

Myanmar: Conflicts over Land in a Time of Transition

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Secure and just land tenure, and sound management of land and natural resources are crucial to easing conflicts between farmers, the State, and extractive industries. This paper underlines that Myanmar cannot hope to achieve inclusive social and economic development without a just and comprehensive framework that protects the land rights of small farmers, ethnic minorities, and the poor. A lack of participation and transparency in land management, coupled with legal and institutional weaknesses that work in favour of big capital rather than small farmers and the rural poor, poses a major challenge to the country's social and economic reform programme.

Myanmar's decades of isolation from the international community were marked by authoritarianism and a great deal of corruption and mismanagement by the military-led government. Failed economic development policies, very low per capita gross domestic product (GDP), and underdeveloped economic and social conditions left Myanmar as one of the least-developed countries. It is currently ranked 150 on the United Nations Human Development Index (out of 187). The Integrated Household Living Condition Assessment¹ (IHLCA) shows that one-fifth of the children in poor families are not enrolled in primary schools and that the child mortality rate is higher than in comparable countries in the region because of the lack of skilled health workers (UNCT 2011). Poverty among the rural population is 29%, roughly twice that in urban areas at 16% (MNPED and UNDP 2011).

Of Myanmar's population, 70% is rural and concentrated in the agricultural sector. Thus, reducing poverty by ensuring the livelihood stability of rural farmers is the primary challenge the country faces, and the key to this is access to land. This, in turn, calls for an efficient and socially acceptable distribution of land that can sustain consumption as well as generate income. This has proved to be major challenge, especially in the light of the country's reliance on revenues from extractive industries, especially mining, oil, and gas. Ordinary citizens rarely see the benefits from these resource sectors. The Revenue Watch Institute ranked Myanmar the lowest among 58 countries in resource governance (2013).

This brief paper maps the political economy of the conflict over land in Myanmar, locating it within the dynamics of a country in transition to a full-fledged democracy. Following a brief discussion of the context of political and economic reforms, it outlines some of the major land-related conflicts and their causes. It then critically examines how the legal and regulatory framework on land continues to generate conflict. It concludes by outlining the broader political significance of resolving land-related conflicts.

Reforms under U Thein Sein

Myanmar initiated its political and economic reform process in 2011 following the introduction of a parliamentary-style civilian government, primarily made up of former military officers. While the previous regime denied that poverty existed in the country, the new government acknowledged the problem and made addressing it a key economic policy priority. As part of the first wave of political reforms, the government of President U Thein Sein took significant steps towards releasing political prisoners and reaching preliminary ceasefire agreements

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with ethnic armed groups. In addition, Daw Aung San Suu Kyi and her political party, the National League for Democracy (NLD), were re-admitted to mainstream politics and contested a by-election in April 2011, winning 43 of the 45 seats. In 2012, the government abolished direct media censorship.

The highlight of the second wave of reforms in May and June 2012 was the Myanmar Planning Commission approving a Framework for Economic and Social Reforms (FESR). It covers public finances, monetary policy, trade and investment, private sector development, food and agricultural development, health and education, communication services, and infrastructure development programmes. Also included were measures aimed at promoting the emergence of an effective, efficient, and transparent system of governance. At a national workshop on the rural development strategic framework, the president stressed rural development as a key area of focus and emphasised food security, poverty reduction, and sustainable economic development (Livelihoods Fund 2013).

Notwithstanding these stated commitments to political, economic, and social reforms, Myanmar faces a major challenge on land use management, especially safeguarding the security of tenure and property rights of smallholder farmers and rural communities, particularly in ethnic-minority states and regions. The political reforms and openness have meant accelerated economic activity and an inflow of foreign capital seeking to exploit natural resources. This is in a context characterised by (a) a regulatory and institutional framework too weak to protect the interests of marginalised rural and ethnic minority communities; and (b) a history of poor land use management dominated by militarisation and undermining the rights of rural communities to land. This has resulted in an explosion of land-related conflicts in the country.

Overview of Major Land-Related Conflicts in Myanmar

Myanmar has traditionally relied on its agricultural sector. Access to land is vital for households relying on agricultural activities for production and daily consumption, and it is directly linked to levels of poverty. Landless farmers account for one-third of the country's rural population. Given this, access to land and the need for inclusive and just land use management has been recognised as central to the process of reform and transition in Myanmar by several governmental, non-governmental, and intergovernmental bodies (Displacement Solutions 2012).

Under the former military government, seeking revenue through enhancing agricultural growth by leasing, renting, and selling land to foreign companies was a regular feature of policy. Millions of acres of farmland were granted to large-scale agribusiness enterprises between 1990 and 2012 in line with the "Burmese Way to Socialism" practised by Ne Win. According to a 2010 report of the department of agricultural planning, 1.75 million acres of farmland were granted to 216 companies. Land was also routinely confiscated to extend towns and villages for military operations and commanders established industrial zones, railways, and bridges in the name of improving productivity, leading to further land seizures.

Land use, as well as claims over land, has been significantly affected by three other factors. First, in most of the upland areas of the country populated by various ethnic minority groups, land is owned communally and used, occupied, or possessed under a customary land allocation system. Second, numerous conflicts involving the state and ethnic minorities, pre- and post-2011, have led to repeated waves of mass displacement of people. For instance, 1,43,000 people have been displaced by communal violence in Rakhine state alone since June 2012, while some ethnic minorities in the east of the country have been displaced for decades (Transnational Institute (TNI) 2013). Third, as discussed below, there are many serious shortcomings in the legal and regulatory frameworks governing land use — a legacy of military rule, which failed to consider the complex realities on the ground.

As with other countries that have experienced a transition from a military regime or colonial rule, such as Zimbabwe, South Africa, or Indonesia, Myanmar faces multiple challenges on the distribution and governance of land. That the country is also simultaneously opening its doors to the global market only aggravates these problems. Thus, along with peace negotiations and constitutional reforms, disputes connected to land-grabbing remain one of the most contentious issues confronting the new regime. Large-scale disputes over land are common across all the states and regions, triggered mostly by the confiscation of land by the military, various government ministries, or departments, and by corporations engaged in agribusiness, extractive industries, and large-scale infrastructure projects.

Often these causes coexist, as in western Rakhine where communities relying largely on upland cultivation and forests confront new cases of land-grabbing while problems related to past confiscations and unresolved land ownership remain unsolved. With the military confiscating land in these upland areas, communities have been subject to livelihood and food insecurity. More recently, land-grabbing in western Rakhine is due to the extension of agribusinesses, and industrial and other large-scale projects. As a result, farmers in these areas have been forced to relocate (*Asia Times* 2013).

Land-grabbing has been facilitated by the absolute power vested in the government to reclassify or change the status of land. How this has proved beneficial to agribusiness corporations is illustrated by two cases from Shan state and Sagaing region in the central-eastern and north-western parts of the country respectively. Both cases involve nearly 50,000 acres of sugar cane plantation and hundreds of farmers (*Popular Journal* 2012). These lands, though treeless, were officially classified as "forest land" and until 2004 farmers grew sugar cane paying 100 kyat per acre as a land use fee to the Ministry of Forestry. But in 2004 the government suddenly reclassified these lands as "vacant" and handed them over to agribusiness companies, making the farmers daily wage labourers.

Foreign investment in extractive industries and large-scale infrastructure or trade-facilitation projects are among the most significant causes of land-grabs in Myanmar. Two major cases of conflicts over land involve a hydropower project in the Myitsone area of Kachin state and a copper mining project in

Monywa district of Sagaing region. Both projects, promoted by Chinese investors, have seen disputes over forced relocation, compensation, sharing of benefits, and environmental concerns (*Guardian* 2014). The Myitsone hydropower project, launched in 2009, is a joint venture between the China Power Investment Corporation (CPIC), Asia World Company, and the Ministry of Electrical Power.² It is the largest of seven dams proposed to be built with Chinese investment on the Irrawaddy River. The project has met with fierce local resistance not only because of the forced relocation of more than 60 Kachin villages, including sacred sites, and significant adverse environmental effects, but also because its primarily goal is to supply power to China's Yunnan Province.³ In 2010, the resistance escalated. Following bomb attacks on the dam site in April, the Kachin Independence Army ended a 17-year-old ceasefire, leading to thousands being displaced.⁴ In late 2011, the president announced a suspension of the project, but there are fears that it may resume under pressure from China after the end of his term in 2015.

The Letpadaung copper mining project in Monywa district of Sagaing region is a joint venture between China's Wanbao Mining Company and Union of Myanmar Economic Holding Company. While the former is a subsidiary of a Chinese state-owned arms manufacturing company, the latter is owned by the Myanmar military.⁵ Faced with the confiscation of more than 7,000 acres of farmland, forced relocation of 66 villages, inadequate compensation, and adverse environmental effects, the affected communities resorted to widespread protests (*Burma News International* 2012; *Democratic Voice of Burma* 2013a). According to the government media, 369 farmers have been compensated in three rounds between 2010 and 2014 for the loss of 1,079.35 acres (*Myanmar Spectrum* 2014).⁶ In the face of continued opposition, the government appointed a committee led by Suu Kyi to look into the project, which controversially endorsed it albeit with some changes (*Democratic Voice of Burma* 2013a). The report further exacerbated tensions and conflict between the authorities and local communities, and the protests continue (*Democratic Voice of Burma* 2013b, 2014b).

One of the largest cases of land confiscation involves the Dawei Special Economic Zone (SEZ) project in the south-east, which is estimated to cost \$50 billion and is spread over 250 square kilometres. A joint venture between a Thai company and the Myanmar's Port Authority, it is designed to facilitate Thailand's access to the Andaman Sea and will include a deep sea port, heavy industries, and a massive petrochemical project. According to a 2012 report by Paung Ku and the TNI, more than 60,000 acres of land will be confiscated for the SEZ and far more than the officially estimated 32,275 people will be relocated (TNI 2012: 6). The report goes on to note, "Potentially 500,000 people from the region surrounding Dawei will be directly and indirectly affected by massive land-grabs, economic speculation, and the decimation of the current rural economy."

Another major cause for land conflicts has been land-grabbing by the military. The new government admitted that the military had confiscated more than two million acres of

land, while an additional 3,00,000 acres was being acquired. In August 2013, the Ministry of Defence announced in parliament that it planned to surrender one-sixth of these lands back to the original owners.⁷ The military has confiscated lands for camps and bases, and also for military-linked enterprises and plantations for army households. In addition to dispossession, military confiscation of land has greatly exacerbated disputes over ownership. For instance, since 1991, the military has grabbed nearly 13,000 acres of farmland in Kant-ba-lu township, mainly for its own plantations. Although 10,700 acres have since been formally surrendered back to the original owners, some of these lands were occupied by new farmers and this has led to disputes between them and the original owners (*Democratic Voice of Burma* 2014a).

In July 2014, a letter from the president to the speaker of the parliament noted that private companies and the army had taken 4,73,979.74 acres of farmland for their projects (*Eleven News Media* 2014). He also said that 351,733.74 acres would not be surrendered, while 43,717.74 acres would be, of which and 26,569.52 acres had already been handed over to farmers.

Land Laws and Institutional Settings

The legal framework for land in Myanmar is made up of at least 73 active laws, amendments, orders, and regulations passed under different governments that often overlap, conflict with each other, or do not refer to preceding laws (USAID 2014). Historically, during the colonial era and after independence, many lands were leased (grant lands) for plantations or agriculture and the landholder's rights registered in a register of holding though no certificate or title was issued.⁸

The main land law developed by the post-independence government was the Land Nationalisation Act 1953, which remained the reference point for land governance up to 2011. This law effectively vested ownership of all land in the country with the government, seeking to abolish landlordism and foreign land ownership, and gave powers over distribution of land to committees at different levels. Moreover, the 1953 Act barred the jurisdiction of civil courts, except in matters of compensation or guardianship, and gave the president broad powers to determine the uses of land, its distribution, transfer, and alienation.

The act gave legal authority to the state to claim all land in line with socialist principles and the president the legal right to confiscate all agricultural land unless otherwise exempted under it (Henley 2014). Under the act, farmers did not need to apply for land registration because land was allocated by the state and the government issued certificates to farmers using it.

The next significant shift came soon after full-fledged military rule was imposed in 1988, with the junta focusing on attracting foreign investment. The Foreign Investment Law of 1988 was followed by the establishment of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land in 1991. These measures were essentially meant to enable large-scale expropriation of land in favour of businesses. For instance, although smallholders could apply to access wasteland, the government did not make any small-scale allocations on the ground that farmers lacked the capital

to develop such land effectively (Obendorf 2012). Allocations of land favoured agribusinesses and other uses that suited the agenda of the military junta.

The 2008 constitution reaffirmed the idea of state ownership of land and resources underneath the soil, but the most significant shift came with the enactment of two new laws in March 2012 — the Vacant, Fallow and Virgin Lands Management Law, and the Farmland Law. These have effectively replaced the Land Nationalisation Act of 1953.

Under the Land Management Law, a central committee constituted and authorised by the president makes final decisions on whether land is vacant, fallow, or virgin. The committee can decide on what uses such lands can be put to though the law specifies agriculture, livestock, poultry farming, aquaculture, and mining. Importantly, this law echoes provisions of the 1988 Foreign Investment Law and allows granting land to joint ventures between foreign investors and national entities.

The Farmland Law effectively enables private ownership and grants rights to transfer and sell agricultural land, while also setting out the criteria on which farmland permits will be granted — farmers have to register at the government agencies specified by the central government. Ownership can be guaranteed through land-use permit certificates and registration at farmland management bodies — these are essentially agencies of the ministry of agriculture and irrigation — at the central, state/region, district, township, and village levels. The main role of the farmland management body at the state/region level is to examine if landowners are using their lands appropriately and productively, determine the use of vacant land, and impose taxes or fees. This is to be done through special boards and task forces.

While these laws are intended to clarify and enhance land rights, it is not clear if that is the effect they will have. Neither of them accommodates practices such as shifting cultivation or collective and traditional forms of ownership and usage. With the farmland management body authorised to issue land-use certificates and the settlement and land record authorised to record registration, farmers face significant opportunity and transaction costs, formal and non-formal. The complexities of the process are contrary to the objectives of the laws to clarify and secure land rights. Rather than reduce the power of the government over small farmers, these laws increase it by strengthening the role of the bureaucracy in farmland registration and management. These weaknesses reflect that a committee of the peoples' parliament with little or no expertise in dealing with agricultural land developed this law in a short time.

An added concern is that there is little transparency in the processes laid down in these laws, which may increase corrupt practices and misuse of power, especially because they also allow penalising farmers for violating rules. Although the Farmland Law allows those whose lands are taken to seek compensation, farmers need documented proof of ownership, which the majority of them do not possess. Thus, in reality, the level of protection accorded to small rural landholders by these laws is unclear and may instead encourage land-grabs.

The complexities and weaknesses in the legal and regulatory frameworks on land leave small landholders and the poor highly vulnerable. Moreover, they are least equipped to deal with the rapid commodification of land in Myanmar. Land prices have skyrocketed, and major domestic and foreign businesses are investing heavily in the real estate market and the banking sector rather than in the real economy and production. As a result, land speculation, which is inherently destabilising and distorts investments due to artificially high land prices, is on the rise. Investors are rapidly purchasing peri-urban land and farmlands to capitalise on value escalation or to establish factories, agribusinesses, and hotels and restaurants, often deviating from the implementation of holistic township plans. Needless to say, corruption associated with land deals has also emerged as a major issue. As the TNI report notes, all these issues are clearly visible in the Dawei SEZ area:

Everyday, land rights are being sold off at an unprecedented pace as property prices reach up to 15 times their pre-2008 value. Meanwhile, the local people often remain in the dark about the price tag placed on their land, and often fear future consequences if they resist. Sometimes people receive compensation, often delayed and always below market value, while in many cases, they receive no compensation. Compensation, or no compensation, corruption is rampant and transparency is lacking (2012: 11).

Towards a New Politics of Land?

The protests and controversies over land-grabs have placed the issue, especially small farmers' rights to land, on the political agenda. The issue has now gained international attention from development, environmental, and human rights organisations. Recently a vice-chair of a key committee of the Association of Southeast Asian Nations (ASEAN) People's Forum noted that the governments of Myanmar and Cambodia had taken little action to address land-grabbing (*Voice Weekly* 2014). In June 2012, the government signed up to the Extractive Industries Transparency Initiative (EITI) and it is expected that information about government revenues from natural resource extraction will become more transparent.⁹ However, important as this step is, it is not sufficient to address the range of issues and concerns discussed.

Disputes over land have also become a major domestic political issue. The announcement suspending work on the Myitsone dam project was a significant victory for those opposing the project. In July 2012, the parliament formed a committee to investigate farmland disputes, especially in Rakhine, Mon, and Kayin states and in the Taninthayi region. In the run-up to the parliamentary elections in 2015, the major political parties, the Union Solidarity and Development Party (USDP) and NLD, both of whom need votes from farmers and rural communities, are seeking ways to address the issue politically. Significantly, in May 2014, the deputy defence minister apologised for land seizures by the military (see Mizzima 2012). He also said that the military would not confiscate land in the future and would return 18,300 acres to farmers. Likewise, Max Myanmar, a company allied with the military and a target of international sanctions, surrendered 106 acres of land to 13 original owners, along with compensation. The

Ayeya-shwewar Company in Ayeyawaddy region returned 40,000 acres to its owners.

It is well established that secure and just land tenure, and sound management of land and natural resources are crucial to ease conflicts over extractive industries (East Asia Forum 2013). Land use management must also be integrated into bottom-up township and spatial planning. This is crucial to ensuring that the diversity of ethnic land use practices and customs are respected. Such an approach will also enhance transparency and accountability of the government to local communities. It is also crucial to strengthen the judiciary and ensure that affected communities and individuals have access to judicial

remedies. Without a just and comprehensive framework that protects the land rights of small farmers, ethnic minorities, and the poor, Myanmar cannot hope to achieve inclusive social and economic development. The lack of participation and transparency in land management, coupled with the legal and institutional weaknesses that work in favour of big capital rather than small farmers and the rural poor, has undermined trust in government. A continued failure to effectively address land disputes and conflicts will eventually pose a major challenge not only to President Thein Sein's social and economic reform programme, but also to Myanmar's transition to a stable and sustainable democratic system.

NOTES

- 1 Conducted by the Ministry of National Planning and Economic Development (MNPED) and the United Nations Development Programme (UNDP).
- 2 Myitsone is the start of Myanmar's lifeline, the Irrawaddy River.
- 3 See Aung San Suu Kyi (2011): "Irrawaddy Appeal", 11 August, http://www.internationalrivers.org/files/attached-files/irrawaddy_appeal_by_dassk_o.pdf
- 4 See International Rivers (2011): "The Myitsone Dam on the Irrawaddy River: A Briefing", 28 September, <http://www.internationalrivers.org/resources/the-myitsone-dam-on-the-irra-waddy-river-a-briefing-3931>
- 5 Wanbao Mining Company is a subsidiary of state-owned arms manufacturer China North Industries Corporation, known as Norinco.
- 6 The Chinese company provided the first two rounds of compensations, while the Union of Myanmar Economic Holding Company provided the third round.
- 7 See "Criticism by Thura Shwe Man on Government's Delayed Action in Land Disputes", 29 August 2013, Thit Htoo Lwin blog, http://www.thith-toolwin.info/2013/08/blog-post_5929.html.
- 8 Grant land is granted or leased out by the government for 10 to 90 years. If the landholder wants a land record and map of land, he or she is given both.
- 9 Under EITI, companies must publish payments made, while the government must disclose sums received, and an independent administrator reconciles them.

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