

National Updates on Agribusiness Large Scale Land Acquisitions in Southeast Asia

Brief #8 of 8: Union of Burma

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Introduction

Emerging from five decades of military dictatorship, civil turmoil and economic isolation, Burma has lately come to the attention of international investors keen to draw profits from the country's vast natural resources which include fertile land, minerals, oil, natural gas and timber.¹ Frequently touted as Asia's next economic

tiger, Burma's new quasi-civilian government raises the prospect of fundamental reforms in national politics and economics for the first time in many decades, but the reform process is still in its very early stages, and significant challenges of implementation lie ahead.²

While oil, gas and coal mining, hydropower projects and logging have featured most prominently to date in terms of investments in Myanmar, agribusiness has emerged at the forefront of recent government development policies.³ The political transformations that Burma is undergoing could be a golden opportunity for the country to engage in agribusiness to achieve economic growth with sustainable and rights-based outcomes.⁴

However, a growing body of literature and studies suggests that Burma has instead become the 'latest flashpoint in an alarming trend' of global land grabs.⁵ Sources suggest that the land and resource rights of local communities are being undermined by legal reforms that seek to liberalize foreign direct investment and place all lands under the ownership of the State, with little indication that strengthened legal protections for the rights of communities will follow.

With its resource-rich but volatile border regions already plagued by decades of civil war, inequitable natural resource exploitation and the dispossession of rural communities in Burma as a result of ill-regulate agribusiness expansion could become the next trigger of heightened

socio-economic turmoil rather than of national development and welfare.

Country facts

Area: 676,578 km²
Bordering countries: Bangladesh, China, India, Laos, Thailand
Population: 54,584,650
Main ethnic groups: Burman 68%, Shan 9%, Karen 7%, Rakhine 4%, Chinese 3%, Indian 2%, Mon 2%, other 5%
Agricultural workforce (% of pop): 70%
Main exports: natural gas, wood products, pulses, beans, fish, rice, clothing, gems
Main imports: fabric, petroleum products, fertilizer, plastics, machinery, transport equipment, cement, construction materials, crude oil, food products, edible oil

National trends in Large Scale Land Acquisitions

Government policies and targets for agribusiness expansion

Constituting the largest country on the Southeast Asian mainland, Burma's extensive river valleys, mountainous watersheds and rich soils have stimulated a spate of agribusiness investments and land speculation since the mid-2000s. Currently, Burma's economic growth draws largely from exploiting its natural resources (gas, gems, wood), agriculture (legumes, cereals) and fisheries.⁶ Agro-based industries, including of bio-fuels, are considered as of high potential not only for import substitution but also for export promotion.⁷

Agriculture accounts for about 36% of gross domestic product, employs 70% of the workforce and provides 25% to 30% of exports by value. As a result, the government prioritizes the agribusiness

sector and rural development as drivers of growth and broad-based development.⁸

Agricultural production and growth is the government's top development priority for poverty alleviation in 2014 – 2015 and part of Strategic Priority 1 of the UN Strategic Framework for Burma in 2012-2015.⁹ In 2013, the Asian Development Bank¹⁰ and the World Bank approved fresh loans for Burma to aid the social and economic development of the country, with agricultural development featuring as a key strategy for economic growth.¹¹

Notably, the Ministry of Agriculture and Irrigation's (MoAI) 30-year Master Plan for the Agriculture Sector (2000-01 to 2030-31) aims to convert 10 million acres of 'wasteland' for private industrial agricultural production, with rubber, oil palm, paddy, pulses, and sugarcane for export being particularly encouraged. Government 'crop campaigns' are also underway, with oil palm promoted in Tanintharyi Region, a nationwide jatropha campaign (which targets 0.5 million acres per state and region, for a national total of 8 million acres), rubber for the Chinese export market, and biofuels, including cassava and sugarcane.¹²

Gross areas allocated to agribusiness

According to a study published by the Environmental Law Institute in Washington D.C., 'while exact information remains difficult to obtain, over the last 20 years, several hundred thousand hectares across Myanmar have been allocated to hundreds of companies and converted into a variety of cash crop plantations'¹³ such as sugarcane, rubber, palm oil, corn, rice, wheat, pulses, jatropha and cassava.¹⁴

By 2011, 204 national companies had been allocated nearly 2 million acres (around 810,000 hectares) of private agricultural concessions, with Tanintharyi Region and

Kachin State accounting for over half of these concessions.¹⁵ This figure does not include concessions not recorded by the government or areas not under government control, such as the Wa-controlled areas. It is reported that only 20-30% of this area has been planted, with evidence suggesting that companies clear the land for profit and then speculate its value by holding the land and not planting crops.¹⁶

Looking forwards, a further 6 million hectares have been earmarked for agricultural commercialization, notably of rubber and oil palm plantations. Tanintharyi Region has been targeted in the last decade by oil palm development, with over 1 million acres already granted to Myanmar companies, many with informal foreign investment backing. Cassava and sugarcane are also being encouraged by the government as biofuel feed, such as Yuzana's 200,000 acre cassava concession in Kachin State's Hugaung Valley, designed for export to China's domestic biofuel market.

Basic information about investment trends and/or key financiers

'In many ways it [Burma] is well-positioned to provide enormous investment opportunities. The fact that there has been so little investment in the past means the potential returns are very high.'

Nobel Prize-winning economist Joseph Stiglitz quoted in Sargent 2012 'Myanmar's economic promise faces pitfalls' in *The Myanmar Times*, 5th March 2012.

Formerly characterized by direct seizure by army units and government departments, large-scale land acquisition is reportedly now frequently undertaken by army-owned domestic companies, joint ventures and other economically and politically powerful operations, often with connections to the military.¹⁷

New land laws and policies to encourage foreign investment and open up the country to global markets are being developed, and Burma is being advertised as 'the final land frontier of Asia'¹⁸ with its lands up for sale to foreign investors.¹⁹ In 2012, it was portrayed by global investor guru Jim Rogers as 'probably the best investment opportunity in the world right now'.²⁰ Other sources, however, are more doubtful of the potential for sustainable and ethical investment in Burma, citing among other risks, continuing human rights abuses, lack of regulatory and legal protections, and child and forced labor.²¹

Prior to the current land reforms, foreign investors could not rent land concessions and joint ventures with the government were a costly and politically risky undertaking. Today, virtually all FDI in Myanmar comes from other Asian countries, notably Thailand, China, Taiwan, Hong Kong, Singapore, India, Malaysia, Vietnam and South Korea²² with particular focus on the production and processing of palm oil and rubber.²³

Very few concessions are 100% foreign-owned and nearly all agricultural concessions in the country to date are formally run by Myanmar companies, with the notable exception of China's opium crop substitution programme which finances many of the rubber concessions in northern Myanmar.²⁴ The Vietnamese government has also recently purchased a 120,000 acre rubber concession in southern Rakhine State.

Current national agricultural policies aim to increase the export of crops to increase foreign exchange revenue by granting agricultural concessions to foreign companies and domestic companies with political connections or affiliations. The situation is set to change further in favor of foreign investors with the passing of two new land laws and the current push by the

new government for foreign direct investment in the agricultural sector.

The Vacant, Fallow, and Virgin Land Law (or VFV Law) legally allows the government's Central Land Management Committee to reallocate smallholder farms to private companies. The Farmland Law states that land can be legally bought, sold and transferred on a land market with land use titles. Both these laws together allow for foreign investors to purchase land use titles, pending the details of the foreign investment law, and for Burmese companies that have been granted or purchased land from local authorities to receive land use titles, which then could be sold to other investors, including to foreign companies.

The Foreign Investment Law (FIL), approved in November 2012, contains some measures to regulate foreign investment to the advantage of domestic companies but also significant liberalisation measures to encourage a new phase of FDI into the country.²⁵ FDI land use rights are granted up to a total of 70 years, which contravenes the new Vacant, Fallow and Virgin Land Law, which stipulates a maximum of 30-year leases for agribusiness. Moreover, the FIL allows foreign investors more than a 70-year lease if they get permission from the central government, provided the land in question is in the less developed areas of the country that lack communication, and that the project promotes Burma's overall economic development.²⁶

Problems with land acquisition

Lack of recognition of rights to land

Land ownership in Burma has been vague since the 1960s when most of the land was nationalized during the socialist reign of Ne Win. The former autocratic regime in Burma saw routine confiscation of land, displacement and cropping enforced by the

government and backed by the military, with little recourse to protest for local communities.²⁷ Today, the Burmese State retains ownership of all land in the country and whatever rights over land that are accorded are exclusively leasehold rights, user rights, or rights to cultivate a certain land parcel subject to the approval of local government bodies that are appointed by the central government.²⁸

Nearly three quarters of Burma's population (or 40 million people) live in rural areas and depend directly on farmland and forests for their livelihoods. Yet land tenure rights are very weak in a country where the State claims ownership over all land and natural resources and where most rural communities have no formal land title for their customary agricultural lands.²⁹

'The conflict in the north of Myanmar, like so many around the world, has its roots in land and resource rights — including community forest rights. The leadership of previous governments guiding Myanmar started a race to sell off our natural resources, and our livelihoods have become collateral damage in the process. As our country opens up to the outside world, we need to stay focused on reducing poverty, not increasing it.'

Maung Maung Than, project coordinator for RECOFTC - The Center for People and Forests in Democratic Voice of Burma 2013 *Burma latest flashpoint in 'global land grabbing' epidemic*. 11th February 2013.

The current reform period has given political space for these communities to voice their collective opposition to this dispossession. Civil society protests against agribusiness-driven large scale land acquisitions are on the rise. For instance, Burmese land-rights activists organised an event in opposition to the

government-sponsored agribusiness fair, the '2nd Commercial Farm Asia', held in Yangon on 11th – 12th October 2012, intended to showcase Burma as Asia's last frontier for agricultural investment.³⁰ Those attending included land rights lawyers, social activists, 88 Generation student activists, farmers' representatives and ethnic political party leaders, to discuss land grabs in Burma. They drafted a letter of solidarity for those present at the protest gathering, and a letter of global solidarity with 100 signatories, which were presented to the organisers of the fair.³¹

But with land acquisition by domestic and foreign private companies on the rise, and laws being passed that only further undermine communities' rights to land and natural resources, it appears that this trend of land grabbing and expropriation of resources is set to continue, albeit featuring potentially different actors.

On-going civil war, poor land governance, farmers' debts and domestic and foreign land grabs are among the reasons why at least one-quarter of all farmers in government-controlled areas in Myanmar are now landless, with some studies showing upwards of 50% in some rural areas. One-third of Myanmar's 47 million rural residents are landless laborers, while others struggle to hold onto their farms through funds borrowed from the informal market.³² In such areas, about half of household farms are under 5 acres, which is below minimum subsistence levels. Landlessness is therefore a serious and growing problem throughout Myanmar, with million of Burmese having been or standing to be dispossessed of land under current laws and policies.

The government, with help from UN agencies, is beginning a national land titling programme to turn land into capital and formalize land use rights. While this presents a solution to some – especially urban land holders – land titling presents

huge challenges and tenure insecurity for rural farmers, especially in the uplands and ethnic borderlands, as the government does not formally recognize traditional upland swidden cultivation (*taungya*).³³

Since many farmers do not possess formal land titles they are susceptible to being classified as squatters. The loss of cultivation rights is likely to exacerbate rural landlessness, poverty and associated problems, such as rapid rural – urban migration and environmental degradation, all of which jeopardize local and national food security.

While the government has said it intends to put farmers at the forefront of its economic reforms, it is reported that residents in most rural areas have yet to feel the impact of the political changes and fear that the new land policies will not protect them from having their land taken with limited compensation by tycoons or investors with political connections, in a repetition of the land confiscations they are all too familiar with.³⁴

Legal reforms further undermine tenure security

Critics of recent law reforms in relation to land and investments in Burma have noted that the legal framework is not only failing to keep pace but actually retrograding in terms of the land tenure security provided to local communities. It has been suggested that these reforms mean farmers and the urban poor are possibly even more vulnerable to possible loss of land and displacement and dispossession than they had been under the previous regime.³⁵

In 2012, President Thein Sein signed two new laws, the Farmland Law and the Vacant, Fallow, and Virgin Land Management Law, that will serve as the legal framework for the country's land reform. Under these laws, the State remains the ultimate owner of all land.

Farmers are allowed to cultivate but only in accordance with the government's prescriptions. Second, farmers can now transfer or mortgage their land to repay their loans. This measure offers new avenues for farmers to raise credit and continue their agricultural activities. Third, the new laws established a Central Farmland Management Body that is in charge of ensuring compliance with the new regulations and is largely independent of the judicial system. This body can transfer or revoke the right to work farmland, and provide land evaluation for various purposes. It operates under the auspices of the Ministry of Agriculture and Irrigation and has subsidiaries extending from the region/state to village levels.

According to land activists and experts, the new land laws contain several fundamental weaknesses. Drafted largely behind closed doors, they were submitted to the parliament in mid-2011 by the Ministry of Agriculture and Irrigation, and passed through the legislature in March 2012 after several rounds of amendments. Under the new laws, farmers still lack land tenure security and are subject to the government's crop prescriptions and production quotas.

Furthermore, once the new councils are operational all persons with usage rights to farmland will be obligated to apply for authorization to continue to work it. In other words, even people with tenure over land today may lose it tomorrow through a process of review and scrutiny of existing holdings that will enable the state not only to identify those areas of land over which it has uncontested possession, but also those areas of land over which farmers' claims are tenuous, or might be contested through the fabrication of alternative documentary claims and the use of various illegal coercive methods.³⁶ In addition, the Farmland Law lacks checks and balances, since disputes must be settled by

government-created farm management bodies, not in the courts.³⁷

In short, far from reducing the prospects of land grabbing, the Farmland Law and the Vacant, Fallow, and Virgin Land Management Law appear to open the door to confiscation of agricultural land on any pretext associated with a state project or the 'national interest'. They not guarantee the rights of farmland users to cultivate and sell their products for fair prices, much less to own the land they use and manage.

Finally, the Special Economic Zone (SEZ) Law and Foreign Investment Law that are currently finalized, along with ASEAN-ADB regional infrastructure development plans, may end up creating new incentives and drivers for land grabbing and further compound the dispossession of local communities from their lands and resources,³⁸ particularly as large-scale investment projects are focused on the resource-rich but conflict-ridden borderlands, also home to already poor and often persecuted ethnic minority groups.³⁹

Land grabbing and land conflicts

'The acquisition of land for agribusiness is expected to become one of the biggest threats to local access to land and to people's livelihoods as the country's new land laws, government promotion of private industrial agriculture and the Foreign Investment Law (FIL) all take effect.'

Buchanan et al 2013 *Developing Disparity - Regional Investment in Burma's Borderlands*. Transnational Institute. P.41.

In a written statement of September 2011 session, the Asian Legal Resource Centre alerted the Human Rights Council to the dangers posed to the rights of people in Myanmar by the convergence of military, business and administrative interests in

new projects which lead to the displacement of smallholders and rural communities from their farms and homes.⁴⁰ It noted that the majority of over 1,700 complaints that the newly established national human rights commission received in the first six months of its operations concerned land grabbing cases.

In August 2012, the National Democratic Force (NDF) established a commission as part of its Farmers' Affairs Committee to identify farmland ownership disputes and has received over 4,000 complaints of land grabs and dispossession since its formation.⁴¹ In July 2012, a bill was passed to establish a Land Acquisition Investigation Commission to improve the government's handling of land grabs. After a few months, more than 2,000 cases had been received.⁴²

The Burmese media is also overwhelmed with reports of people being forced out of their houses or losing agricultural land to state-backed projects, sometimes being offered paltry compensation, sometimes nothing.⁴³ People who refuse to move when forced out by land grabbers may risk prosecution and jail, as well as threats and intimidation.

'The convergence of the military, government agents and business is an enormously dangerous development, as can be seen in the increasingly grave problem of land-grabbing.'

Oral Statement to the 19th Session of the UN Human Rights Council from the Asian Legal Resource Centre, 21st March 2012.

Severe (and sometimes fatal) land conflicts are beginning to emerge as rural communities seek to reclaim land taken from them without their consent and allocated to private companies. Whilst most of these relate to hydroelectric, gas

and oil mining and pipelines and infrastructural projects,⁴⁴ cases of agribusiness-related land conflicts are on the rise.

In 2010, farmers in the northern state of Kachin protested against the destruction of their forest and livelihoods by Yazuna Company, a cassava, sugarcane and jatropha plantation whose owner Htay Myint is widely regarded as a close friend of former dictator Snr-Gen Than Shwe.⁴⁵ The communities drove away company bulldozers, pulled out seedlings and refused to relocate from their homes. They also filed written complaints to the local authorities and the International Labour Organisation after being forcibly evicted, but with little effect. In July 2010, the Kachin Supreme Court in Myitkina opened a case on behalf of the 148 evicted farmers, and while compensation payment was imposed on the company, only some farmers were eligible to receive it.⁴⁶

In another more recent conflict (February 2012), police in southwest Burma shot and wounded at least nine farmers who were among hundreds trying to take back land they say was confiscated by a private company, Orchard Agriculture and Animal Husbandry Co., without compensation or consent being sought.⁴⁷

Rights of smallholders

In a bid to boost production for export, the government is routinely allocating smallholder land to private companies in agricultural land contracts often negotiated with regional and local military authorities and leading to land confiscation and displacement of local farmers. Under the VFV Law, the government's Central Land Management Committee holds the right to reallocate smallholder farms (both upland shifting *taungya* land and lowlands without official land title) to private companies. As very few farmers have official land title certificates from the

Settlement and Land Records Dept. (SLRD), most farmers now have no formal land use rights.

While Burma's small-scale tenant farmers do not actually officially own the land they have worked on for generations, the administratively complex and corruption-fraught process to get title to their land as stipulated under the Farmland Law and the Vacant, Fallow and Virgin Lands Management Law puts peasant farmers' land tenure security at serious risk.

The Farmland Law states that land can be legally bought, sold and transferred on a land market with land use titles. While farmers have engaged in (informal) land transactions for generations, the major difference under the Farmland Law is that anyone without an official land use title has no rights anymore to use the land. Land use titles will be issued by the SLRD, but it is expected to take decades to title all the land in the country, with no provisions made in the meantime to secure communities' rights and access to their land.

Moreover, it will be impossible to title shifting *taungya*, which means that the uplands - now labeled 'wastelands' or 'fallow lands' - have no land tenure security under these two new land laws. Therefore ethnic upland areas are under the greatest threat.⁴⁸

Concerns have also been raised over the transparency and freedom of new contract farming agreements. Field investigations reveal that farmers do not always fully understand their contractual agreements with agribusinesses, and that the obligations and risks often fall disproportionately to the contract farmers rather than the investors.⁴⁹ Finally, frustrations over lost employment and benefit-sharing opportunities have been expressed where Chinese investors import

unskilled labor from China to work in large-scale plantations.⁵⁰

Environmental impacts of expansion

Agribusiness and other large-scale land conversions have led to an unprecedented rate of deforestation across Burma in the last twenty years. Dense forest cover, for example, has declined precipitously, from 45.6% of the land in 1990 to just 19.9% in 2010,⁵¹ making Burma's deforestation rate one of the highest in the world.⁵²

The loss of forest and grassland areas and the transformation of a self-reliant diversified agriculture to large scale monocrop plantations places areas of high biodiversity at serious risk. Logging for land conversion to plantations has also been shown to be directly responsible for floods, soil erosion, landslides, sedimentation build-up behind dams, river siltation, increased dry season water, stunted farm productivity and declining topsoil fertility.⁵³

The environmental impacts of agribusiness expansion are most starkly exemplified by the Yazuna concession in Kachin State. In this concession, which is located inside the world's largest tiger reserve (Hukawng Valley Tiger Reserve), animal corridors have been destroyed, rivers clogged with felled trees and detritus, and no forest is left standing.⁵⁴

Although Burma has a number of laws and regulations designed to protect the environment, few of these are efficiently enforced. For instance, the new Environmental Impact Assessment law is limited in scope, while the institutional and governance context is not conducive to ensuring that any EIA meets international standards.⁵⁵ Protected forests sometimes become mapped within other land use concessions, especially for industrial agriculture.⁵⁶ There are also few laws that adequately address issues such as air and water pollution.⁵⁷

Human rights framework as it applies to agri-businesses

In a number of speeches, Burma's President, Thein Sein⁵⁸ and Aung San Suu Kyi⁵⁹ have welcomed responsible investment that respects workers' rights, which does not harm the environment, and which is supportive of democracy and human rights. However, no specific obligations have to date been placed by the government on agri-businesses to comply with human rights requirements under international law.

While documented human rights abuses have tended to focus largely on ethnic conflicts which escalated in 2011 in northern Burma, civil and political rights infringements by the government and corporations are beginning to be documented in the agribusiness sector, including arbitrary arrests and detentions, land confiscation, forced internal displacement, lack of consultation, harassment of human rights defenders and lack of access to remedy. Direct complicity in these human rights abuses is at play when companies engage security forces for the protection of their assets.

Land rights: Land targeted for agribusiness development is often already under cultivation by small-scale subsistence farmers, many from ethnic minority groups that have long occupied the areas. These communities sometimes find their lands confiscated and are sometimes forced work on the farms and plantations for minimal or no pay.⁶⁰ Procedures for land acquisition are reported to lack transparency, accountability and an adequate regulatory framework for compensation.⁶¹

Central committees determine whether land is unused, a particular concern for farmers practicing the traditional *taungya* form of shifting upland cultivation in

which crops are rotated with some fields left fallow for certain periods of time.⁶²

Right to food: The lack of formal land tenure and use rights – which does not appear to be secured by the two new land laws – may threaten the livelihoods and food security of smallholders in upland areas.⁶³ The conflict between State and customary laws and practices in land management, and lack of legal recognition of the latter, may create the conditions for farmers to be dispossessed of their lands, and therefore their source of subsistence, particularly in upland ethnic regions.

Right to remedy: The 2008 Constitution requires the government to 'enact necessary laws to protect the rights of the peasants and to obtain equitable value of agricultural produce', providing a normative justification for rights claims by rural villagers.⁶⁴ Myanmar's recent policy changes also contain language that could increase opportunities for redress. For instance, the 2012 Farmland Law confirms that 'farmer organization[s]' can legally organize, which provides a potential opportunity for local collective action.⁶⁵ The Farmland Law also provides for a rather poorly-defined grievance mechanism for individuals whose farmland has been requisitioned.⁶⁶

However, the new land laws fail to take into account traditional land conflict resolution, implemented and mediated at the community level according to local customs and by traditional leaders. In some areas, local authorities implement a system that incorporates traditional land tenure practices into a regional registration system;⁶⁷ communities may rely heavily on such existing frameworks to mediate property disputes. In this context of multiple authorities and competing land protection praxes, individuals and communities face uncertainty as to how they can protect their land in a way that will be recognised vis-à-vis external actors.

Judiciary: The Farmland Law and VFV Law preclude any role for the judiciary, ensuring that administrators and government ministers have the final say on all matters of importance concerning the occupation and usage of agricultural land.⁶⁸ At the same time, it is reported that systemic levels of corruption within the judiciary severely impede victims from accessing remedies or compensation related to the infringements they experience. The lack of easily accessible mechanisms for access to justice are further compounded with an inability on the part of most rural communities to afford, and be informed of, formal legal remedies.⁶⁹

Consultation: While the FIL lists classes of ‘restricted or prohibited business’, which require specific approval of the Myanmar Investment Commission (including projects, which may negatively affect public health, the environment, or the cultural rights of ethnic minorities)⁷⁰ there is no procedure for project-affected communities to participate in the selection of members of the Commission.⁷¹ The authority to hold hearings is not even listed as one of the Commission’s powers.⁷² It appears that no provisions are made for participation of local communities in the development and implementation of agribusiness projects in existing laws, meaning that there are no clear safeguards for their rights, or legal protections for their right to exercise Free, Prior and Informed Consent.

Forced migration/internal displacement: Land confiscation without prior consultation, compensation and/or notification has led to reported instances of forced internal displacement.⁷³ In some cases, villagers have been forced of necessity to relocate due to the destruction of livelihoods and environmental degradation in or near project sites.⁷⁴

Child and forced labor: Myanmar has not ratified ILO standards on the use of child labor and there is widespread violation of these standards in the agricultural or farming industries.⁷⁵ Forced labor is also reportedly a phenomenon to be found across many different sectors in Myanmar, for products including bamboo, beans, palm, physic nuts, rice, rubber, sesame, sugarcane and sunflowers.

With regards to workers’ rights, Burma until recently did not allow independent trade unions, and workers’ rights have been routinely violated. A new labour law is now in place⁷⁶ which prohibits forced labor and guarantees the rights of citizens, but is reportedly only infrequently implemented. Instances of abuse of workers’ rights include extended working hours, low wages with few benefits, sexual harassment of female workers and employment discrimination on ethnic grounds.⁷⁷

Burma’s international human rights obligations

Burma has acceded certain international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (in 1997), the Convention on the Rights of the Child (in 1991), the Optional Protocol on the Convention on the Rights of the Child (in 2012) and the Convention on the Rights of Persons with Disabilities (in 2011). Burma is also a party to ILO Convention No. 29 on Forced or Compulsory Labor (1955) and voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples in 2007. Burma was one of the first nations to adopt the United Nations Declaration on Human Rights in 1948.

Burma’s ratification of the ASEAN Charter on in July 2008 raised controversy among member nations because of its much criticized human rights record and

(at the time) ongoing detention of opposition leader Aung San Suu Kyi.⁷⁸ Despite notable progress in terms of certain rights, such as freedom of expression and association, concerns over the human rights situation today in Burma continue to be expressed by civil society and United Nations bodies and representatives, including the Special Rapporteur on the situation of human rights in Myanmar in relation to ‘violations of land and housing rights, in particular regarding the impact of infrastructure projects, natural resource exploitation and associated land confiscations and grabbing’.⁷⁹

‘Given the wave of privatizations in 2011 and the expected increase in foreign investment, together with the new Government’s plans to accelerate economic development, the Special Rapporteur fears an increase in land confiscations, development-induced displacement and other violations of economic, social and cultural rights. The private companies involved also have a responsibility not to be complicit in human rights abuses.’

United Nations 2012d *Progress report of the Special Rapporteur on the situation of human rights in Myanmar*, Tomás Ojea Quintana. 7th March 2012.

Furthermore, concerns have also been voiced that the Constitution of 2008, by granting the Defence Forces complete autonomy and supremacy over the civilian government, limits the full sovereign powers of the civilian government and precludes any oversight over the military. This means Burma as a State is unable to comply with its *erga omnes*⁸⁰ or absolute obligations under customary international law, or as a signatory to multilateral treaties.⁸¹

In addition, the Constitution provides only for the recognition of obligations that arise from ‘treaties or agreements which before the commencement of this Constitution have been in operation between the Government of the Union of Myanmar and the Government of other State.’ In other words, the Constitution only allows for recognition of obligations arising out of bilateral, rather than multilateral, treaties.⁸²

Recent legal developments which strengthen or weaken rights

Myanmar’s land is currently governed by a patchwork of overlapping, and sometimes contradictory, land laws. Recent laws passed by the Government provide some clarity in the law relating to individual land and property rights, but retain substantial government authority to expropriate land. The lack of protections for communities’ rights to land has been highlighted on a number of occasions by civil society in relation to the Farmland Law, the VFV and the FIL.

On a positive note, government and parliamentary officials in recent national dialogues with civil society have recognized the need to conduct land reforms in a more inclusive and sustainable fashion through responsible agricultural investment.⁸³ President Thein Sein stated in a televised speech on 19th June 2012 that Burma needs to have coherent land use and management policies in order to improve rural living conditions and ensure food security and job creation for the population outside of major cities. The president singled out uncertainty about land use rights and land speculation as two major hurdles that need to be addressed.⁸⁴

The government has also acknowledged weaknesses in the Farmland Law and intends to review the law in relation to land dispute adjudication and rights of

local residents to manage and use their farmlands.⁸⁵

International support is also expected to encourage the strengthening of land and tenure rights in Burma. In February 2012, USAID's Land Tenure and Property Rights Division initiated an assessment of tenure issues with the intent of helping the Government of Burma assess tenure and property rights challenges and identify potential opportunities for addressing them. The aim will be to promote legal reforms that both respect citizens' rights and 'will be an essential step for reducing and mitigating conflicts and promoting economic growth.'⁸⁶

Finally, the formation in September 2012 of a new National Human Rights Commission is an important step towards the promotion and protection of human rights in Burma, and is already being actively used by civil society to raise cases of agribusiness-related land acquisition that fails to respect human rights.⁸⁷

Recommendations

There is much speculation over where Burma is headed in terms of development, investment opportunities and human rights.⁸⁸ With agribusiness expansion on the rise, the question remains as to whom most will benefit from these investments in the short and long term, and what this implies for Burma's political and economic trajectory and its largely rural population.⁸⁹

Land reform is urgent and steps taken by the government to this end may usher in a new era of possibility for Burma's beleaguered citizenry.⁹⁰ Much will depend in the types of investment undertaken, the laws that regulate them and their implementation and the overall quality of governance in the concerned areas.⁹¹

Arguably, the new wave of foreign investment, including the active engagement of Western corporations and donors, can play a pivotal role in Burma's transition. A brighter future rests on the transparent, representative and accountable decision-making by the Burmese government and people on governing and sharing the benefits of their land, water and resources.⁹²

The government of Burma has a huge task ahead, and in some ways it could be said that Burma's political reforms have outpaced its economic reforms. Economic reforms have tended to be developed in a piecemeal manner that reflects the drawn out deliberations on new legislation as well as pressures from various political and economic interests.⁹³ Some sources warn that the hectic pace of legal reform is resulting in inconsistent policies, inconsistent draft legislation and ad hoc decision-making.⁹⁴

In terms of legal reform, it is critical that the government adopt laws and policies that support smallholder farmers' livelihoods, such as legal recognition of and respect for customary rights and institutions, as well as recognition of upland shifting cultivation as a formal land use category.⁹⁵ Smallholder farmers, landless people, and land-poor households have fundamental rights to land and food that need immediate attention and protection under the law.⁹⁶

The ALRC has recommended that the government suspend implementation of the Farmland Law and begin a meaningful process of engaging with members of the public at all levels and in all parts of the country, with landholders, land users and legal and technical experts, among others, to get the widest and most comprehensive range of views on how genuinely to protect public interests.

One outcome of this process would be that the law would have been redrafted to guarantee the livelihood rights and food rights of occupiers and cultivators of land, and these should be clearly and explicitly expressed in the law, and procedures and structural arrangements spelled out to protect them, based on what lessons are learned from the consultative process. The ALRC has also called for the government to ensure that whatever form the revised law takes, cases decided under it are subject to judicial review.⁹⁷ Transparent guidelines regarding land compensation are also necessary.

Finally, foreign governments and aid agencies can play a useful role in helping Myanmar figure out how to address land disputes. Fellow ASEAN countries in which the State owns the land can also provide examples of lessons learned and experiences for how they have sought to resolve land tenure and land rights issues in the context of agribusiness expansion.

Burma's future depends in large measure on stewardship of its natural resources and greater inclusiveness of its citizens in the benefits from resource exploitation.⁹⁸ Burma's challenge is in achieving sustainable and equitable development in the face of entrenched vested interests.⁹⁹

In the context of agribusiness and other industries, the extent to which legislators and officials are able to address land reforms and tackle land disputes will be one of the most important tests for the new reformist government.¹⁰⁰ It remains to be seen whether Burma will prioritise the security of property rights of investors over those of its impoverished population in the pursuit of economic development, as some precedents may suggest.¹⁰¹ The growing voice of Burmese civil society will testify as to whether these reforms are seen to support sustainable development and genuinely secure rural communities' rights.

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