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LAND OF SORROW

Human rights violations at Myanmar's Myotha Industrial Park

Cover photo: Bulldozers clear land at the site of the Myotha Industrial Park in Ngazun Township, Mandalay Region / November 2014. © FIDH

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1. EXECUTIVE SUMMARY

Myanmar may soon face a land conflict epidemic as a result of the growing influx of investments and the consequent demand for land, unless laws and policies that adequately address land rights issues are urgently adopted and implemented.

The Myotha Industrial Park typifies Myanmar's current economic development model, which seeks to incentivize investment in areas designated as "least developed." The Myotha Industrial Park, developed by the Burmese company Mandalay Myotha Industrial Development (MMID) in Ngazun Township, Mandalay Region, is a glaring example of how Myanmar's rural communities suffer harmful consequences and receive little or no redress as a result of large-scale industrial projects.

In the Myotha Industrial Park area, a combination of a flawed legal framework, unscrupulous authorities, and irresponsible investors produced a perfect storm in which more than 1,000 families from 14 villages lost their land – their sole source of livelihood – to make way for the project's development.

The process of land confiscation from residents was not inclusive, contravened national laws, and failed to meet international standards related to good practices of consultation with affected communities. Villagers received compensation for only about half of the total land that was confiscated from them as a result of the authorities' gross mismanagement of the land measurement process.

Many of the farmers reported that authorities significantly under-calculated their land, with calculations that, in many cases, accounted for only between 10% and 25% of the land farmers said they used. Farmers, local activists, and community leaders also accused authorities of corruption and claimed that government officers had asked farmers to pay bribes of up to 200,000 kyat (US\$148) to measure the land accurately.

Despite considering the compensation unfair and inadequate, the majority (84%) of the families affected by the Myotha Industrial Park accepted compensation. In many cases, they reluctantly accepted compensation for some or all of their land after authorities and the project developer warned them that they would still lose their land and receive nothing in return if they refused. Farmers who hesitated or refused to accept the compensation reported that both the authorities and the project developer intimidated them and threatened them with arrest and imprisonment.

Farmers noted that compensation amounts did not reflect the market value of the land as of January 2013, when authorities first announced the land confiscation. Many of those who accepted compensation later regretted their decision because the amount they received was not sufficient to buy replacement land.

As a result of the development of the Myotha Industrial Park, land speculation caused land prices to soar to around eight million kyat (US\$5,882) per acre in 2015, and to over 10 million kyat (US\$7,352) per acre in 2017. This stands in stark contrast to the amount of compensation paid to farmers, who received as little as 500,000 kyat (US\$368) per acre.

Numerous actions undertaken by MMID and government authorities as part of the development of the Myotha Industrial Park have contravened international standards, including the provisions of two conventions to which Myanmar is a state party. In addition, land confiscation procedures ignored important provisions of domestic legislation related to land acquisition.

In addition to being inconsistent with international standards and in violation of domestic legislation, the development of the Myotha Industrial Park has resulted in serious human rights violations against local villagers. Land confiscation and clearing to make way for the Myotha Industrial Park, coupled with the inability of farmers to purchase replacement land of comparable size in the area, has deprived farmers of their farmland and access to food, livelihood, and adequate housing.

The Myotha Industrial Park has also had a negative impact on the enjoyment of the right to work for local villagers. Among the stated aims of the Myotha Industrial Park was to create jobs and halt the migration of farmers from Myanmar's "dry zone." However, the reality is that farmers ended up working as hired day laborers to earn a living, often performing menial tasks such as construction, portering, or collecting firewood. They described themselves as "cheap hard labor" for the development of the Myotha Industrial Park. Many affected villagers have left the area after losing their land. In some cases, they moved to Mandalay to seek employment in factories there. Many farmers have incurred debt and borrowed money to make ends meet.

Violations of civil and political rights also occurred as a result of the development of the Myotha Industrial Park. At least 55 local farmers and villagers were arrested, detained, or faced criminal charges for attempting to oppose land confiscation and land clearance for the development of the Myotha Industrial Park.

Finally, the process for the establishment of Myotha Industrial Park has underscored the failure by the project developer, MMID, to conduct proper human rights due diligence, as prescribed by the United Nations (UN) Guiding Principles on Business and Human Rights. This included MMID's failure to undertake meaningful engagement with the affected communities prior to the commencement of the project's development.

MMID described the development of the Myotha Industrial Park as a "win-win situation for all" and claimed that the company had established a "good rapport" with the local communities. These statements are at odds with the situation that FIDH witnessed during four fact-finding missions conducted between November 2014 and April 2017. Villagers expressed anger, frustration, and sadness as they shared how the authorities and MMID had confiscated their land and destroyed their livelihood without providing them with adequate compensation.

METHODOLOGY

Between November 2014 and April 2017, FIDH visited villages in Ngazun Township, Mandalay Region, four times and conducted individual and group interviews with more than 100 residents (representing over 50 separate households from 12 villages) who had suffered land confiscation in connection with the Myotha Industrial Park project's development. Interviewees included villagers who had accepted compensation for the acquisition of their land, as well as villagers who had refused it. FIDH also interviewed Union Solidarity and Development Party (USDP) lawmakers in the Mandalay Regional Parliament whose term of office expired in 2016 and National League for Democracy (NLD) members and regional members of Parliament (MPs) elected in November 2015.¹ During two separate visits, FIDH also spoke with the management of Mandalay Myotha Industrial Development (MMID), the company developing the project, at their office in Mandalay.² FIDH also interviewed community leaders and local land rights defenders.³ In addition to the interviews, this report uses publicly available information from government bodies, parliamentary commissions, the Myotha Industrial Park's website, news articles, and reports by United Nations (UN) agencies and local and international non-governmental organizations (NGOs).

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1. FIDH, *Interview with Tin Ohn (former NLD Kyaukse Township Chairman), Mandalay*, 2014; FIDH, *Interview with Aung Thu Ya (current NLD Kyaukse Township Chairman), Mandalay*, 3 April 2017; FIDH, *Interview with Thae Su Wai, (NLD Mandalay Regional Parliament MP for Ngazun Township), Mandalay*, 7 April 2017
 2. FIDH, *Interview with MMID General Manager Htun Yin, Mandalay*, 27 February 2015; FIDH, *Interview with MMID Chairman Aung Win Khaing and MMID management, Mandalay*, 7 April 2017
 3. FIDH, *Interview with Sayadaw Wi Lar Tha, Than Bo Village*, 2015; FIDH, *Interviews with Sayadaw Wara Nyarna, Let Pa Kyin Village*, 4-7 April 2017; FIDH, *Interviews with Aye Thein and Toe Gyi, (Farmers Network Interest of Farmers and Labor (FNI-FL)) leaders, Mandalay*, 3 April 2017

NEGATIVE IMPACTS OF MYOTHA INDUSTRIAL PARK'S DEVELOPMENT IN MYANMAR

PROJECT DEVELOPER FAILS TO CONDUCT HUMAN RIGHTS DUE DILIGENCE

FARMERS NOT CONSULTED AND INFORMED ABOUT THE PROJECT

INADEQUATE COMPENSATION FOR LAND CONFISCATION

Farmers reported government officers asked them to pay bribes of up to 200,000 kyat (US\$148) to measure the land accurately.

ERRORS AND CORRUPTION IN LAND MEASUREMENT

In many cases, calculations accounted for only between 10% and 25% of the land farmers said they used.

Developed land is expected to be leased for up to 20 times the amount farmers received in compensation.

FARMERS THREATENED INTO ACCEPTING COMPENSATION

Approximately 16% of the families refused what they considered unfair and inadequate offers.

FARMERS ARRESTED AND PROSECUTED FOR OPPOSING THE PROJECT

At least 55 farmers and villagers faced arrest, detention, and legal action.

LAND CLEARANCE LEADS TO FORCED EVICTIONS OF FARMERS WHO HAD NOT ACCEPTED COMPENSATION

OVER 1,000 FAMILIES IN 14 VILLAGES LOSE THEIR LAND, RESULTING IN:

- Loss of livelihood/income
- No adequate housing
- No job opportunities

2. BACKGROUND

Soaring investment risks contributing to more abuses

With the gradual easing of political and economic restrictions after 2011 and the subsequent lifting of Western economic sanctions on Myanmar, investment in the country significantly increased.⁴ According to Myanmar's Directorate of Investment and Company Administration (DICA), the amount of approved foreign direct investment (FDI), which stood at US\$1.41 billion in fiscal year (FY) 2012-13, jumped to US\$4.1 billion in FY 2013-14, US\$8.1 billion in FY 2014-15, and reached nearly US\$9.5 billion in FY 2015-16. In 2016, FDI slowed down.⁵

Despite a 31% decrease in FDI to US\$6.6 billion in FY 2016-17, mostly attributed to the limited number of economic policies proposed by the National League for Democracy (NLD)-led government and the economic slowdown of China (the largest foreign investor in Myanmar), foreign governments and companies continue to view Myanmar as a promising market for infrastructure development and as a production base.

In March 2014, the European Union and Myanmar began negotiating a bilateral Investment Protection Agreement (IPA).⁶ According to the European Commission, the IPA would offer investors a secure investment environment, protect them against discrimination, and ensure fairness in investment opportunities.⁷ In October 2016, the United States lifted all remaining trade restrictions against Myanmar.⁸ In the same month, Myanmar's Parliament adopted a new Investment Law.⁹ The new law reflects Myanmar's continued push to attract foreign investment and contributes to a further liberalization of the country's economic environment.¹⁰

Despite a vastly improved economic climate, independent international indexes show that Myanmar remains a difficult place to do business. The World Bank's *Doing Business 2017* report ranks Myanmar 170th out of 186 countries with regard to the ease of doing business.¹¹ The Heritage Foundation's *Index of Economic Freedom 2017* classifies Myanmar's economy as "mostly unfree" and ranks Myanmar 146th out of 180 countries.¹² Myanmar is also ranked as the 35th most dysfunctional state (out of 178 countries surveyed) in the Fund for Peace's *2017 Fragile State Index*.¹³ Transparency International ranks Myanmar 136th out of 176 countries surveyed in its *2016 Corruption Perceptions Index*.¹⁴

Businesses that have long profited from their close ties to the military remain heavily involved in key sectors of the economy and still have a strong influence at all levels of government. In addition, Myanmar remains plagued by endemic corruption, a weak rule of law, cronyism, internal conflicts, human rights violations, and a legacy of impunity for abuses.

4. Economist, *A Burmese Spring*, 25 May 2013; Diplomat, *Burma: Asia's Next Tiger Economy?*, 31 March 2012

5. Financial Times, *Myanmar Foreign Investment Rush Recedes*, 23 January 2017; Bloomberg, *Booming Myanmar Gets a Crash Course in Capitalism: Quick Take Q&A*, 8 March 2017

6. European Commission, *EU and Myanmar/Burma to negotiate an investment protection agreement*, 20 March 2014

7. European Commission, *EU and Myanmar/Burma to negotiate an investment protection agreement*, 20 March 2014

8. The White House, *Executive Order 13742 of October 7, 2016, Termination of Emergency With Respect to the Actions and Policies of the Government of Burma*, 7 October 2016

9. Government of Myanmar, *Myanmar Investment Law (Pyidaungsu Hluttaw Law No. 40/2016)*, 18 October 2016

10. Myanmar Times, *Protecting profits over people*, 24 November 2014

11. World Bank, *Doing Business 2017*, 25 October 2016

12. Heritage Foundation, *Index of Economic Freedom 2017*, 15 February 2017

13. Fund for Peace, *Fragile States Index 2017*, 10 May 2017

14. Transparency International, *Corruption Perceptions Index 2016*, 25 January 2017

Over the past few years, local and international human rights groups have warned that a rapid increase in investment risks contributing to human rights violations, especially in relation to economic, social, and cultural rights as a result of labor and land rights violations.¹⁵ The development of the Myotha Industrial Park is illustrative of this trend.

Legacy of land confiscation remains unaddressed

An estimated 70% of Myanmar's population lives in rural areas and depends on agricultural land as its primary means of livelihood.¹⁶ Few farmers have formal documents to prove they have any land use rights,¹⁷ and the land registration system is inefficient, with complex requirements.¹⁸ The cadastral surveys are outdated and land classifications and mappings used by different ministries may overlap or not reflect current land use.¹⁹ Even the possession of formal land titles does not provide any significant protection against land confiscation.²⁰

No reliable official figures exist as to the scale of land confiscation in Myanmar. A report by Global Witness found that from 2005 to 2013, 5.3 million acres (about 2,144,834 hectares) of land (almost 30 times the size of Singapore) had been leased out to investors for commercial agriculture, mostly without the consent of the lessees.²¹ The majority of land confiscation was carried out by military and civilian authorities in the 1990s and early 2000s, when the country underwent a transition from military-controlled socialism to a more market-oriented economic system.²² Confiscation normally went through various cycles of allocation and reallocation, which resulted in corrupt profit-making schemes. In a typical scheme, authorities confiscated land for a project that was claimed to be in the public interest and then loaned large tracts of the land to private companies or leased it to the previous occupants.²³ This complex history of ownership, combined with a lack of land titling and documentation, makes it particularly challenging for persons who believe they have legitimate claims to seek compensation or the return of their land.

The growing influx of investments, both domestic and foreign, has increased demand for land and made it a more valuable commodity. Before 2011, land confiscation was predominantly conducted by the military. In recent years, the business sector has become the predominate driver of confiscation.²⁴ In this environment, land confiscation most commonly occurs to make way for commercial agriculture, large extractive activities, and infrastructure and industrial development projects, including the creation of special economic zones (SEZs).²⁵

15. International Trade Union Confederation (ITUC), *Foreign Investment in Myanmar: What impact on human rights?*, October 2015; Business & Human Rights Resource Centre, *Business and human rights in Myanmar: A Round-up of recent developments*, August 2013

16. UNDP, *About Myanmar*, available at: <http://www.mm.undp.org/content/myanmar/en/home/countryinfo.html>

17. Myanmar Centre for Responsible Business (MCRB), *Land Briefing Paper*, March 2015

18. OECD, *OECD Investment Policy Reviews: Myanmar 2014*, March 2014, p. 108

19. Land Core Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*, November 2012, p. 7-10

20. Land in Our Hands Network, *Destroying People's Lives: The Impact of Land Grabbing on Communities in Myanmar*, 29 December 2015, p. 21 and 29

21. Global Witness, *Guns, Cronies and Crops: How military, political and business cronies conspired to grab land in Myanmar*, 26 March 2015

22. Land in Our Hands Network, *Destroying People's Lives: The Impact of Land Grabbing on Communities in Myanmar*, 29 December 2015

23. Transnational Institute (TNI)/Burma Centrum Netherlands, *Access Denied: Land Rights and Ethnic Conflict in Burma*, May 2013

24. Burma Partnership, *Rampant Land Confiscation Requires Further Attention and Action from Parliamentary Committee*, 12 March 2013; Goldman School of Public Policy/University of California Berkeley/The Global Justice Center, *Vulnerable Land, Vulnerable Women Gender Dimensions of Land Grabbing in Myanmar*, May 2017, p. 3; Myanmar Times, *A political anatomy of land grabs*, 3 March 2014

25. Mekong Region Land Governance (MRLG), *The Political Economy of Land Governance in Myanmar*, November 2015; Land Core Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*, November 2012, p. 13-14

Over the past five years, the enactment of flawed legislation has given legitimacy to some forms of land confiscation, which have increased in scale and frequency.²⁶ New land laws adopted in 2012 have created conditions that have led to additional land confiscation and displacement [See below *LEGAL FRAMEWORK*].²⁷

Most acts of land confiscation in Myanmar follow a process that is characterized by: a lack of consultation with affected communities; a lack of free and informed consent from the affected communities; inadequate or non-existent compensation; the absence of any sound resettlement policy; a lack of judicial remedies or other forms of redress; and the harassment and prosecution of farmers and land rights activists who protest against land confiscation.²⁸

Farmers and land rights defenders prosecuted over land confiscation protests

Since 2011, disputes over land acquisition and use have dramatically increased. As a result of a freer space for civil society and the increased enjoyment of the rights to freedom of opinion and expression and freedom of peaceful assembly, individuals and communities have become more active in criticizing authorities' policies and practices and demanding the return of confiscated land. Growing internet access and the use of social media have also contributed to the increased mobilization of land rights activists and victims of land confiscation.

Public statements by government officials indicating that confiscated land would be returned to its original lessees have given communities hope that past abuses would be rectified.²⁹ Since late 2015, citizens have also acted with the hope that the NLD-led government would be more receptive to addressing citizens' grievances with regard to the protection of their basic rights.³⁰

With limited formal judicial or non-judicial remedial mechanisms, individuals and communities have sought to prevent land acquisition or obtain compensation or restitution for confiscated land through various means. Farmers across Myanmar have submitted claims to national authorities, sought the intervention of local members of Parliament (MPs), negotiated with the government and companies, contacted the media, and established organized farmers' groups.³¹ In addition, communities and land rights defenders have increasingly resorted to public protests through marches, the setting up of demonstration camps, and 'plow protests,' a form of protest where farmers continue to till disputed land to signify their claim over it.³²

Authorities have often cracked down on these protests and arbitrarily arrested, prosecuted, and imprisoned farmers and land rights activists. According to the Assistance Association for Political Prisoners (AAPP), as of 31 July 2017, 13 farmers and one land rights activist remained behind bars.³³ In addition, 105 farmers and land rights activists were awaiting trial on various charges under the Criminal Code and the 2011 Peaceful Gathering and Demonstration Law.³⁴

26. Displacement Solutions, *Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations*, May 2015; Karen Human Rights Group (KHRG), *Losing Ground: Land conflicts and collective action in eastern Myanmar*, 5 March 2013

27. Displacement Solutions, *Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations*, May 2015

28. Transnational Institute (TNI)/Burma Centrum Netherlands, *Access Denied: Land Rights and Ethnic Conflict in Burma*, May 2013

29. FIDH, *Interviews farmers in Mandalay and Sagaing Regions*, 27-30 November 2014

30. FIDH, *Interviews farmers in Mandalay and Sagaing Regions*, 27-30 November 2014

31. Land in Our Hands Network, *Destroying People's Lives: The Impact of Land Grabbing on Communities in Myanmar*, 29 December 2015, p. 31

32. FIDH, *Burma: Drop charges against Mandalay farmers and land rights defenders*, 9 August 2017

33. Assistance Association for Political Prisoners (AAPP), *39 Remaining PPs Updated on Jul 31, 17*, 16 August 2017, available at: <http://aappb.org/2017/08/aapp-monthly-chronology-of-july-2017-and-current-political-prisoners-list/39-remaining-pps-updated-on-jul-31-17/>

34. Assistance Association for Political Prisoners (AAPP), *Jul 186 facing trial list updated on Jul 31, 17 (Updated)*, 16 August 2017, available at: <http://aappb.org/wp-content/uploads/2017/08/Jul-186-facing-trial-list-updated-on-Jul-31-17-Updated.pdf>

Efforts to address land confiscation fall short

Since 2011, despite the formation of numerous non-judicial committees and commissions, efforts by Parliament and the government to address land-related issues have been slow, incomplete, and marred by confusion and a lack of coordination.

The legislative and executive branches formed three bodies [See table *Myanmar's land confiscation investigative bodies (2012-present)*] tasked with investigating and addressing land disputes. However, all three bodies have struggled to make significant progress on the thousands of past and new land disputes.

Myanmar's land confiscation investigative bodies (2012-present)				
Name	Created by	Period of operation	Chair and members	Mandate
Farmland Investigation Commission	National Parliament	8 August 2012 – March 2016	Chair: MP Tin Htut Members: 74 members (MPs from various parties and military-appointed MPs)	<ul style="list-style-type: none"> Investigate allegations of abuses in connection with land confiscation Make recommendations to the President's Office regarding the return of land or the payment of compensation
Land Utilization Management Central Committee	President's Office	16 September 2013 - March 2016	Chair: Nyan Tun (Myanmar's Vice-President) Members: Ministers and Deputy Ministers from seven ministries, and Chief Ministers of all 14 states and regions	<ul style="list-style-type: none"> Implement the recommendations of the Farmland Investigation Commission
Central Review Committee on Confiscated Farmlands and Other Lands	President's Office	5 May 2016 - current	Chair: Henry Van Thio (Myanmar's Vice-President) Members: Eight Ministers and Deputy Ministers, Naypyidaw Mayor.	<ul style="list-style-type: none"> Investigate cases of confiscated land and establish whether land should be returned or compensation paid Direct state and regional governments to handle land disputes Monitor the return of land to farmers by government ministries, state and military-owned enterprises, and private companies

From September 2013 to January 2016, the Farmland Investigation Commission (FIC) produced and submitted to the President's Office 18 reports that investigated past cases of land confiscation by various actors in a wide range of economic sectors.³⁵ However, the FIC did not have the power to implement its findings or to refer cases to courts or the relevant government bodies for action.

35. Republic of the Union of Myanmar, *Farmland Investigation Commission, Report no 1-18*, September 2013-January 2016. All reports (in Burmese) can be downloaded from the Land Core Group's document repository: <http://www.mylaff.org/>

When the FIC and the Land Utilization Management Central Committee (LUMCC) – which had been established to implement the FIC’s recommendations – were dissolved in 2016, they left behind thousands of uninvestigated cases.³⁶

Out of the three bodies, the Central Review Committee on Confiscated Farmlands and Other Lands (CRCCF) is the only body that is still operational. The CRCCF set the unrealistic goal of settling all land dispute cases within the first six months of its mandate (i.e. by November 2016).³⁷

In late 2016, the CRCCF began forming additional sub-committees at state/regional, district, township, and village-tract levels. These committees allow for the formal participation of civil society representatives alongside MPs, civil servants, and members of the military.³⁸ The CRCCF set guidelines on how cases of land confiscation should be reviewed by the sub-committees.³⁹ The sub-committees at the state/regional level scrutinize cases and decide whether an investigation is necessary. Township and village-tract level sub-committees conduct on-the-ground investigations and send reports back to state/regional level sub-committees, which have the authority to resolve the cases.⁴⁰

Despite this attempt to streamline the process of receiving, reviewing, and resolving land confiscation complaints, most cases remain unaddressed. As of 12 April 2017, the CRCCF had a backlog of 10,891 cases to investigate, including 6,707 that it had inherited from the LUMCC.⁴¹ Only 2,057 cases, or about 19%, had been settled and the land was returned to the original lessees.⁴²

One important factor that has hampered the progress of the CRCCF’s work has been the lack of communication between the various levels of the committees. While sub-committees at the state/regional level have the power to resolve cases, they often pass investigation reports and recommendations on to the CRCCF for a final decision.⁴³ Even when the CRCCF finally decides to return confiscated land, the handover process can take many months.⁴⁴

In addition, the CRCCF has not consistently published the number of claims that it has received or resolved, and it has failed to provide updates on cases under review or explain the reasons for the rejection of some cases.⁴⁵ This has resulted in claimants using multiple channels, which in turn has led to duplication and additional work for bodies that are already severely under-resourced.⁴⁶

36. Mekong Region Land Governance, *Transparency Under Scrutiny Information Disclosure by the Parliamentary Land Investigation Commission in Myanmar*, February 2017; Frontier Myanmar, *Leftover land dispute vex government as discontent grows*, 12 April 2017; In early 2016, the FIC said that it had reviewed 14,756 of the 26,371 complaint letters it had received from August 2012 to March 2016 from individuals and communities that alleged they had been the victims of land confiscation.

37. Irrawaddy, *Govt Committee to settle all land grabs cases in six months*, 1 July 2016

38. Myanmar Times, *Local farmland committees formed to slice backlog*, 8 October 2016; Frontier Myanmar, *Land committees: An opportunity for inclusion*, 7 July 2017

39. Frontier Myanmar, *Land committees: An opportunity for inclusion*, 7 July 2017; Frontier Myanmar, *Leftover land disputes vex government as discontent grows*, 7 July 2017

40. Namati, *Myanmar’s Foray into deliberative democracy: Citizen participation in resolving historical land grabs*, June 2017

41. Frontier Myanmar, *Leftover land dispute vex government as discontent grows*, 12 April 2017

42. Frontier Myanmar, *Leftover land dispute vex government as discontent grows*, 12 April 2017

43. Frontier Myanmar, *Land committees: An opportunity for inclusion*, 7 July 2017

44. Frontier Myanmar, *Land committees: An opportunity for inclusion*, 7 July 2017; Frontier Myanmar, *Leftover land disputes vex government as discontent grows*, 7 July 2017; Namati, *Myanmar’s Foray into deliberative democracy: Citizen participation in resolving historical land grabs*, June 2017

45. Frontier Myanmar, *Land committees: An opportunity for inclusion*, 7 July 2017; Frontier Myanmar, *Leftover land disputes vex government as discontent grows*, 7 July 2017; Namati, *Myanmar’s Foray into deliberative democracy: Citizen participation in resolving historical land grabs*, June 2017

46. Frontier Myanmar, *Land committees: An opportunity for inclusion*, 7 July 2017

Finally, accusations of conflict of interest have been made against members of some sub-committees at the state/regional and township levels for their alleged involvement in land confiscation during the Thein Sein administration.⁴⁷

In addition to complaints submitted to the three above-referenced bodies, thousands of complaints about land confiscation have also been submitted to other institutions, including the National Human Rights Commission (NHRC) and the parliamentary Committee on Rule of Law and Tranquility. However, these bodies have no power to enforce their own findings and recommendations.⁴⁸

NLD-led government disappoints

The NLD-led government has failed to make significant progress towards the fulfillment of the party's election promises with regard to land rights. In its 'Election Manifesto,' published ahead of the November 2015 general election, the NLD vowed to ensure the return to farmers of "illegally-lost land" and the payment of compensation.⁴⁹ The document also promised the party would work towards defending farmers against "illegal land confiscation practices" and amending the existing land laws "that are not appropriate for the present era."⁵⁰ Despite this stated commitment to resolve the country's land disputes, land confiscation has continued under the NLD-led administration.

The NLD-led administration has also failed to implement the National Law Use Policy (NLUP), which was adopted by the previous government in January 2016 in order to harmonize land use management and protect farmers' rights.⁵¹ While the NLUP is not a legally binding instrument, its implementation would show a commitment by the government to reform land laws in line with international human rights standards and in consultation with civil society.⁵² The NLUP referred to human rights standards with regard to land acquisition and recognized traditional land ownership and shifting cultivation regimes.⁵³ The NLUP acknowledged the need for participatory, transparent, and accountable processes with regard to land issues. It called for public consultation and a participatory decision-making process.⁵⁴ The NLD further muddled its position on land confiscation matters when State Counselor Aung San Suu Kyi appointed former Army General and Union Solidarity and Development Party (USDP) Chairman Shwe Mann as chair of the National Parliament's Commission for the Assessment of Legal Affairs and Special Issues on 5 February 2016. Under Shwe Mann, the commission has criticized the NLUP and suggested that it should clearly affirm that the state has the authority to confiscate land when it is deemed necessary for public interests.⁵⁵

47. Myanmar Times, *Committee for solving land disputes accused of conflict of interest*, 28 September 2016; Frontier Myanmar, *Leftover land disputes vex government as discontent grows*, 7 July 2017

48. Namati, *Myanmar's Foray Into Deliberative Democracy: Citizen Participation In Resolving Historical Land Grabs*, June 2017, p. 13; Land Core Group and USAID, *Land Stakeholder Analysis: Governance Structures and Actors in Myanmar*, December 2016

49. National League for Democracy (NLD), *Election Statement*, 15 September 2015

50. National League for Democracy (NLD), *Election Statement*, 15 September 2015

51. National Land Use Policy (NLUP), released by the National Land Resources Management Central Committee, January 2016, Article 9(b), Part IV

52. National Land Use Policy (NLUP), Chapter 10; Economist, *Land policy a test case for new parliament's power*, 23 December 2016; Frontier Myanmar, *A sound basis for land reform*, February 2016

53. Transnational Institute (TNI), *The Challenge of Democratic and Inclusive Land Policymaking in Myanmar*, 16 February 2015; Frontier Myanmar, *A sound basis for land reform*, 19 February 2016

54. National Land Use Policy (NLUP), January 2016, Article 9(b), Part IV

55. Myanmar Times, *Thura U Shwe Mann appointed to head own legislative commission*, 8 February 2016; Myanmar Times, *Parliamentary commission advises overhaul of national land use policy*, 1 December 2016

3. THE MYOTHA INDUSTRIAL PARK

Myotha Industrial Park at a glance

Location: Ngazun Township, Mandalay Region

Project developer: Mandalay Myotha Industrial Development (MMID)

Surface: 10,353 acres (4,190 hectares)

Number of villages affected by the project: 14

Number of households affected by the project: Approximately 10,000

Compensation offer (US\$ per acre of land): 368 (500,000 kyat) in 91% of the cases; 1,470 (two million kyat) in 9% of the cases

Number of farmers arrested, detained, or charged for protesting land grabbing for the project: 55

Number of households refusing compensation offers: 156

Land prices skyrocket in one of Myanmar's "least developed" areas

The Myotha Industrial Park typifies the government's economic development model, which seeks to incentivize investment in areas designated as "least developed."⁵⁶ The Myanmar Investment Commission (MIC) described the Myotha Industrial Park as one of the "ambitious projects" that would make foreign direct investment (FDI) in Mandalay Region "boom" by 2018.⁵⁷

The project is a large-scale mixed-use industrial park under development in Ngazun Township, Mandalay Region. It covers 10,353 acres (4,190 hectares) of land (more than the area of 1,000 standard football fields), or about 40km², and is located about 50km from downtown Mandalay.⁵⁸ Mandalay Myotha Industrial Development (MMID), the company developing the project, chose the site for its strategic location, close to the Irrawaddy River, Mandalay and other cities, and the Mandalay International Airport.⁵⁹ Two projects that complement the Myotha Industrial Park are also currently under development: 1) the Semeikhon Port project, a 375-acre (152-hectare) jetty port located 18km west of the Myotha Industrial Park along the Irrawaddy River; and 2) a road connecting the Myotha Industrial Park with the Semeikhon Port.⁶⁰ The International Finance Corporation (IFC), a member of the World Bank, is a co-developer of the Semeikhon Port through its IFC InfraVentures fund.⁶¹ On 23 August 2017, MMID and IFC signed a joint venture agreement for the development of the Semeikhon Port, with IFC purchasing a 30% share from MMID.⁶²

In addition to providing land plots for factories and industrial projects, planned developments for the Myotha Industrial Park include residences, commercial areas, research facilities, and a golf course.⁶³

56. Republic of the Union of Myanmar, *Myanmar Investment Law*, 16 October 2016

57. Myanmar Times, *MIC forecast Mandalay foreign investment boom*, 7 October 2015

58. Mandalay Myotha Industrial Development (MMID), *Prospectus*, April 2013

59. Mandalay Myotha Industrial Development (MMID), *Prospectus*, April 2013, p. 3; MMID is the developer of the Myotha Industrial Park in a joint venture with the Mandalay Industrial Development Authority – a public body that was appointed by the Mandalay Regional government and that answers to the Mandalay Chief Minister. MMID was established as an incorporated company on 27 February 2013. On 19 November 2012, the Myanmar Investment Commission issued a permit to MMID.

60. Mandalay Myotha Industrial Development (MMID), *Prospectus*, April 2013, p. 3

61. World Bank Group, *Request for expression of interest - Environmental & Social Impact Assessment (ESIA) of the Semeikhon Riverside Port Project in Myanmar*, 5 January 2016. IFC InfraVentures is a US\$150 million global infrastructure project development fund.

62. MMID, *MMID JV with IFC*, 3 August 2017

63. Myanmar Times, *Myanmar signs off on new industrial park*, 14 January 2014



Main entrance gate to the Myotha Industrial Park in Ngazun Township, Mandalay Region / April 2017. © FIDH

The Mandalay Regional government adopted the Myotha Industrial Park and Semeikhon Port master plan on 3 January 2013.⁶⁴ A week later, then-Mandalay Region Chief Minister Ye Myint signed the joint venture agreement with MMID.⁶⁵ The terms of the agreement include:

- Mandalay Industrial Development Authority offering at least 10,000 acres (4,047 hectares) for the project.
- Twenty percent of the revenues from Myotha Industrial Park land leases to investors going to the Mandalay Industrial Development Authority.
- Compensation to be paid by MMID to the farmers or occupants of the area in which the Myotha Industrial Park is developed at rates stipulated by the government.⁶⁶

The initial 70-year term for the joint venture agreement can be extended twice, with each extension lasting 10 years.⁶⁷

The Myotha Industrial Park is to be developed in three phases:

1. Phase 1 (2013-2018), involving 2,000 acres (809 hectares) for the Myotha Industrial Park – actual development work on the park began in early 2014.
2. Phase 2 (2019-2024), involving 4,375 acres (1,770 hectares) for the Myotha Industrial Park, the Semeikhon Port areas, road networks, logistics facilities, and residential areas.
3. Phase 3 (2025-onwards), involving the remaining 3,978 acres (1,610 hectares) of the Myotha Industrial Park.

In October 2015, MMID announced that approximately 100 potential local and foreign investors visited the Myotha Industrial Park and Semeikhon Port.⁶⁸ On 30 June 2016, five pilot factories, including plywood and food packaging factories, began operations in the Myotha Industrial Park.⁶⁹

64. MMID, *Prospectus*, April 2013, p. 3

65. Myanmar Times, *Myanmar sings off on new industrial park*, 14 January 2013

66. MMID, *Prospectus*, April 2013

67. MMID, *Prospectus*, April 2013

68. MMID, *Potential Investors MIP Site Visit*, 1 October 2015

69. FIDH, *Interview with Thae Sue Wai, Ngazun Township*, 6 April 2017

According to a project prospectus published by MMID for potential investors in April 2013, the company expects to reap “significant revenue” from the lease of the land at the Myotha Industrial Park.⁷⁰ The prospectus projected gross land lease revenues of US\$2,143,390 for MMID through 2027, with developed land lease prices expected to skyrocket to US\$183,727 per acre for residential use and US\$161,834 per acre for industrial use.⁷¹

The Investment Law, which was enacted in October 2016 and came into effect on 1 April 2017, allows income tax exemption for up to seven years for Myanmar’s “least developed areas.”⁷² MMID has sought a seven-year exemption from “income tax, customs duty, and other internal taxes” because the area where the Myotha Industrial Park is being developed has been officially designated as a “least developed area.”⁷³

Crony throwback: Mandalay Myotha Industrial Development (MMID)

MMID is part of Royal Hi-Tech Group, a Burmese conglomerate owned by businessman Aung Win Khaing (aka ‘Nelson’). Aung Win Khaing, 69, is the Chairman of both Royal Hi-Tech Group and MMID. MMID’s nine-person Board of Directors includes Aung Win Khaing and his three sons (Tun Tun Aung, Kyaw Kyaw, and Nyi Nyi Aung). Tun Tun Aung is the Managing Director of Royal Hi-Tech Group and MMID.⁷⁴

Born in Shan State, Aung Win Khaing moved to Mandalay in 1968. While Aung Win Khaing describes himself as a “visionary” and philanthropic entrepreneur, activists interviewed by FIDH describe him as a “typical crony businessman.”⁷⁵ From the 1980s, he developed and expanded his business interests under Myanmar’s military regime. He started in the local tea business and then became the Mandalay representative of several Thai and Indian timber companies.⁷⁶ In 1990, he set up the Mandalay Industrial Zone (MIZ), which covers over 1,200 acres (486 hectares) of land in Mandalay Region’s Pyigyidagun Township, and currently hosts some 1,500 small and medium factories in sectors ranging from automobile assembly, wood processing, and steel fabrication. According to media reports from March 2016, over 90 factories in the MIZ were accused of dumping wastewater into the Dunawadi River, depriving villages downstream of drinking water and causing health problems.⁷⁷

Aung Win Khaing was never placed on any sanction list, but he has always had strong political ties to the military and the Thein Sein government and holds executive positions in several institutions and companies, including the Upper Myanmar Chamber of Commerce and Yadanabon Bank.⁷⁸ He has had an especially close relationship with a number of military commanders in Mandalay Region. “Whatever they needed, I tried to support them,” he acknowledged in a 2013 media interview.⁷⁹ Some people interviewed by FIDH in 2017 made reference to rumors that Aung Win Khaing was backed by Aung Thaung – late Union Solidarity and Development Party (USDP) leader, Minister of Industry-1, and one of Myanmar’s wealthiest businessmen – known for organizing the Swan Arr Shin vigilantes (a civilian militia) and his involvement in the May 2003 Depayin massacre.

70. MMID, *Prospectus*, April 2013, p. 5

71. MMID, *Prospectus*, April 2013, pp. 3 and 75

72. *Myanmar Investment Law*, Articles 74-81

73. Myanmar Investment Commission, *Notification No. 10/2017 Designation of Development Zone*, 22 February 2017

74. MMID, *Prospectus*, April 2013

75. MMID, *Management*, available at: <http://www.mmidproject.com/Management.aspx>

76. The Edge Singapore, *Road to Mandalay*, 1 April 2013, p. 18

77. Eleven Myanmar, *Mandalay industrial zone waste water poisons river*, 22 March 2016

78. MMID, *Management*, available at: <http://www.mmidproject.com/Management.aspx>

79. The Edge Singapore, *Road to Mandalay*, 1 April 2013, p. 19

Project developer fails to conduct human rights due diligence

The process for the establishment of Myotha Industrial Park has underscored the failure by the project developer, MMID, to conduct proper human rights due diligence and carry out meaningful consultation with affected groups, as prescribed by the United Nations (UN) Guiding Principles on Business and Human Rights.⁸⁰

The project prospectus described a 10-month project-planning period in 2012, followed by the 9 January 2013 signing of the joint venture agreement.⁸¹ However, the few attempts by MMID to engage with the affected communities only occurred after the site had already been chosen and land allotted by the government. On 2 January 2013, MMID opened an “i-center” in Mandalay for potential stakeholders and other interested parties to learn more about the project.⁸² However, the center’s location – more than a two-hour drive from the site – would have required expensive and difficult travel for affected farmers.

MMID deflected responsibility for its failure to conduct proper human rights due diligence by shifting blame to government authorities with regard to the limited consultation and inadequate compensation for confiscated land: “We are just the developers. Our job is to make roads, ditches, pave the land, and install electricity and water supply,” MMID General Manager Htun Yin said in an interview with FIDH.⁸³

In April 2017, FIDH interviewed MMID representatives again and asked about the consultation process. MMID Chairman Aung Win Khaing said the company had organized meetings in 2013, although he did not provide any details about the number of meetings, the dates on which they were held, or how many villagers attended them. “We organized meetings, but villagers were busy on the farm so not everyone attended the meetings. We have published information material for villagers as well. We explained the project, but villagers will never understand everything 100% no matter how many times you explain things to them.”⁸⁴ MMID managers also told FIDH that they created a website to inform villagers about the project. However, the website is only in English and almost no villagers in the area had Internet access in 2012.

In the prospectus for the Myotha Industrial Park, MMID played down the project’s negative impacts, claiming the land at the Myotha Industrial Park site was “comparatively non-arable” and that there were “not many farmers and villagers.”⁸⁵ As a result, MMID argued that the project location was ideal to build an industrial park “without displacing too many locals – a win-win situation for all.”⁸⁶

FIDH researchers visiting the area between November 2014 and April 2017 found a situation that could hardly be described as a “win” for hundreds of farmers displaced as a result of the project’s development. Villagers expressed anger, frustration, and sadness as they shared how the authorities and MMID had confiscated their land and destroyed their livelihood without providing them with adequate compensation [See below *HUMAN RIGHTS VIOLATIONS AT THE MYOTHA INDUSTRIAL PARK*]. These facts directly contradict statements made by MMID that the company had “built up [a] good rapport with the local village communities.”⁸⁷

80. UN Guiding Principles on Business and Human Rights, adopted under UN Human Rights Council Resolution A/HRC/RES/17/4 on 16 June 2001, Principle 17

81. MMID, *Prospectus*, April 2013

82. MMID, *Prospectus*, April 2013

83. FIDH, *Interview with Htun Yin, Ngazun Township*, 28 February 2015

84. FIDH, *Interview with Aung Win Khaing, Mandalay*, 7 April 2017

85. MMID, *Prospectus*, April 2013, p. 3

86. MMID, *Prospectus*, April 2013, p. 3

87. MMID, *Prospectus*, April 2013, pp. 12 and 56

When asked about the Environmental Impact Assessment (EIA) required by law,⁸⁸ MMID managers told FIDH they had already conducted an EIA.⁸⁹ MMID did not share the EIA report with FIDH and when asked whether the report was accessible on the company's website, MMID replied they would upload it online. As of 14 September 2017, the EIA report had not been published on MMID's website.

When FIDH asked MMID about the company's responsibility to respect human rights, MMID representatives went to great lengths to describe the company's corporate social responsibility (CSR) activities, which are also listed on the Myotha Industrial Park's website.⁹⁰ However, the CSR activities undertaken by MMID – mostly related to building roads and making donations to local schools – are selective and voluntary. MMID unilaterally chooses the scope and types of activities, and their beneficiaries. As a result, MMID's CSR activities cannot be a substitute for the company's responsibility to respect the human rights of individuals and communities affected by the Myotha Industrial Park.

88. International Commission of Jurists (ICJ), *Special Economic Zones in Myanmar and the State Duty to Protect Human Rights*, 1 February 2017, p. 38; Ministry of Environmental Conservation and Forestry, *Myanmar Environmental Impact Assessment Procedures, Notification 616*, 29 December 2015. Myanmar's EIA Procedures prescribe mandatory information disclosure and public participation by the "project proponent" (either the project developer or the government) in the context of investment and infrastructure projects. The EIA Procedures require that projects involving involuntary resettlement must adhere to international standards, including those accepted by the World Bank and the Asian Development Bank (Article 7). To comply with the EIA Procedures, resettlement planning should occur prior to land acquisition and ensure that alternatives are explored and livelihood restoration plans are in place before any displacement. The EIA report should be finalized prior to commencing preparations for land acquisition. As part of the EIA, the project proponent has an obligation to inform and consult with affected individuals and to create opportunities for their participation in the decision-making process.

89. FIDH, *Interview with Aung Win Khaing*, Mandalay, 7 April 2017

90. MMID, *CSR*, available at: <http://www.mmidproject.com/CSR.aspx>

4. HUMAN RIGHTS VIOLATIONS AT THE MYOTHA INDUSTRIAL PARK

The land confiscation that occurred to make way for the development of the Myotha Industrial Park has resulted in serious violations of economic, social, and cultural rights, as well as civil and political rights, for affected individuals and communities. In addition, the land confiscation process exposed significant flaws in the legal framework related to land management and its enforcement by the authorities, which fell demonstrably short of international standards.



Satellite image showing the area where the Myotha Industrial Park is being developed in Ngazun Township, Mandalay Region / 2017.

Source: Google Earth

Over 1,000 families lose their land

Over 1,000 families from 14 villages (Ah Nauk Taw, Htan Chaung, Lay Daunt Kan, Leik Wut Taw, Let Pa Kyin, Nawarat, Ngwe Inn, Nyaung Pin Kone, Pauk Sein, Pyawbwe, Taung Auk, Than Bo, Thaug Pyin, Ywar Saik) in Ngazun Township had their land confiscated to make way for the development of the Myotha Industrial Park.

Prior to the signing of the joint venture contract between Mandalay Myotha Industrial Development (MMID) and the Mandalay Industrial Development Authority, land at the Myotha Industrial Park site was used as farmland or for raising livestock, and provided the sole source of livelihood for the residents of these 14 villages. For at least three generations, farmers had been tilling this land they called their “endless land.”⁹¹

In April 2017, MMID told FIDH that they had allocated an unspecified number of 60x40 foot (223m²) land plots inside the Myotha Industrial Park site as part of the compensation for confiscated land.⁹² However, the farmers were not allowed to farm these plots, which were meant to serve as an investment.⁹³ Most

91. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

92. FIDH, *Interview with MMID management, Mandalay*, 7 April 2017

93. Elliot Prasse-Freeman, *Sedentarized in Motion: Socio-political Consequences of Dispossession, Displacement, Deterritorialization, and Devalorization of Peasants and Poor People in Contemporary Myanmar - Paper presented for Agrarian Studies Spring Colloquium*, 5 May 2016

farmers were not in a position to wait for a return on investment for the land plots and immediately transferred the land titles.⁹⁴ As a result, the allocation of land plots for housing did not address the farmers' potential loss of farmland and livelihood.⁹⁵

Non-existent consultation process

The land confiscation process for the development of the Myotha Industrial Park was not inclusive, contravened national laws, and failed to meet international standards related to good practices of consultation with affected communities.

Authorities and project developers took insufficient steps to engage all affected communities in the initial project planning and implementation process and to provide them with sufficient information to make informed decisions.

Community meetings with government authorities did not offer meaningful opportunities to challenge the eviction decision or allow for the presenting of alternative proposals.⁹⁶ In addition, authorities failed to post a notice in the government gazette in accordance with the Land Acquisition Act, which would have triggered the 30-day objection period [See below *LEGAL FRAMEWORK*].

In December 2012, about 400 people from the 14 affected villages gathered in Nawarat Village for a visit from then-Mandalay Region Electric Power and Industry Minister Kyaw Myint. Farmers told FIDH that Kyaw Myint announced that the government had confiscated their lands for an industrial park and explained how much they would be compensated.⁹⁷ Villagers reported that at no point did government authorities explain the project in detail, provide any written documentation about it, or provide any opportunity to discuss the project.⁹⁸ Farmers reported that when they tried to ask questions they were told to sit down.⁹⁹ In January 2013, a similar meeting took place in Than Bo Village, during which Kyaw Myint announced that land had been confiscated for the Myotha Industrial Park and relayed compensation amounts.¹⁰⁰

Some farmers interviewed by FIDH reported that they first learned the government would confiscate their land for the Myotha Industrial Park in early 2013 through loudspeaker announcements in their villages.¹⁰¹ Others reported that they learned their land would be confiscated only when land officers came to measure land plots.¹⁰²

Members of the NLD-led government and local activists confirmed what villagers told FIDH. Mandalay Region's Kyaukse Township Chairman Aung Thu Ya said that no consultation with villagers had taken place and that the company had started to seize land before villagers even knew about the project.¹⁰³ Thae Su Wai, an NLD Mandalay Regional Parliament MP for Ngazun Constituency, told FIDH that some farmers first learned about the project when they read about it in the local newspaper. Others, who had

94. Elliot Prasse-Freeman, *Sedentarized in Motion: Socio-political Consequences of Dispossession, Displacement, Deterritorialization, and Devalorization of Peasants and Poor People in Contemporary Myanmar - Paper presented for Agrarian Studies Spring Colloquium*, 5 May 2016

95. FIDH, *Interviews with farmers, Than Bo Village*, 25-26 February 2015 and 28 November 2015

96. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 25-26 February 2015 and 4-5 April 2017

97. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 25-26 February 2015 and 4-5 April 2017

98. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 25-26 February 2015 and 4-5 April 2017

99. FIDH, *Interviews with farmers, Than Bo Village*, 25 February 2015

100. FIDH, *Interviews with farmers, Than Bo Village*, 25 February 2015

101. FIDH, *Interviews with farmers, Than Bo Village*, 25 February 2015; FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

102. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

103. FIDH, *Interview with Aung Thu Ya, Mandalay*, 3 April 2017

refused compensation, found out that their land had been confiscated when they saw company workers on their land.¹⁰⁴ Toe Gyi and Aye Thein, prominent land rights defenders and leaders of the Mandalay-based Farmers Network Interest of Farmers and Labor (FNI-FL), confirmed the lack of consultation with farmers before their land was seized.¹⁰⁵ “Some farmers only realized which part of their land was being confiscated when they saw government authorities marking their land with flags,” Aye Thein told FIDH.¹⁰⁶



Then-National League for Democracy (NLD) Kyaukse Township Chairman Tin Ohn meets with villagers affected by the development of the Myotha Industrial Park in Ngazun Township, Mandalay Region / November 2014. © FIDH

International standards provide that individuals and communities affected by investment and infrastructure projects have the right to: access relevant information; be involved in meaningful consultations; and participate in the decision-making process.¹⁰⁷ The Basic Principles and Guidelines on Development-based Evictions and Displacement (Eviction Guidelines) prescribe that public hearings should be convened to provide opportunities for “all those likely to be affected” to present comments, objections, and propose alternatives.¹⁰⁸

Arbitrary and non-transparent compensation scheme

As part of the arbitrary and non-transparent compensation process for land confiscation, authorities established a two-tier scheme that relied on outdated records from 1941 to determine land use rights. This scheme provided the project developer with a tool to greatly limit the compensation payout.

104. FIDH, *Interview with Thae Su Wai, Mandalay*, 7 April 2017

105. FIDH, *Interview with Farmers Network Interest of Farmers and Labor (FNI-FL), Mandalay*, 3 April 2017

106. FIDH, *Interview with Farmers Network Interest of Farmers and Labor (FNI-FL), Mandalay*, 3 April 2017

107. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), 25 June 1998; Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I), 3-14 June 1992, Principle 10: “each individual shall have appropriate access to information concerning the environment [...], including information on [...] activities affecting their communities, and the opportunity to participate in decision-making processes.”

108. Basic Principles and Guidelines on Development-based Evictions and Displacement, Principle 37

Land plots designated as 'Y' would be valued at two million kyat (US\$1,470) per acre and plots designated as 'N' would be valued at 500,000 kyat (US\$368) per acre.¹⁰⁹ 'Y' indicated land for which farmers had official titles and 'N' indicated land for which farmers had no documented titles. Farmers using 'N' land were therefore only awarded compensation for crops. Although many affected farmers had lived and worked in the area for decades, documented land titles existed for only 898 acres (about 363 hectares) out of the project's 10,353 acres (4,190 hectares). As a result, less than 9% of the land confiscated to make way for the Myotha Industrial Park was classed as 'Y' and entitled its lessees to receive the higher compensation amount under this scheme.¹¹⁰

All farmers interviewed by FIDH expressed strong disagreement with the 'Y' and 'N' designations and the official calculations for the size of their farms, and described the compensation process as "unfair" and "unjust." Farmers also expressed concern that the confusing and arbitrary calculations for land value was a result of corruption and favoritism at the local level [See below *Errors and corruption mar land measurement*].¹¹¹

Authorities failed to provide adequate information regarding the compensation scheme, which resulted in widespread confusion among the farmers. For example, some farmers told FIDH they thought that 'Y' meant farmland or cultivated land and 'N' meant land that was not cultivated, while others thought that 'Y' meant they had land titles and 'N' meant they did not.¹¹² A farmer from Let Pa Kyin Village told FIDH: "I don't know how much of my land is 'N' and how much is 'Y'. I have never heard of it before. They classed my land that way but I don't understand how they did it. I don't think it's correct."¹¹³ A number of farmers reported learning about the 'Y' and 'N' scheme and the higher compensation rate for some plots only after they had already accepted compensation.¹¹⁴

Many of the farmers who accepted compensation were illiterate. They reported that authorities did not explain the purpose or contents of the documents they were asked to sign. In addition, they did not receive any copies of the documents they signed, nor did authorities provide any receipts for the compensation they accepted.¹¹⁵ There are no known official records that document how many farmers were compensated, the amount of land involved in each transaction, the date on which the transaction occurred, and the amount of compensation paid.

Compensation scheme exploits gaps in legal framework and land title records

Authorities established the flawed 'Y' and 'N' compensation scheme by taking advantage of legislative gaps and the lack of proper land title records.

By the time the joint venture agreement was signed in January 2013, the Farmland Law was in force and land use rights could have theoretically been determined through Land Use Permits [See below *LEGAL FRAMEWORK*]. However, obtaining Land Use Permits would have been problematic because of the small window between the March 2012 promulgation of the Farmland Law and the signature of the joint venture agreement in January 2013. Farmers might not have had sufficient time or administrative support to obtain proper land use documentation. In any case, authorities ignored the Farmland Law and relied exclusively on colonial-era land records. Authorities also ignored all other documents, which could have determined land use rights, such as tax records or farmers' declarations.

109. Exchange rate: US\$1 = 971 kyat in December 2013 and 1,365 kyat in September 2017

110. FIDH, *Interviews with farmers, Ngazun Township*, 28 February 2015

111. FIDH, *Interviews with farmers, Taung Auk Village*, 25 February 2015

112. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

113. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

114. FIDH, *Interviews with farmers, Taung Auk Village*, 25 February 2015

115. FIDH, *Interviews with farmers, Htan Chaung Village*, 26 February 2015

Many farmers told FIDH that they did not have registration documents, but that they had kept all the receipts from taxes they had paid for the land.¹¹⁶ A farmer from Let Pa Kyin Village said: “I only have land tax receipts because the government did not allow farmers to register their land before [2012].”¹¹⁷ Another farmer from Taung Auk Village told FIDH that he had applied for registration, but had not received any response from the authorities.¹¹⁸ Sayadaw Wara Nyarna, a Buddhist monk and community leader from Let Pa Kyin Village, told FIDH that villagers had tried to register their land after the project started, but that it was too late by that point because the land had already been slated for confiscation. As a result, they lost the land without receiving the higher compensation amount for land classed as ‘Y’ [See above *Arbitrary and non-transparent compensation scheme*].¹¹⁹

Errors and corruption mar land measurement

According to FIDH estimates, farmers received compensation for only about half of the land that was confiscated from them as a result of the authorities’ gross mismanagement of the land measurement process.

Land measurements took place in early 2013.¹²⁰ Many of the farmers interviewed reported that officers of the Land Measurement Committee significantly under-calculated their land, with calculations that, in many cases, accounted for only between 10% and 25% of the land farmers said they used.¹²¹

Farmers also reported that authorities did not provide them opportunities to assist in the process of confirming the location and area of their land.¹²² In a small number of cases, authorities agreed to conduct a second and third calculation, although farmers continued to dispute their accuracy.¹²³ “The second measurement was worse than the first,” noted NLD Mandalay Regional Parliament MP Thae Su Wai.¹²⁴

Many farmers and community leaders complained that only the planted areas inside the land plots were measured instead of the entire plot.¹²⁵ The authorities’ decision to apply compensation value only for planted areas is at odds with farmland use. Farmers in the Myotha Industrial Park area, as in many places across Myanmar, do not cultivate the entire plot of land at any given time, allowing some areas to rest and rejuvenate, and leaving others for the collection of firewood or hunting.¹²⁶ Land that could have been plowed and therefore eligible for crop compensation was often used for other purposes, such as cattle grazing.¹²⁷ Authorities therefore assumed that land without crops was “valueless.”

Farmers, local activists, community leaders, and NLD MPs interviewed by FIDH also accused the Land Measurement Committee of corruption.¹²⁸ They said that government officers had asked farmers to pay

116. Receipts provided to FIDH by several farmers in Ngazun Township in June 2015.

117. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

118. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

119. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

120. FIDH, *Interviews with farmers, Than Bo Village*, 25-26 February 2015

121. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

122. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

123. FIDH, *Interviews with farmers, Than Bo Village and Htan Chaung Village*, 25 February 2015

124. FIDH, *Interview with Thae Su Wai, Mandalay*, 7 April 2017

125. FIDH, *Interview with Thae Su Wai, Mandalay*, 7 April 2017

126. Elliot Prasse-Freeman, *Sedentarized in Motion: Socio-political Consequences of Dispossession, Displacement, Deterritorialization, and Devalorization of Peasants and Poor People in Contemporary Myanmar - Paper presented for Agrarian Studies Spring Colloquium*, 5 May 2016

127. FIDH, *Interviews with farmers, Than Bo Village*, 25-26 February 2015

128. FIDH, *Interviews with farmers Let Pa Kyin Village*, 4-5 April 2017; FIDH, *Interview with Thae Su Wai, Mandalay*, 7 April 2017; FIDH, *Interview with Farmers Network Interest of Farmers and Labor (FNI-FL), Mandalay*, 3 April 2017

bribes of up to 200,000 kyat (US\$148) to measure the land accurately.¹²⁹ Some farmers reported that local authorities asked them to pay fees in order to obtain appropriate documentation to register their land.¹³⁰ In most cases, officers calculated a lesser amount or classed the land as 'N' when in fact it was 'Y' if farmers refused to pay bribes.¹³¹ In addition, leaders of the FNI-FL reported that farmers who were closely associated with village administrators received two million kyat (US\$1,470) per acre, while those who were not received only 500,000 kyat (US\$368), regardless of the classification of their land.¹³²

Unfair and inadequate land compensation

Approximately 16% of the families affected by the Myotha Industrial Park refused the compensation offers made by the project developer, which they considered unfair and inadequate. Many of those who accepted compensation in 2013 later regretted their decision because the amount they received was not sufficient to buy replacement land.

The company's prospectus declares that all the farmers evicted from their land were given adequate compensation and supported the project.¹³³ However, this narrative has been contradicted by FIDH's findings. While many farmers interviewed by FIDH said they were not opposed to the Myotha Industrial Park, they strongly criticized and opposed the compensation process for land confiscation, which they considered unfair and inadequate to guarantee their livelihood.¹³⁴ One woman from Than Bo Village remarked: "We can accept an industrial park to develop the country. Developing the country is good. But if to develop the country, people have to suffer, that is not fair."¹³⁵

By mid-2013, as many as 300 of the approximately 1,000 affected families had refused the initial land compensation offers.¹³⁶ By November 2014, almost two years after the joint venture contract was signed between MMID and the Mandalay Industrial Development Authority, nearly 200 affected families continued to refuse compensation offers. As of early September 2017, 156 families still refused to accept any compensation.

Farmers noted that compensation amounts offered by MMID did not reflect the market value of the land in January 2013, when authorities first announced the land confiscation.¹³⁷ Farmers therefore rejected the compensation offer because it was not enough to buy replacement land.¹³⁸

The price of land in the area was approximately 2.5 million kyat (US\$1,838) per acre when the project began in 2013. As a result of the removal of more than 10,000 acres from the market and because of land speculation, prices in the area skyrocketed to around eight million kyat (US\$5,882) per acre in 2015, and to over 10 million kyat (US\$7,352) per acre in 2017.¹³⁹ As such, land is expected to be leased for up to 20 times the amount farmers received in compensation for 'N' land (500,000 kyat (US\$368)). According to MMID projections, by 2027, the price of land will be comparable to that of the most expensive developed land in the United States today.¹⁴⁰ A farmer, who accepted compensation for 12.5

129. FIDH, *Interviews with farmers Let Pa Kyin Village*, 4-5 April 2017

130. FIDH, *Interviews with farmers, Nawarat Village*, 26 February 2015

131. FIDH, *Interviews with farmers Let Pa Kyin Village*, 4-5 April 2017

132. FIDH, *Interviews with farmers Let Pa Kyin Village*, 4-5 April 2017; Irrawaddy, *Farmers Protest Myotha Industrial Zone*, 5 January 2015

133. MMID, *Prospectus*, April 2013

134. FIDH, *Interviews with farmers, Ngwe Inn Village and Pauk Sein Village*, 25 February 2015

135. FIDH, *Interviews with farmers, Than Bo Village*, 25 February 2015

136. FIDH, *Interviews with farmers, Than Bo Village*, 25 February 2015; Nawarat Village is the only village where all of the farmers have accepted compensation.

137. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 4-5 April 2017

138. FIDH, *Interviews with farmers, Than Bo Village*, 25 February 2015

139. FIDH, *Interviews with farmers, Than Bo Village*, 25 February 2015; *Interviews with farmers Let Pa Kyin Village*, 4-5 April 2017

140. United States Department of Agriculture, *Land Values. 2017 Summary*, August 2017

of his 26 acres of land, said: "I can't farm on other land. The local price is now nine million to 10 million kyat [US\$6,617 to US\$7,352] per acre for farmland. With this amount of compensation [I received], I can only get three replacement acres."¹⁴¹

With the help of local land rights activists and NLD members and MPs, farmers who still refused compensation tried throughout 2017 to negotiate compensation that reflected market prices with the authorities. However, on 22 July 2017, the General Administration Department (GAD) of Ngazun Township issued a notification that stated that the compensation offered under the 'Y' and 'N' scheme was adequate.¹⁴² The notification rejected the possibility of further negotiations with the villagers and urged them to comply with the terms of the scheme.¹⁴³

According to the Land Acquisition Act and international standards, such as the Eviction Guidelines, the government should have provided resettlement and compensation in the form of comparable land. However, the authorities and MMID did not offer alternative farmland and failed to provide adequate compensation for crop loss.

Adequate compensation in line with international standards is aimed at avoiding the loss of sustainable livelihood and the rapid dissipation of financial compensation.¹⁴⁴ As a result, international standards provide that alternative land, not monetary compensation, should be offered to individuals and communities affected by land confiscation. In response to an FIDH question about the compensation process, MMID General Manager Htun Yin responded: "I do not know about international standards."¹⁴⁵

Land clearance leads to forced evictions

The clearing of land and destruction of crops, both during the day and at night, by the authorities and the project developer resulted in the forced eviction of farmers who had not accepted compensation.

From late 2013, farmers impacted by the Myotha Industrial Park tried to defend their land rights by sending appeal letters that alleged discrimination in the compensation process to authorities at the village, township, and regional levels, as well as to the Farmland Investigation Commission (FIC).¹⁴⁶ Without effective legal protection, farmers who had rejected compensation offers continued to work their land, vulnerable to the actions of the authorities and MMID.

On 17 August 2014, project developers began construction in some areas of the Myotha Industrial Park, including on land for which farmers had not yet agreed to compensation and were still cultivating.¹⁴⁷ For example, farmers in Than Bo Village reported that in November 2014, company bulldozers destroyed overnight two farms on land for which farmers had not yet accepted compensation.¹⁴⁸ In many cases, farmers were unaware of and unable to oppose land clearance operations that took place at night because their homes were located far away from the land.¹⁴⁹

141. FIDH, *Interviews with farmers, Pauk Sein Village*, 25 February 2015

142. General Administration Department, Ngazun Township, *Notification letter*, 22 July 2017

143. General Administration Department, Ngazun Township, *Notification letter*, 22 July 2017

144. International Finance Corporation (IFC), *Performance Standard 5: Land acquisition and involuntary resettlement*, 1 January 2012; Asian Development Bank, *Involuntary Resettlement Safeguards*, November 2012

145. FIDH, *Interview with Htun Yin, Mandalay*, 27 February 2015

146. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015; *Letter sent to ILO*, 27 April 2015; *Complaint letter to Ministry of Home Affairs and the Ministry of Religious Affairs*, 17 February 2015; *Appeal letter to Lower House Speaker Shwe Mann, signed by Min Naing on behalf of the farmers whose land was confiscated*, 24 December 2014; *Appeal letter to Lower House Speaker Shwe Mann*, 8 April 2015

147. Eleven Myanmar, *Farmers protest industrial development project in Mandalay*, 19 November 2014

148. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

149. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

In response, farmers built makeshift lookout camps near their farmland so they could guard against bulldozing.¹⁵⁰ On many occasions, starting in August 2014, farmers stood in front of bulldozers and confronted workers attempting to clear their land.¹⁵¹ One woman described the experience of confronting bulldozers on her farmland: “I was so worried about losing my land. I confronted the bulldozer even though I was afraid. I was more afraid of losing the land.”¹⁵² Another woman explained that she had to run back and forth between two bulldozers to stop them. One man who stopped bulldozers on his neighbor’s land galvanized other members of the community to take action when police wearing riot gear accompanied the bulldozers.¹⁵³



One of the huts built by villagers at a makeshift lookout camp near their farmland so they could guard against bulldozing in Ngazun Township, Mandalay Region / November 2014. © FIDH

Attempts to clear land at night run counter to relevant international standards, such as the Eviction Guidelines, which prohibit such activity.¹⁵⁴ The UN has declared that the seizure by force of land occupied by communities who have not accepted compensation constitutes a forced eviction.¹⁵⁵ The Eviction Guidelines assert that forced evictions constitute “a gross violation of human rights, in particular the right to adequate housing.”¹⁵⁶

150. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

151. FIDH, *Interviews with farmers, Than Bo Village and Nawarat Village*, 25-26 February 2015; Elliot Prasse-Freeman, *Sedentarized in Motion: Socio-political Consequences of Dispossession, Displacement, Deterritorialization, and Devalorization of Peasants and Poor People in Contemporary Myanmar - Paper presented for Agrarian Studies Spring Colloquium*, 5 May 2016, p. 30-31

152. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

153. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

154. Article 49 of the Eviction Guidelines states: “Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.” CESCR General Comment No. 7, Para. 15 states that evictions should not take place at night “unless the affected persons consent otherwise.”

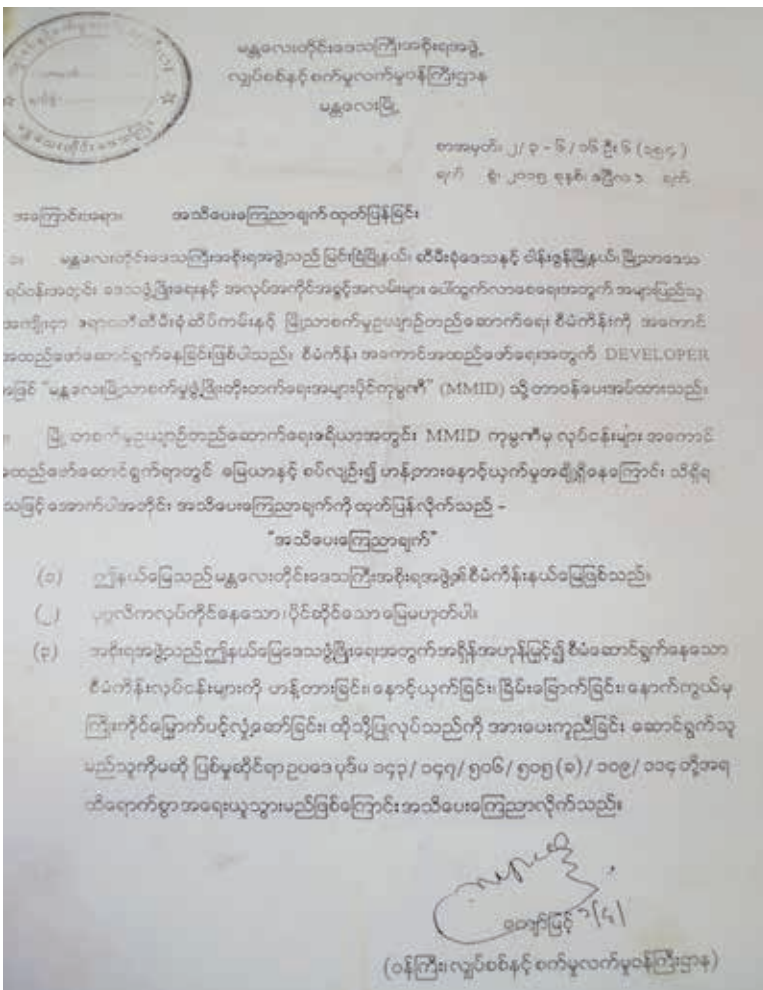
155. UN Commission on Human Rights, *Forced evictions, Resolution 1993/77*, 10 March 1993. The resolution recommended all governments “provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups.” The UN Commission on Human Rights was replaced by the UN Human Rights Council in 2006.

156. UN Commission on Human Rights, *Prohibition of forced evictions, Resolution 2004/28*, 16 April 2004; UN Guiding Principles on Internal Displacement, Principle 6; Eviction Guidelines, Articles 40 and 43

Farmers threatened and intimidated

Farmers who hesitated or refused to accept compensation reported that both the authorities and the project developer intimidated them and threatened them with arrest and imprisonment.

Loudspeaker announcements by local authorities and occasional visits by MMID representatives urged farmers to accept compensation for the confiscation of their land.¹⁵⁷ A farmer reported that in March 2013, MMID representatives, including MMID Chairman Aung Win Khaing, visited a school in Pauk Sein Village and told villagers to sign and accept compensation.¹⁵⁸ One farmer described an interaction with an MMID worker at the Myotha Industrial Park site: “If you try to stop this project, you will be arrested,” he was told.¹⁵⁹ On 3 April 2014, then-Mandalay Region Chief Minister Ye Myint visited Than Bo Village and told villagers they would face “consequences” if they continued to refuse compensation.¹⁶⁰ One farmer said he was “forced” to accept an undervalued estimate under threat of losing his property and facing a prison sentence.¹⁶¹



Notification dated 1 April 2015, in which then-Mandalay Region Electric Power and Industry Minister Kyaw Myint threatened anyone who disrupted or attempted to block the development of the Myotha Industrial Park with legal action in accordance with relevant provisions of the Criminal Code / June 2015. © FIDH

Farmers reported that both MMID and the authorities threatened them with arrest and imprisonment if they tried to stop the project.¹⁶² One woman said: “The bulldozers came twice and I confronted them. There were lots of threats, [such as] ‘if you don’t take the compensation you will be arrested and sent to jail.’”¹⁶³ A farmer from Let Pa Kyin Village said: “Win Myint Han [Ngazun Township administrator] warned me that I should stop working on the land or they would take legal action. He came with other officers from the GAD [General Administration Department] land records office and four police officers to my farm. There were 20-25 of them in total. They came to destroy my crops. They said they would file a lawsuit against me.”¹⁶⁴

157. FIDH, *Interviews with farmers, Than Bo Village, Let Pa Kyin Village and Htan Chaung Village*, 25-26 February 2015
 158. FIDH, *Interviews with farmers, Pauk Sein Village*, 25 February 2015
 159. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 26 February 2015
 160. FIDH, *Interviews with farmers, Than Bo Village*, 26 February 2015
 161. Irrawaddy, *Farmers Protest Myotha Industrial Zone*, 5 January 2015
 162. Mandalay Regional Electric Power and Industry Ministry, *Letter No 2/3 – 6/ 16 Oo 6 (154): Subject: Notification*, 1 April 2015
 163. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015
 164. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

Many farmers interviewed by FIDH said that during discussions about compensation with villagers, both the authorities and the project developer warned farmers they would still lose their land and receive nothing in return if they refused their offers.¹⁶⁵ Farmers from several villages who accepted compensation for some or all of their land told FIDH that they did so out of fear of losing their land without receiving anything in return.¹⁶⁶ One farmer said: “Some people took compensation because of threats by authorities. If you don’t take compensation, bulldozers will destroy your land and you won’t get any compensation.”¹⁶⁷ Villagers reported that authorities visited Nawarat Village three times between 2012 and 2014, during which they intimidated farmers to accept compensation.¹⁶⁸

Threats and attacks against human rights defender Zarni

Zarni, a former political prisoner and the Director of the Saitta Thukha Development Institute, a Yangon-based human rights group, has worked to support farmers in Upper Myanmar for many years and participated in the four FIDH fact-finding missions to the Myotha Industrial Park. After assisting FIDH with field research in June 2015, Zarni was intimidated and received numerous death threats through phone calls that were made in the middle of the night. He changed his phone number ten times, but continued to receive calls.

On two occasions in June 2015, a car followed him while he was travelling on his motorbike near Mandalay. On one of the occasions, the car attempted to hit him. He reported the attack to the Mandalay police, who dismissed the gravity of the threat and took no action.

After these incidents, Zarni went into hiding in Karen State and other areas of eastern Myanmar fearing an escalation of the threats and reprisals. He spent two months in hiding before being able to go back to Mandalay and Yangon. He has not been able to identify those behind the death threats but believes the incidents were connected to his activism in the area.¹⁶⁹



Toe Gyi (L), leader of the Mandalay-based Farmers Network Interest of Farmers and Labor, and Zarni (R), Director of the Saitta Thukha Development Institute, a Yangon-based human rights group. After assisting FIDH with field research at the Myotha Industrial Park area in June 2015, Zarni received numerous death threats through phone calls / April 2017 © FIDH

165. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015; FIDH, *Interviews with farmers, Than Bo Village, Taung Auk Village, and Nawarat Village*, 25-26 February 2015

166. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

167. FIDH, *Interviews with farmers, Taung Auk Village*, 25 February 2015

168. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015; FIDH, *Interviews with farmers, Than Bo Village and Nawarat Village*, 25-26 February 2015

169. FIDH, *Interview with Zarni, Yangon*, 22 September 2015

Opposition to the project met with arrests and prosecutions

At least 55 local farmers and villagers faced arrest, detention, and legal action for attempting to oppose land confiscation for the development of the Myotha Industrial Park.

On 23 September 2014, the Ngazun Township Court ordered the detention of 10 farmers from Than Bo Village after they confronted a bulldozer attempting to clear a farmer's land and police officers wearing riot gear, who were accompanying the bulldozer.¹⁷⁰ The farmers were charged under Articles 143 (unlawful assembly), 147 (rioting), 427 (mischief causing damage), 447 (criminal trespass), and 505(b) (disturbing public tranquility) of the Criminal Code.¹⁷¹ The farmers were initially denied bail and remained detained awaiting trial at the Ngazun police station for more than four months before being released on bail on 6 February 2015.¹⁷² In October 2014, authorities charged 23 more farmers from Let Pa Kyin, Pyawbwe, Than Bo, and Ywar Zite Villages under the same provisions of the Criminal Code for attempting to prevent bulldozers from clearing land for which farmers had not yet accepted compensation.¹⁷³

By February 2015, 55 farmers faced criminal charges for blocking the clearing of land for which compensation had not yet been agreed upon.¹⁷⁴ One farmer from Than Bo Village, who stood in front of bulldozers for one month, told FIDH that he was detained for 13 months after being arrested on 23 April 2014 on charges under Articles 143, 147, 447, and 505(b) of the Criminal Code. He said: "While I was in jail the company confiscated all of my land. I did not get any money. When I got out of jail I had nothing left."¹⁷⁵ Farmers saw legal action taken by the authorities as a form of intimidation to force them to accept compensation.¹⁷⁶ All 10 farmers from Than Bo Village have since been released and to date, no new arrests have been made in the Myotha Industrial Park area since the NLD-led government took power.



A farmer from Than Bo Village, Ngazun Township, Mandalay Region, during his interview with FIDH. He was detained for 13 months after being arrested on 23 April 2014 for confronting a bulldozer during land clearance operations / April 2017. © FIDH

170. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015; Myanmar Times, *Farmers displaced by industrial park project*, 13 July 2015

171. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015; Myanmar Times, *Farmers displaced by industrial park project*, 13 July 2015; Irrawaddy, *Farmers Protest Myotha Industrial Zone*, 5 January 2015

172. FIDH, *Interviews with farmers, Than Bo Village*, 26 February 2015

173. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

174. FIDH, *Interviews with farmers, Than Bo Village*, 25 February 2015. On 8 January 2015, authorities charged 21 farmers from affected villages under Articles 109, 114, 143, 147, 447, 505(b), and 506 of the Criminal Code.

175. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

176. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

Fighting back: Civil society supports farmers against land confiscation and legal action

The development of the Myotha Industrial Park, and the abuses associated with it, led to the mobilization of local land rights defenders, politicians, and members of civil society to support farmers in their struggle for justice.

Two local monks have helped communities in their negotiations. Sayadaw Wara Nyarna, a Buddhist monk from Let Pa Kyin Village, is currently leading villagers' efforts to obtain fair compensation. Previously, in Than Bo Village, where around 200 people had originally refused compensation, Buddhist monk Sayadaw Wi Lar Tha had led efforts to negotiate with authorities and MMID to receive fair and adequate compensation for confiscated land.¹⁷⁷ The Than Bo community also showed unity in its response to the September 2014 detention and trial of 10 farmers who had confronted bulldozers. At least 200 people from Than Bo Village travelled together at significant personal expense to attend trial sessions to show support for the detainees.¹⁷⁸ On 17 November 2014, over 800 people from the villages in the area held a peaceful demonstration against the Myotha Industrial Park in Mandalay to call for the release of the detained farmers, the dropping of all charges against them, and for fair compensation for confiscated land.¹⁷⁹ Farmers held a similar protest on 5 January 2015.¹⁸⁰

The FNI-FL, a Mandalay-based organization that works for the promotion and protection of labor rights and land rights in Upper Myanmar, has also supported farmers' efforts to protect their land. FNI-FL activists helped farmers draft appeal letters and organize a peaceful protest against land confiscation for the Myotha Industrial Park in November 2014.

Since shortly after the start of the project in early 2014, the NLD office in Kyaukse Township, Mandalay Region, has supported farmers by assisting them with the drafting of appeal letters to challenge the confiscation of their land and discussing strategies to defend their land.¹⁸¹

When FIDH met with FNI-FL activist Aye Thein in April 2017, he explained that farmers in Mandalay Region were becoming increasingly organized and determined in their demand for the return of their land and an end to the prosecution of local farmers and land rights activists.¹⁸² However, Aye Thein also noted that prosecutions of land rights defenders across Myanmar had continued under the NLD-led government: "When the new government took power, farmers became more hopeful and they waited for a better solution. Although the government said they would help resolve the problem, they haven't done it yet. The government still arrested and charged us under the Criminal Code for protesting."¹⁸³

177. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

178. FIDH, *Interviews with farmers, Than Bo Village*, 28 November 2015

179. Eleven Myanmar, *Farmers protest industrial development project in Mandalay*, 19 November 2014

180. Irrawaddy, *Mandalay farmers protest Myotha Industrial Zone*, 5 January 2015

181. FIDH, *Interview with Aung Thu Ya, Mandalay*, 3 April 2017

182. FIDH, *Interview with Farmers Network Interest of Farmers and Labor (FNI-FL), Mandalay*, 3 April 2017

183. FIDH, *Interview with Farmers Network Interest of Farmers and Labor (FNI-FL), Mandalay*, 3 April 2017

Fundamental economic, social, and cultural rights violated

In addition to the fact that the development of the Myotha Industrial Park has been conducted in contravention of international standards and in violation of domestic legislation, it has also resulted in serious abuses against local villagers. These have included violations of: the right to adequate housing; the right to an adequate standard of living; the right to work; and the right to education.

Land confiscation and clearing to make way for the Myotha Industrial Park, coupled with the inability of farmers to purchase replacement land of comparable size and quality in the area has deprived farmers of their farmland and access to food, livelihood, and adequate housing. Affected communities previously utilized communal forested areas as complements to farmlands and sources of food, including birds, fish, vegetables, firewood, stones, and other material for housing.¹⁸⁴ Many farmers in the area are also palm tree climbers and used to complement their income by making palm sugar crystal. This, they told FIDH in April 2017, was much more difficult to do now because they could no longer collect firewood.¹⁸⁵

The deprivation of livelihood has also impacted the farmers' ability to enjoy an adequate standard of living. Farmers interviewed by FIDH expressed concern that without land they "have nothing."¹⁸⁶ Farmers in the area have limited opportunities to turn a small monetary compensation amount into a sustainable livelihood. One farmer reported that he had used his compensation money to purchase a machine for collecting and breaking stones: "My income is less than what it was in the past. I was very happy with my life as a farmer. Now I am breaking stones and always worrying if I will have some income or not."¹⁸⁷

Farmers interviewed in April 2017 described the change in their lives since the project started. One farmer from Let Pa Kyin Village said: "My family had to sell our animals to generate some income. Before we had 10 cows, now we have only four left and we will have to sell them as well to make some money."¹⁸⁸ Another family had sold all of the 50 goats they owned. Others said that they had to sell their cattle because the land for grazing was now further away.¹⁸⁹ Another resident from Let Pa Kyin Village said: "Most people in our village are in the livestock business. We asked the developers to leave some pasture for our livestock, but they didn't. We need the livestock because our income from farmland is not enough. Now we are selling [our] animals because we don't have pastures."¹⁹⁰

184. Elliot Prasse-Freeman, *Sedentarized in Motion: Socio-political Consequences of Dispossession, Displacement, Deterritorialization, and Devalorization of Peasants and Poor People in Contemporary Myanmar - Paper presented for Agrarian Studies Spring Colloquium*, 5 May 2016

185. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

186. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

187. FIDH, *Interviews with farmers, Nawarat Village*, 26 February 2015

188. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

189. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

190. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017



Houses located just outside Let Pa Kyin Village, Ngazun Township, Mandalay Region. Occupants are at risk of being evicted as the land on which the houses were built has been slated for confiscation for the development of the Myotha Industrial Park / April 2017. © FIDH

In April 2017, FIDH observed that while some of the farmers who did not accept compensation, especially in Let Pa Kyin Village, continued to work on the farmland that they still considered their own, they lived in constant fear of bulldozers clearing their land at night.¹⁹¹ In April 2017, a farmer from Let Pa Kyin Village showed FIDH his land, which had been excavated by MMID, making it impossible for him to work on it anymore as the top fertile layer of soil had been destroyed.¹⁹² Another farmer in Let Pa Kyin Village said: "I still have some land but I cannot use it in the same way as before because the company machinery has flattened it and I cannot plow it."¹⁹³

The development of the Myotha Industrial Park has also had a negative impact on the enjoyment of the right to work for local villagers. Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that everyone has the right to "the opportunity to gain his living by work which he freely chooses or accepts." General Comment No. 18 on the right to work notes that states should take steps to ensure that companies do not interfere with the enjoyment of the right to work.¹⁹⁴

Among the stated aims of the Myotha Industrial Park was to create jobs and halt the migration of farmers who find it "immensely difficult to make ends meet" in Myanmar's "dry zone."¹⁹⁵ MMID estimated that once completed, the project would create about 200,000 local jobs.¹⁹⁶ With the construction of job-producing factories at the Myotha Industrial Park not slated until 2024 – 10 years after the confiscation of farmers' land – farmers who had their means of sustainable livelihood taken away would be unable to

191. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

192. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

193. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

194. CESCR, *General Comment No. 18 – The right to work*, 6 February 2006; UN Doc. E/C.12/GC/18, Para. 22

195. MMID, *Prospectus*, April 2013

196. MMID, *Prospectus*, April 2013; FIDH, *Interview with Aung Win Khaing, Mandalay*, 7 April 2017; Myanmar Times, *Farmers displaced by industrial park project*, 13 July 2015; Irrawaddy, *Farmers Protest Myotha Industrial Zone*, 5 January 2015; Myanmar Times, *Shares go on sale for Mandalay industrial project*, 8 April 2013

generate any income.¹⁹⁷ MMID managers told FIDH that by April 2017 there were around 2,000 people – mostly from the affected villages – working on the project site. MMID Chairman Aung Win Khaing said: “We offered people jobs, we offered to pay them more than the minimum wage, up to 5,000 kyat [US\$3.13] per day.”¹⁹⁸ However, the reality is that farmers work as hired day laborers to earn a living, often performing menial tasks such as construction, portering, or collecting firewood.¹⁹⁹ They described themselves as “cheap hard labor” for the development of the Myotha Industrial Park.²⁰⁰ Many affected villagers left the area after losing their land. In some cases, they moved to Mandalay to seek employment in factories there.²⁰¹ Many farmers have also incurred debt and borrowed money to make ends meet.²⁰²

A 74-year-old farmer from Let Pa Kyin Village told FIDH: “It’s been four years since I accepted compensation. I spent all of the money I received already a long time ago. I had a significantly lower income after my land was taken. I am too old to climb [palm trees] now and the Myotha project doesn’t hire people my age.”²⁰³ A woman from Let Pa Kyin Village said: “Now I am working as daily laborer for people who transport sand and stones using their vehicles. I make 1,500 kyat [US\$1.1] for half a day’s work and 3,000 kyat [US\$2.2] for a full day. My sons used to make palm sugar before, now they don’t do it anymore because we don’t have non-farming lands where we can collect firewood to cook the palm sugar. I used to raise cows, now we don’t have a lot of pasture and no grass, so we don’t do that anymore.”²⁰⁴ A villager from Lay Daunt Kan Village said: “My daughter is working as a daily laborer. My sons are working as water well diggers. Before our land was taken, we were working as farmers on our land.”²⁰⁵

The prolonged judicial harassment and detention of farmers protesting land confiscation also negatively affected their families’ ability to maintain an adequate standard of living.²⁰⁶ A farmer whose relative had been on trial recounted: “We had no time to work. We had to go to the court to support our relatives.”²⁰⁷

The Myotha Industrial Park has also had an impact on children’s education, as many families can no longer afford to send their children to school. A woman told FIDH: “Before, I sent all three of my children to school, now I can send only one, the rest have to work.”²⁰⁸

Finally, as work on the Myotha Industrial Park progressed, affected villagers and community leaders became increasingly concerned about environmental degradation and access to water. The golf club, one of the projects under development inside the Myotha Industrial Park [See above *THE MYOTHA INDUSTRIAL PARK*], which is now partially functioning, uses water from the Pyaa stream. Farmers from villages near the stream have told FIDH: “We have to move the cattle far away because they cannot drink the water here anymore.”²⁰⁹ Villagers also reported that all the wild animals in the area disappeared. Community leaders and local MPs have confirmed the environmental concerns of villagers. NLD Mandalay Regional Parliament MP Thae Su Wai asked: “Now there are only five factories, but what is it going to happen when there are more?”²¹⁰

197. MMID, *Prospectus*, April 2013

198. FIDH, *Interview with Aung Win Khaing, Mandalay*, 7 April 2017

199. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 26 February 2015

200. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

201. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

202. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

203. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

204. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

205. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

206. FIDH, *Interviews with farmers, Than Bo Village and Leit Wut Taw Village*, 28 November 2015

207. FIDH, *Interviews with farmers, Ngwe Inn Village*, 25 February 2015

208. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

209. FIDH, *Interviews with farmers, Let Pa Kyin Village*, 5 April 2017

210. FIDH, *Interview with Thae Su Wai, Mandalay*, 7 April 2017

5. LEGAL FRAMEWORK

Numerous actions undertaken by MMID and government authorities as part of the development of the Myotha Industrial Park have contravened international standards, including the provisions of two conventions to which Myanmar is a state party. In addition, land confiscation procedures ignored important provisions of domestic legislation related to land acquisition.

INTERNATIONAL LAW AND STANDARDS

Under international law, states are permitted to compulsorily acquire or expropriate land for a public purpose only if certain fundamental conditions are met. In addition to international human rights law, a number of other non-binding instruments provide standards and guidelines that states should follow to ensure that evictions, especially in cases of economic development, do not violate human rights.

International Covenant on Economic, Social and Cultural Rights

Myanmar signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 16 July 2015.²¹¹ Although it has not yet ratified the ICESCR, Myanmar is obliged to refrain from conduct that defeats the treaty's object and purpose.²¹²

Under Article 11 of the ICESCR, everyone has the right to an adequate standard of living. Land rights constitute a key element for the enjoyment of the right to an adequate standard of living, which encompasses food, clothing, housing, and water.²¹³ The respect, protection, and fulfillment of this right are of particular importance during the development and implementation of projects that involve land acquisition and the involuntary resettlement of affected communities.²¹⁴

General Comment No. 12 on the right to adequate food clarifies that states have an obligation to respect, protect, and fulfill this right by: 1) refraining from measures that result in preventing access to food; 2) ensuring that third parties do not prevent access to food; and 3) undertaking measures to ensure people's livelihood.²¹⁵ A state is in violation of its obligations if, as a result of the sale or leasing of land to business enterprises, affected individuals are deprived of access to productive resources that are required for their livelihood.²¹⁶

Another component of the right to an adequate standard of living is the right to adequate housing, the enjoyment of which is particularly contingent on access to land.²¹⁷ Two essential elements of this right are security of tenure and protection against forced eviction.²¹⁸ As a result, states have an obligation to refrain from forced evictions and to enforce the law against its agents or third parties who carried out forced evictions.²¹⁹

211. UN Secretary General, *Reference: C.N.415.2015.TREATIES-IV.3 (Depositary Notification)*, 16 July 2015

212. Article 18 of the Vienna Convention on the Law of Treaties states the obligation of state parties "to refrain from acts which would defeat the object and purpose of a treaty" before its entry into force.

213. CESCR, *General Comment No. 12 - The Right to Adequate Food (Art. 11)*, 12 May 1999, UN Doc. E/C.12/1999/5, Para. 26

214. International Commission of Jurists (ICJ), *Special Economic Zones in Myanmar and the State Duty to Protect Human Rights*, 1 February 2017, p. 8

215. CESCR, *General Comment No. 12 - The Right to Adequate Food (Art. 11)*, 12 May 1999, UN Doc. E/C.12/1999/5, Para. 15

216. Olivier De Schutter, Special Rapporteur on the right to food, *Large-Scale Acquisitions and Leases: a set of core principles and measures to address the human rights challenge*, 11 June 2009, Para. 15

217. ICESCR, Article 11; UDHR, Article 25(1); CEDAW, Article 14; CRC, Articles 16(1) and 27(3); UN Commission on Human Rights, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, 3 March 2005, UN Doc. E/CN.4/2005/48

218. CESCR, *General Comment No. 4 - The right to adequate housing (Art. 11(1))*, UN Doc. E/1992/23, 1992, Para. 7

219. CESCR, *General Comment No. 7 - The right to adequate housing (Art. 11 (1))*, 20 May 1997, UN Doc. E/1998/22, Para. 9; UN Commission on Human Rights, *Prohibition of forced evictions, Resolution 2004/28*, 16 April 2004

General Comment No. 7 on the right to adequate housing defines forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”²²⁰ General Comment No. 7 states that inclusive consultation procedures must be conducted before any eviction can take place, including “an opportunity for genuine consultation of those affected” and “adequate and reasonable notice for all affected persons prior to the scheduled date of eviction.”²²¹

United Nations (UN) treaty bodies, including the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, have repeatedly recommended that states ensure consultation with affected communities prior to conducting development projects or land acquisitions.²²²

An eviction may be carried out only in exceptional circumstances, where there are appropriate legal protections and access to remedy for affected persons, and in conformity with international human rights standards.²²³ An eviction that does not meet these criteria is not a lawful eviction, but a “forced eviction.” General Comment No. 4 on the right to adequate housing notes that forced evictions are “*prima facie* incompatible” with the ICESCR.²²⁴

Security of tenure is critical to providing legal protection against forced evictions and arbitrary displacement.²²⁵ General Comment No. 4 notes that states should confer security of tenure to all persons lacking legal protections, irrespective of whether they hold a land title under domestic law.²²⁶

Finally, a fundamental principle of international law is that every right must be accompanied by an effective remedy in the event of a violation.²²⁷ This includes the right to access an independent and impartial authority with the power to: determine whether a violation has occurred, order an investigation, and provide a remedy.²²⁸ General Comment No. 7 reiterates the need for “legal remedies” in the case of evictions.²²⁹

Convention on the Elimination of All forms of Discrimination against Women and Convention on the Rights of the Child

The Convention on the Elimination of All forms of Discrimination against Women (CEDAW), ratified by Myanmar in 1997, affirms the right to an adequate standard of living and the right to adequate housing.²³⁰ It establishes obligations for state parties to ensure that women in rural areas participate in and benefit from development, including through participation in the elaboration and implementation of development planning.²³¹

220. CESCR, *General Comment No. 7 - The right to adequate housing (Art. 11 (1))*, 20 May 1997, UN Doc. E/1998/22

221. CESCR, *General Comment No. 7 - The right to adequate housing (Art. 11 (1))*, 20 May 1997, UN Doc. E/1998/22, Para. 15

222. CESCR, Concluding Observations on Cambodia (UN Doc. E/C.12/KHM/CO/1, 2009), Chad (UN Doc. E/C.12/TCD/CO/3, 2009), and Madagascar (UN Doc. E/C.12/MDG/CO/2, 2009); CERD, Concluding Observations on Argentina (UN Doc. CERD/C/ARG/CO/19-20, 2010), Chile (UN Doc. CERD/C/CHL/CO/15-18, 2009), and Congo (UN Doc. CERD/C/COG/CO/9, 2009); CCPR, Concluding Observations on Tanzania (UN Doc. CCPR/C/TZA/CO/4, 2009)

223. Basic Principles and Guidelines on Development-based Evictions and Displacement, Principle 40.

224. CESCR, *General Comment No. 4 – The right to adequate housing (Art. 11 (1))*, 13 December 1991, UN Doc. E/1992/23, Para. 18

225. CESCR, *General Comment No. 4 – The right to adequate housing (Art. 11 (1))*, 13 December 1991, UN Doc. E/1992/23, Paras. 8(a) and 18

226. CESCR, *General Comment No. 4 – The right to adequate housing (Art. 11 (1))*, 13 December 1991, UN Doc. E/1992/23, Para. 8(a)

227. Universal Declaration of Human Rights (Art. 8); International Covenant on Civil and Political Rights (Article 2 (3)); Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (Articles 13 and 14); International Convention on the Elimination of All Forms of Racial Discrimination (Article 6); Convention on the Rights of the Child (Article 39); UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 26.

228. International Commission of Jurists (ICJ), *The Right to a Remedy and Reparations for Gross Human Rights Violations: A Practitioners Guide*, 2006, p. 46-47

229. CESCR, *General Comment No. 7*, Para. 15

230. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 14(2)

231. CEDAW, Article 14(2)

The right to an adequate standard of living and the right to adequate housing are also set out in the Convention on the Rights of the Child (CRC), which Myanmar ratified in 1991.²³² General Comment No. 16 on state obligations regarding the impact of the business sector on children's rights provides guidance on the legal and institutional frameworks that need to be put in place to respect, protect, and fulfill children's rights.²³³ States have a legal obligation to ensure that companies respect the rights of the child, that they do not hinder efforts to advance children's rights, and that they engage positively in the realization of these rights.²³⁴

UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council on 16 June 2011, clarify the obligations and responsibilities of both states and business enterprises to ensure that business activities do not violate human rights.

The UNGPs affirm that states have a duty to protect against human rights abuses by third parties, including business enterprises, within their territory and/or jurisdiction.²³⁵ The UNGPs also set out the responsibilities of businesses to avoid causing or contributing to violations of human rights through their activities.²³⁶ The responsibility to respect human rights is a global standard of expected conduct for all business enterprises, local or multinational, of any size.²³⁷

The UNGPs note that business enterprises are required to comply with domestic law and act in conformity with a state's international legal obligations.²³⁸ To identify, prevent, and mitigate adverse human rights impacts, businesses should conduct human rights due diligence.²³⁹ This includes "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."²⁴⁰ The UNGPs also state that business enterprises should engage in "meaningful consultation with potentially affected groups and other relevant stakeholders."²⁴¹

Finally, the UNGPs state that businesses should provide for, or cooperate in remedy processes in response to instances in which they have caused or contributed to adverse impacts for individuals and communities.²⁴² Business enterprises should, for example, establish an operational grievance mechanism – a non-judicial procedure at the site or project level to resolve disputes and provide remedies.²⁴³

232. Convention on the Rights of the Child (CRC), Articles 23-33

233. UN Committee on the Right of the Child, *General Comment No. 16 on state obligations regarding the impact of the business sector on children's rights*, 17 April 2013, UN Doc. CRC/C/GC/16

234. UN Committee on the Right of the Child, *General Comment No. 16 on state obligations regarding the impact of the business sector on children's rights*, 17 April 2013, UN Doc. CRC/C/GC/16

235. UN Human Rights Council, 17th session, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, 21 March 2011, UN Doc. A/HRC/17/31, Principles 1-10

236. UN Guiding Principles on Business and Human Rights, Principles 11-24

237. UN Guiding Principles on Business and Human Rights, Principle 11 (Commentary)

238. International Commission of Jurists (ICJ), *Special Economic Zones in Myanmar and the State Duty to Protect Human Rights*, 1 February 2017, p. 38

239. UN Guiding Principles on Business and Human Rights, Principles 11, 17, and 18

240. UN Guiding Principles on Business and Human Rights, Principle 17

241. UN Guiding Principles on Business and Human Rights, Principle 17

242. UN Guiding Principles on Business and Human Rights, Principle 22

243. UN Guiding Principles on Business and Human Rights, Principles 22, 29, 30, and 31

UN Basic Principles and Guidelines on Development-Based Evictions and Displacement

The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (the Eviction Guidelines) set out standards to be followed by states and other parties responsible for displacement, affirming the following requirements: 1) fully exploring alternatives to displacement; 2) ensuring an appropriate planning process with sufficient opportunities for meaningful participation and informed participation; 3) ensuring displaced persons do not experience a deterioration in living standards, including by ensuring appropriate compensation and alternative livelihood options; and 4) prohibiting all forced evictions.²⁴⁴

The Eviction Guidelines stipulate that evictions should not leave individuals vulnerable to other violations of human rights.²⁴⁵ The guidelines describe appropriate processes to be followed prior to evictions. Key steps include: the involvement of all those likely to be affected; appropriate notice, effective dissemination by authorities of relevant information in advance, including land records; a reasonable time period for public review and possible objection to plans; efforts to assist with the provision of legal, technical, or other advice to those affected; and public hearings with opportunities to challenge the eviction decision and present alternatives.²⁴⁶ In addition, according to the guidelines, eviction decisions should be “announced in writing in the local language to all individuals concerned, sufficiently in advance” and should contain “detailed justification” for the decision. Affected parties must also be guaranteed “timely access to legal counsel, without payment if necessary.”²⁴⁷

The Eviction Guidelines prescribe “fair and just compensation” for any losses and “resettlement or access to productive land.”²⁴⁸ According to the guidelines, monetary compensation “should under no circumstances replace real compensation in the form of land and common property resources” and alternative land should be “of better or equal quality.”²⁴⁹ The guidelines also stipulate that states must ensure adequate and effective legal or other appropriate remedies for victims of forced evictions.²⁵⁰

International Financial Institutions’ safeguards on involuntary resettlement

International Financial Institutions (IFIs) have developed safeguards with regard to involuntary resettlement, which place the responsibility for resettlement arrangements upon states.²⁵¹

The safeguards adopted by the World Bank, the Asian Development Bank, and other IFIs affirm the rights to information, consultation, and participation in economic projects.²⁵² Myanmar’s 2015 Environmental Impact Assessment Procedures require that investment and infrastructure projects involving involuntary resettlement of individuals and communities conform to IFI standards and safeguards.²⁵³

Policies developed by the World Bank’s International Finance Corporation (IFC) place the responsibility for resettlement arrangements on “clients,” (states or private companies, depending on who is responsible

244. Basic Principles and Guidelines on Development-based Evictions and Displacement (Eviction Guidelines)

245. Basic Principles and Guidelines on Development-based Evictions and Displacement (Eviction Guidelines), Articles 40 and 43

246. Basic Principles and Guidelines on Development-based Evictions and Displacement (Eviction Guidelines), Article 37

247. Basic Principles and Guidelines on Development-based Evictions and Displacement (Eviction Guidelines), Article 41

248. Basic Principles and Guidelines on Development-based Evictions and Displacement (Eviction Guidelines), Articles 43 and 60

249. Basic Principles and Guidelines on Development-based Evictions and Displacement (Eviction Guidelines), Articles 26 and 60

250. Basic Principles and Guidelines on Development-based Evictions and Displacement (Eviction Guidelines), Article 17

251. Asian Development Bank, *Safeguard Requirements 2: Involuntary Resettlement*, Para. A(1); International Finance Corporation (IFC) *Performance Standard 5*, 2012, Para. 2; World Bank, *Operational Policy 4.12 (Involuntary Resettlement)*, Para. 2; World Bank, *Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects*, 2004, pp. 9 and 144

252. World Bank, *Operational Policy 4.12 - Involuntary Resettlement*, December 2001 (revised April 2013), Para. 2b; Asian Development Bank (ADB), *Safeguard Policy Statement*, June 2009, Para. 28

253. EIA Procedures, Article 7

for the development of the project that is financed).²⁵⁴ This is important because IFC is supporting the development of the Semeikhon Port [See above *THE MYOTHA INDUSTRIAL PARK*].

NATIONAL LAWS

Myanmar's legal framework has legitimized and facilitated land confiscation and forced reallocation that favors the government (including the military) and businesses, with limited recognition of the rights of people and communities.²⁵⁵ In addition, laws have failed to recognize customary land users' rights, which have traditionally governed land relations in Myanmar.²⁵⁶

There are currently over 70 laws related to land governance in Myanmar. The following laws provide the legal basis for land acquisition in the country:

- 2008 constitution, Article 37 stipulates that the state is the "ultimate owner of all land and all natural resources."²⁵⁷
- 1894 Land Acquisition Act.
- 2012 Farmland Law.
- 2012 Vacant, Fallow and Virgin Lands Management Law.

The Land Acquisition Act, the Farmland Law, and the Vacant, Fallow and Virgin Lands Management Law are currently under review and expected to be amended by the end of 2017. However, very little has been made public about the status and progress of the review process.²⁵⁸

1984 Land Acquisition Act

A legacy of the British colonial period, the Land Acquisition Act regulates the acquisition of all land not covered by a more specific law. The Act empowers authorities to carry out land acquisition if it is declared to be for a public purpose.²⁵⁹ In addition, a private investor may acquire land use rights from the state, a private company, or an individual for the implementation of a "public purpose" project.²⁶⁰ The Act does not define the concept of "public purpose." As a result, authorities have wide discretion in qualifying land use for public purpose, without an effective administrative or judicial review of land acquisition.²⁶¹

The Land Acquisition Act contains only limited safeguards and no provisions concerning involuntary resettlement.²⁶² An agreement between the relevant authority and a company acquiring the land must be publicized in the government gazette and allow for objections within 30 days. In addition, the public

254. International Finance Corporation, *Performance Standard 5*, 2012, Para. 2

255. Displacement Solutions, *Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations*, May 2015, p 15; Goldman School of Public Policy, University of California, Berkeley and Global Justice Center, *Vulnerable Land, Vulnerable Women Gender Dimensions of Land Grabbing in Myanmar*, May 2017, p. 3

256. Land Core Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*, November 2012

257. Constitution of the Republic of the Union of Myanmar (2008), Articles 35, 37, 356, and 372

258. Land Core Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*, November 2012

259. Land Acquisition Act, Articles 4 and 40(b)

260. Land Acquisition Act, Article 38

261. International Trade Union Confederation (ITUC), *Foreign Direct Investment in Myanmar: What Impacts on Human Rights*, October 2015, p. 20

262. International financial institutions have developed standards on involuntary resettlement, which place the responsibility for resettlement arrangements upon states. World Bank, *Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects*, 2004, pp. 9 and 144; Asian Development Bank (ADB), *Safeguard Requirements 2: Involuntary Resettlement*, Para. A(1); World Bank, *Operational Policy 4.12 - Involuntary Resettlement*, December 2001 (revised April 2013), Para. 2

must be informed through notices that are required to be posted in the locality of the land.²⁶³ Any “interested person” may object to the acquisition.²⁶⁴ The “collector”, a function served by the District Officer of the General Administration Department (GAD), hears and assesses an objection, then makes a recommendation to the relevant authority for a decision on the matter.²⁶⁵ The authority’s decision is final, providing the government with wide discretionary powers.²⁶⁶

Under the Act, authorities are responsible for carrying out the land acquisition and providing compensation, but the funds for compensation are to be provided by the company that has acquired the land.²⁶⁷ The Act requires that compensation should be based on the land’s “market value” at the date of the publication of the notification in the government gazette, plus 15%.²⁶⁸ In addition, compensation must take into consideration and account for the dispossession of land, crops, trees, buildings, and other sources of livelihood.²⁶⁹ Finally, the Act states that the “collector” may decide to grant replacement land instead of monetary compensation.²⁷⁰

2012 Farmland Law

The Farmland Law and its implementing rules allow authorities to take over farmland “in the interests of the state” or “the public” with no procedural or substantive restrictions.²⁷¹ The law does not provide for procedures to challenge illegal land acquisition or inadequate compensation.²⁷²

The Farmland Law entitles individuals to apply with local authorities for a Land Use Permit (colloquially referred to as ‘Form 7’), which grants them the right to use, lease, and transfer land for agricultural purposes.²⁷³

Under the Farmland Law, acquisition for a non-agricultural purpose requires the Central Farmland Management Body to reclassify the land.²⁷⁴ In these cases, the Farmland Law’s implementing rules require that farmers who hold Land Use Permits to farm the land be compensated at a fair market value for the farmland, at three times the market value for crops, and twice the market value for any buildings associated with the land.²⁷⁵

2012 Vacant, Fallow and Virgin Lands Management Law

The Vacant, Fallow and Virgin Lands Management Law gives the government the right to repossess lands classed as “vacant, fallow and virgin” for the implementation of infrastructure projects or special

263. Land Acquisition Act, Articles 4(1), 9(1), 9(3), and 42

264. Land Acquisition Act, Articles 3(b) and 5(3); An “interested person” is defined as someone “claiming an interest in compensation.”

265. Land Acquisition Act, Article 5(a)(2)

266. Land Acquisition Act, Articles 5(a)(1) and 5(a)(2)

267. Land Acquisition Act, Article 11

268. Land Acquisition Act, Article 23(1)(2)

269. Land Acquisition Act, Articles 17(3) and 19(1)(a)

270. Land Acquisition Act, Article 31(3)

271. Farmland Law, Articles 30 and 32

272. Myanmar Centre for Responsible Business, *Myanmar Oil & Gas Sector-Wide Impact Assessment*, 4 September 2014, p. 103; Displacement Solutions, *Land Acquisition Law and Practice in Myanmar: overview, gap analysis with IFC PS1 & PSf and scope of due diligence recommendations*, May 2015, p. 10

273. Farmland Law, Article. 4

274. Farmland Law, Articles 30-32. The Central Farmland Management Body is made up of: Minister of Agriculture and Irrigation (Chairman); Deputy Minister of Agriculture and Irrigation (Vice-Chairman); Director General of the Settlement and Land Records Department (Secretary); and relevant government department officials (members).

275. Ministry of Agriculture and Irrigation, Notification No 62/2012, 31 August 2012; Article 67

projects required in the “interest of the state.”²⁷⁶ The law establishes a Central Committee that can lease to local and joint venture investors for up to 30 years land that the state considers as being not in use.²⁷⁷ Farmers, who the Central Committee has granted the right to use vacant, fallow, or virgin land for an established period of time, are entitled to compensation when this land is involved in a land conflict with a third party.²⁷⁸ This provision, however, is not followed or enforced. For vacant, fallow, or virgin land that has never been granted the right to be used, the law does not provide for any compensation to be made to persons who may claim rights to that land.²⁷⁹

Despite the fact that approximately half of the land in Myanmar is occupied or subject to shifting cultivation according to traditional farming practices, it could be classified as vacant, fallow, or virgin, and therefore subject to acquisition under the Vacant, Fallow and Virgin Lands Management Law.²⁸⁰

The Vacant, Fallow and Virgin Lands Management Law does not set out any procedures to challenge or seek a judicial review of measures that authorize land confiscation.²⁸¹ The law punishes with prison terms of up to three years anyone found guilty of trespassing, obstructing the implementation of business, or who “fails to leave” vacant, fallow, and virgin land.²⁸² These provisions can be used to take legal action against protestors who seek remedy for the confiscation of their land.

276. Vacant, Fallow and Virgin Lands Management Law, Articles 3 and 55

277. Vacant, Fallow and Virgin Lands Management Law, Articles 4, 5, 10, and 11(c)

278. Vacant, Fallow and Virgin Lands Management Law, Article 25(b)

279. Vacant, Fallow and Virgin Lands Management Law, Article 2(e)(f)

280. Land Core Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*, November 2012, p. 13-14; Myanmar Centre for Responsible Business, *Land Briefing*, March 2015, p. 10; Transnational Institute (TNI), *Access denied: land rights and ethnic conflict in Burma*, May 2013

281. Myanmar Centre for Responsible Business, *Myanmar Oil & Gas Sector-Wide Impact Assessment*, 4 September 2014, p. 103; Displacement Solutions, *Land Acquisition Law and Practice in Myanmar: overview, gap analysis with IFC PS1 & PSf and scope of due diligence recommendations*, May 2015, p. 10

282. Vacant, Fallow and Virgin Lands Management Law, Articles 26-29

6. RECOMMENDATIONS

To the government:

- Provide adequate resettlement for all individuals subjected to forced evictions in connection with the development of the Myotha Industrial Park.
- Re-measure confiscated lands through a fair and transparent process that is subject to challenge by affected individuals.
- Ensure that land comparable in size and type is granted to all individuals evicted for the development of the Myotha Industrial Park, regardless of land title possession.
- In instances where the return of land or the provision of alternative land is not an option, ensure that compensation is paid at the market rate for any loss of land and crops, and that those affected have access to livelihood sources, in accordance with applicable domestic legislation and relevant international standards.
- Ensure that the Central Review Committee on Confiscated Farmlands and Other Lands' sub-committees review demands from villagers affected by the development of the Myotha Industrial Park, in a transparent, independent, and participatory way.
- Ensure that land confiscated for the development of the Myotha Industrial Park is returned to the appropriate lessees if it is not in use.
- Ensure that Mandalay Myotha Industrial Development does not violate human rights in its operations, including the economic, social, and cultural rights of individuals affected by the development of the Myotha Industrial Park.
- Immediately and unconditionally drop all criminal charges against farmers and land rights defenders who have been prosecuted for exercising their right to peaceful assembly by protesting against land confiscation and forced evictions at the Myotha Industrial Park site.
- Ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol.
- Implement the practice of seeking 'Free, Prior and Informed Consent' as defined in the UN Declaration on the Rights of Indigenous Peoples – to which Myanmar is a signatory – for all infrastructure and investment projects.
- Incorporate the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests into domestic legislation.
- Develop a National Action Plan, in consultation with civil society organizations, to implement the UN Guiding Principles on Business and Human Rights.
- Adopt and implement the January 2016 National Land Use Policy and ensure that its principles are incorporated into any new land-related legislation, including amendments to existing laws.
- Draft, in consultation with civil society organizations, a new comprehensive land law that conforms with international standards, particularly with regard to: protection against land confiscation and forced evictions; access to effective legal remedies; and recognition and protection of legitimate collective and customary land tenure and user rights.
- Ensure that transparent, competent, and independent Environmental Impact Assessments and Social Impact Assessments are undertaken for all land investments prior to the signing of any contracts related to infrastructure and investment projects. The results of such assessments should be made public and available in Burmese and appropriate ethnic minority languages.
- Establish effective and independent judicial mechanisms that allow affected individuals and communities to challenge measures authorizing land confiscation.
- Ensure that infrastructure and investment projects do not violate human rights.
- Comply with international standards on consultation, compensation, and remedy in all cases involving land confiscation for infrastructure and investment projects.
- Establish and enforce a moratorium on the allocation of land concessions for the development of

large-scale industrial and other development projects until appropriate and effective safeguards are in place to protect the rights of affected individuals and communities.

To Mandalay Myotha Industrial Development:

- Immediately halt all clearing, construction, or other operations at the Myotha Industrial Park site on land plots for which farmers have refused compensation.
- For land that was confiscated and has not been returned, provide land comparable in size and type as a first alternative. If affected farmers refuse this option, pay monetary compensation at the market rate for any loss of land, and ensure that farmers have access to livelihood sources.
- Establish a transparent, independent, inclusive, and effective local dispute resolution mechanism, accessible to all villagers affected by the company's operations and other civil society actors.
- Comply with, and implement decisions made by the Central Review Committee on Confiscated Farmlands and Other Lands related to the return of confiscated land that has not been used for the development of the Myotha Industrial Park.
- Ensure that all operations related to the development of the Myotha Industrial Park respect the human rights of affected individuals and communities.
- Conduct transparent, competent, and independent Environmental Impact Assessments and Social Impact Assessments in relation to the company's activities as part of the development of the Myotha Industrial Park. Publicly disclose these assessments and ensure they are made available to the affected villagers. Use these assessments to determine remedies that the company will put in place for individuals who have been negatively impacted by its operations.
- Conduct independent human rights due diligence of past and ongoing impacts of the Myotha Industrial Park and make recommendations on reparations for rights violations.

To investors:

- Conduct independent human rights due diligence that assesses the possibility of further forced evictions and other violations of economic, social, and cultural rights prior to making any additional investments in the development of the Myotha Industrial Park.
- Cease all investment activities at the Myotha Industrial Park if due diligence assessments identify potential human rights violations.

Keep your eyes open

Director of publications:

Dimitris Christopoulos

Editor:

Antoine Bernard

Authors:

Irene Pietropaoli,
Andrea Giorgetta,
Diane Louys

Design:

CBT

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CONTACT US

FIDH

17, passage de la Main d'Or

75011 Paris

Tel: (33-1) 43 55 25 18

www.fidh.org

Twitter: @fidh_en / fidh_fr / fidh_es

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