

Analysis Paper on Land Confiscations in Conflict Areas & Implications for the Peace Process

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About BadeiDha Moe Civil Society Organization (BDM)

BadeiDha Moe was formed in November 2010 for networking, information sharing and strengthening local capacity through advocacy and the transfer of skills and knowledge to promote community participation at all stages of development. We have since implemented environmental, human rights, peace building and land projects across areas of Myanmar vulnerable to large-scale investment. Within these projects, we provide legal aid, legal literacy and peace-building workshops, and engage with Members of Parliament to address community concerns, conflict management, build inner peace and harmony within communities. Currently, we focus on resolving conflict in the peripheral areas of Myanmar through local women leading in solving disputes over land and natural resources.

Publication Details

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Map of Myanmar



Acronyms

CBO	-	Community Based Organization
COVID	-	19 - Coronavirus Disease of 2019
BDM	-	BadeiDha Moe
CSO	-	Civil Society Organization
DALMS	-	Department of Agriculture, Land Management & Statistics¹
EAO	-	Ethnic Armed Organization
FPIC	-	Free Prior and Informed Consent
GAD	-	General Administrative Department
GOM	-	Government of Myanmar
IDP	-	Internally Displaced Persons
KIO	-	Kachin Independence Organization
MADB	-	Myanmar Agricultural Development Bank
MMK	-	Myanmar Kyat
MNDAA	-	Myanmar National Democratic Alliance Army
MOALI	-	Ministry of Agriculture, Livelihood and Irrigation
MOECAF	-	Ministry of Environmental Conservation and Forestry
NCA	-	Nationwide Ceasefire Agreement
NGO	-	Non-Governmental Organization
NLD	-	National League for Democracy
NLUP	-	National Land Use Policy
NMSP	-	New Mon State Party
PNO	-	Pa-O National Organization
RCSS	-	Restoration Council of Shan State
SLORC	-	State Law and Order Restoration Council
SLRD	-	Settlements and Land Records Department

¹ Formerly the SLRD

Executive Summary

Land grabbing are drivers of armed conflict globally. In Myanmar, armed conflict has historically been centrally tied to the control of land and natural resources. The existence of unresolved or recurring land tenure disputes perpetuate the conflict cycle in three ways. Firstly, they may act as a root cause or trigger for conflict. Secondly, they have the potential to undermine peace negotiations by sowing distrust between negotiating parties, and reducing public trust in non-violent conflict resolution. Thirdly, without amicable resolution of disputes, they weaken the resilience of communities to sustain peace (UN 2019). Good governance can not only alleviate these urgent and ongoing conflicts, but also lead to more inclusive economic dividends and sustained peace.

BadeiDha Moe (BDM) has been working for over ten years in Myanmar's conflict-affected ethnic areas. In line with our organization's focus of incorporating land and natural resource concerns into community harmonization, we have been educating, documenting and advocating on the land and natural resource issues affecting communities in these areas. The goal of this work is to integrate the resolution of land disputes into the ongoing peace process in Myanmar. Since 2015, the Government of Myanmar (GOM) and ten Ethnic Armed Organizations (EAOs) have signed the Nationwide Ceasefire Agreement (NCA) and have been engaged in a series of discussions commonly referred to as the 21st Century Panglong. One of the six themes prioritized in these dialogues is concerned with land and natural resources.

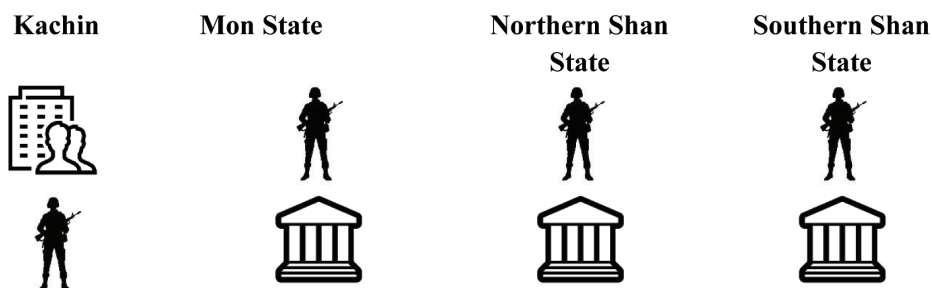
To inform these discussions, this analysis paper exposes the reality of land disputes at the community-level in four conflict affected ethnic minority regions of Myanmar: Kachin State, Mon State, Southern Shan State, and Northern Shan State. It is our hope that this study will strengthen processes for land dispute resolution and highlight the need for prioritizing land tenure issues within the country's ongoing peace talks towards national reconciliation. By addressing ethnic nationalities' claims to land, the peace process would ultimately uphold diversity as a powerful asset in supporting peace and harmony among all the country's citizens.

Our research teams collected data from 12th January 2018 to 25th August 2019. The research process included a survey of a total of 444 victims of separate land dispute cases in 17 townships across four regions; sixteen FGDs; six key informant interviews to learn more about successfully resolved cases; and a review of our organization's regional community stakeholder experience sharing workshops on land dispossession.

Characteristics of Land Grabbing


Across 67 villages surveyed, a total of 4,195.91 acres were taken in 444 land dispute cases included in this study.² Our data focuses on land grabs from the beginning of the military government in 1962 until the completion of this research. The mean year of all of the land grabbing incidents collected in our research was 1998, suggesting that in our targeted areas, land grabbing has increased alongside the policy of market liberalization in the 1990s and/or that people are more likely to remember and report land grabs from the last 20 years. The victims of land grabbing in our targeted areas identified the following types of land confiscators: the government, the Tatmadaw, companies, and individuals. 90% of all acres grabbed attributed to three factors: investment, national security, and government development projects.

While there was variation across the survey areas, the Tatmadaw confiscated the most land. Across all areas where we conducted our research, the Tatmadaw took the most land in terms of total acreage acquired. However, there were variations in the other groups (often with close ties to the Tatmadaw) involved in land grabbing. In Kachin State, the largest grabber was companies. In Northern Shan State, individuals were second to the Tatmadaw in grabbing land. In Mon State, the government was second to the Tatmadaw in the land grabbing. In Southern Shan State, there was more involvement of EAOs. Following up on the involvement of these other actors, we found that they often had ties to the Tatmadaw whether through ownership, cronyism in companies, family relationships with individuals or through business agreements with EAOs. It was common for villagers to report that village administrators and other government officials assisted the Tatmadaw and other powerful actors in their land grabs. In one in four cases the current dispute was with a subsequent owner following a land transfer by the original confiscators.



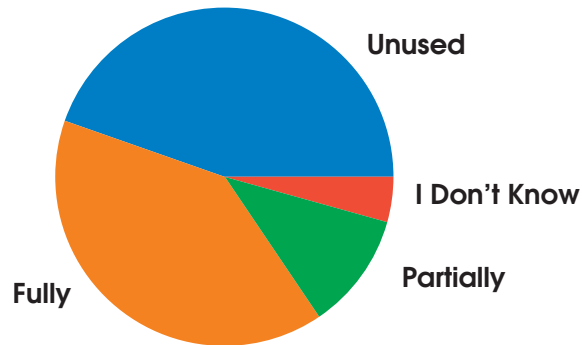
In the surveyed area, victims lived within conflict-affected, frequently remote, areas and tended to lack formal education. In general, victims were poor, subsisting on an average annual income of 2 million MMK, or 5,000 MMK per day (\$3.75), to cover the costs of a household (Mean: six persons). Each household tended to lose less than 10 acres of land as they were smallholder farmers. For 74% of households, this represented all of their land holdings. The victims of land grabbing incidents had on average held the land for over 20 years prior to the land grabbing incident. Their claims were in general not supported by written documentation and there was limited understanding of legal requirements and most of the victims claimed ownership according to traditional laws (66%).

² Given limits to access in many areas, this does not cover the full extent of land grab cases in all states studied.⁸

Victim Characteristics	
	<i>Income: 5,000 MMK per day</i>
	<i>Household: 6 Persons</i>
	<i>Land Lost: 100%</i>
	<i>Length of prior land tenure: 20 years</i>
	<i>Written land tenure documentation: None</i>
	<i>Ownership Claim: Customary Tenure</i>

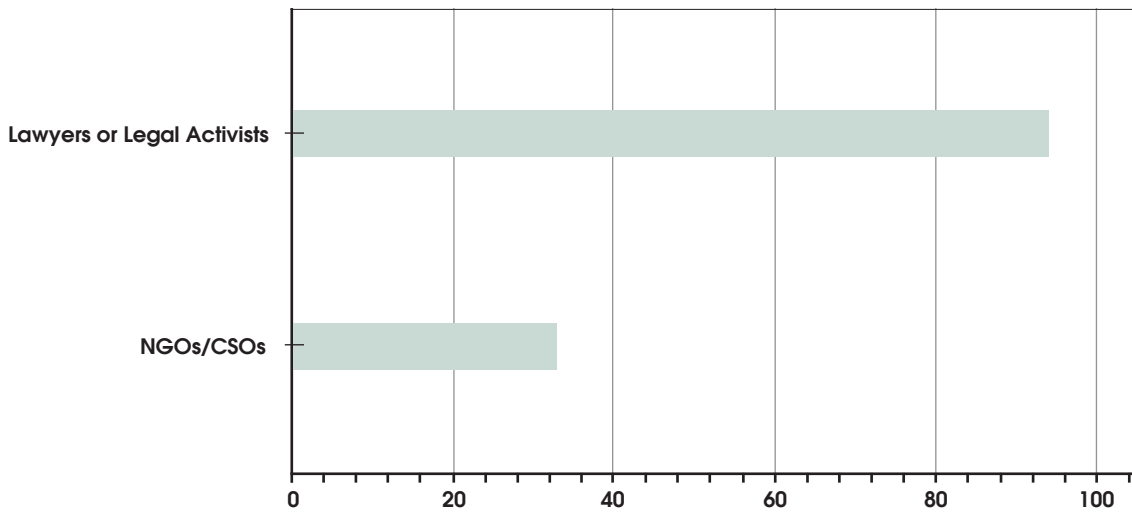
Legal processes on land confiscation were obfuscated for victims. In 95% of land dispute cases, victims said they had been forced off their land and they were not aware of any laws used. In only 2% of land dispute cases, land had been confiscated according to the law. In addition, in 45% of land dispute cases, victims stated that the land grabbed from them was unused compared to 40% who stated that it was fully used. Of the remaining land dispute cases, 11% stated that it was partially used and 4% didn't know whether it was used or not.

To What extent was the land grabbed from you used?



Since 2012, communities have attempted to seek redress. Communities received assistance from CSOs/ NGOs in 33% of land dispute cases and assistance from lawyers/ activists in 25% of all land dispute cases. Across the regions, victims in a total of 100 land dispute cases participated in public demonstrations against land grabbing. For 99% of all land dispute cases, their efforts were not sufficient to resolve their disputes. As well as this 52 people (12% of land dispute cases) faced prosecution for their actions in getting land returned. As a result, many groups in Myanmar have an inherent distrust in the authorities as they remain without legal rights to land. In recent years, although local authorities and parliamentary representatives have taken actions to resolve land disputes, their actions are limited in strength and coincide with re-occurring misuses of power. Instead of law facilitating restitution for farmers, law has been used to further oppress them.

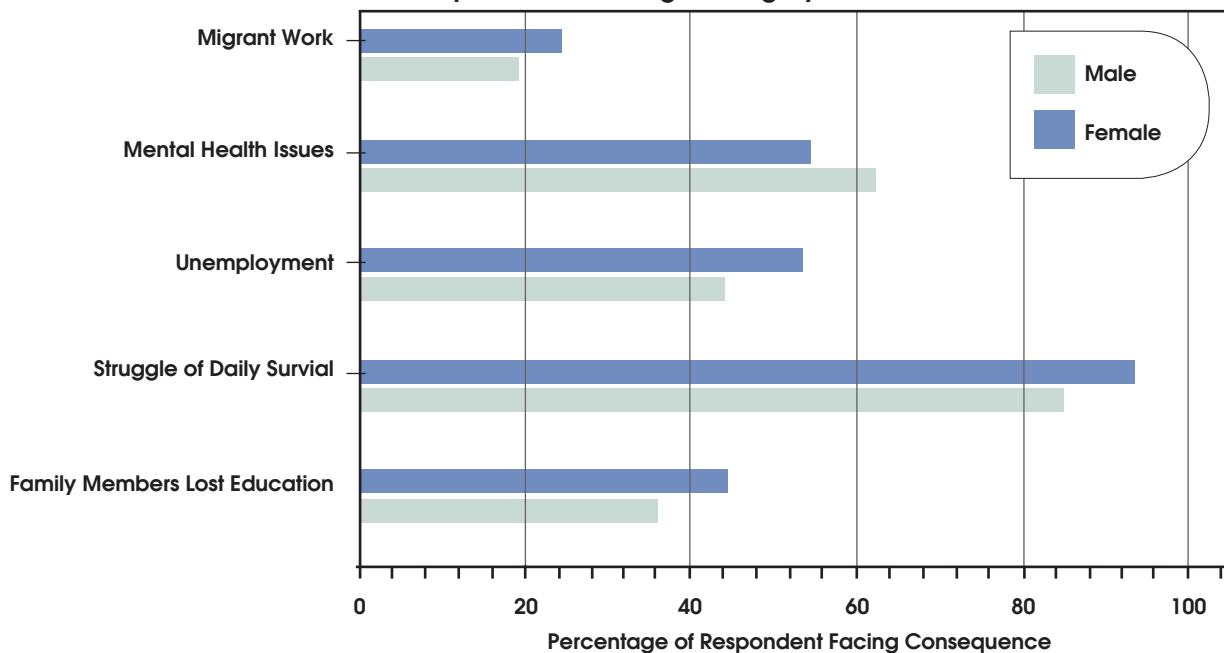
Percentage of Respondents Receiving Assistance From Actors



Impacts of Land Grabbing

Victims consider loss of livelihoods as the worst impact of land grabbing. The complainants in land dispute cases expressed that the most serious impact of land grabbing was their loss of livelihood. Victims in three in four land dispute cases had no land left after the land grabbing incident. After land grabbing, victims in 89% of land dispute cases stated that they struggled for daily survival (93% for women). Most families affected by land grabbing have to find work with a reduced income as daily laborers, fisherman, and market vendors or on other farms. Landlessness and unemployment have forced communities to move their occupations to more insecure work such as migrating to neighboring countries, a factor recognized in 22% of land dispute cases.

Consequences of land grabbing by Gender



Land grabbing exaggerates social problems among victims. Many families are not able to provide a good education for their children and cannot meet the healthcare needs of their family. Some fall into deeper problems when they have to face criminal law suits. Mental health problems among victims of land grabbing across the four regions was prevalent (58%). Many families also suffer from depression, alcoholism and drug use. As a consequence of worsening family economics, conflicts emerge within families.

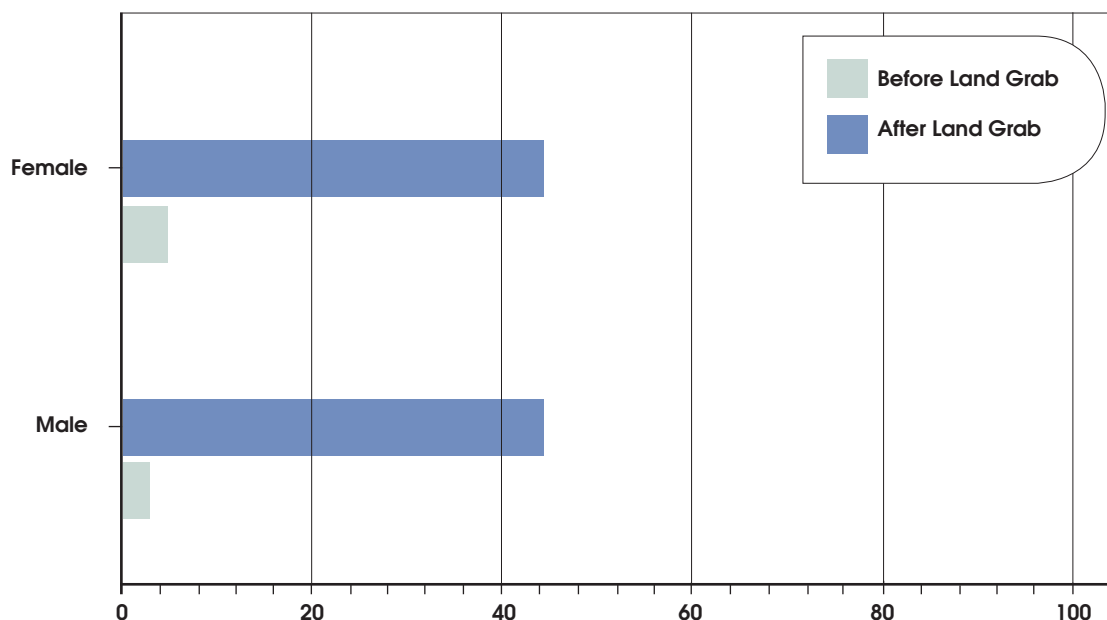


Land grabbing impacts communities' wider ecosystems. The environmental impacts of land dispute cases differed according to the use of land after the land grabbing occurred. They included climatic impacts associated with deforestation, impacts to biodiversity from pollution and impacts to community livelihoods from environmental degradation. These multiple forms of environmental degradation all have a secondary impact upon the community, forcing members into competition over land, which can create more conflict.



Women suffer more from land grabbing. Compared to other households, women-led households are facing more severe impacts from land grabbing to their livelihoods, social status, work, education and health. Women were more likely to become daily laborers than men, with daily laborers amongst men increasing by 20% and amongst women by 40%. Pregnant women cannot look after their health well after land grabs, often leading to fatal outcomes for mother and child. Female land grab victims also can face legal issues. This can impact on their human dignity and their social identities, leading to a high level of depression among women who face incarceration. As well as this, there is weak life security as women migrate to other countries for work due to scarce job opportunities. Women were more concerned about daily survival struggles than men with 93% to 85% answering yes to the question.

Percentage of Respondents Working as Daily Labourers by Gender



BDM identified six disputes that have been addressed to the satisfaction of the victims. These cases include disputes involving the Tatmadaw, companies, and village authorities, and each dispute was resolved through different processes. By reviewing these processes, we can see that supportive factors involve public participation, authorities' cooperation, context appropriate methods, media coverage, and external support.

Based on this research, our team developed recommendations for government/ Tatmadaw (G), non-state authorities (NS), civil society groups (CS), and donors (D).

- (G, NS, CS, D) Integrate land dispute resolution as a cross-cutting issue in the formal peace process: Numerous land and natural resource conflicts are ongoing as the peace process unfolds. Within the formal peace process, there remains insufficient space,13 allocation of resources, and engagement with diverse stakeholders to effectively address issues pertaining to land and natural resources . Link land across the sectors of politics, economics, social affairs and security.
- (G, NS, CS, D) Ensure an immediate end to victimization and incorporate the concerns of victims of land grabbing in conflict-affected areas as part of the peace process: Collecting data and listening to the perspectives of the victims will assist in overcoming obstacles to peace and foster trust between citizens and state.
- (G, CS, D) Strengthen existing government processes for handling land confiscation:
 1. Increase democratic representation of civil society leaders into multi-stakeholder committees at each level of government to ensure that decision-making processes are as accountable as possible.
 2. Have stronger parliamentary oversight of the government bodies presiding over land confiscation cases to ensure that reclaimed land is returned to local communities, and not redirected to third parties.

3. Increase the transparency of the land restitution process: All case data should be made public at the township level, (i.e. number of cases initiated and resolved, total acres disputed and returned, the status of each case, etc.)
 4. Address multiple original and secondary claimants: Prioritize land return for original claimants, but also compensate the needs of secondary users
- (G, CS, D) Government should continue its efforts from 2017 to reclaim land that has been leased out, but not used for productive purposes, and redistribute this back to the communities that had originally lost these lands, or other landless/land-poor cultivators. This land should be prioritized for land titles or form 7s.
 - (G, CS, D) Ensure that all future land laws are pro-poor and secure citizens' rights to land: Specifically, the new National Land Law should be developed in alignment with the 2016 NLUP, which specifically mentions recognition of ethnic nationalities' ancestral land. Consult with stakeholders in the peace process and local communities likely to be affected by changes to these laws.
 - (G, CS, D) Acknowledge and provide legal protection for customary land practices: This should be done in partnership with communities practicing customary tenure systems, who are the experts. The law must have clear procedures for securing legal recognition of customary land. It should link coherently with other laws, especially the VFV Land Law and Land Acquisition Law.
 - (G, CS, D) Protect groups vulnerable to dispossession due to punitive land laws:
 1. Removal of prosecution of 'trespassers' in 2018 amended VFV Land Law: The current punishment procedures within the amended VFV law threatens communities for using their own land if it is classified as VFV, but unregistered. This is extremely unreasonable in light of the fact that information on the 14 classification of VFV land is extremely limited, with many communities unaware of whether their land has been classified as VFV or not.
 2. Protections for displaced persons: special clauses should be included in the Farmland Law and VFV Land Law to ensure stronger protections for IDPs who are not able to defend their claims to land
 - (G, CS, D) Ensure the Land Acquisition Law is just: The law must ensure that communities are treated fairly when land is acquired for a public purpose, based on a narrower and clearer definition. It should follow FPIC, ensure fair market compensation, and restore affected people to their original or a better standard of life.
 - (G, CS, D) Demarcation of customary land: In the interim while a strong customary land law is drafted, government should partner with civil society groups to demarcate communities' customary land boundaries, while taking into account the lessons learned from pilot projects in order to mitigate conflict within and between communities.
 - (G, CS, D) Prioritize the registration of land in ethnic communities: Until now, the government has not demonstrated the will nor allocated sufficient resources to supporting ethnic communities that cultivate on permanent plots to gain secure tenure under the Farmland Law or VFV Land Law. This should be prioritized by the government going forward, but not enforced on

communities that use more communal farming systems, such as shifting cultivation.

- (G, CS, D) Land restitution for IDP and refugees: Plan for dignified returns of IDPs and refugees, which consider their preferences for returning to original land plots, the option for resettlement to new land, and reintegration support services, i.e. livelihoods support and legal documentation, and conflict mitigation within communities.
- (G, NS, CS, D) Do not prioritize an “economic development first” agenda over substantial political settlements in active or recent conflict areas: Large-scale projects should be put on hold during the interim period, unless they are deemed to provide crucial local benefits, based on consultations with key stakeholders.
- (G, NS, CS, D) When developing projects in conflict-affected areas, use FPIC, and conflict-sensitive responsible business practices and rigorously apply international human rights standards and due diligence. At a minimum, business activities should meet or exceed Myanmar regulations, as well as relevant EAO policies.
- (G, NS, CS, D) Consider establishing multi-stakeholder State and Region-level committees (including government, EAO, community representatives, and private sector), to coordinate decisions on aid, development and private sector investments.¹⁵
- (CS, D) With a view to supporting interim arrangements in ceasefire areas, and where appropriate, support increased collaboration between government and local (EAO and CSO) service delivery systems, in the areas of land and forestry governance. Where relevant, support the strengthening of EAOs’ land and forest governance, so that these can be delivered in a responsible manner.

Study Rationale

BadeiDha Moe (BDM) has been working for over ten years in conflict-affected ethnic areas of Myanmar, including parts of Kachin State, Mon State, Southern Shan State, and Northern Shan State. In line with our organization's focus of incorporating land and natural resource concerns into community harmonization, we have been educating, documenting and advocating on the land and natural resource issues affecting communities in these areas. Our project includes providing land, gender & peace trainings to community members, documenting land disputes, and presenting land disputes to key stakeholders in the peace process. The goal of this work is to integrate the resolution of land disputes into the ongoing peace process in Myanmar.

This analysis paper exposes the reality of land disputes at the community-level in four conflict affected ethnic minority regions of Myanmar, as part of a broader strategy to inform the national peace process. It presents the real on-the-ground situation of land conflicts, the communities' perspectives and identifies factors that facilitate amicable resolution. It is our hope that the presentation of the issues will strengthen processes for land dispute resolution and highlight the need for prioritizing land tenure issues within the country's ongoing peace talks towards national reconciliation.

Our organization collected the data and produced this analysis paper whilst the Myanmar government and a number of Ethnic Armed Organizations (EAOs) engaged in a series of discussions commonly referred to as the 21st Century Panglong. One of the stated objectives of these discussions is 'To establish in conformity with the political dialogue a union based on federalism fully ensuring the rights to national equality and self-determination'³. The current negotiations directed at achieving peace in Myanmar are, like similar negotiations in other contexts, highly complex. Many of the issues included in this process interlink with the prosperity of these people, the most notable being the need to address their claims to land.

³Framework for Political Dialogue Section 1(e)

According to *The Meaning of Land in Myanmar* (TNI 2016), “land has been essential to many kinds of human practices and to the building of diverse human societies. Land has shaped human society along several dimensions: economic, social and cultural (including spiritual), as well as political dimensions.” Land is often the most important asset for vulnerable persons, including the rural and urban poor, and is crucial to livelihoods, wealth accumulation, and as wealth transfers between generations (World Bank 2003). Similarly, land also holds significant social and cultural values. “The multi-dimensional character of land” refers to the different dimensions of meaning that land holds for people, informing “where we settle, how we feed ourselves, what materials we build our homes with, who we worship, which spirits we perceive in the air, and it informs our stories of where we come from and why we are here” (TNI 2016). By addressing ethnic nationalities claims to land, the peace process would ultimately uphold diversity as a powerful asset in supporting peace and harmony among all the country’s citizens.

The role of resolving land tenure disputes is central to the success and sustainability of Myanmar’s peace process, yet little is known about the on-the-ground experiences of land grabbing and factors that contribute to the successful resolution of land tenure disputes in conflict-affected areas. Based on our team’s practice of active listening, we have heard from the community members, themselves. They shared with us stories from generations of suffering as a result of frequent and pervasive land grabs. In seeking resolution, they expressed feelings of isolation and neglect from political processes. Based on this feedback, our team designed this research to provide these communities with an outlet to express their perspectives.

Therefore, this research was developed:

- a. To present accurate data to reveal the nature of land grabbing and its impacts upon communities in four conflict-affected regions of Myanmar
- b. To identify the factors that have contributed to the successful resolution of land tenure disputes in conflict-affected regions of Myanmar

Further, it is envisaged that this research:

- a. Will promote the integration of amicable resolution of land disputes in conflict areas as an essential component of Myanmar’s current political reconciliation

The paper is structured as follows: Section 2 starts off with an overview of the relationship between land and conflict. Section 3 describes the mixed-methods used to do the primary research. Section 4 provides a history of land and conflict in Myanmar’s ethnic areas. Section 5, 6 and 7 summarizes the findings of the primary research by describing the characteristics and impacts of land grabbing, as well as factors behind case resolution. The last section provides recommendations for resolving land grab cases.



Relationship between land and conflict

The role of land disputes is gaining increasing recognition as a key driver of armed conflict, globally. Its role is widely noted in conflicts in Liberia, Nigeria, Sudan and Sri Lanka (Bruce 2013). In Myanmar, armed conflict has historically been centrally tied to the control of land and natural resources. Good governance can not only alleviate these urgent and ongoing conflicts, but also lead to more inclusive economic dividends and sustained peace. In a March 2019 guidance note, the UN Security General stated that land relates to each of the UN's three pillars: to maintain international peace and security, to achieve economic and social progress and development, and to promote respect for human rights. On analysis of this note, we can assess that the existence of unresolved or recurring land tenure disputes perpetuate the conflict cycle in three ways. Firstly, they may act as a root cause or trigger for conflict. Secondly, they have the potential to undermine peace negotiations by sowing distrust between negotiating parties, and reducing public trust in non-violent conflict resolution. Thirdly, without amicable resolution of disputes, they weaken the resilience of communities to sustain peace (UN 2019).

Similarly, a 2017 analysis by the UN recognizes that land tenure disputes can be a root cause, a proximate factor or a trigger for a conflict. A root cause refers to the main cause of a conflict. A proximate factor refers to a case where land issues may not be the root cause but can influence the dispute as one of a number of factors. A trigger refers to a situation that may not be the root cause but immediately preceded the outbreak of conflict. The root cause analysis of land and conflict issues for peace building, outlined fifteen land issues that may act as root causes and triggers of conflict (UN Habitat 2017). While the list is not exhaustive, key issues included are; political exclusion from displacement, environmental degradation, natural resource exploitation, poverty, occupation of land, and weak land administration.

In addition to having a role in the conflict cycle, land dispute resolution also plays a central role in supporting peace dialogue. Without addressing land rights in a peace processes, there is the potential that the residual impacts of the conflict may never dissipate. If the resolution of land injustice is not included as an objective of a peace process, lingering discontent could reignite

armed conflict. This is even more likely where land tenure disputes involve groups rather than individuals. Grievance literature argues that groups bound by common identity markers that have experienced unequal resource access, as a result of exploitation by elites, could be easily mobilized to participate in armed struggle (Homer-Dixon 2000). In Myanmar, the most pervasive violent conflict is related to exclusion on the basis of ethnic identity, and to a lesser degree, the exclusion of groups based on religion. There is now growing consensus that without appropriately addressing land issues, states emerging from conflict may not be able to facilitate safe return and restitution, promote economic recovery, nor fully protect human rights.

Holistic integration of land tenure concerns is an essential component for a sustainable peace process. The inclusion of land tenure dispute resolution not only requires restitution for past disputes, but also preventative measures to rule out new disputes arising. The role of resolving land tenure disputes is central to the success and sustainability of any peace process including Myanmar's.

Methodology

Research Ethics

In recognition of the sensitive nature of these issues, this research maintains participant anonymity, collects data on a consensual basis, verifies data appropriately, acts lawfully, and ensures the research and report does not exacerbate conflict in any way. All of the data contained within this research received consent from the participants. Every participant had an opportunity to provide consent either in writing, on a consent form, or orally. Some participants preferred to provide oral consent as they were uncomfortable signing. Participants were informed that all data could be removed or amended at their request.

Sampling and Target Areas

Our Team implemented this research in four conflict-affected regions of Myanmar where BDM has field offices. Accordingly, our researchers include speakers of the following languages: Burmese, Shan, Ta'ang, Pa-Oh, Jingphaw Kachin, Rawang Kachin, Sagaw Karen and Mon. Each of these areas reflects different dynamics in Myanmar's conflict context. Some of the regions have post-conflict characteristics while others remain in conflict. Many of these areas are under the mixed-control of both the government and EAOs, however communities studied have not received land documentation from any EAOs, except from the KNU in parts of Mon State. Through collecting data in these diverse regions, this research can illustrate both national and regional trends.

We selected target villages in cooperation with the five field offices. To select these villages, we used the snowball sampling methodology as data on those affected by land grabbing in Myanmar is not widely available. Data was collected from 67 villages in 17 townships across the four regions where BDM works.

For initial surveys and focus group discussions, we contacted community members who had already received trainings or legal aid from us in targeted villages. These community members

referred us to areas where land grabbing had occurred in their region. We then surveyed all of the community members affected by land grabbing cases, paying specific attention to women affected by land tenure disputes.

Data Collection

We used surveys to collect details regarding land disputes and their characteristics, focus group discussions to understand the impacts of land disputes on communities, in-depth interviews to identify the factors that led to successful resolution of cases, and documentation from our regional workshops for responses to communities sharing experiences of land dispossession. We formed data collection teams comprised of eighteen researchers from our regional offices to collect data on the ground.

Surveys

The team collected the data from 12th January 2018 to 25th August 2019. The team of 18 field staff with monitoring assistance from six head office staff conducted surveys of 444 separate land dispute cases in 17 townships across four regions. A land case is defined as a dispute over one piece of land where the confiscation of land is not amicable (e.g. the complainant is not satisfied by the result). Each land dispute case represents one piece of land either owned by one household or communally. Surveys were collected from 131 respondents in Southern Shan State, 116 in Kachin State, 105 in Mon State and 92 in Northern Shan State. The different survey numbers are a reflection of snowball sampling i.e. referrals from one key informant to another. For households, we invited households with disputes to send one member and ensured 50% women participation. For communal land, we surveyed respected village leaders and elders. The research teams attempted to collect information on as many land grabbing cases as possible in target areas of each region, but access was limited by active conflict in some areas of Hsipaw, Kyauk Me and Nawng Hkio Townships of Northern Shan State.

The data was collected directly from the victims of land confiscation or their families (98% of the data collected). Data from political activists and other related persons made up the remainder (2%). The survey covered: land dispute type, loss of land, land ownership information, affected persons' information, profile of the land grabber, compensation, legal issues, background, and other information. These nine sections enabled our team to gain a detailed understanding of each land dispute. After completing the survey forms, our field staff sent them back to our Head Office. Our Head Office Team verified data with the field offices.

Focus Group Discussions

We opted for semi-structured FGDs that organized the questions into two categories: impacts of land confiscation, and suggestions to stakeholders. In discussing impacts of land confiscation, we directed respondents to discuss about economic, educational, social, health, legal, confidence in authority, and other impacts. In discussing suggestions for leaders, we directed respondents to discuss about the Tatmadaw, union government, state government and ethnic armed organizations. We conducted sixteen FGDs in total. We held four FGDs in each region. We selected members of land dispute affected households who we were working with to negotiate resolutions. We ensured a gender balance in each of the FGDs. Each FGD had between seven and fifteen participants (Mean: 11 participants). After completing the focus group discussions, our field staff sent the hard-copies of the transcripts back to our head office. Our head office team then

typed up the data from the transcripts in preparation for data analysis.

Key Informant Interviews

After collecting data on the characteristics of land grabbing and the associated impacts, our team decided to study incidents of amicable resolution. By contacting communities and stakeholders, we were only able to find six cases across 67 villages of amicably resolved land disputes in addition to the 444 unresolved cases. Together we developed a structured interview format to collect data on the resolved cases. The interview included fourteen questions. Through these questions, we were able to learn the process to resolve cases, the parties involved, the challenges overcome, the agreements on resolution, the groups providing assistance and the perspectives of the farmers involved. After conducting six key informant interviews, the data was provided to the head office team.

Regional community-stakeholder experience sharing workshops on land dispossession.

We were also able to collect responses to land grabbing cases from key stakeholders through our organization's regional community-stakeholder experience sharing workshops on land dispossession. In these workshops, stakeholders listened and responded to cases presented by victims of land grabbing in their respective areas. We held workshops in 2018 and 2019 in Kachin State, Mon State, Southern Shan State and Northern Shan State. We have included the feedback of these stakeholders, particularly in relation to negotiation, into this report to ensure that their voices and perspectives can be represented.

Data Processing and Data Analysis

Following data collection, hard-copies of the data were passed on to head office staff who would enter the data into prepared formats at our headquarters. We then held a strategic workshop with all staff to discuss the initial data collected and develop strategies for collaborative and effective data verification. Head office staff then worked to verify data on an ongoing basis with field offices through regular communication.

Data Analysis & Compilation

Once we had collected and collated all of the data, we began analyzing it. We used different strategies for each group of data. For the survey data, we inputted the data into a spreadsheet and then analyzed it using the open source python library, Pandas. Our analysis focused on finding out trends outlining the general characteristics of land grabbing, and any unique situations occurring in particular contexts. The surveys provided relevant information on both the characteristics of land grabbing and the impacts of land grabbing. When working with the focus group discussion data, our head office team coded each issue that arose. After coding each issue, they counted the frequency of issues and based on the frequency included the issues within the report. They also highlighted strong examples of these issues. Finally, when working with data from the key informant interviews and regional community-stakeholder experience sharing workshops on land dispossession, our team summarized the main points of each piece of data. We then extracted key information supporting the main points and included them within this report, while ensuring that all of the different views were adequately represented. Qualitative data was analyzed in Burmese, while quantitative data was analyzed in English. All information was then summarized and translated into English.

Data Verification & Final Drafting

For the final drafting and data verification, we received support from international colleagues to strengthen the overall presentation of our research paper. In developing recommendations and other key sections, we worked as a team. In keeping with this team spirit and in response to restrictions because of the COVID-19 pandemic, our team verified the data contained within this report through a series of phone calls and meetings of not more than five people with a sample of community members that participated in the research. In each of the calls, the community members reviewed the draft analysis paper and discussed whether the data is accurate with their situation, especially the focus group discussions. These calls also provided the community members with the opportunity to omit any data that they felt uncomfortable publicizing. These validation calls enhanced community ownership, transparency and accountability of this analysis paper. They also provided an additional layer of conflict sensitivity to this analysis paper.

Shortcomings

Due to time limitations, verification of data could not be done with some peace process stakeholders. Therefore, we acknowledge that stakeholders may contest some of the data provided within this report. In addition, particularly within the focus group discussions on impacts, participants alerted us to cases involving sexual violence and human trafficking. We have included these cases in this report, but we recognize that follow-up data for these cases is not available so further verification and explanation is limited. While this data is not representative of all land confiscation scenarios in the country, it is illustrative of broad trends, characteristics, impacts and resolution strategies affecting land disputes in conflict-affected areas, and thus is valuable to inform policy decisions going forward.

History of Land and Conflict in Myanmar's Ethnic Regions

To situate this research, this section provides a brief historical overview of land and conflict in Myanmar's ethnic regions over: the colonial period, the post-independence period, the Burma Socialist Party period, the State Law and Order Restoration Council (SLORC) era, and the post-2010 transition period. Although some writers and scholars note that disputes and resentment between the Burman majority and ethnic minorities have existed for centuries in the regions, a suitable point to begin analyzing the relationship of land and conflict is with the colonial period, as this era brought in legal reforms that have significantly impacted the country until today

The British Administration

The British occupation began in 1824 and continued through the first and second world wars until Myanmar achieved independence in 1948. Many of the foundations of the governance structure of modern Myanmar were established in that period. After the annexation of Upper Burma in 1886, the British developed two separate systems of administration for the so-called 'ministerial Burma', the Burman-majority areas including Mon State, and for the 'Frontier Areas', the ethnic minority areas including Kachin and Shan States. Ministerial Burma was governed directly by the head of the executive government, while the frontier areas were largely governed under their own chieftains (Furnivall 1960). The enactment of laws in Ministerial Burma created a legal duality which remains relevant up to the present day. In Ministerial Burma, the 1876 Lower Burma Land and Revenue Act was passed, which mandated that "the land of every cultivator was to be measured up, and he was to receive a statement showing that he possessed so many fields and so much garden land" (ibid). To facilitate the acquisition of land for government development projects, the 1894 Land Acquisition Act was passed, a law that remains relevant today. As these reforms were implemented, the Frontier Areas continued to practice customary legal systems.

Post-Independence Burma

After independence in 1948, the Burmese government attempted to integrate the Frontier Areas into Burma proper. In February 1947, independence leader Aung San and ethnic leaders held the Panglong Conference to create a new union. The uneven outcome of negotiations between the ethnic groups resulted in the 1947 Constitution giving more autonomy to some groups, but not others. Soon after independence, many ethnic groups took up arms against the state. However, the 1947 Constitution established the State as the ultimate owner of all-natural resources and land, later reaffirmed by the 1974 and 2008 constitutions. The 1953 Land Nationalization Act affirmed the state's ultimate rights to the land, allowing it to lease land to tillers on certain conditions.

The Burma Socialist Programme Party

When Prime Minister U Nu agreed to convene a meeting with ethnic leaders in 1962 to discuss their proposal to form a federal system of government, the Tatmadaw headed by General Ne Win carried out a coup on 2 March 1962 that brought Myanmar into five decades of military rule and centralized control (Smith 1999; South 2008). During this era, there was a sharp escalation in conflict in Mon, Shan and Kachin States, as the Tatmadaw forcibly relocated large swathes of ethnic populations under the 'four cuts' military strategy, making large territorial gains (TAF 2017). The Tatmadaw's successful territorial gains coincided with a period of extensive nationalization of land and natural resources.

The Tenancy Law 1963 was enacted which defined farmers as tenants on state-owned land. By the 1960s, overlapping governance forms of land were emerging with customary practices continuing unrecognized, such as the use of the semi-official '10-Kyat Contract' for land transactions, and areas in the former 'Frontier Regions' largely falling outside of the control of the state. Between 1974 through the SLORC period to 2003, the government extracted large surpluses from farmers in land confiscation and forced paddy procurement (Hudson-Rodd et al. 2013). The nationalization policies eventually failed in the late 1980s and the government was forced to alter their economic strategy.

The State Law and Order Restoration Council

In 1991 in a change of strategy as part of a transition to a 'market economy', the SLORC government enacted the Vacant, Fallow and Virgin Land Instructions, or "Wasteland Instructions. These instructions guided Myanmar back towards system of, 'individual land holdings' initiated in the colonial period (ibid). These instructions facilitated the granting of "wasteland" for agri-business concessions of up to 50,000 acres, while the 1989 Aquaculture Law reallocated wasteland for industrial fish farming (Mark & Belton, 2020). State entities, companies, and investors close to the regime were leased large areas of lands across the country. Land confiscations were also driven by the regime's vision of modernization for the country. Businesses that were close to the Tatmadaw benefitted from various licenses to carry out large infrastructural projects, including the construction of dams and highways. Crony capital greatly benefitted from alliances with many foreign investors, particularly China (Scurrah et al., 2015; Suhardiman et al., 2019). According to a study published by the Burma Environment Working Group, during this time, local communities' lives and livelihoods were severely impacted by conflict-related economies (BEWG 2017).

As the SLORC government initiated the transition towards a market economy, the government began to seek ceasefires with EAOs, allowing them to transform into political parties or armed entities under the control of the Tatmadaw in the 1990s. The government signed bi-lateral ceasefires year by year and 40 ceasefires had been signed by 2010 (Min Zaw Oo 2014), including with the KIO and NMSP. Of the 40 ceasefires signed, 35 groups transformed into people's militias or Border Guard Forces (BGFs) and 5 groups refused, including KIO and NMSP (ibid). After these ceasefires, the military and its enterprises, state entities, and favored investors entered border areas to acquire land and other natural resources (Talbot et al. 2016). Some EAOs also relied on natural resources to fund armed conflict, to provide services for populations under their control, and for personal gain.

The Transition to democracy and quasi civilian government

After the adoption of the 2008 constitution which provided for a quasi-civilian government, the SPDC government attempted to transition the country from dictatorship to democracy. The state's ownership of land was once again reaffirmed in the 2008 Constitution (GOM 2008). However, this reaffirmation in Article 37(a) appeared to create tensions with other sections which indicated a transition towards a market economy (Willis 2013). A legal analyst stated that 'this means that only land use property rights may be granted, and that the government reserves the power to rescind these rights' (Oberndorf 2012). To promote this vision, land laws were passed to accelerate the reform process envisaged in the 2008 Constitution, including the 2012 Farmland Laws and the 2012 Vacant, Fallow and Virgin Land Management Laws. These two laws have received criticism for numerous weaknesses, including failing to recognize customary tenure. By January 2016, official data showed that a little over nine million LUCs had been issued or 98.8% of 2012 government targets⁴ and likely more by now. Most of these titles were given out in lowland areas under government control. Titling has been much thinner in conflict-affected ethnic areas, which can be government-controlled, EAO-controlled or jointly controlled by both authorities. In a study looking at access to LUCs in eight villages in government-controlled parts of Kachin State, it was found that villagers' experienced varying degrees of success due to a number of impediments (EMREF and Spectrum 2019). Seven of the villages had household registration rates well below 50%, while only one had a rate of 89%, far below the rates of lowland villages.

At the same time, President Thein Sein in 2012 set up the Commission for the Inquiry into the Confiscation of Farmland and Other Land to investigate the grievances related to land confiscation. They collected data on the following types of land confiscation:

- 1) Confiscation for urban expansion.
- 2) Confiscation for the construction of industrial zones
- 3) The inclusion of farmland under work rights for private companies undertaking agricultural and livestock breeding projects.
- 4) Confiscation by the Tatmadaw as military territory.
- 5) Confiscation for the construction of state-owned factories.
- 6) Confiscation for construction of national projects such as railways and roads

In February 2014, after receiving 35,000 complaints about cases of land confiscation, the Parliamentary Land Confiscation Inquiry Commission recommended the return of 512,204 acres of land deemed improperly seized in 745 cases.⁵ The Tatmadaw had the largest share at 297,127 acres of land across 655 cases, making up 63% of the total land and 94% of the cases filed.⁶ The Commission made little progress because of corruption, lack of standard procedures, insufficient capacity, and erroneous mapping. To continue this work, the NLD government in 2016 created the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands under the executive branch. They continue to face similar dynamics that hampered restitution under the USDP government. However, the government process has given little attention to conflict-affected areas, including the ones studied here. Since the transition, President Thein Sein's government negotiated bilateral ceasefires with ethnic armed organizations still in conflict with the government. By the end of 2012, the government had successfully signed bilateral ceasefires with organizations including the NMSP and the RCSS. Disappointingly, some older ceasefires also broke down including one with the KIO leading to intense fighting in Kachin State. However, by 2018, ten EAOs had signed the 2015 NCA. This paved the way for a series of national dialogues to eventually reach a political settlement. Peace process stakeholders recognized the importance of land issues by including it as one of the six key themes in the 21st Century Panglong. The different but related dimensions of the land issue in Myanmar include the protection of customary land and the need to address land confiscations (Mark et al. 2017).

In alignment with this national vision, a passage of the 2016 National Land Use Policy represents a notable example of a push towards addressing land issues. Section 38 of the policy states that “when managing... restitution related activities that result from land acquisition and allocation, unfair land confiscation or displacement due to the civil war, clear international best practices and human rights standards shall be applied” and commits to “conduct research on best procedures for restitution of rights to land and housing of individuals, households and communities that had to abandon the area where they previously resided due to illegal land confiscation, civil war, natural disasters or other causes ” (NLUP 2016).

Under the umbrella of the NLUP, the government started developing a new National Land Law, which is meant to rationalize the numerous conflicting laws regulating land governance. After very weak logical coherence between the legislative process and the peace process, there is now some initial efforts to include the vision of federalism into the new National Land Law. Given the complexity of Myanmar's history and notably its legal pluralism regarding land, the resolution of land issues through the peace process is an immense task. However, it is crucial given that much of the conflict in the border regions has arisen over disputed lands (Hiebert & Nguyen 2012).

⁴ Data from Union-level SLRD office received January 2016

⁵ “Parliamentary Commission to Resolve Yangon Land Disputes.” Eleven Myanmar, 11 April 2014

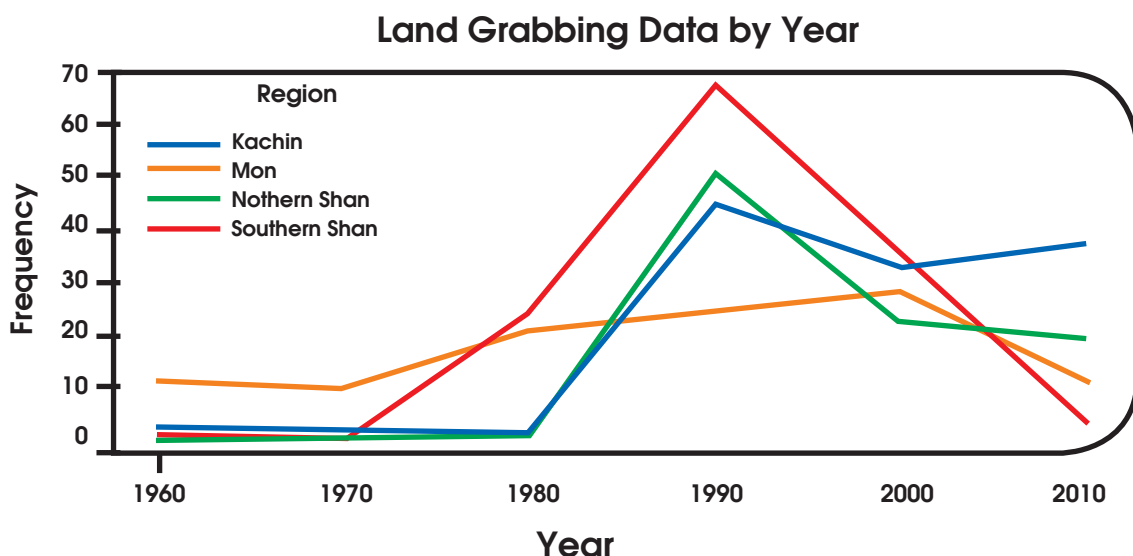
⁶ Official minutes from Union Ministry of Defense to Parliament from the seventh regular session of first Union Parliament, 26 July 2015

Characteristics of Land Grabbing

Frequency and timing of land disputes

Our data focuses on land grabs from the beginning of the military government in 1962 until the completion of this research. Across 67 villages surveyed, a total of 4,195.91 acres were taken in 444 separate cases. This is broken down as follows in acres: Northern Shan State 568.08; Kachin State 807.45; Mon State 1022.75; and Southern Shan State 1797.63. Due to active conflict, the team was not able to conduct research in some areas. When comparing the extent of land grabbing by village, the data showed that 71% of cases were over 10 acres, with a median land grab of 27.5 acres. There was a high regional variance with land grabbing in Southern Shan State generally of smaller areas, but more widespread (Median: 11 acres), with the exception of three villages where over 300 acres of land were grabbed. In contrast, Northern Shan State, Kachin State and Mon State recorded over 75% of villages with land grabbing cases had lost at least ten acres (75%, 81.8% and 100%, respectively). Villages affected by land grabbing in Kachin and Mon State faced particularly large losses of land (Medians of 63.5 and 63.3 acres, respectively).

Land grabbing occurred more frequently in the late 1980s and 1990s. These increases suggest that in our targeted areas, land grabbing has increased alongside the policy of market liberalization in the 1990s. However, this may also reflect the fact that more people are likely to remember and report land grabs from the last 20 years. Land grabbing incidents occurred earlier in Mon State (Mean: 1991) and Southern Shan State (Mean: 1995) than Northern Shan State (Mean: 2000) and Kachin State (Mean: 2005). This data appears to skew towards periods of conflict with land grabbing more likely to occur around periods of armed conflict.

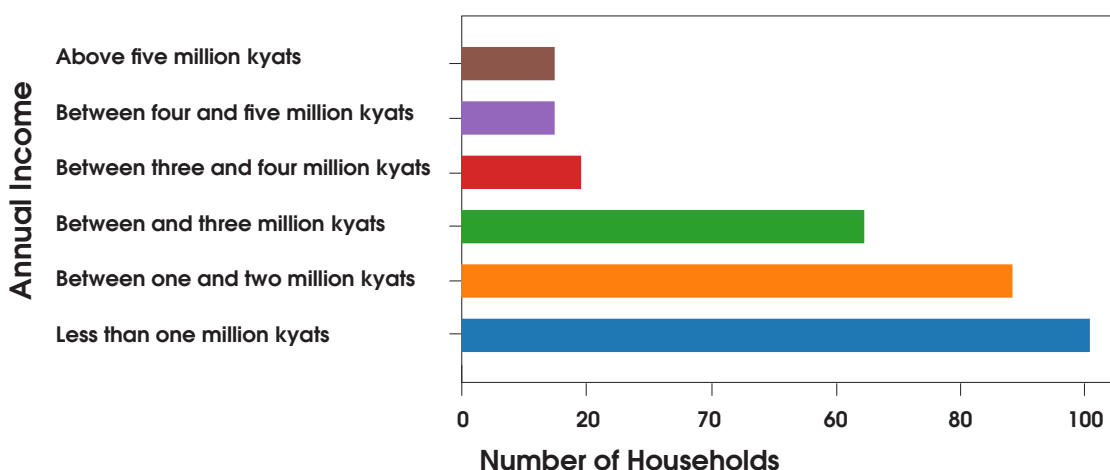


Characteristics of victims and their land tenure

The characteristics of the victims, living in conflict-affected and remote areas, tended towards low educated farmers with large families. Our data showed that in 90% of land grabbing incidents, the victims had not completed high school and in 86% of cases, the victims were married. The average household impacted by a land dispute incident had six members including four dependents.

These large families survived on a low annual income of 2 million MMK, annually.⁷ This works out to approximately 5,000 MMK (\$3.75) daily⁸ (Mean: six persons). To put this in perspective, this amount is for the livelihood of a whole family and works out to be slightly above the minimum wage for an individual in Myanmar or 4,800 MMK. Additionally, these households also faced difficulty accessing credit with only 14% of all households, all located within Shan State, being able to access loans from the Myanmar Agriculture Development Bank—a process that requires form 7.

Income by Affected households



Note 1 - Data excludes respondents in 140 cases who did not reply to this question

On average, each household lost less than 10 acres of land as they were smallholder farmers. For 74% of households, this represented all of their land holdings. The exceptions to this were in Southern Shan State where the Tatmadaw on average acquired 20 acres of land and in Kachin and Mon State where government land grabbing frequently acquired areas of land holding greater than ten acres. The victims of land grabbing incidents had on average held the land for over 20 years prior to the land grabbing incident. Some of the land grabbing victims had claims to the land going back as far as the 1910s, but the mean year of original claims to land was 1976. Prior to the land grabbing incidents, the land owners had either used the land primarily for farming on household plots (56%), plantations (22%) or for shifting cultivation (4%). Most of the victims claimed ownership according to traditional laws (66%). A smaller percentage (8%) had claims to the land through purchasing from another individual land holder, some with legal documents.

⁷ Median calculation from surveys

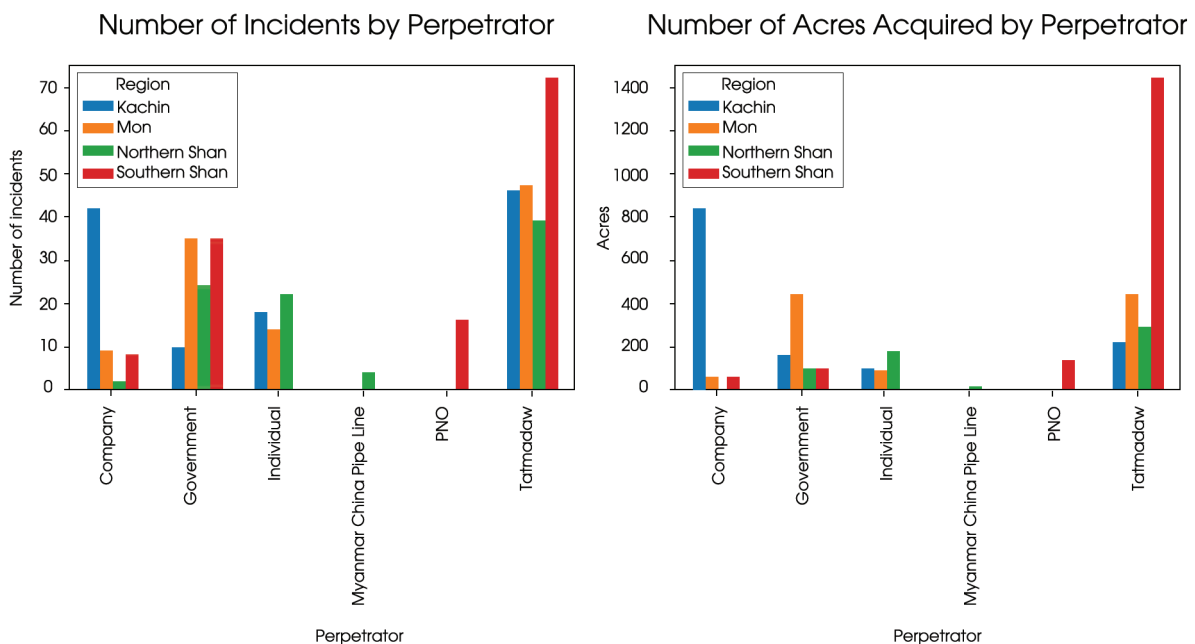
⁸ Using the average exchange rate in March 2020.

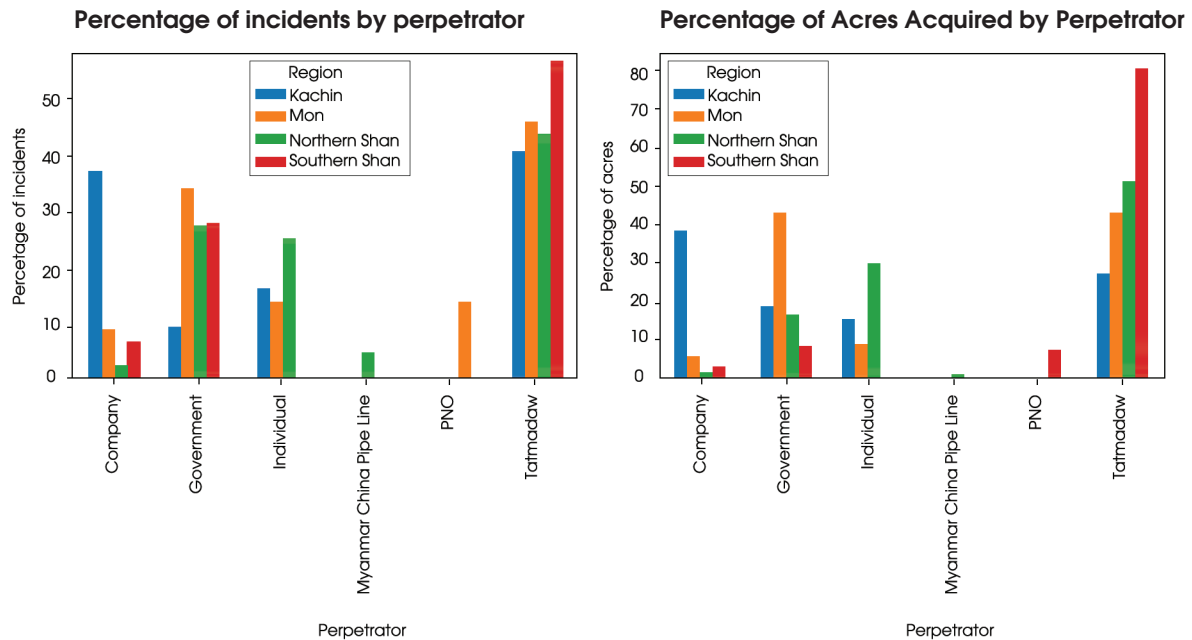
Their claims were in general not supported by written documentation and there was limited understanding of legal requirements. There are several reasons for this: a lack of laws in local languages, difficulties for many ethnic communities to comprehend technical Burmese text, and few groups on the ground to help farmers to access land titles. Our findings showed that victims in only 4% of our cases had kept legal documents. When victims who had not paid tax (52%) in cases were asked for justifications, 91% stated that they were unaware that it was required to pay tax for land, or that it was important to maintain tax records. Thus, though these tax records could serve as a record of land ownership, they were very rarely maintained.

Relationships with power

The victims of land grabbing in our targeted areas identified the following types of land confiscators: the government, the Tatmadaw, companies, and individuals. The Myanmar-China Pipeline was identified as a unique type of confiscator in Northern Shan, while ethnic armed organizations (EAO) were identified in Southern Shan.

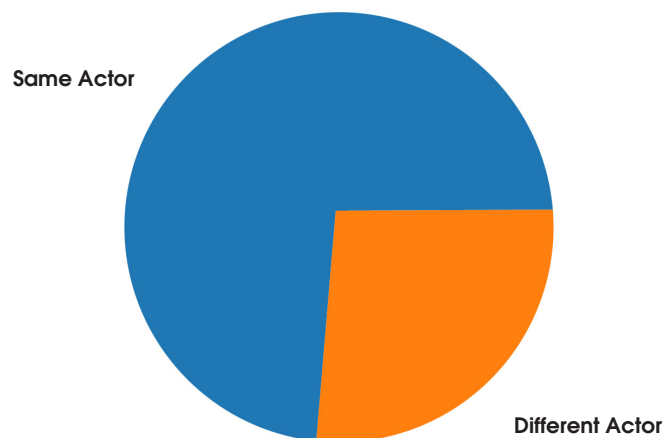
Across all areas where we conducted our research, the Tatmadaw took the most land in terms of total acreage acquired. However, there were variations in the other groups, often with close ties to the Tatmadaw, involved in land grabbing. In Kachin State, the largest grabber was companies. In Northern Shan State, individuals were second to the Tatmadaw in grabbing land. In Mon State, the government was second to the Tatmadaw in the land grabbing. In Southern Shan State, there was more involvement of EAOs compared with other regions.





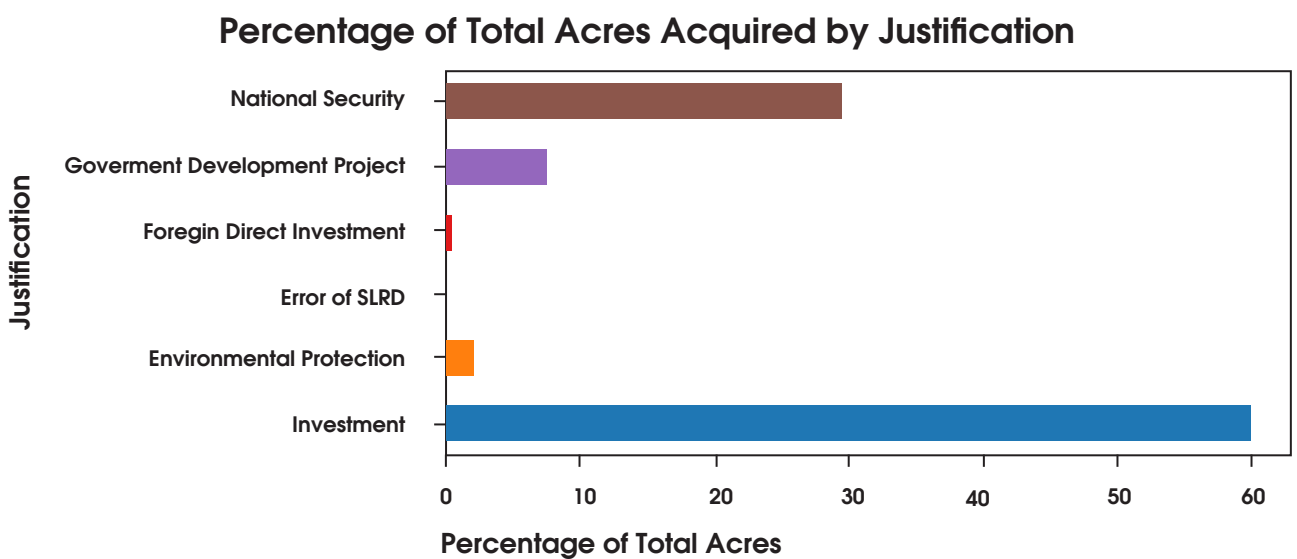
It was common for villagers to report that village administrators and other government officials assisted the Tatmadaw and other powerful actors in their land grabs. These actions, not only, complicate processes for the resolution of land disputes, they also increase distrust in the state promoting identity politics. In one in four cases the original perpetrators were not involved in the land dispute, as land was often transferred from the original confiscator to another owner. This further complicated the resolution of land disputes. It also illustrates the challenges to ensuring restitution is implemented, fairly and inclusively. Restitution processes will often involve more than two parties and will require engagement and negotiations with previous owners. This will stretch the resources of actors participating in restitution.

Land Grabber and Land Dispute With Actor



Justifications for land grabbing

We found three primary justifications for land grabs: investment, national security, and government development projects. Investment projects included salt farms, rubber plantations, and agricultural plantations, including bananas and coffee. These projects were owned by private investors and did not create sustainable employment opportunities for the local people. National security refers to land for military camps and military defence. Government development project refers to infrastructure projects implemented by the government typically for transport or telecommunications infrastructure. Together, these accounted for over 90% of the acres grabbed as illustrated here:

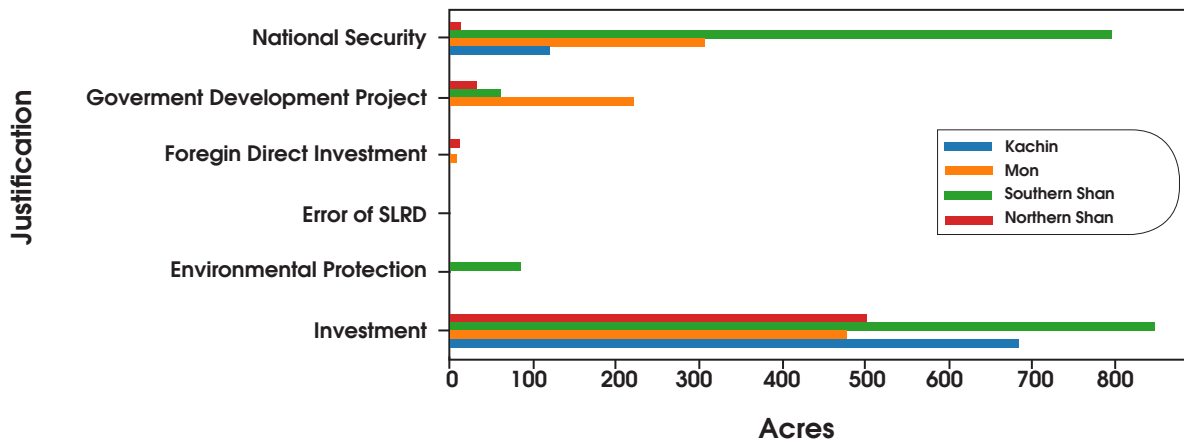


In the cases victims were aware of the investor’s nationality (42% of the total cases), 88% of cases involved investors with Myanmar nationality and 12% of cases involved investors were considered to be of Chinese-Myanmar or Chinese nationality.

Regional Variance

Although the main justifications provided nationwide for land grabbing were investment, national security and government development projects, there were large variations by region. Notably, in Southern Shan State, where the Tatmadaw’s eastern command is based, the Tatmadaw took 1,446.78 acres from a total of 1,787.63 acres there. The majority of the confiscated land, in an area under a long ceasefire with the PNO, was grabbed for national security. There were also large expanses of land grabbed for agricultural investments particularly for coffee and mulberry plantations. In comparison, Kachin State’s investment projects had a focus on projects such as mining (i.e. Aye YarDana mining company took 63.5 acres for this purpose) and banana plantations.

Acres of Land Grabbed by Justification and Region

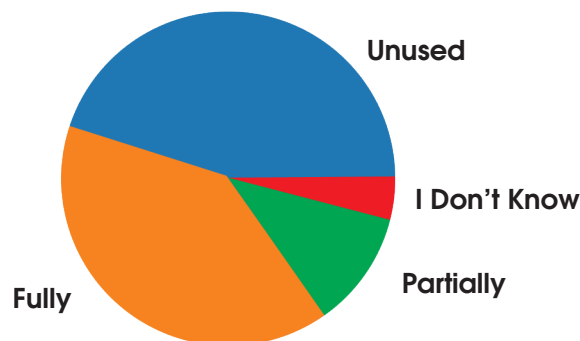


Legality of land grabs

The vast majority of land grabbing is considered illegal by the community members affected. In 95% of cases, victims said they had been forced off their land and they were not aware of any laws used. Only 2% of community members said that their land had been confiscated according to the law. We found that land grabbers did not engage at all in the Free Prior Informed Consent (FPIC) process. However, our surveying found that prior information disclosure and some kind of compensation were more likely to be offered in Mon State.

The idea that land may only be confiscated if the confiscation is necessary is included in Myanmar law and is a widely recognized international principle. However according to community members, we found that after land grabbing a large percentage of land remained unused. Our research showed victims in 45% of cases stated that the land grabbed from them was unused compared to 40% who stated that it was fully used. Of the remaining cases, 11% stated that it was partially used and 4% didn't know whether it was used or not.

To what extent was the land grabbed from you used?

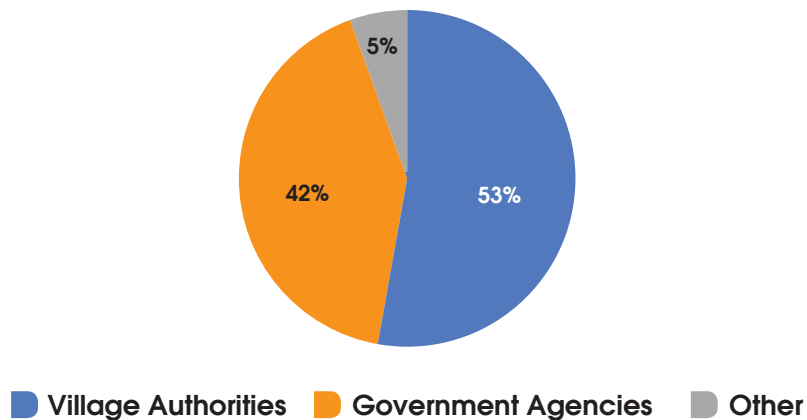


In addition to this, there were multiple cases where land was used, but for a different purpose than what was originally stated. This was particularly true in cases of national security. Often, land confiscated by battalions of the Tatmadaw was not used as military land. The land was far from the Tatmadaw camp and it was used by the Tatmadaw for plantations. In some cases, the Tatmadaw took ownership of the land and forced local people, reliant on continuing subsistent farming, to pay and/ or acknowledge by signature Tatmadaw ownership of the land.

Compensation

Following land grabs, land grabbers offered compensation in 12% of cases. Where compensation was offered, in 77% of cases a negotiation process with community members followed. After receiving the offer of compensation, 28% of the community members accepted it. Per the figure below, although the funds came from those taking the land, the provision of compensation was made mostly through government (41.7%) or village authorities (52.8%). With the exception of one case (out of 444), there were no cases where victims considered that the compensation offered was sufficient. In the case where the respondent was satisfied, land was grabbed to construct the Myanmar-China Pipeline in Northern Shan State. Overall, there was insufficient information provided about compensation and land grabbing victims were not provided with compensation at a standard price. Victims in 80% of cases stated that they received no information and only 5% stated that there was a standard price for compensation.

Provider of Compensation



Access to legal redress

Communities received assistance from CSOs/ NGOs in 33% of cases and assistance from lawyers/ activists in 25% of cases. Community members tried different channels to get their land returned:

- Submitted a complaint letter to the Township Authorities: 72%
- Submitted a complaint letter to the District Authorities: 51%

- Submitted a complaint letter to the Regional Authorities: 53%
- Signed a solidarity statement: 61%
- Negotiated with land grabber: 29%
- Held a demonstration: 23%

Victims in a total of 100 cases said that they participated in public demonstrations following the land grabbing. These included 45 in Kachin State, 20 in Mon State, and 34 in Southern Shan State, and 1 in Northern Shan State. For 99% of all cases surveyed, these actions were not sufficient to resolve their cases. As well as this victims in 52 cases (12%) faced prosecution for their actions to get land returned. Official Efforts at Land Restitution Many groups in Myanmar have an inherent distrust in the authorities as they remain without legal rights to land. The laws and procedures that govern Myanmar's land are weak, inconsistent with the ground situation, and lack protections for customary land. In recent years, although local authorities and parliamentary representatives have taken actions to resolve land disputes, their actions are limited in strength and coincide with reoccurring misuses of power.

At the same time, the present legal framework has enabled land grabbers to sue the same farmers from whom they grabbed the land. In addition, the government fails to acknowledge land grabbing that occurred prior to 1988, making it nearly impossible to address older cases.

Our research found that government protection of community land has been weak for several reasons. First, departments have not made sufficient outreach to rural households to increase their ability to use laws to protect themselves. In other cases, involving customary land, the complainants had no protection under the law. Second, while international law recognizes customary land claims, Myanmar does not do so beyond the NLUP. Third, corruption is endemic. An example of this is village leaders and government departments suspiciously receiving Form 7 within one week after trading village communal land. Fourth, even when the government tries to help communities, their actions often have little influence on the Tatmadaw, which implements its own policy of land ownership. In addition, land confiscations involving the EAOs would need to be addressed through the national reconciliation process.

Instead of law facilitating restitution for farmers, law has been used to further oppress them. This often culminates in the state raising criminal lawsuits against the complainants, who had already lost land. This happened, most notably in Southern Shan State, following a land grab by the Tatmadaw. Eighty-one farmers returned to work on their original land after projects were not implemented and soon faced lawsuits under Penal Code Section 447. The accused farmers, on top of facing a difficult economic situation, attended over 60 court appointments spanning almost two years. After all this, one woman was sentenced to a year in prison with hard labor, and the other farmers were sentenced to prison and fined. Therefore, victims of land grabbing cases not only lose their farmland, they suffer several times over from criminal lawsuits brought against them.

Community leaders as part of the solution or the problem?

Many village leaders were not able to protect the land in their community, and in some cases, even facilitated land acquisition for personal benefit, such as receiving bribes or taking a share of profit from the land sales. These kinds of actions are common in villages affected by armed conflict between ethnic armed groups and the Tatmadaw. In these “black zones,” village leaders have full authority over the affairs of the village. As such, armed actors often try to influence these local authorities.

In some cases, despite having received advanced notice of land confiscation, village leaders did not notify the villagers. Village leaders tend to be locals who speak local languages, as well as Burmese. However, many villagers are not well-educated and speak poor Burmese, making them quite defenseless against the coercive pressures put on them. In Mon State for example, the Tatmadaw and land records staff prevented farmers from cultivating on their land without proof of ownership, after which the land was cordoned off. Farmers were often forced to sign acknowledgements denouncing their ownership rights. To make matters worse, perpetrators often do not express any concern for the various forms of distress forming in communities. In Kachin State for example, there are cases of destruction of village sacred land caused by excavation by mining projects.

Local authorities have also been involved with land restitution processes, as many of them sit in the Land Reinvestigation Committee. Complainants stated that they submitted official complaints, but they did not hear anything back. Later, local authorities called the complainants in to intimidate them. Many people asked for basic income support from village leaders, but rarely received it. The lack of support was generally justified due to limited resources. However, many villagers reported that village leaders were, in fact, colluding with business people. When land disputes arose, village leaders’ adjudication often favored investors and did not take into account the will of the locals.



Impacts of Land Grabbing

Basic survival

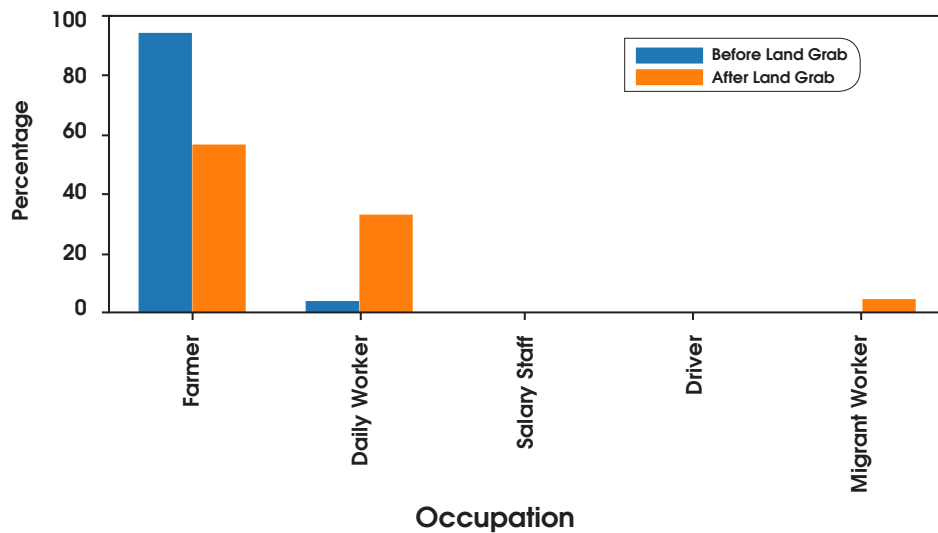
The complainants in land dispute cases expressed that the most serious impact of land grabbing was the loss of their livelihood. After land grabbing, victims in 89% of our cases stated that they struggled for daily survival (93% for women). Victims of three in four of our cases had no land left after the land grabbing incident, while victims in 48% of our cases said that land grabbing caused rising unemployment in their areas.

Within Myanmar and particularly in ethnic areas, many victims of land grabbing are subsistence farmers. Most families affected by land grabbing have to find work with a reduced income as daily laborers, in the fishing sector, as market vendors or on other farms. Women were more likely to become daily laborers than men, with daily laborers amongst men increasing by 20% and amongst women by 40%. Though nationally, there was a sharp increase in daily workers after land grabs, this was particularly true of Kachin State where daily workers outnumbered farmers among land grabbing victims. Since losing their land, most moneylenders do not trust them enough to take out loans and when they do borrow money, they often find themselves in a cycle of debt.

Landlessness and unemployment have forced communities to move their occupations to more insecure work such as migrating to neighboring countries, a factor recognized by victims in 22% of our cases. The majority of migrant workers in our targeted area were younger males, both pre and post confiscation, while it was more modest among women, rising from less than 1% to 3% after confiscation occurred. Migration was thought more likely to happen in Mon (30%) and Southern Shan States (32%) than in Kachin (8%) and Northern Shan (15%). When comparing survey responses on occupations prior to and following land grabbing, our data showed that victims of land grabbing in Mon were more likely to become migrant workers than other regions. Migrant work among victims in cases

rose from 0% to 16% in Mon State compared with the total average of less than 1% to 4%. In Mon and Shan State, migrants tended to go to Thailand and Malaysia to find work. In contrast, most of the young people in Kachin State sought daily wage work either in Waingmaw Township's tissue culture banana plantations, or mining projects located in Kyipwe, Hpakant and Tanai regions. Some traveled illegally to Thailand or Malaysia. Only a very small number of those workers had a good experience, some workers ended up losing contact and are captured by police and imprisoned.

Percentage by Occupation (Pre & Post Land Grabbing)



Declining social capital

Victims of land grabbing face numerous social problems. Many families are not able to provide a good education for their children and cannot meet the healthcare needs of their family. Due to increased stress, conflicts and drug use emerge within some families. Some fall into deeper problems when they have to face criminal law suits. Moreover, in some villages, land grabbers confiscated land used by Christian villagers for cemeteries, leaving villagers nowhere to bury their dead.

Land loss directly impacts children's education as reported by victims in 40% of cases. In Mon State, when families are no longer able to earn sufficient income, children are forced to leave school to find work in rubber farms, rubber markets and as gardeners. Some of the young people migrate for work. Many young people in Kachin State travel to neighboring China illegally, often facing arrest and imprisonment. Many children also resort to drug use, when they fall under bad influences.

The impacts of land loss to health can be severe. In Kachin State, some of the victims of land grabbing move to work in the amber mines, gold mines, and the Hpakant Jade mine. Far from their families and suffering from the tiring work, they become drug users, with high fatality rates. Some of them as a result of their reduced quality of life, experience various lung infections or transmit HIV/ AIDS. There are also many who arrive to work as daily workers

on the banana tissue culture plantations. Due to the unregulated use of fertilizers on the fields, they suffer from dizziness, headaches and migraines.

Many victims of land grabbing across Myanmar are sued under the criminal law. Some of them have been charged with criminal offences and some are still facing court cases. One woman in southern Shan State was sued by the Tatmadaw and attended several court appointments before finally being sentenced to one month in prison. After being freed from prison, they suffer impacts to their mental health and social status from community discrimination as they consider them a convict. Mental health problems among victims of land grabbing across the four regions was prevalent (58.1%). The number could well be higher as complainants reported far fewer mental health issues in Kachin State, potentially due to cultural factors preventing citizens speaking out (Kachin was 34%, while other regions averaged 66%). Many families also suffer from depression, alcoholism and drug use. As a consequence of worsening family economics, conflicts emerge within families.

Environmental destruction

The environmental impacts of land grabbing cases differed according to the use of land after the land grabbing occurred. They included climatic impacts associated with deforestation, impacts to biodiversity from pollution and impacts to community livelihoods from environmental degradation.

In mountainous areas with large forest cover, community members reported that land grabbers deforested their lands and this has impacted the climate. Community members in Southern Shan State noted that the deforestation occurred after EAOs signed ceasefires with the government. In Kachin State, community members stated that the government grabbed forest land protected by them for generations under customary land use management systems. This land subsequently became deforested for the purpose of investment projects. The result of this deforestation was hotter summers, colder winters and increasing unpredictability with regards to rainfall causing in particular increased flooding.

As well as deforestation, land grabbers implemented their own investment projects. Our data showed investment projects included dams, gas pipelines, tissue-culture banana plantations, rubber plantations and salt farms. These types of projects contrasted with the traditional forms of small-scale agriculture practiced by communities in the mountainous and coastal regions. These projects impacted on the environment in different ways. Around the tissue plantations in Kachin State, water pollution caused a scarcity of water resources, a reduction in fish species and a loss of land and aquatic species. The community believes this is due to insecticides and pesticides used in the project. Community members also raise concerns about the air quality from these products and increasing air pollution in their regions. Around the coastal salt farms in Mon State, the soil along the coast is drying out and marine species are being depleted. Community members said that they can no longer continue with their traditional forms of agriculture, as the soil and water flow has changed. In another village close to a salt farm, construction on the project site has caused the water to rise and spill out into neighboring farms with salt water. After this flooding, local people may no longer plant seasonal crops as the soil is destroyed.

When erosion of the land occurs, this creates further difficulties. In Mon State, victims in 64% of cases stated that there was soil erosion on their land. This was also the case in 20% of cases in Northern Shan State. These multiple forms of environmental degradation all have a secondary impact upon the community and force members into competition for land, which can create more conflict. All of these factors make it difficult even in the case of restitution to restore the community members to their previous standard of living.

Proliferating gender inequality

Compared to other households, women-led households are facing more severe impacts from land grabbing to their livelihoods, social status, work, education and health. There is a high level of depression among women who face incarceration as a result of efforts made to resolve land disputes. Local people who are involved in land dispute cases with the military especially worry about how to guarantee the security of young women. As well as this, there is weak life security as women migrate to other countries for work due to scarce job opportunities. Women were more concerned about daily survival struggles than men with 93% to 85% answering yes to the question.

Women affected by land grabbing struggle to survive and provide for their family livelihoods and their children's education. Women were more likely to become daily laborers than men, with daily laborers amongst men increasing by 20% and amongst women by 40%. In particular, young women in Kachin State increasingly travel to find work in China illegally. Similarly, in Shan State (North and South) and Mon State, women are increasingly migrating illegally to Thailand. As women-led households struggle with migrant or casual work, they can no longer closely take care and school their children, and young people transition to drug addiction. Additionally, some of the children of families affected by land confiscation leave from middle school and have to help support their families near to their village especially by weeding, clearing and collecting peanuts.

Half a percentage point of female victims in cases reported their occupation as migrant work prior to land confiscation. After land confiscation, the percentage of female victims in cases reported their occupation as migrant worker rose to 3%. (although this could be underreported given that migrant workers were absent). The information on migrant workers showed that general opinion in each area of impacts recognized that migration was more likely in Mon (30%) and Southern Shan States (32%) [Kachin (8%) and Northern Shan (15%)]. In Kachin State, specifically, many women have been trafficked by individuals who say they will help them migrate to China and Malaysia. In addition, some of the Mon women who traveled to Thailand had to perform insecure work. After some time, they returned to their region.

Pregnant women cannot look after their health well after land grabs. In Northern Shan State, one female victim of land grabbing could not travel to the hospital or clinic to deliver, and without medical treatment, both mother and son lost their lives during childbirth. In some families, following land grabs, victims suffered from depression and, consequentially, developed heart disease and high blood pressure. In Mon State, there was also a similar situation with a pregnant woman where one month after birth, due to the livelihood

challenges faced by land grabbing, mother and child fell ill from nutritional difficulties. Another woman in Kachin State immediately after giving birth in a delicate health state, lost her sight because of constantly straining her eyes to filter out rocks from low-quality rice (yellow rice) sold by the Tatmadaw.

Female land grab victims can also face legal issues. This can impact on their human dignity and their social identities. In Southern Shan State, female farmers imprisoned under the law are facing humiliation and discrimination within their community until now. A further consequence of land grabbing is that there are no guarantees of safety for young women. In a community in Mon State, military land is located around the village and the Tatmadaw ordered all of the women to help them as volunteers with work such as drawing water, carrying firewood, tossing rice and maintaining fences. When some young women were collecting betel nuts and finding vegetables within a garden, some soldiers came in and threatened them with military knives. One woman fled in fear and the other women became fearful for their safety.

Factors in amicable land dispute resolution

Through a multi-year program in the four regions, BDM provided land law training, legal aid, and supported the resolution of cases through negotiations together with other CSOs, affected farmers, and authorities. Through this process, BDM identified six disputes that have been addressed to the satisfaction of the victims. These cases include disputes involving the Tatmadaw, companies, and village authorities, and each dispute was resolved through different processes. In many cases, their land title was not fully secure, but the authorities recognized their claims and facilitated access to some form of legal documentation i.e. form 3 or form 7, if they did not have legal documentation to prior to the land grab.

The six successful cases include:

1. Southern Shan State: Farmers were paid 1,000,000 MMK per acre for a field confiscated by an EAO in Taunggyi Township
2. Southern Shan State: In the Pa-O self-administered area, the Tatmadaw returned 200 acres of land to the original farmers.
3. Northern Shan State: In Nawngkhio Township a farmer who had twenty acres of land confiscated by a businessman was provided the right to reclaim the land.
4. Northern Shan State: In Hsipaw Township, farmers' regained access to seven acres of land confiscated by the Tatmadaw, proposed as an agricultural business project.
5. Mon State: In Paung Township, a militia leader illegally grabbed the land of a farmer holding form 7 in their name. The farmer regained this land through the land management committee.
6. Kachin State: In Waingmaw Township, villagers received compensation of 6,500,000

MMK for 26 acres of land confiscated by a banana plantation company. The forestry department is also assisting farmers to apply for community forestry on additional land in their village.

By reviewing these processes, we can see that supportive factors involve public participation, authorities' cooperation, context-appropriate methods, media coverage, and external support.

Communities are empowered and persistent

Farmers approached village elders and village chiefs for advice. After that, they met with the village tract administrator with the advice they received. Complaints were submitted to the township and state departments from 2012 to 2014. In total, farmers in these 6 cases communicated with 24 departments, including the Ministry of Home Affairs. They also made frequent visits to the DALMS and GAD to ask questions. In addition, some farmers personally traveled to meet with the upper and lower parliaments (Pyithu and Amyotha Hluttaw) in Naypyitaw to lodge complaints. These farmers were able to use the legal trainings provided by local CSOs to enhance their messaging at workshops and press conferences.

Authorities are cooperative

The amicably resolved cases frequently involved direct cooperation between communities and authorities from government, Tatmadaw or EAOs. In some cases, government authorities at different levels carried out investigations into the land dispute cases. In a case in Southern Shan State, the township GAD conducted an investigation into a land case. After this, they advised to cancel the investor's proposed project on the land, to which the investor agreed. This example shows how government officials can successfully mediate land disputes. In other cases, complainants managed to resolve disputes through direct meetings with the perpetrators. In Waingmaw Township of Kachin State, a company confiscated land for a 15-year investment on land customarily managed by farmers since 1963. After the forestry department investigated and found that the land was not protected forest, authorities advised complainants to submit a cancellation request for the project. With their mediation, the company agreed to provide compensation for the loss of 26 acres to eight farmers.

Context-appropriate negotiation

Different types of methods have been used to amicably resolve land disputes in ethnic areas. The most effective negotiations are those that are appropriate and fitting with the context of the land dispute. The negotiations included some combination of the following stakeholders: complainants, EAOs, businessmen, perpetrators, and government officers.

In two disputes, complainants were able to resolve their disputes through direct negotiations. In Southern Shan State, an EAO met and negotiated with complainants on four occasions. Although the EAO proposed to return the land at the first meeting, additional meetings were needed to work out the differences in the size of land and numbers of people affected. Similarly, in Paung Township in Mon State, community members met and negotiated with the people's militia leader several times to resolve the land dispute. The process began with community members working with civil society to document with photos the land grabbed

from them and to send the data in a letter to the township-level DALMS office. After that, the state-level DALMS office ordered the return of the land. The township-level DALMS office held three rounds of negotiations before the land was returned.

In Nawng Hkio Township in Northern Shan State, community members appealed to every level but received no reply. After this, they faced lawsuits for returning to cultivate the confiscated land. They soon took out loans as they faced the cases. Later, they went to directly negotiate with the land confiscators. Through direct negotiations, they were able to have the lawsuits dropped and they were able to return to working on the land.

In Hsipaw Township in Northern Shan State, community members shared their land disputes at regional community-stakeholder experience sharing workshops on land dispossession. At these workshops, although they did not have written evidence, they were able to provide oral testimony on their experiences. CSOs collected and presented the recommendations to multiple stakeholders including MPs and relevant departments. After receiving the issues, township officials called the community members on over twenty occasions and after one year their rights to work on the land were returned.

In Waigmax Township in Kachin State, multi-party negotiation was an effective strategy. In the case of land grabbed for a banana plantation, communities met with the township GAD, an officer from the local company operating the banana plantation, and government officers.

Media attention

Coverage of land dispute issues in national media, local media and social media (Facebook) increased public awareness of land disputes and has supported the resolution of some farmer's cases. This is especially true in the case of land disputes in Mon State, where because of wide sharing on a Facebook page, there was better understanding amongst the public about the land dispute process; government officials working on the procedures were more careful; and the cases attracted more external assistance. In Kachin State, the Myitkyina Journal and the local media shared step by step information about the process of resolving land disputes and updates on local cases in Kachin State. At a press conference held by the 88 Generation students in Myitkyina, farmers were also able to inform local media about land disputes.

Assistance from external networks

Complainants involved in cases of successful resolution tended to participate in wider networks and have access to a variety of actors, ready and willing to provide them with assistance. Village elders with knowledge of existing laws and civil society organizations facilitated these networks. Resolved cases across the country saw external civil society actors providing support, guidance, legal aid and awareness raising activities. One example is in Southern Shan State where the township authorities of the NLD party, officers in legal aid networks, and officials in the Shan State Generation Forces worked together to resolve land disputes.

Recommendations: Resolving and Preventing land conflicts as part of an inclusive National Peace Process

While this data is not representative of all land confiscation scenarios in the country, it is illustrative of broad trends, characteristics, impacts and resolution strategies affecting land disputes in conflict-affected areas, and thus is valuable for policy making. Based on this research, our team developed recommendations for government/ Tatmadaw (G), non-state authorities (NS), civil society groups (CS), and donors (D).

- (G, NS, CS, D) Integrate land dispute resolution as a cross-cutting issue in the formal peace process: Numerous land and natural resource conflicts are ongoing as the peace process unfolds. Yet, there is no space in the formal peace process to address these issues. Link land across the sectors of politics, economics, social affairs and security.
 - (G, NS, CS, D) Ensure an immediate end to victimization and incorporate the concerns of victims of land grabbing in conflict-affected areas as part of the peace process: Collecting data and listening to the perspectives of the victims will assist in overcoming obstacles to peace and foster trust between citizens and state.
 - (G, CS, D) Strengthen existing government processes for handling land confiscation:
5. Increase democratic representation of civil society leaders into multi-stakeholder committees at each level of government to ensure that decision-making processes are as accountable as possible.
 6. Have stronger parliamentary oversight of the government bodies presiding over land

confiscation cases to ensure that reclaimed land is returned to local communities, and not redirected to third parties.

7. Increase the transparency of the land restitution process: All case data should be made public at the township level, (i.e. number of cases initiated and resolved, total acres disputed and returned, the status of each case, etc.)

8. Address multiple original and secondary claimants: Prioritize land return for original claimants, but also compensate the needs of secondary users

- (G, CS, D) Government should continue its efforts from 2017 to reclaim land that has been leased out, but not used for productive purposes, and redistribute this back to the communities that had originally lost these lands, or other landless/land-poor cultivators. This land should be prioritized for land titles or form 7s.

- (G, CS, D) Ensure that all future land laws are pro-poor and secure citizens' rights to land: Specifically, the new National Land Law should be developed in alignment with the 2016 NLUP, which specifically mentions recognition of ethnic nationalities'

ancestral land. Consult with stakeholders in the peace process and local communities likely to be affected by changes to these laws.

- (G, CS, D) Acknowledge and provide legal protection for customary land practices: This should be done in partnership with communities practicing customary tenure systems, who are the experts. The law must have clear procedures for securing legal recognition of customary land. It should link coherently with other laws, especially the VFV Land Law and Land Acquisition Law.

- (G, CS, D) Protect groups vulnerable to dispossession due to punitive land laws:

3. Removal of prosecution of 'trespassers' in 2018 amended VFV Land Law: The current punishment procedures within the amended VFV law threatens communities for using their own land if it is classified as VFV, but unregistered. This is extremely unreasonable in light of the fact that information on the classification of VFV land is extremely limited, with many communities unaware of whether their land has been classified as VFV or not.

4. Protections for displaced persons: special clauses should be included in the Farmland Law and VFV Land Law to ensure stronger protections for IDPs who are not able to defend their claims to land

- (G, CS, D) Ensure the Land Acquisition Law is just: The law must ensure that communities are treated fairly when land is acquired for a public purpose, based on a narrower and clearer definition. It should follow FPIC, ensure fair market compensation, and restore affected people to their original or a better standard of life.

- (G, CS, D) Demarcation of customary land: In the interim while a strong customary land law is drafted, government should partner with civil society groups to demarcate communities' customary land boundaries, while taking into account the lessons learned from pilot projects in order to mitigate conflict within and between communities.

- (G, CS, D) Prioritize the registration of land in ethnic communities: Until now, the gov-

ernment has not demonstrated the will nor allocated sufficient resources to supporting ethnic communities that cultivate on permanent plots to gain secure tenure under the Farmland Law or VFV Land Law. This should be prioritized by the government going forward, but not enforced on communities that use more communal farming systems, such as shifting cultivation.

- (G, CS, D) Land restitution for IDP and refugees: Plan for dignified returns of IDPs and refugees, which consider their preferences for returning to original land plots, the option for resettlement to new land, and reintegration support services, i.e. livelihoods support and legal documentation, and conflict mitigation within communities.
- (G, NS, CS, D) Do not prioritize an “economic development first” agenda over substantial political settlements in active or recent conflict areas: Large-scale projects should be put on hold during the interim period, unless they are deemed to provide crucial local benefits, based on consultations with key stakeholders.
- (G, NS, CS, D) When developing projects in conflict-affected areas, use FPIC, and conflict-sensitive responsible business practices and rigorously apply international human rights standards and due diligence. At a minimum, business activities should meet or exceed Myanmar regulations, as well as relevant EAO policies.
- (G, NS, CS, D) Consider establishing multi-stakeholder State and Region-level committees (including government, EAO, community representatives, and private sector), to coordinate decisions on aid, development and private sector investments.
- (CS, D) With a view to supporting interim arrangements in ceasefire areas, and where appropriate, support increased collaboration between government and local (EAO and CSO) service delivery systems, in the areas of land and forestry governance. Where relevant, support the strengthening of EAOs’ land and forest governance, so that these can be delivered in a responsible manner.

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