



## Burmese government land grabs: Farmers without rights

**U Myo and Lane Weir**

*\*Originally published in Mizzima*

The Burmese authorities are selling off plots of Burma's land to the highest bidder. In 2002, Saytoktaya Township farmlands were illegally occupied so that the government could build a military service factory. Fields and crops were bulldozed and no compensation was provided.

In May 2009, authorities in Arakan State confiscated farms for the purpose of providing land for a Chinese gas pipeline construction project from the Indian Ocean to Mainland China. The promised compensation never materialized

In December 2010, the government permitted a large Chinese company, Two Diamond Dragon, to confiscate hundreds of acres of farmland from local people in Kachin State.

These are just examples of a rash of cases over the past decade in which the Burmese authorities have grabbed farmers' land in pursuit of royalties and tax revenues, seemingly oblivious of the heartache caused to farmers, workers and families who are suddenly left with virtually no means of support.

As a result, many workers and farmers are left with no option but to leave Burma to pursue work as migrant labourers in neighboring countries, particularly Thailand.

Jackie Pollock, the director of the MAP Foundation in Chiang Mai, Thailand, says that for migrant labourers 'moving away from their homes, families and friends to work in Thailand is a huge decision. But there is comfort for those migrants that move knowing that they have a home to return to'.



But, as Pollock states, 'For those who migrate because their land has been confiscated, even this last shred of security is torn from them, making the migration a traumatic experience'.

An analysis of Burmese domestic law clearly illustrates the illegality of these land confiscations, resulting in heightened vulnerability and insecurity for Burmese workers and farmers.

### **The problem situated in domestic law**

After struggling under British colonial power, the 1947 Constitution brought in prior to independence the following year, represented liberation for the Burmese people. Under colonial rule, there had been no rights for peasants and workers. However, under the new Constitution and subsequent laws passed by the legislature, protection for peasants and workers emerged.

Section 30 of the Constitution provided that the 'State is the ultimate owner of all lands' and that 'subject to the provisions of this Constitution, the State shall have the right to regulate, alter or abolish land tenures or resume possession of any land and distribute the same for collective or cooperating farming or to agricultural tenants' and that 'there can be no large land holdings on any basis whatsoever. The maximum size of a private land holding shall, as soon as circumstances permit, be determined by law'.

These provisions marked an attempt to provide land and security to small farmers and workers in Burma.

Prior to independence, the wealthy elite owned large estates that they, along with the colonial government, had confiscated from small farmers. The majority of farmers, then, were forced to work as tenants on these estates. Tenants were required to pay exorbitant rents, in the form of crops, to the landowners. Unable to pay the rent, many farmers accumulated enormous amounts of debt and suffered from heightened vulnerability. Farmers across Burma aspired to own the farms that they worked.

Following independence in 1948, the Tenancy Law and the Land Nationalization Act supplemented the constitutional provisions on land described above. The Land Nationalization Act, for example, set out to ensure that land was owned by farmers in small holdings by giving the government wide powers over the use and distribution of land. However, subsequent amendments to these laws, particularly the Tenancy Law, enabled large landowners and the government to continue leeching more and more resources from the farmers. Corrupt government officials and large landowners used the Tenancy Law as a mechanism for quashing the rights of Burmese farmers and workers.



Compounding the problem is the issue of low wages. Laws passed in December 1948 and November 1949 set basic minimum wages for farmers. Unfortunately, the governments of General Ne Win and the State Peace and Development Council (SPDC) ignored these laws. Instead of aiding those that the 1948 and 1949 governments attempted to benefit, they have disregarded the basic needs of farmers and instead governed for the benefit only of the government and its cronies.

The current government continues to govern in contrast to both the 1948 and 1949 laws and international standards on minimum wages by setting the level far below an adequate amount. Burmese workers earn a minimum wage of just 12,000 kyat (US\$ 13.2) per month, in stark contrast to the 30,000 kyat minimum that Burmese government employees receive.

By comparison, Burmese workers receive the lowest compensation among ASEAN countries. For example, what a Burmese worker earns in a month, a Thai worker is guaranteed in just three days of work. The inability to earn a living that meets their basic needs forces many workers to seek employment in neighbouring countries.

In sharp contradiction to the current treatment of workers in Burma, the 1963 Tenancy Law and the 1963 Law Safeguarding Peasant Rights were intended to protect farmers. The Law Safeguarding Peasant Rights, for example, stipulates in Section 3 that 'notwithstanding anything elsewhere contained in any existing law, a Civil Court shall not make a decree or order for: (a) a warrant of attachment for or confiscation of agricultural land; neither for employed livestock and implements, harrows and implements, other animate and inanimate implements, nor the produce of agricultural land, (b) prohibition of work upon or entry into agricultural land, (c) prohibition of movement or sale in whole or part or use of employed livestock and implements, harrows and implements, other animate and inanimate implements, or the produce of agricultural land and (d) arrest in detention of a peasant in connection with any matter included in paragraphs (a) (b) and (c)'.

### **Ongoing illegal government action**

The reality today is that the rights of farmers and workers are not being protected in accordance with the law.

This was illustrated on March 9, 2011 in proceedings in the Burmese legislature, the country's new Parliament. On that day, three representatives in the legislature, Aung Thein of Ywangan Constituency, Aung Zin of Pazundaung



Constituency and Ye Tun of Hsipaw Constituency, posed questions that received responses inconsistent with Burmese domestic law.

For example, Aung Zin asked why, in contrast to the purposes of the 1963 Tenancy Law and the 1963 Law Safeguarding Peasant Rights which aims to protect the interests of farmers owning small land holdings, the land of peasants was now being confiscated and nationalized in order to construct large factories and contract resources to foreign companies for the purpose of developing large agricultural holdings. This, he suggested, had turned farmers back into tenants.

He asked if the government could justify the apparent inconsistencies between domestic law and government action. The Minister for Agriculture and Irrigation, Htay Oo, responded by arguing that the government was acting to serve the interests of peasants who constituted the majority of the population and that these actions were taken in accordance with domestic law. He failed to provide reasons as to why this was the case.

The government's actions cannot be justified. Clear contradictions between government action and domestic law can be seen on three grounds. First, the government attempted to use the powers conferred on them by the Land Nationalization Act to justify the confiscation of farmland from small farmers. However, it was the intent of the legislature when it passed the act to enable the government to provide land for farmers, not to aid government officials in their attempts to line their own pockets by making contracts with foreign multinational companies. The government permits these activities because they enable the collection of taxes from the foreign companies. The intent of the Land Nationalization Act and the actions taken by the government are clearly inconsistent.

Second, the actions taken by the government by actively engaging in confiscation, or enabling the confiscation of farmland, represents a clear violation of the Law Safeguarding Peasant Rights. As documented by the International Labour Organization, the government has arrested and detained farmers who have protested the illegal confiscation of their land.

Finally, the government has violated the provisions of the 2008 Constitution. Section 36(d) of the Constitution provides that the state 'shall not nationalize economic enterprises'. By confiscating land from small farmers in order to provide land and resources to foreign companies for the benefit of government officials, the 2008 Constitution has clearly been contravened.

Life for farmers and workers in Burma is growing increasingly more difficult. The minimum wage fails to provide the 'just and favourable remuneration' that ensures 'an existence worthy of human dignity' guaranteed by Article 23 of the Universal Declaration of Human Rights.



As a result, many Burmese citizens are forced to leave their families and communities to work as migrant labourers in neighbouring countries. Further, the government's efforts to confiscate the land of small farmers in order to profit from foreign investors has increased the vulnerability of many Burmese citizens. These actions have been taken in sharp contrast to both Burmese domestic and international laws.

The government has provided no reasonable justification for their actions and, therefore, the government is acting in an illegal manner inconsistent with their responsibilities to the Burmese population.

\* \* \* \* \*