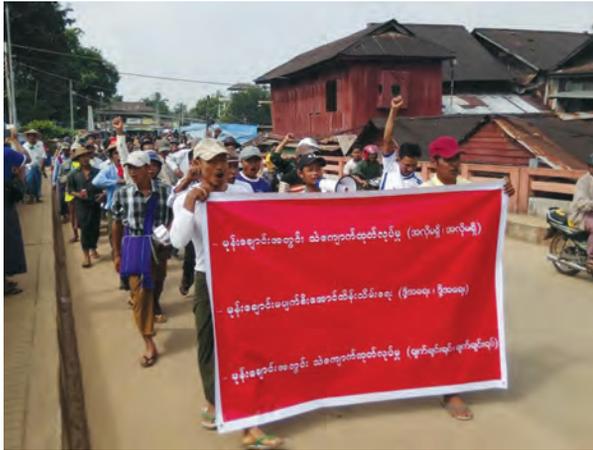
Photos: Protests and Confrontation



These photos were taken by a KHRG researcher on December 5th 2015 in Htantabin Township, Toungoo District. The Kaung Myanmar Aung Company confiscated the agricultural lands of the communities in Ad--- village, Ab--- village, Ac--- village. They threatened the villagers for many years [because of this land dispute]. The local populations held a demonstration against the company in order to get their lands back. That is why the police force brought in security guards. They took the pictures of the demonstrators. They also tried to protect the company and timber plantation, as they kept their eyes on the demonstrators. *[Photos: KHRG]*



These photos were taken by a KHRG researcher on January 12th 2016 in Toungoo Township. They show 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. *[Photos: KHRG]*



These photos were taken on November 6th 2017. They show local people demonstrating against stone and sand mining in Mone River, Mi Taing Taw village, Mone Township. The Mone River was illegally mined, without the permission of the national authorities. Those responsible for the mining had only negotiated with the Township Administrator U Tin Myo Aung. The photo on the left was taken in front of the office of the Township administrator in Ler Doh Town. The photo on the right shows villagers demonstrating against the stone and sand mining. In this case, parliament members, the Governor, the Township police commander and municipal level authorities resolved the issue because of the local demonstration. [Photos: KHRG]



These pictures were taken in April 2017, Ap--- village, Htee Moh Pga area, Ler Muh Lah Township, Mergui-Tavoy District. They were taken during an environmental event organised by Thara Fleh Kay, a coordinator from a local Community-based Organisation (CBO). Around 200 people from about 10 villages participated in this event. The purpose of holding this event is to take action to protect the environment and to ensure the ecological sustainability of the Tanintharyi River. The picture on the right shows local people holding up a signboard that says 'No Dam'. The event took place on the banks of the Tanintharyi River, about 2.7km downstream from the proposed dam site. [Photos: Southern Youth]



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]*



This photo was taken by a KHRG researcher on September 9th 2017 in Co--- village, Shauk Pin Chaung village tract, Toungoo Township, Toungoo District. The Tatmadaw confiscated the ancestral lands of the local population in 1996. Since then, they handed the land over to two agribusiness companies: the Kyaik Hto Company and the Myo Kaung Myo That Company. The local population reported that the Tatmadaw handed over their lands to rich people. They opposed this land confiscation by fencing their lands and by gathering to advocate for their land rights communally. *[Photo: KHRG]*

Community Support

In this section, community support is defined as the collective action taken by villagers at the local level to advocate for their land rights. The different forms of community support in this chapter include: forming a committee²⁹⁵ and working with Community-based Organisations (CBOs).²⁹⁶

Key findings

1. 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.
2. 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.
3. Compared to the pre-2012 ceasefire period, villagers were more likely to form village committees to advocate for their rights.

Forming a village-level committee

Villagers throughout Southeast Myanmar frequently reported that they are more comfortable facing companies and government authorities as a group rather than as individuals.

Villagers expressed that it is necessary to gain the community's consent and guidance before engaging in negotiations with companies. 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.

For example, according to Ko Z--- from Na Ga Mauk village tract, the Kaung Myanmar Aung Company has tried to create division within the village in different ways. KMAC has attempted to negotiate with individual farmers and has offered differing rates of compensation to different farmers whose lands were confiscated by the Company to develop a large-scale plantation. Therefore, community members protected themselves by stating that all negotiations should be public and shared:

"The decision cannot be made by only us. We also need every villager's decision."

Ko Z---, (male, 48), Ab--- village, Na Ga Mauk village tract, Htantabin Township, Toungoo District/northern Kayin state (Received in December 2015)²⁹⁷

In many cases, rural populations formed a village-level committee to encourage community participation and to respond to corporate development-related issues more effectively. They are typically composed of local leaders, and other respected members of the community. Villagers who do not actively participate in the committee often provide a financial contribution as a form of support.

²⁹⁵ See Source #76: "Nyaunglebin Interview: Saw A---, May 2017," KHRG, December 2017; and see Source #13.

²⁹⁶ See Source #48: "Nyaunglebin Interview: Naw A---, November 2016," KHRG, September 2017; and see Source #10.

²⁹⁷ See Source #3.

A KHRG researcher in Shwegyin Township, Nyaunglebin District emphasised that:

“Working alone will never be an effective strategy for villagers. When you are standing up alone and opposing the project alone, people are laughing at you. So, landowners are talking to each other in order to take action to prevent their land. If a villager is going to do it alone, nobody will listen to him/her.”

Saw Cq---, (male), KHRG researcher in Shwegyin Township, Nyaunglaybin District/eastern Bago Region (Interviewed in December 2017)²⁹⁸

Villagers sometimes held group discussions to share their experiences dealing with the impacts of corporate development projects, and interacting with authorities who support these projects. When a company started to mine gold in Bu Tho Township, Hpapun District, it damaged the villagers’ farmlands. In response to this, local community members came together to raise their concerns about pollution:

“The civilians who have farm lands beside the river, [some of them] have boats and travel by boat, [but] the soil [on their farm lands] collapsed [into the river] more and more, so they gathered together and discussed the problems that they will face in the future with leaders, who gave permission to the ships [to mine the river for gold].”

Situation Update written by a KHRG researcher, Bu Tho Township, Hpapun District/northeastern Kayin State (Received in August 2016)²⁹⁹

The example below demonstrates how villagers consulted with each other prior to confronting companies or authorities,

“Some of them are uneducated so they just support their committee members with some money when they have to meet with the Burma/Myanmar government authority. [...] They met with the Burma/Myanmar government authority monthly and reported the issue to them.”

Saw N---, (male), KHRG researcher in Tanintharyi Township, Mergui-Tavoy District/Tanintharyi Region (Interviewed in November 2017)³⁰⁰

Village-level committees helped people confront governments and private companies about development-related abuses. They also enabled villagers to consolidate and share information about commercial development projects.

Village committees can be catalysts for the local community to work together to advocate for their land rights:

“We formed a group and we explained to the villagers about the advantages and disadvantages [if the project is implemented]. Many of the villagers then objected to the project.”

Saw B--- (male, 42), At--- village, Thaton Township Thaton District/northern Mon State (Interviewed in April 2016)³⁰¹

²⁹⁸ See Source #31.

²⁹⁹ See Source #83: “Hpapun Situation Update: Dwe Lo Township, May to August 2016,” KHRG, January 2017.

³⁰⁰ See Source #26.

³⁰¹ See Source #79: “Thaton Interview: Saw Be---, April 2016,” KHRG, February 2018.

Since the 2012 ceasefire, rural populations have increasingly formed village-level committees to advocate for their rights. Because they are a formal body, they have the ability to improve the negotiating position of rural communities vis-à-vis company representatives and government authorities.

In the case of a mining project in Shwegyin Township, Nyaunglebin District, villagers formed a committee to be able to approach different stakeholders more effectively:

“Local villagers formed a committee on their own with the number of 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. The committee was supported by the Paung Ku³⁰² Foundation and Environmental Conservation team.”

Situation Update written by a KHRG researcher, Thandaunggyi Township, Toungoo District/northern Kayin State (Received in November 2015)³⁰³

When Arsa Thein Nge Company wanted to develop a limestone mine in Win Yay Township, Dooplaya District, villagers formed an environmental conservation committee to oppose the environmental degradation of the mountain:³⁰⁴

“[...] a meeting was organised by Cr--- villagers. Arsa Thein Nge Company came to test a rocky mountain nearby Cr--- village many times [in order for whether to construct a cement factory or not]. Cr--- villagers disagreed with the proposed cement factory construction. That is why the villagers gathered together and held a meeting. Then, they formed an environmental conservation committee.”

Photo Note written by a KHRG researcher, Win Yay Township, Dooplaya District/southern Kayin State (Received in January 2017)

In many rural areas of Southeast Myanmar, villagers recognise lands or forests as belonging to the community as a whole. As discussed in the *Mining for Limestone on Communal Land: the Case of Khonkhan Rocky Mountain*, village-level committees are also useful for rural communities to advocate for the protection of community lands.

Networking with Civil Society Organisations

“As the CBOs entered in the local places they promoted grassroots leadership [through workshops and trainings]. The local people developed their [own] mindset through the workshops and trainings and also became motivated to confront their past experience [regarding land confiscation].”

Saw Cs---, (male), KHRG researcher in Kyaukkyi Township, Nyaunglebin District/eastern Bago Region (Interviewed in November 2017)³⁰⁵

According to KHRG analysis, villagers and civil society organisations have been collaborating more openly following the 2012 preliminary ceasefires and the 2015 Nationwide Ceasefire

³⁰² Paung Ku was established in 2007 and is a registered, independent, Myanmar non-governmental organisation (NGO) focused on strengthening civil society organizations. Paung Ku is a Burmese term that means ‘bridging’ or ‘connecting’ in English. For more detail information and work of Paung Ku, visit at <http://www.pk-tutorial.com/>.

³⁰³ See Source #5.

³⁰⁴ See *Mining for Limestone on Communal Land: the Case of Khonkhan Rocky Mountain*.

³⁰⁵ See Source #24.

Agreement (NCA). The increase in stability has been paralleled by an increase in the confidence of rural communities to advocate for their rights. As a KHRG researcher explains,

“Before 2012, villages had a lack of agency strategies to respond to the case. We can also say that they did not have it at all. Now, since the 2012 preliminary ceasefire, villagers have started to speak more about their rights and they also feel more secure than in the past. Their minds have also broadened gradually as many organisations have come to their places. So, we can say that there are changes within our community. When an issue comes up, they hold a meeting and sit together to discuss what they should do. They are advising each other about where and who to submit cases to. We did not have this kind of activity in the past. In the past, villagers thought of ways to ambush with musket guns because it was the conflict period. When you did something wrong, people confronted you with a gun. So, people used violence for everything in the past. Nowadays, they have a meeting and talk about their issue to solve the problem.”

Saw Cq---, (male), KHRG researcher in Shwegyin Township, Nyaunglebin District/eastern Bago Region (Interviewed in December 2017)³⁰⁶

By working with Community-based Organisations (CBOs), rural populations can gain the technical skills, legal aid and financial support necessary to achieve their objectives and demands for justice against companies in Southeast Myanmar.

In an interview with a KHRG researcher from Thandaunggyi Township, Toungoo District, the researcher explained how rural populations have gained from working with CBOs:

“[...] villagers are empowered to gain confidence and motivation to claim their lands, and the cooperation among villagers has increased because they formed a village committee and also they attended the land law awareness workshop and the land rights workshop that were provided by Independent Labor Union, Civil Society Organisations, Non-Governmental Organisations, Human rights organisations and individual land law expert.”

Saw Q---, (male), KHRG researcher in Thandaunggyi Township, Toungoo District/northern Kayin State (Interviewed in December 2017)³⁰⁷

In 2016, private companies started mining for gold in Shwegyin Township, Nyaunglebin District, without holding any consultations with the local population. Villagers approached the Karen Women Organisation (KWO) for help. Together, community members and KWO gathered information about the gold mines. They held meetings and raised awareness of the negative impacts of gold mining. They gathered community support and submitted complaint letters to different KNU authorities. These advocacy efforts were successful: the gold mining project was reviewed by the KNU leadership. Although the gold mining activities did not stop, local villagers were also granted permission to mine for gold, and benefitted from this natural resource. The voices of villagers in the area were amplified through the involvement of civil society.

The KWO member who led this advocacy campaign explains the extent of this collaboration:

“At first, the KWO had a meeting with village authorities, the village tract leader, the ten households’ leader and some local villagers. In the meeting, KWO explained that there is no protection for them [from the pollution]. At that time, we heard that the gold mining process can cause harm to villagers if they [business men] heat the gold. KWO explained this to them [village authorities] and they told everyone that we have to stop it [the gold mining] together. The KWO told them that the KWO had to work together with villagers because nowadays their [KWO] voice cannot

³⁰⁶ See Source #31.

³⁰⁷ See Source #23.

be heard but the villagers' voices can be. Therefore, the KWO had to go to explain to the villagers about it. Also, the KWO had to ask permission from the village authorities. Then, the KWO had to go to tell villagers house by house regarding [the risks of] the goldstone mining project. For villagers who do not agree with the project, we had to get signatures from them and [explain] why they do not accept the project. KWO tries to do things like that."

Naw T---, (female, 27), Shwegyin Township,
Nyaunglebin District/eastern Bago Region (Interviewed in November 2016)³⁰⁸

Civil society organisations also played an important role in the *Taking a Land Dispute to Court: the Case of Kaung Myanmar Aung Company* case study. When villagers wanted to organise a demonstration against the land confiscations by the Kaung Myanmar Aung Company, a local non-governmental organisation provided them with technical and logistical support, supplying trucks and food for protesters.³⁰⁹

Overall, increased collaboration with civil society organisations has bolstered the ability of rural populations to advocate for their rights.

Challenges

Even though civic space has grown since the 2012 and 2015 ceasefires, there are significant barriers that impede communities from advocating for their rights. A significant barrier is the lack of awareness in rural communities about their rights:

"In my opinion, I think that they [villagers] need more knowledge to know how to confront [companies] because they do not even know if their rights have been violated or not. For instance, they do not realise that their rights were violated even though their land was confiscated."

Saw Bb---, (male), KHRG researcher in Bu Tho Township,
Hpapun District/northeastern Kayin State (Interviewed in December 2017)³¹⁰

For villagers impacted by land confiscation, realising that they have rights is the first step to advocating for their rights. One of the main challenges is a lack of understanding of land laws. Aware of this barrier, rural community members are reaching out to local authorities to equip themselves with the knowledge necessary to protect their land:

"Villagers do not know about laws, neither do I. I know villagers want to solve cases according to the law but the problem is that they do not understand the law. However, they try to approach whoever understands the law to help them. They also seek advice from village heads about what they should. The weakness with villagers is that they do not understand the law."

Saw Cq---, (male), KHRG researcher in Shwegyin Township,
Nyaunglebin District/eastern Bago Region (Interviewed in December 2017)³¹¹

When communities are not already well organised, it can be difficult for them to collectively mobilise and advocate against land confiscations. Sa Ayar Win, a coordinator from the Myanmar Lawyer Network, describes the challenges of grassroots mobilisation:

³⁰⁸ See Source #48: "Nyaunglebin Interview: Naw A---, November 2016," KHRG, September 2017.

³⁰⁹ See Source #22.

³¹⁰ See Source #30.

³¹¹ See Source #31.

“Challenges include: in some areas, the involvement and cooperation of the civilians are still weak. So, when cooperation is weak, legal aid providing organisations like our organisation cannot campaign by ourselves, so this is one challenge for us to do advocacy.”

Sa Ayar Win (male), coordinator from the Myanmar Lawyer Network/
Myeik Lawyer Network (Interviewed on January 22, 2018)³¹²

In addition, once when rural communities and civil society organisations come together to work on particular issues, it can be difficult for them to coordinate advocacy efforts. Sa Ayar Win explains:

“In some areas, the cooperation of the civilians is still weak and this is one challenge. Even when cooperation between civilians is strong, we have another challenge: communities can sometimes lack direction. Speaking honestly, we have to cooperate together with many different organisations and sometimes there are misunderstandings between organisations and actions were mistakenly made.”

Sa Ayar Win (male), coordinator from the Myanmar Lawyer Network/
Myeik Lawyer Network (Interviewed on January 22, 2018)³¹³

Conclusion

In our reporting period, rural communities turned to community support to protect themselves from a wide range of corporate development projects, including road construction, gold mining, cement factories and agribusiness. KHRG has found that community support is one of the main factors that improves a rural community’s ability to advocate for their rights.

³¹² See Source #13.

³¹³ See Source #13.

Photos: Community Support



The photo on left was taken on January 15th 2017 in Cr--- village, Sin Pyay village tract, Win Yay Township, Dooplaya District. The photo shows a meeting organised by the local population. The Arsa Thein Nge Company came to test a mountain near Cr--- village [to evaluate the quality of the limestone and determine whether to build a cement factory]. Local villagers did not want a cement factory to be built near their lands. They held a meeting and formed an environmental conservation committee. [Photo: KHRG]



The photo on right was taken on February 5th 2017 in the upper Ct--- village, Leik Tho Town, Thandaunggyi Township, Toungoo District. It shows a meeting that was held by local villagers to discuss the Myanmar Government's decision to confiscate their land to expand a nearby reserved teak forest. Since 2013, Myanmar government planned to confiscate more than 50,000 acres of land in order to expand the reserved teak forest. Currently, those lands are being used by plantations and farms by the local population. [Photo: KHRG]



This photo was taken on March 12th 2017 in Cu--- village, Paingkone Township, Hpa-an District. It shows the representatives of 24 different villages attending a workshop organised by Thwee Community Development Network (TCDN), Karen Environment and Social Action Network (KESAN) and Karen Human Rights Group (KHRG). This workshop was related to the development of the Asian Highway between Kawkareik and Eindu towns. Workshop participants discussed the potential negative impacts of the road construction on their villages and how to overcome these issues. Then, they formed a committee to monitor how the road construction would damage agricultural lands, plantations and property. This would help them demand fair compensation [for land confiscations and property damage]. [Photo: KHRG and TCDN]



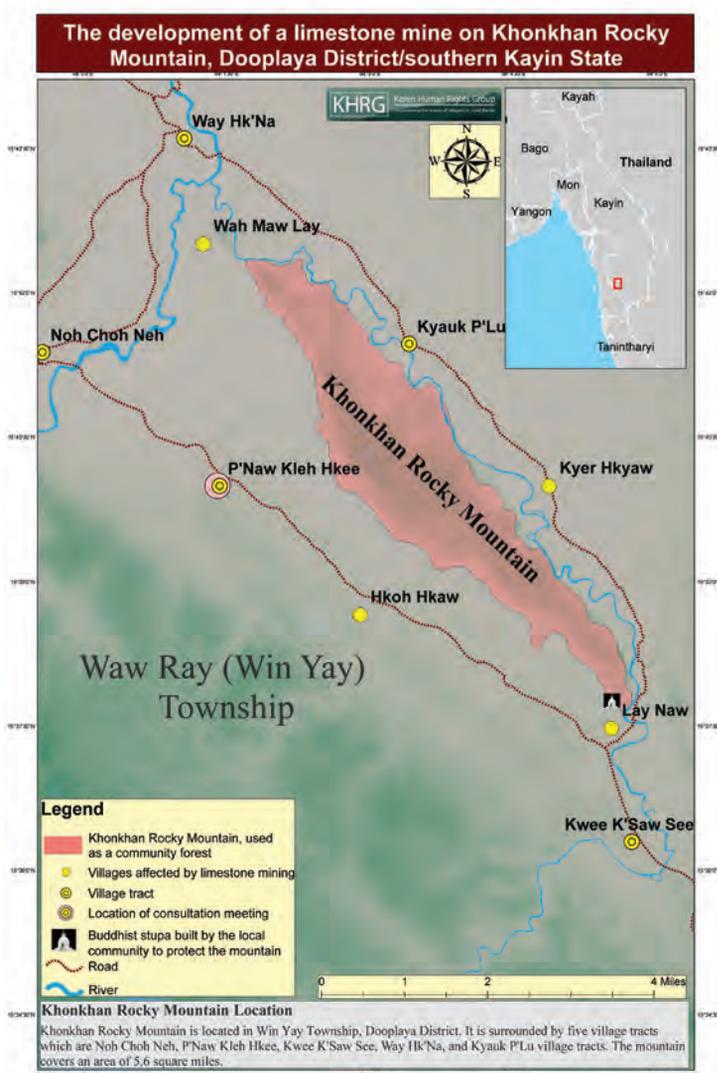
This photo was taken on January 19th 2018 in Thandaunggyi Township, Toungoo District. It shows a workshop organised by Land In Our Hand (LIOH), Karen Environment and Social Action Network (KESAN) and Karen Human Rights Group (KHRG) in Cu--- village. Local community members and local CBOs/CSOs were present 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]

Case Study: Mining for Limestone on Communal Land: the Case of Khonkhan Rocky Mountain

Introduction

This case study will analyse how a rural community responded to the Asia Falcon Company’s proposed stone mining and cement factory project in Dooplaya District. Because this case takes place in an area administered by the KNU, it sheds light on how communities respond to land issues in areas outside of the Myanmar government’s control. In addition, the Khonkhan Rocky Mountain is a case where community land is at risk of confiscation, even though it is crucial to the livelihoods of the local population.³¹⁴

The Asian Falcon Company, in Burmese known as Arsa Thein Nge Company,³¹⁵ intends to quarry limestone from the Khonkhan Rocky Mountain in Three Pagoda Pass sub-township, Kyainseikgyi Township.³¹⁶ From January 2017 onwards, KHRG received 7 reports describing the concerns of the local population about the potential negative impacts of the proposed limestone quarry and cement production facility at the Khonkhan Rocky Mountain. These accounts also detailed the strategies that villagers used to voice their opposition to the project, such as forming an environmental conservation committee, submitting complaint letters to local KNU leaders, and directly confronting the company staff. The local community also requested for a Karen Community-based Organisation (CBO) to advocate on their behalf. Finally, the local community built a stupa³¹⁷ on the mountain under the leadership of a local monk.



³¹⁴ See Source #82: “Villagers raise concerns regarding proposed stone mining and cement production in Win Yay Township, Dooplaya District,” KHRG, January 2018.

³¹⁵ This company may be referred to as the Asia Eagle Company. For further KHRG reports regarding the company’s involvement in stone mining in Dooplaya District, see Source #81: “Dooplaya Situation Update: Kawkareik Township and Win Yay Township, November 2016 to January 2017,” August 2017.

³¹⁶ The place of the Asian Falcon company site visit is a mixed control area. Therefore, the visit site has two townships names according to the KNU and Myanmar-government defined territory.

³¹⁷ A stupa is a Buddhist religious structure.

This company has been testing³¹⁸ the Khonkhan Rocky Mountain since March 2016 to use limestone to produce cement in a factory close to Cv--- village, Sin Pyay village tract, Win Yay Township, Dooplaya District.³¹⁹ If implemented, this quarry would affect eight villages surrounding the Khonkhan Rocky Mountain that use the mountain as community land, and rely on its forest for their livelihoods. Most villagers in rural areas, especially those under KNU control, depend on both plantations and community forests for their livelihood.

Company Profile and Project Background

According to Myanmar's Directorate of Investment and Company Administration, the Asian Falcon Company was registered in Myanmar in 2007 as an industry and manufacturing business. According to a local community member interviewed by KHRG, the community members that would be impacted by the Asia Falcon Company's activities do not have any specific information about the limestone mine. They just heard by word-of-mouth that a company wants to develop a limestone quarry on Khonkhan Rocky Mountain to produce cement. Villagers know for certain that the company workers are trying to survey the Khonkhan Rocky Mountain.

The Asian Falcon Company negotiated and obtained permission to survey the mountain from the KNU chairperson in Win Yay Township. Villagers were isolated from this negotiation process and were not informed of the company's site visits.

From March to December 2016, the company conducted a number of site visits to survey mineral deposits and to test the quality of limestone to assess the possibility of producing cement. Then, in January 2017, the Asian Falcon Company returned to Khonkhan Rocky Mountain to test the stone. Although villagers raised their concerns and disagreement with this project with KNU local authorities, the company continued with its site visits and examinations without informing villagers of their activities.

The Asian Falcon Company returned to the Khonkhan Rocky Mountain again on August 12, 2017. This time, they held consultation meetings with local villagers. During this consultation, the Asian Falcon Company did not obtain the consent of the local community to conduct their project. They did not take their concerns and complaints into account. Because of the way that the Asian Falcon Company designed its consultation meeting, local community members did not have a platform to voice their concerns about the negative impact of this limestone mine. The meeting was only held to inform villagers about the survey they conducted to measure and test the stone on the mountain. Local villagers thought this meeting provided insufficient information, because they were not informed about how the company's current or future activities would impact them or the surrounding environment.

When a village head wanted to learn more details about the Asian Falcon Company's stone mining project and why they were measuring and examining Khonkhan Rocky Mountain, company workers responded that their role was solely to report to the Kayin State Chief Minister Nan Khin Htwe Myint and responsible leaders from Nay Pyi Taw. The company workers who attended the

³¹⁸ Although there is a lack of transparency on the testing, it is likely that the company is testing the quality of the limestone to assess if it is of a suitable standard for cement production. According to the internationally held standard for natural resource governance, exploration and licensing of potential mining sites should be allocated to companies in a transparent process, and closely monitored by the government. 'Natural Resources Charter Benchmarking Framework,' NRG, 2017.

³¹⁹ See Source #82: "Villagers raise concerns regarding proposed stone mining and cement production in Win Yay Township, Dooplaya District," KHRG, January 2018.

consultation claimed that they were only responsible for arranging the site visit, and could not take the concerns of the local populations into account.

By autumn of 2017, the Asian Falcon Company had successfully finished its mineral testing on Khonkhan Rocky Mountain. On October 9th 2017, a representative of the Asian Falcon Company, Manager Yan Naung Soe, submitted a letter to the KNU chairperson in Win Yay Township and requested for a number of officials to have access to the Khonkhan Rocky Mountain to survey their results, including the Mineral exploration group led by Asia Falcon Company's and the field investigation group led by a director of Myanmar Department of Geological Survey and Mineral Exploration, Ministry of Natural Resources and Environmental Conservation from Nay Pyi Taw.

In the testing and development phases of the stone mining project in Khonkhan Rocky Mountain, the Asian Falcon Company failed to abide by the standard of Free, Prior and Informed Consent (FPIC), outlined in the Consultation Chapter. Throughout 2016, the Asian Falcon Company did not provide local communities with adequate information about the potential stone mine on Khonkhan Rocky Mountain. As one villager explains,

"Except knowing that the company is measuring and testing the Khonkhan Rocky Mountain I do not know any specific information about this project."

When a consultation finally took place, it failed to provide a platform for villagers to voice their concerns.

Local community concerns about the potential impact of the project

Local communities are opposed to the development of a limestone mine on Khonkhan Rocky Mountain. According to a villager from Cw--- village, P'Naw Kleh Hkee village tract, Win Yay Township:

"If this Khonkhan Rocky Mountain is removed [damaged by stone mining] and the cement industry is established, our livelihoods will be damaged. The river can also dry up. These are the main reasons we worry about our livelihoods."

Moreover, villagers worry that the livelihood impacts will be so dramatic that it may result in their displacement from their homes:

"We, local residents, are not sure when we have to move away because when the company [Asian Falcon Company] came [to conduct a survey on the rock mountain], they brought a permission letter from the KNU headquarters."³²⁰

The lack of information about the stone mine created a lot of insecurity in the communities living around Khonkhan Rocky Mountain:

"[the company] did not explain to local residents anything about the cement factory project or about the permission letters. Villagers were [also] not consulted during the planning stages of the Three Pagodas Pass-Thanyuzayat road. We have to deal with the negative impacts of development projects although we did not agree to them."³²¹

³²⁰ See Source #81: "Dooplaya Situation Update: Kawkareik Township and Win Yay Township, November 2016 to January 2017," KHRG, August 2017.

³²¹ See Source #81: "Dooplaya Situation Update: Kawkareik Township and Win Yay Township, November 2016 to January 2017," KHRG, August 2017.

There are five main reasons why villagers disagreed with the development of a stone mine:

- 1) The biodiversity of the community forest on Khonkhan Rocky Mountain, including plants and animals, is at risk.
- 2) The extensive shade provided by the mountain is beneficial for the surrounding plantations, which may suffer if the shade is lost.
- 3) The Win Yay River at the bottom of the Khonkhan Rocky Mountain is the main water source of local communities. They are worried that the limestone mine will pollute the river.
- 4) There may be potential stone falls and erosion caused by mining. Villagers who live close to Khonkhan Rocky Mountain are worried about damage to their land.
- 5) Villagers are also concerned about the long-term impacts of the stone mine. They believe that the development of the extractive industry will damage their land, and may eventually lead to displacement.

Community Support: Protecting the Khonkhan Mountain Communal Forest from Limestone Mining

Villagers have used different agency strategies to protect the Khonkhan Rocky Mountain and the community forest that grows on it.

Forming an Environmental Conservation Committee

After local villagers found out that the Asian Falcon Company was testing the stone on Khonkhan Rocky Mountain, they formed an Environmental Conservation Committee to protect their community forest.³²²

On January 4, 2018, a KHRG researcher reported that the Environmental Conservation Committee held a meeting at Cx--- village, Win Yay Township. During this meeting, community members set up their principles for environmental conservation. Around 50 villagers attended this meeting including four local monks to discuss different ways of protecting the Khonkhan Rocky Mountain.

The committee was crucial in helping the local population communicate with decision makers and advocate for their land rights. During the assessment period, whenever the company workers would come to examine the Khonkhan Rocky Mountain, local villagers requested to follow them. The committee reached an agreement with the Asian Falcon Company, which permitted local community members to monitor the surveys of the mountain. Local community members would follow the company workers, monitor their actions, and report back to the village head. This helped them gain more information about the company's plan to develop a stone mine.

³²² See Source #81: "Dooplaya Situation Update: Kawkareik Township and Win Yay Township, November 2016 to January 2017," KHRG, August 2017.



The photo on the left was taken on January 15th 2017 in Cx--- village, Sin Pyay village tract, Win Yay Township, Dooplaya District. It shows a meeting organised by local villagers. The Asian Falcon Company came to test the quality of the limestone on the Khonkhan Rocky Mountain to evaluate the quality of its limestone. The local population is opposed to the development of a stone mine on their mountain. Therefore, villagers gathered together, discussed their concerns, and formed an Environmental Conservation Committee.

The photo on the right was taken in Cw--- village, Sin Pyay village tract, Dooplaya District, Win Yay Township on December 6, 2017. It shows a local protest organised [to oppose the development of a stone mine on Khonkhan Rocky Mountain]. Local villagers built a Buddhist stupa on the top of the mountain. In the picture, villagers are mixing the cement and carrying the stone to the peak of the mountain. By erecting a sacred structure, the local population wants to protect their natural environment from destruction. This initiative was led by the monk of Cw--- village. Many local people volunteered [to help build the stupa]. [Photos: KHRG]

Holding Community Meetings

Villagers and village tract leaders held community meetings to discuss how to respond to the Asian Falcon Company's plans to mine for limestone on Khonkhan Rocky Mountain.³²³ As an outcome of these meetings, local community members sent a complaint letter to the KNU Township leaders in Win Yay Township on March 6, 2017. They also coordinated a community response to the project, and voiced their concerns to company representatives in a meeting on August 12, 2017.

Involving Community-based Organisations

On October 10th 2017, when local villagers learned that the Asian Falcon Company gained permission to start testing the Khonkhan Rocky Mountain, they requested help from a Karen Community-based Organisation (CBO).³²⁴ The local community wanted the CBO to help them pressure the local KNU authorities to overturn their permission. They wanted to prevent the company from continuing with the stone mining tests.

³²³ See Source #81: "Dooplaya Situation Update: Kawkareik Township and Win Yay Township, November 2016 to January 2017," KHRG, August 2017.

³²⁴ See Source #82: "Villagers raise concerns regarding proposed stone mining and cement production in Win Yay Township, Dooplaya District," KHRG, January 2018.

Building a religious stupa

On December 6th 2017, a KHRG researcher reported that villagers had developed another strategy to protect the Khonkhan Rocky Mountain.³²⁵ Led by a religious monk, local community members built a Buddhist stupa on top of the mountain. This is a unique agency strategy because it capitalises on the religious sentiments of Burmese company workers to protect community land.

Villagers in other districts where KHRG operates have also used this agency strategy when their community forests were at risk due to cement production and stone mining projects. According to KHRG researchers, villagers believe this is an effective strategy because it incentivises Buddhist authorities and company representatives to stop mining community land.

Barriers and Challenges

Although local villagers actively employed various agency strategies, they found it difficult to have their concerns heard. Villagers found that there is no effective grievance mechanism through which they could submit their complaints and raise their concerns to the local authorities and the Asian Falcon Company. The lack of transparency and accountability is another issue that villagers identified as a barrier.

Outcome of Village Agency Strategies

Despite submitting complaint letters, villagers did not get responses from the KNU authorities or company staff members. However, with the involvement of local religious leaders and advocacy by Karen CBOs, villagers felt that their agency was more effective. Through the support of community leaders and community organisations, rural populations felt that they could put pressure on decision makers and raise their voices. Despite the efforts of local community members to voice their opposition to this project, the limestone mine is set to continue.

Recommendations of the local population

To the KNU local authorities

-The local population should be consulted in the early stages of a corporate development project:

“They [the company] will not get a chance to conduct a survey on the rocky mountain if the KNU headquarters /national leaders do not give permission [to the company] to conduct the survey. Due to the KNU’s permission [given to the company], villagers have to be silent [cannot resist the cement factory project].”³²⁶

To the Asian Falcon Company

-Information sharing is the key to transparency. The Asian Falcon Company should conduct their proposed project in a transparent manner, and consult the local community that is reliant on Khonkhan Rocky Mountain:

“There are many villagers who rely on this rocky mountain [for their livelihoods].”

³²⁵ See Source #82: “Villagers raise concerns regarding proposed stone mining and cement production in Win Yay Township, Dooplaya District,” KHRG, January 2018.

³²⁶ See Source #81: “Dooplaya Situation Update: Kawkareik Township and Win Yay Township, November 2016 to January 2017,” KHRG, August 2017.

Photos: Front and back cover

Front cover photo:

This photo was taken on March 14th 2018 in Taung Kyah Area, Htee Th'Daw Hta village tract, Bu Tho Township, Mutraw (Hpapun) District/northeastern Kayin State. It shows 1,500 people protesting against the Hatgyi hydropower dam. This protest happened during the 'International Day of Action for Rivers', a celebration organised by Karen River Watch on the banks of the Salween River. *[Photo: KHRG]*

Back cover photo:

This photo was taken on January 12th 2016 in Toungoo Town, Htantabin Township, Toungoo District. It shows 200 local villagers protesting against the Kaung Myanmar Aung Company (KMAC). KMAC seized their land to develop a teak plantation. The villagers held this demonstration to reclaim their lands. *[Photo: KHRG]*



The Nationwide Ceasefire Agreement of 2015 has ushered in a period of intensifying investment in Myanmar. Infrastructure development, agribusiness, hydropower development and natural resource extraction are on the rise throughout Southeast Myanmar. This has prompted an upswing in land confiscations, the acquisition of lands that are already occupied or used by indigenous 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. In a region where 70% of the local population depends on land for their survival, land confiscations can threaten the livelihoods of entire communities.

Throughout Southeast Myanmar, rural communities are fighting for their land rights by challenging, confronting and engaging with private companies and government authorities. Too often, their perspectives are ignored. By projecting the voices of villagers impacted by land confiscations, KHRG hopes to encourage policy makers and private companies to take a step towards more inclusive development in Myanmar.

"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 kyat, I would not exchange it with this mountain."

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

Karen Human Rights Group (KHRG) was founded in 1992 and documents the situation of villagers and townspeople in rural southeast Myanmar through their direct testimonies, supported by photographic and other evidence. KHRG operates independently and is not affiliated with any political or other organisation. Examples of our work can be seen online at www.khr.org, or printed copies of our reports may be obtained subject to approval and availability by sending a request to khr@khr.org.