

Report Briefer

March 2013

Losing Ground:

Land conflicts and collective action in eastern Myanmar

"The companies came to mine metal and confiscated a lot of the villagers' lands that they had used for agriculture and plantations for their livelihoods. Furthermore, the companies built up a dam for hydroelectric power, which damaged many villagers' land. They didn't give any compensation to the villagers. Even though people call it development, there's no advantage to the villagers."

Situation update written by a community member, Ler Doh Soh Township, Tenasserim (Mergui-Tavoy District)/ Tanintharyi Region (Received in June 2012)

Reports of business and development projects in eastern Myanmar have increased substantially in the wake of Myanmar government reforms and the ceasefire signed with the Karen National Union (KNU) in January 2012. While the cessation of armed conflict has made the area more accessible to investment and commercial interests, eastern Myanmar remains a highly militarized environment. In this context, where abundant resources provide lucrative opportunities for many, and a culture of coercion and impunity is entrenched after decades of war, villagers understand that demand for land carries an implicit threat. Villagers consistently report that their perspectives are excluded from the planning and implementation of these projects, which often provide little or no benefit to the local community or result in substantial, often irreversible, harm.

Villagers described land confiscation and forced displacement occurring without consultation, compensation, or, often, notification. Displacements have taken place most frequently around natural resource extraction, industry and development projects. These include hydropower dam construction, infrastructure development, logging, mining and plantation agriculture projects, which are undertaken or facilitated by various civil and military State authorities, foreign and domestic companies and armed ethnic groups.

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Over 400 villagers from Shwegyin and Kyauk Kyi Townships gathered together on March 12th 2012 to protest the Kyauk N'Ga Dam on the Shwegyin River in eastern Bago Region. The community member who took this photo told KHRG that, villagers chanted three requests of the Government in Burmese: *"No continuation of the dam construction. Compensation for lost farmland flooded by the dam. Let the water flow naturally."* [Photo: KHRG]



The above photo was taken on August 1st 2012 and shows an active construction site in the Toh Boh area, Tantabin Township, Toungoo District, run by the Shwe Swan In Company. According to villagers in the area, the Toh Boh Dam operations, including the construction of large buildings to house hydropower generators in Toh Boh village, have resulted in the displacement of villagers. [Photo: KHRG]

Displacement and barriers to land access arising from these projects present major challenges at the local level. Where land is forcibly taken, or otherwise made inaccessible, the obstacles to effective local-level response are often insurmountable. Even where villagers manage to overcome barriers to organizing a response, current legislation does not provide any easily accessible mechanism to allow their complaints to be heard.

Despite this, villagers employ forms of collective action that provide viable avenues to gain representation and compensation and to forestall expropriation. Villagers' ability to navigate local power dynamics and negotiate for unofficial remedies, championed in some cases by an increasingly active domestic media, is forging new and promising avenues for collective action and association.

This report draws on villagers' interviews and testimony, as well as other forms of documentation including photographs, film and audio recordings, collected by community members who have been trained by KHRG to report on the local human rights situation. Findings in this report are based upon field information received between January 2011 and November 2012 across seven research

areas, encompassing all or part of Kayin and Mon States and Bago and Tanintharyi Regions. Of 809 documents analysed, 99 raised concerns or dealt with issues related to natural resource extraction and development projects in eastern Myanmar.

The documentation has been analysed for cases in which villagers' access to and use of land has been disrupted. This report highlights trends of abuse, and details obstructions to the formal channels of complaint or redress that villagers face. The report closes by outlining the serious consequences created by such abuses and the lack of meaningful inclusion of villagers in the making of decisions, which affect them so fundamentally.

This year, the Tatmadaw will completely confiscate the land and ask us to sign it away. Here you see, they type the words as if they are the landowner. They ask us to sign but we didn't sign. We discussed this and we think we will never sign. Now, they pressure us and they said, if we don't sign, they would report us to the police, DKBA and Peace Council who will arrest the villagers. Some of the women said if they want to arrest us, they can arrest us. We have nothing."

Saw N--- (male, 60), T--- village, T'Nay Hsah Township, Hpa-an District/Central Kayin State (Interviewed in June 2012)

The objective of this report is to foster a better understanding of the dynamics and impacts of natural resource extraction and development projects on the ground by presenting a substantial and recent dataset of villagers' testimonies in eastern Myanmar. The complaints recorded in this report are important, and deserve attention, first and foremost because they represent the lived experience of villagers who are directly affected by the actions of myriad actors in a rapidly changing Myanmar. It is intended to assist all stakeholders, including Myanmar government officials, business actors, potential and current investors, and local and international non-profit organisations, as they work to:



The above photo was taken on August 9th 2012 and shows the flooding of villagers' homes in Let Kauk Wa village, Nyaunglebin District. The community member who took these photos reports that the flooding was caused by the Shwegyin Dam. [Photo: KHRG]

- (1) Acknowledge and avoid the potential for abuse caused directly or in complicity with other actors;
- (2) Further investigate, verify and respond to allegations of abuse;
- (3) Address the obstacles that prevent rural communities from engaging with protective frameworks; and
- (4) Take more effective steps to ensure sustainable, community-driven development that will not destabilize efforts for peace and ethnic inclusion.

Ceasefire negotiations between Government and KNU have not yet resulted in sufficient land rights protection

During this time of transition in Myanmar, institutions remain weak and governance structures are in flux. Eastern Myanmar faces added uncertainty as it transitions out of a protracted armed conflict. The ongoing process of political negotiation presents opportunities to establish land use systems that would support locally-determined interests and be consistent with international human rights norms. At the same time, the current vacuum allows private entities, acting in concert with State civilian and military officials or armed ethnic actors, to pursue their operations without regard for the consequences on local communities, and with impunity for acts of coercion or other human rights abuses.

In this context of multiple authorities and competing land protection praxes, individuals and communities face uncertainty as to how they can protect their land in a way that will be recognised vis-à-vis external actors. Villagers who do attempt to register land title within the new system face institutional corruption, insurmountable expense and a complicated system that fails to reflect accurately the local realities of land use. These factors conspire to deny villagers' land and livelihood rights, while facilitating land confiscation, rural displacement and investment that frequently has no benefit for the local community.

While ceasefire negotiations are ongoing, investors and other development actors should proceed with extreme caution. Until outstanding claims, including those of a currently dislocated population of IDPs and refugees, have been resolved and an integrated, community-centered system of land tenure applied, actors should recognize that even if they make diligent, good-faith efforts to identify and fairly compensate

landowners, they could still be faced with legitimate claims to the land in the future.

The ultimate aim of any land-governance reforms should be to protect the property rights of people in Myanmar, while providing an environment that allows for sustainable economic development for their benefit. Communities are best placed to make decisions about local development in accordance with their priorities and needs, including handling dispute resolution and managing resource revenue for the benefit of the community. Domestic legal standards are necessary, but they will be inadequate if the protection they purport to provide is inaccessible, inappropriate to affected communities or flouted in practice. The more opportunities at the local, national and international levels for villagers in eastern Myanmar to respond to unjust land practices, the greater the chance that such issues will be addressed and practices reformed for the benefit of all actors involved.



The above photo was taken on July 15th 2012 in Papun District, and shows the damage that resulted from gold mining near the Baw Paw Law River. According to the community member who took these photos, many villagers' houses were damaged during the operation. [Photo: KHRG]

Figure 1: Projects under observation in locally-defined Karen districts (Kayin and Mon States; Bago Region)



Figure 2: Projects under observation in locally-defined Karen districts (Tanintharyi Region)



Key findings

Natural resource extraction and development projects were implemented unilaterally without engaging or informing project-affected villagers. Villagers reported that they were not consulted or informed before a project began, nor given an opportunity to enter into dialogue or request additional information.

Land confiscation or obstacles to land use or access resulted directly from natural resource extraction and development projects. Villagers described land confiscation as a result of the project expansion and encroachment onto land adjacent to the project site, as well as the confiscation of land belonging to refugees and internally-displaced persons (IDPs).

Communities face obstacles to securing fair compensation for losses or damages incurred during or after project implementation. Villagers described not being offered compensation, nor provided with an opportunity to negotiate for compensation, following development-based destruction of their land.

Development-induced displacement or resettlement also occurred as a direct result of natural resource extraction and development projects. Villagers described explicit orders issued by military and civilian government officials for communities to relocate from targeted project areas, such as those to be developed for agri-business, infrastructure development or dams, and said that such orders were frequently accompanied by threats of violence for non-compliance.

Communities actively attempt to prevent or mitigate negative impacts to their land and livelihoods in response to natural resource extraction and development projects. Forms of collective action described include: writing complaint letters to Myanmar government bodies, to the KNU or to private companies; organising public protests; forming committees to submit complaints and strengthen collective bargaining ability; directly negotiating with relevant authorities; and refusing to comply with verbal or written orders.

Serious negative consequences on communities' land, livelihoods and physical security occur due to natural resource extraction and development projects. Villagers describe destruction of agricultural activities and a lack of alternative livelihood options. Dam projects resulted in permanent flooding, logging led to deforestation and soil erosion, and agricultural or mining projects caused water contamination, posing health risks for villagers and livestock.

Serious obstacles undermine communities attempting to respond to problems caused by natural resource and development projects, and limit their ability to prevent and mitigate negative impacts. The exclusion of local voices from development planning constrains rural communities' ability to raise concerns or seek redress for damages through negotiation. Local communities lack knowledge of both details and impacts of projects and of the law, limiting their ability to negotiate or take action, and increasing their vulnerability to manipulation. Explicit and implicit threats of violence deter communities from proactively engaging authorities. Fear of violence is worsened by recent memories of violence and abuse related to decades of militarization, armed conflict and counter-insurgency.

Recommendations

Consultation and consent

- Villagers are best placed to assess their own interests and the impact of development on their livelihoods. Their perspectives must be included in all decision-making.
- All development actors must carry out environmental, health and human rights impact assessments prior to project implementation. These assessments should be carried out independently of the actor's interests, in consultation with project-affected communities and made publicly available in all local languages.
- Development projects should be planned in consultation with local communities, with full disclosure of information relating to how the projects could affect their lands and livelihoods. Communities should participate in decisions regarding size, scope, compensation, and means of project implementation.

Customary land rights and usage

- Government should protect existing land use practices and tenure rights, and acknowledge that local communities may recognise land title granted by multiple sources, including customary, colonial and local administrations.
- Policy reforms should ascertain and respect the land rights of communities and individuals displaced by conflict.

Support for community solutions

- Development actors should seek out and engage with local, broad-based, independent associations of villagers formed to address land issues, as well as local community-based organizations.
- Domestic civil society should promote knowledge-sharing among and give support to independent associations across the country.
- Media should expand their coverage of land conflicts in rural eastern Myanmar.
- The Government and civil society should provide communities with training and educational resources about domestic complaint and adjudication bodies.

Ceasefire context

- Business and development actors should ensure they do not become complicit in human rights abuses by carrying out good faith due diligence to ensure that their partners do not compromise the rights and security of local communities.

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