



MRLG
MEKONG REGION
LAND GOVERNANCE



The Political Economy of **Land Governance** in Myanmar

Natalia Scurrah, Philip Hirsch and Kevin Woods

November 2015

With support from:



Research by:





MRLG
MEKONG REGION
LAND GOVERNANCE

The Political Economy of **Land Governance** in Myanmar

Natalia Scurrah¹, Philip Hirsch¹ and Kevin Woods²

¹ University of Sydney

² University of California – Berkeley

November 2015

CONTENTS

INTRODUCTION	1
THE POLITICAL-ECONOMIC CONTEXT OF LAND GOVERNANCE	2
HISTORY AND KEY TRANSITIONS IN LAND RELATIONS	2
GEOGRAPHICAL CONTEXT OF LAND USE AND LAND RELATIONS	4
STRUCTURES OF POWER AND PATRONAGE IN LAND RELATIONS	5
PUBLIC AND PRIVATE INTERESTS IN LAND	8
POLITICAL-ECONOMIC DYNAMICS OF LAND RELATIONS	10
ACTOR DYNAMICS IN DECISION MAKING AND CONTESTATION AROUND LAND	10
AGRICULTURAL MODERNISATION	12
FOREIGN DIRECT INVESTMENT, LAND GRABBING AND DISPOSSESSION	14
FORMALISATION, TITLING AND TENURE SECURITY	15
LAND CONCENTRATION, LANDLESSNESS AND DISTRIBUTION	17
CONSTRAINTS AND OPENINGS IN LAND GOVERNANCE	18
LAND AND RELATED POLICY AND LAW REFORM	18
POSITIONS, AGENDAS AND INTERESTS BEHIND LAND GOVERNANCE REFORM	19
CONCLUSION	23
REFERENCES	24



MRLG
MEKONG REGION
LAND GOVERNANCE



The Political Economy of **Land Governance** in Myanmar

Natalia Scurrah, Philip Hirsch and Kevin Woods

November 2015

With support from:



Research by:



ABBREVIATIONS

ACMECS	Ayeyawaddy-Chao Phraya-Mekong Economic Cooperation Strategy
ADB	Asian Development Bank
AEC	ASEAN Economic Community
ALTSEAN	Alternative ASEAN Network Burma
ASEAN	Association of Southeast Asian Nations
CBNRM	Community-Based Natural Resource Management
CLMV	Cambodia, Laos, Myanmar and Viet Nam
CSOS	Civil Society Organisations
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
GMS	Greater Mekong Sub-region
KDNG	Kachin Development Networking Group
MRLG	Mekong Region Land Governance
NGOS	Non-Governmental Organisations
NPA	Non-Profit Associations
SDC	Swiss Agency For Development Cooperation
SEZ	Special Economic Zone
SME	Small And Medium-Sized Enterprises
TSYO	Ta'ang Student And Youth Organization
VFV ACT	Vacant, Fallow And Virgin Lands Act

INTRODUCTION

Land governance is an inherently political-economic issue. This report on Myanmar¹ is one of a series of country reports on Cambodia, Laos, Myanmar and Viet Nam (CLMV) that seek to present country-level analyses of the political economy of land governance.

The country level analysis addresses land governance in Myanmar in two ways. First, it summarises what the existing body of knowledge tells us about power and configurations that shape access to and exclusion from land, particularly among smallholders, the rural poor, ethnic minorities and women. Second, it draws upon existing literature and expert assessment to provide a preliminary analysis of the openings for and obstacles to land governance reform afforded by the political economic structures and dynamics of each country.

The premise of this analysis is that existing configurations of social, political, administrative and economic power lead to unequal distribution of land and related resources. They also produce outcomes that are socially exclusionary, environmentally unsustainable and economically inefficient. Power imbalances at various levels of society result in growing insecurity of land tenure, loss of access to resources by smallholders, increasing food and livelihood insecurity, and human rights abuses. The first part of this analysis explains why, how and with what results for different groups these exclusionary arrangements and outcomes are occurring.

In recognition of the problems associated with existing land governance arrangements, a number of reform initiatives are underway in the Mekong Region. Most of these initiatives seek to enhance security of access to land by disadvantaged groups. All the initiatives work within existing structures of power, and the second part of the analysis discusses the potential opportunities and constraints afforded by the existing arrangements.

This country report commences with a brief identification of the political-economic context that sets the parameters for existing land governance and for reform in Myanmar. It then explores the political-economic dynamics of land relations and identifies key transitions in land relations that affect access to land and tenure security for smallholders. Finally, the report discusses key openings for, and constraints to, land governance reform.

Myanmar is marked by a rapid opening of its economy to foreign investment. This has exacerbated insecurity over land in a country where arbitrary use of authority has troubled smallholders for decades. Close association between the military (which still controls the levers of government), domestic big business and foreign corporate interests produces a powerful force for land alienation in a country where the current accelerated development path is largely based on land-demanding projects. These projects include agribusiness plantations, extractives projects in the energy and mining sector, and special economic zones (SEZs). The space for open dialogue and challenges around these issues has opened up rapidly, leaving civil society, government officials and the international community scrambling to stay abreast. Meanwhile, new and complex issues have emerged on top of old problems as neoliberal approaches to turn land into capital see tenure reforms move in the direction of private land titling for smallholder sedentary lowland farmers. In addition, new land and investment-related laws enable foreign capital into land-based deals, particularly for agribusiness.

1. In 1989 the then military government changed the official name of the country from Burma to Myanmar. They are alternative forms in the Burmese language. Myanmar will be used in this report unless referring to historical periods or names.

THE POLITICAL-ECONOMIC CONTEXT OF LAND GOVERNANCE

HISTORY AND KEY TRANSITIONS IN LAND RELATIONS

The political-economic roots of Myanmar's land issues lie in the country's colonial history, in two main ways. First, the State's assumption of rights over land and its management is a colonial legacy. Second, the relationship between the central government authority and that of the various ethnic-based states that form the "Union of Myanmar" is based on governance arrangements forged during the colonial era, and this relationship is key to understanding current patterns of land control, concession granting and dispossession.

The British colonial landscape inscribed new territorial arrangements based on a system of grids and wards to facilitate tax collection. This system did not, however, apply to the upland frontier areas, where different rules and institutions for property rights governed forest allocation and management, and where "non-Burmese princes... were to maintain semi-autonomous rule over their subjects" (Ferguson 2014: 298).

In Lower Myanmar, land ownership records were introduced by the British for taxation purposes, thereby fixing land ownership to land use. Concentration of land was a feature of colonialism in Myanmar. It occurred in the more prosperous and commercialised rice growing areas where profits were to be made and landlordism developed, often with the aid of ethnic Indian and Chinese money lenders that left farmers indebted (Turnell 2009). Land deemed to be empty was also carved out in the uplands from shifting cultivation systems for rubber and other plantation crops grown on British colonial estates, or for colonial forestry purposes (Bryant 1998).

Recognition of land ownership did not extend to fallow land. Under the Land Acquisition Act (1894) so-called "waste land", which often included areas under active fallow cycles and used by villagers for livestock grazing and the collection of non-timber forest products, could be appropriated by the State for "public purpose" (Land Acquisition Act 1894: Part 2 4(1)). While the British

colonial classification of waste land was based on the capacity of land to provide profit and taxation (rather than its inherent productivity), subsequent military governments adopted it as a discursive frame to legitimise the appropriation of land by the State in counter-insurgency campaigns (Ferguson 2014: 296-298).

Land was a key anti-colonial revolutionary rallying issue in Burma due to the high rates of landlordism, usury and landlessness in core rice growing areas. The 1947 Constitution, adopted one year before Burma's independence from British colonial rule, formally designated the State as the ultimate owner of all land. The post-independence government sought not only to take back land from foreigners, but also to reduce or abolish landlordism through the 1953 Land Nationalization Act. Private land rights were replaced by a system in which the State formally owned, and could exert claims over, the country's land. Some exceptions notwithstanding, all agricultural land was subject to state reclamation and redistribution schemes. Although this legislation was intended to protect smallholder farming and limit large-scale land acquisitions, it opened the doors to widespread land confiscation by a legally empowered State under ever more dubious premises.

Several ethnic groups in the border regions felt marginalised in post-independence Burma, and launched an armed struggle against the government to press for equal rights and autonomy (Smith 1991). The mounting challenges from separatist insurgents prompted General Ne Win to stage a military coup against the democratically elected government in 1962. A one-party State under the military-dominated Burma Socialist Program Party was established. This served to further deepen the rifts and mistrust between ethnic minorities and the central military government; this history shapes current efforts at negotiating peace and wealth sharing (Lynn & Oye 2014).

State control over land deepened under Ne Win's Burmese Way to Socialism platform. The passing of the Disposal of Tenancies Law (1963) established the State's right to terminate landlord tenancy arrangements and placed further restrictions on people's right to own or rent land. Laws that gave added protections to smallholders were also instated as part of Ne Win's socialist project, namely the Law Safeguarding Peasants Rights (1963), which aimed to protect indebted farmers from creditors foreclosing on land (Oberndorf 2012). Furthermore, a range of controls on agriculture and other economic activity were imposed, most notably through procurement quotas for rice and other main crops. The State accrued new powers to enable it to confiscate land if farmers failed to cultivate a specific crop and produce a set yield, or if they failed to sell a set quota to the junta at a predetermined price. Private commerce was concomitantly severely curtailed (Taylor 2009: 351).

Ne Win's socialist-inspired model for economic development emphasising self-reliance and state-led import substitution industrialisation was disastrous (Larkin 2012; Jones 2014). Inflation and unemployment skyrocketed and the economy stagnated. There was a mass exodus of the country's entrepreneurial class composed largely of ethnic Chinese and Indians. Once the world's largest exporter of rice during the colonial period, the country experienced a steady decline in agricultural production from which it has not yet managed to recover (Kurosaki 2008). This set the context for Myanmar's transition "from state socialism to state-mediated capitalism" (Jones 2014).

After the uprising and military clampdown in 1988, the new State Law and Order Restoration Council (SLORC) at once entrenched military control and started to liberalise the economy, allowing some private trade in agricultural crops and encouraging foreign investment (Larkin 2012; LCG 2012). Land remained the property of the state. However, through the "Wastelands Instructions" of 1991, supposedly "vacant land" was

open for private investment. There was no recognition that much of this land was in fact part of fallow cycles and other customary uses, resulting in widespread land appropriation (Oberndorf 2012: 3).

The growth of private economic activity beginning in the 1990s saw the emergence of influential economic actors with close links to the military which procured lucrative contracts for oil and gas exploitation, the construction of hydroelectric dams, roads and other infrastructure, and the development of agribusiness concessions. This increase in private sector activity, however, did not spread the wealth around, dismantle state monopolies or lead to significant improvements in the country's economic performance (Maung 1998; Larkin 2012). Instead, investments by "crony" companies often led to the confiscation of house and farmland without payment of adequate compensation, and facilitated the increased militarisation of ethnic border areas (AASYC, PYO & MYPO 2009; KDNG 2010; TSYO 2011; Buchanan, Kramer & Woods 2013; ALTSEAN 2014).

Following the national elections in 2010, the doors for foreign investment were flung wide open under President Thein Sein's extensive reform program. Investors, mostly from within Asia but also further afield, have been primarily interested in Myanmar's rich land and natural resource base, located mainly in the ethnic border regions that are mired in long-standing political armed conflict. In the absence of reforms in land tenure arrangements, the intensification of foreign investment in land, agribusiness and resources has increase the potential for land expropriation. Legislation aimed primarily at attracting business investment into the agricultural sector and other land-demanding activities does not have adequate provisions recognising smallholder use of and rights to land. The relevant laws (all passed in 2012) include the Farmland Law, the Vacant, Fallow and Virgin Lands Management Law (VFV Law), and the Foreign Investment Law (to be replaced by an updated investment law).

GEOGRAPHICAL CONTEXT OF LAND USE AND LAND RELATIONS

The geographies of land relations in Myanmar are complex, much like the diverse agro- and political ecologies around the country. The agro-ecological diversity in Myanmar presents several main contexts for land use and associated land relations. In the uplands on the country's political margins, where ethnic minorities are most concentrated, shifting cultivation (*taungya*) is the main agricultural practice. These upland areas, particularly along the Thai and Chinese borders, are where most of the land concessions are being granted for agribusiness and other resource developments, and where land dispossessions and loss of resource-use rights are most prevalent (LCG 2009; Woods 2012, 2013a; Buchanan, Kramer & Woods 2013). This is partly because tenure in the uplands has historically been regulated by customary law, yet customary land-use rights are not formally recognised by the government under the current legal regime (LCG 2009; Oberndorf 2012). Most *taungya* or grazing land is not formally registered or mapped, making such areas particularly vulnerable to confiscation by private actors under the pretext of claiming "waste land".

Meanwhile, most of the ethnic Bamar majority population lives in the central plains, valleys and deltas. The Ayeyarwaddy Delta is the agricultural heartland where the country's large rice surplus used to be generated and where there is greatest potential for revitalisation (Dapice, Vallely & Wilkinson 2010; MSU & MDRI/CESD 2013). The potential for increasing rice production progressively decreases as one moves south where water salinity limits paddy cultivation to the monsoon season. The Dry Zone of upper central Myanmar is given over to a mix of rice, pulses and various other cash crops - largely farmed on a smallholder basis. Variability

in water is a key constraint to agricultural production in this area - creating a spatial distinction between "prosperous" irrigated villages located near rivers and streams, and the more "risk-prone" dry farming areas (Boutry et al. 2015: 28). In both delta and dry zones, smallholders continue to face challenges, including very high levels of debt, weak collective organisations, and an overall lack of services. Accessing affordable credit, quality seeds, inputs, and long-term investment is a challenge; most farmers live precariously and distress sales are common (Dapice, Vallely & Wilkinson 2010; Haggblade et al. 2014). Outmigration as a livelihood strategy is becoming increasingly important as the number of landless increases (Dapice, Vallely & Wilkinson 2010; Rammohan & Pritchard 2014).

The geography of land tenure and land relations is also influenced by the historical presence of the State and other sources of authority. Myanmar's preoccupation with paddy production dating back to colonial times has made the Ayeyarwaddy Delta a focus of government interventions, and this has in turn shaped land distribution and management in the area. Up until 2003, the Delta area was the focus of policies related to compulsory procurement of crops, which had severe consequences for "undutiful" farmers who had their lands confiscated when they were unable to sell prescribed quotas to the local government (GRET 2014). In recent years the Delta has again become a focus of state policy implementation, this time in the form of a land titling program centred on issuing Land Use Certificates (LUCs) to landholders. According to a study by GRET, the crop procurement policies of the past account for most of the cases of land dispossession in the Delta and "represents a large proportion, if not the largest, of land contestations occurring with the current land registration process in villages of the Delta" (Boutry et al. 2015: 158).

In contrast, in the upland regions along Myanmar's national borders, central government presence has been very limited due to a protracted civil war between successive military governments and diverse ethnic groups engaged in armed struggle against the central government. Since the 1990s, the dynamics of these struggles have resulted in what has been termed "ceasefire capitalism", whereby land deals are inherent in the agreements between former foes with attendant significant political and securitisation effects (Woods 2011). The opening up of the country, combined with the cessation of hostilities along the Chinese and Thai borders, has attracted a burst of investment that threatens to ignite new conflict as people are dispossessed of their land to make way for new investors (Buchanan, Kramer & Woods 2013; Hickie 2014). Despite these rapid changes, key reform areas related to decentralisation and local governance are still sensitive (Lynn & Oye 2014). This continues to inhibit the implementation of central government land reform programs in these areas, including recent land titling initiatives.

Border areas also attract hybrid public-private investments that result in dispossession. For example, the Chinese government's opium substitution program on the China-Myanmar borderlands has favoured Chinese investors being given access to large land concessions for agribusiness under the guise of ex-popy smallholder development schemes (Kramer & Woods 2012). Since this program's private business model was adopted in 2006, large tracts of land have been expropriated and converted to rubber in the uplands of Kachin and Shan States. The large-scale rubber concession model promoted by the opium substitution program in northern Myanmar contrasts starkly to the state-backed yet smallholder-driven rubber production programs in the more traditional rubber growing areas along the Thai border in the south of the country, which have contributed to the livelihoods of smallholder farmers (Woods 2012: 11). This

points to how different investment patterns have shaped land relations and production chains for particular commodities in different parts of the country, with significant implications for poor farmers. Similarly, Woods (2015a) observes that the geography of farmer-broker relationships in Myanmar (based on ethnic affiliations) has had considerable bearing on patterns of landlessness within maize-growing areas in Shan State.

STRUCTURES OF POWER AND PATRONAGE IN LAND RELATIONS

Myanmar is marked by longstanding military rule. Since the onset of initial economic reforms in the early 1990s, and despite recent reforms, the political economy of Myanmar has centred around the control not only of the administrative levers of power by the military, but also by the Tatmadaw's² extension of its organisational and its senior officers' private interests into the most profitable extractive opportunities associated with land and natural resources. Large concessions have been given to key influential business figures, leading to a pattern of cronyism between business and senior military officers. Another important context in the political economy of land relations is the evolving relationship between centre and periphery with the signing of ceasefire agreements between the central government and ethnic minority insurgents, giving rise to "new politico-business complexes" (Jones 2014: 147).

The Tatmadaw emerged as the strongest political institution in the country in the 1950s in the context of Burmese nationalism and paved the way for the military to seize power in the 1960s. In 1988, economic reforms introduced by the SLORC sought to end the country's self-imposed isolation and attract foreign investment. However, the extent and pace of reform was shaped by struggles within the military and State. Rapid liberalisation was resisted by various conservative factions, including those ministries linked to state-owned enterprises (SoE) and military-linked

2. The Myanmar Armed Forces.

entrepreneurs (Jones 2014). These positions were consolidated when SLORC was reorganised under the State Peace and Development Council (SPDC) in 1997, allowing formal state monopolies to not only continue, but to also develop new state-business networks.

Large amounts of foreign investment (concentrated on energy and minerals in border regions) entered Myanmar via joint ventures with SoEs and military-linked firms. The privatisation process was managed in such a way as to benefit domestic and foreign entrepreneurs who developed close links with powerful officials and supported the goals of the regime. In return for their loyalty they were awarded trade licenses, joint venture deals for lucrative development projects and land concessions. Two of the largest and most well-known conglomerates include the Union of Myanmar Economic Holdings Limited (UMEHL) and Myanmar Economic Corporation (MEC), both owned by the Ministry of Defence. UMEHL activities span a broad range of industries, including trading, hotels and tourism, banking, property development, car assembly and precious stones; while MEC has interests in building materials and mining (Larkin 2012).

Revenues derived from investments in extractives and other land-based development projects were not reinvested in health or education. Instead, the SPDC pursued a policy of militarisation directed in particular to ethnic minority areas not under central government control, which is also where most of the resource development projects are located. Throughout the 1990s and 2000s, villagers' lands were expropriated in the name of national defence for military encampments and related facilities, and surrounding farmland and grazing land was expropriated for food production to support military personnel (ASYC et al. 2009; TSYO 2011; KESAN

2012; HURFOM 2013). In 1999, the Asian Human Rights Commission linked growing food scarcity in Myanmar directly to militarisation of the nation (AASYC et al. 2009).

More recently, that same land (large areas of which were later re-occupied by smallholders whose lands had been expropriated), has in some cases been transferred to companies, with smallholders once again being expelled as "squatters" under the 1991 Wastelands Instruction and, more recently, the 2012 VFV Law.

A report by Global Witness (2015) uncovers evidence that in 2006, the Tatmadaw's North East Regional Commander, U Myint Hlaing (who is also the current Minister of Agriculture and Irrigation), collaborated with the district government and private companies to confiscate large tracts of land in northeast Shan State for conversion to rubber. The report also reveals that the main beneficiary of the land confiscations, the Myanmar company Sein Wut Hmon, also conducted its own land confiscations between 2008–2011. According to the report, Sein Wut Hmon Company now controls 4,608 acres (1,865 hectares) of plantations, the largest amount of land of any rubber company in northeastern Shan State (p. 4).

This is no isolated case (c.f. KDNG 2010; TSYO 2011; Kramer & Woods 2012; HURFOM 2013; ALTSEAN 2014). With the country opening up to foreign investors, the scope for much larger scale investment has heightened this cronyism, and it has also brought foreign investors into the relationship (Kramer & Woods 2012; Buchanan, Kramer & Woods 2013; Woods 2012, 2013). Growing evidence of the role of crony companies in contemporary land grabs points to the emergence of a powerful oligarchy that exercises considerable influence over the trajectory of reforms in the country.

A second important issue structuring power and patronage in land relations in Myanmar is the signing of ceasefire agreements between the central government and ethnic minority insurgents. Since the 1990s, the SLORC/SPDC has sought to pacify border regions by negotiating truces based on promises of development and business opportunities (Woods 2011). Complex alliances and accommodations have been formed by former enemies around concessions for timber, agribusiness, and other resources, facilitated by foreign investment. The leadership of all sides of the old conflict have been complicit in this particular manifestation of land grabbing (Woods 2011; Buchanan, Kramer & Woods 2013). In northern Shan State, for example, indigenous authorities in the Wa Self-Administered Division and in the now government-controlled Kokang area have facilitated Myanmar military companies and Chinese companies to establish rubber plantations in what was formerly farmers' swidden fields (Woods 2012).

The increased militarisation of borderland areas as a result of the cessation of conflict (but without peace), has allowed the government to gain control over territories previously controlled by ethnic groups. Centralised networks of army commanders have become key brokers of land deals with domestic and foreign investors. In other cases, agricultural concessions have been granted by non-state political groups (e.g. ceasefire groups and insurgent organisations), sometimes with permission from the government. Whatever the arrangement, the overall trend has been one of increased state power in borderlands, loss of control over territory and natural resources, loss of revenues derived from taxing companies that were granted concessions within previously controlled territory, and the enfolding of ceasefire group leaders into new patronage networks (Woods 2011; Buchanan, Kramer & Woods 2013; Jones 2014).

The flood of foreign investment financed projects in the borderlands has led to new waves of land dispossessions, displacements and conflicts. There is growing resentment over the large number of expropriations and displacements occurring in the ethnic border regions in the name of foreign investment and national development. In 2011, a 17-year old ceasefire agreement between the Kachin Independence Organisation (KIO) and the government was abruptly terminated after conflicts resumed in the resource-rich Kachin and North Shan States. Other sporadic clashes with ethnic groups with recent ceasefire agreements have also been linked to resource investments (Buchanan, Kramer & Woods 2013). The lack of transparency around land deals related to ceasefire negotiations raises concerns about what "peace" and increased state power in the borderlands actually means for the future of ethnic minority communities. As many commentators have noted, the future of the peace process and hence reform in Myanmar rests largely on the government's ability to address issues of economic disadvantage, land access and ownership, participation in resource governance and the devolution of power from central to regional and local levels (Hickie 2014; Lyn & Oye 2014).

Structures of power and patronage in land relations occur at different scales. Access to land and rural credit at the village and village tract level is generally controlled by a few powerful individuals, including local authorities, local representatives of the Settlement Land Records Department (SLRD) and the Myanmar Agricultural Development Bank (MADB). Among these, the village headman has historically occupied a position of privilege as the state's "political broker" in Bamar-dominated lowland areas, fostering patronage networks that shape land relations to this day (GRET 2015). In the past, village headmen in lowland areas played a key role in legitimating land transfers at the

village level (even when they were technically illegal) and overseeing the redistribution of land expropriated via the crop procurement policy (ibid). Village headmen will now adjudicate land disputes at the village level in their newly appointed positions within Village Tract Land Management Committees (VLMC) under the 2012 Farmland Law. Networks of informal money lenders and brokers are also important players shaping power and patronage in land relations at the local level in Myanmar (see Kaino 2006; Woods 2015a).

PUBLIC AND PRIVATE INTERESTS IN LAND

A recurrent theme in socialist and post-socialist land relations is the shifts and ambiguities in public and private interests in land and other resources. While the Myanmar 2008 Constitution contains provisions for private property rights (Articles 35 and 36), it maintains that the State is the ultimate owner of all land (Article 37), thus preserving the government's right to forcibly acquire land from its citizens. With all land the property of the State and holders of state power in cosy relationships with those who have accumulated capital, the opportunities for political and economic elite groups to benefit one another at the expense of politically and economically marginal groups is immense. Resource nationalisation has translated into arbitrary application and abrogation of rights and disregard for customary tenure and practices, which has allowed land to fall into private hands. The esoteric pattern of socialist development from the 1950s to 1980s has therefore been fundamental in setting the scene for a post-socialist resource-extractive economy based on patron-client relationships and where there are few protections for smallholders.

Myanmar's enlarged military apparatus has been a key factor distorting public and private interests in land relations. SLORC/SPDC pursued a policy of aggressive state-building and military expansion that involved confiscating land from mainly ethnic minority communities, and transferring their former property and assets to the military government. Unable to finance this mass military expansion, the State employed a deliberate policy of "self-reliance" (HURFOM 2013: 16) whereby soldiers in outposts had to fend for themselves and live like 'stray dogs', taking farmland, crops and food from villagers (villager quoted in Ferguson 2014: 295).

Part of the justification for increased military presence in the ethnic borderlands has been to provide 'security' for foreign investments in large-scale resource development projects such as oil and gas pipelines, mines and hydropower dams. Most of these investments are by SoEs that are wholly or partially financed by governments in the region, further blurring private/public interests (Buchanan, Kramer & Woods 2013). Mostly undertaken as joint ventures with domestic companies, these projects are touted as the cornerstone to national development. While foreign investment in the energy sector has earned the government significant revenue, up until recently very little of it was invested in health, education or public infrastructure. Even today there is little transparency of how revenue earned from these projects is spent (SGM 2013). According to one source, billions of dollars of gas revenues remain unaccounted for (Arakan Oil Watch 2012).

The Thein Sein government promised to pay attention to poverty alleviation and ensure the benefits of foreign investment “go down to the grassroots level” (President U Thein Sein, quoted in Buchanan, Kramer & Woods 2013: 11). However, the increase in foreign investments that has accompanied Myanmar’s democratic reforms has led to new waves of dispossession and displacement by companies who have acquired large tracts of land for agribusiness and other projects, also in the name of ‘national development’. The land for these concessions is legally acquired by the State and allocated to private investors using the concept of ‘fallow’ or ‘vacant’ land, under the 2012 Farmland and VFV laws. It remains unclear how policies promoting the appropriation of land in the name of public interest for private accumulation

will be reconciled with goals of ‘poverty alleviation’ and promises of peaceful and ‘people-centred development’. Moreover, there is currently limited capacity for non-farm sectors to absorb those expropriated from their lands (Larkin 2014). While foreign direct investment (FDI) was a staggering US \$4.1 billion in 2013-2014, concentrated in the oil and gas, mining and hydroelectric power sectors (DICA 2014), such projects generate few jobs for low-skill workers outside of the construction phase. Likewise, and as explored further below, the granting of land to large-scale agribusiness companies have generally not generated expected revenues or employment opportunities for those whose lands were appropriated.

ACTOR DYNAMICS IN DECISION MAKING AND CONTESTATION AROUND LAND

In Myanmar, multiple agencies and ministries are responsible for land governance and land administration. Hierarchies and powers largely reflect institutional legacies dating back to the colonial period. However, two laws enacted in 2012 – the Farmland Law and the VFV Law – have introduced fundamental changes to land governance and administration in Myanmar. Under the new laws, ministries and departments with little history of cooperation are required to work together to implement a sweep of land governance reforms. The adoption of a private property rights regime requires the creation of a new system for administering land markets, including the issuing of LUCs and associated cadastral mapping. Governance bodies and associated rules and procedures for identifying and allocating land to private investors and resolving disputes are all in the process of being crafted with the support of donors, alongside a centralised land database and concession inventory to improve transparency. Progress is slow and convoluted.

The 2012 land laws and the National Land Use Policy (NLUP) (drafted and disseminated for public debate in 2014), have been criticised by civil society organisations and other actors for benefiting private sector investors at the expense of smallholder farmers (TNI 2013, 2014). A key concern is that without formal recognition of customary land rights and informal tenure and occupancy rights, the new laws will exacerbate land tenure and food insecurity for smallholders, particularly ethnic minority groups who practice shifting cultivation for which land title is not available. At the same time, civil society groups and others recognise that the land

reform process holds opportunities for advancing ‘good governance’ in Myanmar. For example, land reforms promise to build reliable legal frameworks, strengthen institutional capacity and create land-based knowledge and information systems. These are all prerequisites for more informed, transparent, accountable decision making. However, there is much apprehension about the capacity of the government to implement land reforms in a way that will achieve broad-based development goals. Concerns are not only levelled at the limited technical and human capacity of government agencies. They are also based on a fundamental recognition that the political-economic context in which decisions over land are made often enables powerful political and economic actors to capture benefits at the expense of weaker groups.

Land administration in Myanmar is characterised by legal ambiguities and institutional overlaps, despite the new land laws supposedly addressing these issues. The most critical overlap of mandates is between the Settlement and Land Records Department (SLRD), housed within the Ministry of Agriculture and Irrigation (MoAI), and the Forestry Department, under the Ministry of Environmental Conservation and Forestry (MoECAF). The SLRD has responsibility for administering and registering land classified as “farmland” (or low/paddy land), while the Forestry Department has responsibility for land designated as “forest”. Under the 2012 Farmland Law, the issuing of LUCs only applies to land classified as “farmland”. While “vacant” land and “other woodland” can be reclassified as “farmland” and be formally registered by SLRD, land classified as “forest” is not eligible and falls under the purview of MoECAF (Baver et al. 2013).

This means that under the current laws, farmers who are cultivating in designated “forest” land - some of them for generations – could be termed “illegal squatters” and be legally evicted. It is widely acknowledged over many generations, as populations grew and land became scarcer, farmers moved to the forested peripheries of the central valleys to cultivate. Many of the government classification maps are out-dated. Moreover, local authorities (village headmen or elders) often granted/legitimised households’ land rights through informal arrangements, including issuing generic papers and contract forms, even though it was technically illegal under the previous legal framework (Boudry et al. 2015: 158).

The issue of land reclassification is therefore critical, but also potentially contentious. To deal with the problem, the government has established a Land Allotment and Utilization Scrutiny Committee. However, it remains to be seen whether this central government body will have the capacity and authority to cut through ministerial jurisdictional rivalries (both horizontal and vertical), let alone integrate a broad range of stakeholders into decision making. Meanwhile, there are concerns that the Farmland Administrative Bodies (FAB), tasked with adjudicating all land disputes related to land classification and compensation under the 2012 Farmland Law, lack independence.

Another key area of contestation and overlap is through the process for granting land concessions to private investors. The VFV Law empowers the Central Committee for the Management of Vacant, Fallow, and Virgin Land (or CCVFV), to reallocate so-called “vacant” or “fallow” land (which is almost always villager’s upland

swidden farms and village managed agro-forestlands) to domestic and foreign investors. CCVFV members are mainly senior government officials from different ministries (for a full membership list of CCVFV, see Table 6 in Baver et al. 2013: 165). There are overlapping mandates between the CCVFV and the FAB, giving rise to some incoherence and conflicts of interest in land management (OECD 2014).

To further complicate matters, the 2012 Foreign Investment Law (now in the process of being updated to the Investment Law) confers powers to yet another central committee – the Myanmar Investment Commission (MIC) - to grant vacant land to foreign investors. Like CCVFV, MIC’s membership consists mainly of government officials from different ministries as well as a few representatives from the private sector (for a full membership lists of MIC, see Table 4.1 in OECD 2014: 137). Both bodies have considerable discretionary power to grant land concessions to the private sector, with little room for scrutiny or contestation of decisions made by these bodies (OECD 2014).

Given the lack of checks and balances that would guarantee impartiality within the new government bodies established to settle land disputes, non-government organisations (NGOs) have in some instances encouraged smallholders to fight land cases in the court system. There is also a growing interest in educating villagers about the law as part of broader efforts to protect farmers’ land use and ownership rights. Other strategies have been to build up a grassroots movement of farmers to influence land and investment policies, as evidenced by an explosion of farmers unions and grassroots networks.

AGRICULTURAL MODERNISATION

From its position as the world's largest exporter of rice in the early 1900s, the Myanmar agricultural sector has steadily declined and stagnated. Despite the country's partial liberalisation during the 1990s, an unfavourable investment climate and poor management of the economy constrained agricultural production and agribusiness development. Some 70 per cent of Myanmar's population is dependent on agriculture for their livelihood. With the exception of some central areas where farmers have good productivity rates and are actively inserted into markets, the sector is generally characterised by land inequality, low productivity, and high rates of food insecurity (Dapice, Vallely & Wilkinson 2010; Haggblade et al. 2014). Around half of rural households report having insufficient food for two months of the year and around one-third of children are stunted (Haggblade et al. 2014: 56).

Against this backdrop, the government of Myanmar has, in recent years, embarked on ambitious policy reforms to liberalise markets and encourage private sector investment in agriculture. Following multilateral and bilateral donor advice that Myanmar should capitalise on its favourable conditions for agribusiness development and strategic location relative to regional markets, the government has promoted agricultural sector "modernisation" through mechanisation and market mechanisms. The two land laws, the draft NLUP and the draft Investment Law are all designed to support a shift towards large-scale, export-led, agro-industrial development through the granting of large land concessions to domestic and foreign investors. Consequently, large-scale commercial agriculture has become a key new driver of land grabs in the country, raising concerns that Myanmar's current land policy direction will neither alleviate poverty, nor attain the expected productivity and growth gains.

The MoAI's 30-year Master Plan for the Agricultural Sector (2000-2030) aims to convert ten million acres (four million hectares) of "vacant", "fallow" and "virgin" land to private industrial agriculture for export (USAID 2010). By May 2013, an estimated two million hectares of "VFV land", "forestland" and "deep-water land" had been allocated to private investors. Almost all of it went to domestic companies for rubber, oil palm, jatropha, rice, sugarcane and cassava (Byerlee et al. 2014, p.vi).

According to a 2015 Forest Trends report, land allocated to large-scale agricultural concessions increased by a massive 170 per cent between 2010–2013. However, only 20 per cent of the land allocated was planted with crops by the end of 2013 (Woods 2015b: vi, xi). In Kachin State and Tanintharyi Region, two areas with high value conservation forests and where the majority of agribusiness concessions in Myanmar are granted, the percentage of areas planted by crops is even lower: 12 and 19 per cent respectively (ibid: vii). This suggests that agricultural concessions provide entry points for companies to access logging concessions and/or engage in land grabs for land speculation purposes.

The logic of the current large-scale land concession model is that investments will lead to greater production and growth in exports, and spur the rural economy through the provision of jobs. Increasing productivity of certain crops is also seen by the government to increase national food security, thereby reducing dependence on commodities imported from other countries, such as edible oil. However, as the figures above indicate, few concessions achieve their intended purpose of developing "modern" agriculture. Despite these problems, the government has not taken steps to systematically review nonperforming concessions (Byerlee et al. 2014).

While this model of development is not yielding promised results, it is having substantial social and environmental impacts. Most significantly, the granting of concessions for agribusiness is resulting in widespread dispossession of farmers from their land. This is especially the case in the upland borderland areas of the country where predominantly ethnic minorities practice shifting cultivation (taungya system) and where farmers do not have secure rights to their land. Available literature suggests that land concessions have seldom led to employment opportunities for those dispossessed. In Shan State, for example, Chinese investors have preferred to import unskilled labour from China or from the central/delta regions of Myanmar to work in large-scale plantations (Woods 2012). Partly mechanised agribusiness development has quite limited demands for labour, while at the same time there are few industrial or alternative jobs for the growing landless.

A prevailing view in the literature is that granting large-scale land concessions at low costs to attract investors is a risky strategy, and the debate has shifted somewhat (at least among foreign donors) to examine whether and how agribusiness models can be more inclusive of smallholder farmers (Byerlee et al. 2014; Haggblade et al. 2014; Woods 2015a). This reflects discussions occurring at the regional and global scales about small-versus large-scale agriculture, where the potential of smallholders as drivers of productivity and growth is increasingly recognised alongside their contribution to addressing poverty and food insecurity (e.g. Paglietti & Sabrie 2013; see also Food and Agriculture Organization of the United Nations (FAO) link, www.fao.org/ag/ags/contract-farming). Much of the emerging literature on inclusive agribusiness models – most notably on contract farming – is premised on the idea that greater efficiency and equity can be achieved through models that match the complementary assets of agribusiness companies, namely their access to technology, capital and markets; and those of smallholders, namely their labour, land and local knowledge (Byerlee et al 2014).

Inclusive business models are also being promoted by international development agencies as “alternatives to land acquisitions that can minimise investors’ risk” (OECD 2014: 331).

Recent studies have identified different business models already operating in Myanmar (Byerlee et al. 2014), and more research is clearly needed to assess the opportunities and constraints of different arrangements. Various large-scale agribusiness concessions in the central areas first gravitated towards contract farming because they were unable to meet production quotas set by the government that came with the concessions. However, this largely amounted to adopting a “quasi-feudal system” rather than actual contract farming (Woods 2013a). Today, models and arrangements have diversified substantially across the country, although contract farming in Myanmar is still very much in its infancy. While there are some promising examples of shared benefits for farmers from contract farming, especially in poultry and sugarcane (Byerlee et al. 2014), farmers are generally too poorly organised to reap potential benefits from these arrangements, and many are vulnerable to exploitation. A recent report on Charoen Pokphand (CP) maize cultivation by upland farmers in Shan State provides damning evidence of the risks associated with contract farming that fall on smallholders – many of whom are dispossessed through debts incurred by new patterns of capital engagement with farming. In this case, differential patterns of accumulation and dispossession for low- versus high-capital households are largely influenced by poor households’ reliance on high-interest loans from local money brokers (Woods 2015a). Studies have generally concluded that contract farming offers no panacea to the problems of agricultural development in Myanmar, emphasising the importance of situating the impacts of such schemes within the livelihood terrains and political-economic realities in which they operate (ibid; Byerlee et al. 2014).

Nevertheless, some studies (particularly studies employing value chain analysis), do point to areas where private investment can be better channelled in ways that distribute benefits more evenly. For example, there are suggestions that FDI should target food processing and food retail, rather than food production (as it has high employment multiplier effects); or that investment in the seed industry holds potential for increasing productivity among smallholders (Byerlee et al. 2014). Overwhelmingly, however, research points to the need for public investment that supports small-scale farmers to become more productive in a free-exchange market. Increasing security of tenure is critical, but it also needs to be accompanied by appropriate agricultural support, including the provision of public infrastructure, such as roads, extension services, information, affordable inputs and access to cheap credit (ibid; Dapice, Vallely & Wilkinson 2010; MSU & MDRI/CESD 2013; Haggblade et al. 2014). This stands in direct contrast to the government's current approach to reforms, which envisages little or no role for smallholder farmers in local and national economic agricultural development.

FOREIGN DIRECT INVESTMENT, LAND GRABBING AND DISPOSSESSION

Cross-border investment and resource extraction in Myanmar's borderlands began in the late 1980s, when the SLORC and SPDC military governments initiated a partial liberalisation of foreign investment and trade laws. At the same time, a series of ceasefire agreements were initiated with armed ethnic groups that enabled the military government to progressively gain greater control over frontier territories and access cross-border investors (Woods 2011). During this period, FDI focused on the extractives sector, particularly energy, minerals and timber. FDI entered the country through joint ventures with military-owned companies, including

UMEHL and MEC (Buchanan, Kramer & Woods 2013). With its policy of non-interference in domestic affairs, China was a key ally of the previous military government, and the State actively promoted Chinese companies to invest in large resource projects, particularly in the northern states near the Myanmar-China border.

More recently, Chinese investment has focused on large-scale land acquisitions for agribusiness concessions, particularly rubber plantations. Current political reforms and the prospect of peace in ethnic border regions are providing further impetus for large-scale foreign investment in land and natural resources. Myanmar's regional neighbours are all keen to expand their investments in Myanmar, particularly China, Thailand, India and South Korea. Previously isolated frontier regions are becoming key nodes for regional trade and investment, posing significant threats to communities with insecure land tenure (Buchanan, Kramer & Woods 2013; Kramer and Woods 2013). Allegations that the government is using the peace process to push forward a development agenda without consulting local groups points to the delicacy of the situation and the potential for conflicts to reignite (Hickie 2014).

As in other parts of the country, FDI in Myanmar's ethnic areas occurs through both formal and informal channels (Buchanan, Kramer & Woods 2013). FDI in large projects, such as oil and gas, hydropower, or SEZs, goes through formal channels as these sectors are controlled by the State and entail massive investments. The remaining foreign investment is largely informal and involves partnerships with domestic companies to facilitate land deals, such as Chinese foreign investment in rubber in Kachin and North Shan states, and Thai and Malaysian investments in palm oil in the southern Tanintharyi Region.

Prior to the current land reforms, foreign investors could only engage in joint-venture arrangements. With the enactment of the 2012 land laws, foreign companies are now able to purchase land use titles for agricultural concessions as 100 per cent foreign-owned ventures. While the 2012 Foreign Investment Law contains some (ambiguous) measures to regulate foreign investment in agriculture to the advantage of domestic companies, it also allows foreign investors to acquire land use rights for up to 70 years (Obendorf 2012). It is expected that the new Investment Law will provide similar legal support measures for both domestic and foreign investment in the agricultural sector.

Despite the swathe of recent legal reforms aimed at increasing FDI in land concessions, there is today very little FDI in Myanmar's national formal agricultural sector. Nearly all agricultural concessions in the country are formally registered to domestic companies. Due in part to greater restrictions and high taxes on foreign investment, foreign companies prefer to obtain land concessions by informally supporting or partnering with local companies (Woods 2012). This is best illustrated by China's opium crop substitution program which finances many of the rubber concessions in northern Myanmar through local elites (Kramer & Woods 2012).

Since most of the FDI in agriculture is informal and channelled through companies in Myanmar, it is difficult to ascertain the extent of foreign investment in agribusiness. Official FDI figures thus underestimate the degree to which foreign companies and investors are involved in land deals, either for agricultural concessions or as a prelude to timber extraction or land speculation (Woods 2012, 2013, 2015b). Although FDI in agriculture is done informally and therefore not recorded or taxed, it plays a crucial role in shaping industrial agricultural development in Myanmar.

The government's apparent push for FDI in large-scale land concessions is to help reach agricultural export quotas that the domestic sector has been struggling to meet. In many ways, this is a legacy from the Ne Win era

during which smallholders were exhorted to meet such quotas and, as such, they exemplify the continuing hybrid socialist/capitalist nature of the political-economic system. However, as noted in the previous section, it is clear that such concessions are not achieving their stated productivity objectives, with only marginal yields recorded (Woods 2015b).

FORMALISATION, TITLING AND TENURE SECURITY

Most land in Myanmar is held through customary or informal tenure arrangements. However, this is starting to change in lowland areas as the government, with help from United Nations (UN) agencies, begins a national land titling program to turn land into capital and formalise land use rights. The context for this change is the passing of the Farmland Law in 2012, which provides for the issuance of formal LUCs that can be transferred, inherited and mortgaged. While the government retains ultimate ownership of farmland, for the first time, usage rights will be freely saleable, provided transfers are properly registered. In conjunction with the VLV Law and the Foreign Investment Law, private companies, both domestic and foreign, can obtain LUCs for land purchased or acquired by means of the government granting so-called "vacant land" or "waste land".

To date, the issuing of LUCs has concentrated in the Ayeyawaddy Delta and Dry Zone. These areas have a history of commercialisation and multi-generational land holdings. According to a household survey conducted by GRET in August-November 2014, 71 per cent of sampled landowners in the Delta had received LUCs, while 80 per cent of landowners in the Dry Zone had received LUCs (Boutry et al. 2015: 143-144). Note, however, that these figures disregard the high recorded rates of landless households: 60 per cent in the Delta and 41 per cent in the Dry Zone (p. 71). The difference in number of LUCs issued between the two zones is partly attributed to the greater occurrence of land disputes in the Delta, most of which originated during the time of the crop procurement policies when the State

confiscated land from farmers who were unable to reach crop production quotas. Another factor is that the Delta has more lands designated as “forests” that are under cultivation, which are not eligible for LUCs (p. 144). Ongoing land disputes and unresolved issues around land classification and ministerial jurisdiction pose challenges to the land formalisation process, suggesting there are real constraints to land titling achieving fair and equitable outcomes.

Despite identifying a number of disparities and exclusions in the delivery of LUCs due in part to the hasty and top-down manner of implementation, the GRET study nevertheless finds the land registration process in the lowlands to have been relatively comprehensive and efficient. This is attributed to the relative fluidity between existing customary land tenure systems and practices on the one hand, and formal changes in land use rights introduced through the land titling initiative on the other. In other words, the informal arrangements developed by local authorities over the years for recognising land use rights, while technically ‘illegal’ under previous legal frameworks, have provided (and continued to provide) farmers with a degree of tenure security (ibid: 190-191). In this context, the LUCs served mainly as a “formalization fix” (Dwyer 2015) – the rubber stamping over land whose ownership status was not really contested because land had already been recognised and legitimised (albeit ‘illegally’) by local authorities. The GRET study thus concludes that while LUCs have been welcomed, “in practice...little change[d] for farmers” (ibid: 190).

This does not mean that farmers in the Delta and Dry Zones do not experience tenure insecurity. One needs only to look at high rates of landlessness recorded for these areas (noted above) to see that tenure insecurity in the lowlands is indeed prevalent. Up until 2003, the forced paddy procurement system was a key driver of land insecurity in the Delta. Since then, the most important factor leading to land loss has been indebtedness, particularly the use of land as collateral for

credit loans, mainly with informal money lenders. Indeed, there is scepticism about whether the supposed benefits of land titling, such as the stimulation of credit-driven agricultural investment, can be attained in a context where there are high levels of debt and access to financial institutions is a major challenge (Baver et al. 2013; Woods 2015a). Under such conditions, land titling can, in effect, incentivise farmers already under financial strain to sell their land.

Land titling presents huge challenges for tenure security for rural farmers in the ethnic uplands as the government does not formally recognise traditional upland swidden cultivation (taungya). Lack of formal recognition for customary land rights systems and practices is rooted in a long history of internal conflict between diverse armed ethnic groups and the central government. Land insecurity in these areas is compounded by the large numbers of people who have been displaced, often repeatedly, by civil war. In this context, current land tenure reforms authorising the State to transfer people’s swiddens to private companies, has been examined through the lens of racialised military state building (Woods 2013b). People living in the uplands seem to have the least formal tenure security, with no statutory or official claim to their land. Here, agribusiness ventures have easily seized rotational agriculture land (Woods 2012; Kramer & Woods 2012).

Without proper recognition and legal protection of customary land tenure, efforts to formalise land through titles may create greater insecurity, as experiences in Laos and Cambodia have shown. The government’s impetus to reserve State land (or VFV land) to allocate to private concessions may, moreover, create tensions with donor principles of basing land titles on pre-existing de facto recognised land use. The land titling program is likely to meet significant obstacles as it expands to the uplands, some operational, and others more political in nature.

LAND CONCENTRATION, LANDLESSNESS AND DISTRIBUTION

Myanmar is characterised by high levels of land inequality and landlessness or near-landlessness in the rural sector. According to a recent report published by FAO, 69 per cent of farmland is controlled by 20 per cent of rural households, while less than 30 per cent of agricultural land is controlled by smallholders and sharecroppers (Srinivas and Hlaing 2015: xi). The report also notes a major increase in the number of large landholdings (50 acres [20 ha] or more) and in the number of households with large farms (ibid).

Various development organisations, NGOs and research groups have carried out surveys of landlessness in different parts of the country, reporting a variety of results (c.f. Boutry et al. 2015; Haggblade et al. 2014; EcoDev 2008). It is estimated that at least one-quarter of all farmers in Myanmar are landless, with a recent study recording close to 60 per cent landlessness in the Ayeyawaddy Delta (Boutry et al. 2015: 71). Landlessness is reported to be lower in the uplands than in the central plains as there is more available land and farming operates under different agro-ecological and customary systems (MSU & MDRI/CESD 2013). These studies also report a large number of marginal landholdings below the five acre (two hectare) minimum to sustain a household.

Land fragmentation due to farm family succession cycles and indebtedness are important historical drivers of landlessness or near-landlessness (LCG 2012). Land acquisitions by the military, and government-directed resettlements to make way for development projects have also contributed to landlessness. In the ethnic uplands, decades of civil war have led to mass displacements of people within the country and outside. The introduction of a market economy in the late 1980s produced new patterns of accumulation and dispossession. Recently enacted legislation favouring foreign investment is likely to intensify land inequality and landlessness, particularly in the context of weak tenure protections for smallholders and insufficient government support for more inclusive models of agricultural development.

In this context, and with grossly inadequate land redistribution programs (ALTSEAN 2014: 2), landless farmers are turning to wage labour or non-agricultural occupations to make ends meet, with an increasing trend towards migration, either locally across villages or to cities in Myanmar, Thailand and further afield (Baver et al. 2013; Srinivas and Hlaing 2015; Woods 2015a). However, with insufficient jobs to absorb the growing number of landless labourers and minimum wage driven to the ground, there is cause for much concern over growing levels of poverty and an “incipient social crisis” (Dapice, Vallely & Wilkinson 2010).

CONSTRAINTS AND OPENINGS IN LAND GOVERNANCE

LAND AND RELATED POLICY AND LAW REFORM

Since holding elections in 2010, Myanmar has transitioned from nearly five decades of direct military dictatorship to a formally quasi-democratic system. Symptomatic of the centrality of land to the country's political economy, the period of reform has been accompanied by a sharp rise in land conflicts as people protest against past and recent land acquisitions by the military, the government and their business allies. The sudden increase in visibility of land disputes partly reflects the new political freedoms in the country and relaxation of media censorship. It also points to entrenched interests of "crony capitalists" and emerging "politico-economic complexes" in the borderlands that underwrite contemporary land grabs as the country opens up to foreign investment.

Whether future reforms can achieve key milestones set out by the Thein Sein government, including addressing the economic crisis and finding a peaceful resolution to conflict with ethnic minority groups, largely hinges on its ability to address complex, sensitive, yet vital issues related to land tenure. The political survival of the military's political party, the Union Solidarity and Development Party, also depends on its ability to bring into its fold diverse interests and agendas from within the military-government apparatus, the private sector, civil society and other stakeholders.

The government is in the midst of an ambitious (and uncertain) program to develop a comprehensive legal and institutional framework that will decide how land will be used, by whom and for what purposes. The process started in 2012 with the enactment of various land and land-related laws, including the previously-mentioned Farmland Law, VFV Law and Foreign Investment Law. The two land laws were the first to pass through parliament, which was done quickly without the benefit of public debate (TNI 2013). The initial Foreign Investment Law contained provisions of concern to foreign investors, namely too much domestic protection,

and was returned to parliament for further consideration (Allens and Linklaters 2012). The law is in the process of being updated. Together, these laws have been criticised on a number of grounds: prioritising foreign investment; providing weak protection of (and effectively excluding) customary and upland farm households from land rights; delivering cumbersome land registration procedures for those who do qualify for LUCs; and unaccountable decision-making bodies with the power to grant large land concessions others (Oberndorf 2012; TNI 2013).

There has been an on-going process of government engagement with civil society to revise the Farmland Law and VFV Law – particularly with regard to increasing the representation of these groups in FAB and potentially also other decision-making committees (Oberndorf 2012; TNI 2014). However, any demand for reforms of the two land laws has so far been subsumed by other priorities, including disseminating and informing local communities about the land laws and their implications, dealing with the overwhelming number of land conflicts around the country and, more recently, engaging in the national land policy process.

In October 2014, the government released a draft NLUP for public consultation and comment (see TNI 2014 for a preliminary analysis of the NLUP). Subsequently, the government held 17 public consultations around the country, inviting the public to comment on the policy. A taskforce was established through the Land Core Group, a peak body of NGOs working on land-related issues, to coordinate a series of pre-consultations to inform communities about the NLUP. Despite various problems with the consultation process (Woods & Aguirre 2014), including issues around the timing and inconsistency in translations of the policy (see GRET 2015); it provided a unique opportunity for civil society to engage constructively with government on land policy. The resulting feedback is currently being incorporated into a final NLUP, with some ambiguity remaining about the timing and process for finalisation. The policy will then form the basis for the country's first National Land Law.

The NLUP and land reform process remains, to a degree, open-ended and contestable. The November 2015 elections present an opportunity to galvanise action to ensure that the concerns raised during consultations are adequately represented in the policy and laws, although so far these important issues on land and models of development have been eclipsed by national-level politics.

POSITIONS, AGENDAS AND INTERESTS BEHIND LAND GOVERNANCE REFORM

While the space for public input into the national land policy may be closing, the development of a national Land Law presents another opportunity to negotiate land tenure rights in Myanmar. Other efforts to improve land administration also open up possibilities for innovation, including initiatives to harmonise existing legislation, establishing a land concession inventory, and more coordinated national land use planning and management.

GOVERNMENT

While the draft NLUP includes some provisions that seem to extend land use rights to ethnic nationalities and improve land governance, the extent to which government is committed to more inclusive development is questionable. Whether the NLUP is pro-poor or pro-agribusiness was a question framing the public discussions (TNI 2013). The main thrust of the land policy and laws suggests that land reforms are primarily geared at modernising agriculture by attracting private investment in large export-oriented agribusiness, while ensuring national-scale food security in rice production. These objectives largely match those of the foreign donor community, in particular USAID, which sponsored the initial draft of the NLUP without consulting with Myanmar civil society (Woods & Aguirre 2014). Much less emphasis is placed on supporting land and resource based livelihoods and food security of smallholder

households, particularly those most vulnerable to modernised agriculture, such as ethnic populations who rely on informal tenure regimes and swidden agriculture. Even the narrower view of smallholders as undervalued “assets” who could be generating growth through greater integration into global market chains does not seem to have captured the imagination of current policy makers. While the government displays genuine political will to resolve land conflicts, efforts seem to stem from a concern about their impact on foreign investments, rather than by a commitment to human rights and democratic governance.

Irrespective of whether current land reforms are genuinely geared towards promoting more equitable land rights, there are good reasons to expect the direction of reforms to be heavily constrained and contested by powerful economic interests and influential political forces (TNI 2013). In Myanmar, land reform is being shaped by state-business complexes emerging from “ceasefire capitalism” in the borderlands (Woods 2011) and powerful business oligarchs (Jones 2014). Crony companies and ex-militia leaders, many of whom are now MPs, are asserting significant influence over government policy making, which has so far created a high-risk investment climate for large foreign corporations. In this regard, there are potential lessons to be learnt from the experience in Cambodia.

PRIVATE SECTOR

Myanmar companies are positioning themselves such that domestic political-economic elites would capture accumulated capital through joint ventures or informal arrangements with foreign investors – with both protected by national laws pending the revised Investment Law. Lands confiscated by the military since the 1980s have in part been transferred to local companies, who are now putting that land up for sale to foreign investors.

More reform-minded domestic companies desire land governance reforms such that land conflicts are minimised and streamlined by new sets of laws that provide more systematic methods for acquiring land concessions (although this would not deal with past land grabs). This is so that the potential for any future illegal land grabs do not pose significant risks to investors and increase their exposure to judicial claims. This is particularly the view of companies operating in Myanmar that have links to transnational developers and investors who tend to abide by international best practice for due diligence purposes. In addition, the new Investment Law will include rights for foreign investors that would trump national laws and policies that may impede their profits, with the right to access international arbitration courts outside Myanmar (Woods & Aguirre 2014). However, it does not appear that domestic companies will be afforded such corporate rights to international arbitration (as first proposed) in the revised new Investment Law,

Another dimension to the issue of corporate risk is added when projects are located in contested ethnic borderland areas and involve engaging security forces to evict residents and secure emptied zones. As seen in Kachin State, the militarisation of zones for land and other resource investments can increase violence against civilians and provoke armed conflicts (Woods 2011). In these conflict zones, companies run the additional risk of being linked to war crimes and human rights abuses by using and benefiting from land grabbed under these circumstances (ALTSEAN 2014).

Corporate Social Responsibility (CSR) among private sector investors in Myanmar is limited, given the inadequacy of environmental laws and weak regulatory regime (Lynn and Oye 2014). To the extent that CSR initiatives are present, social and environmental standards are most likely to be enacted among large

transnational companies investing in the extractives sector. In addition, Beijing has made CSR programs an integral component of Chinese SoE operations inside Myanmar in the wake of the suspension of the Myitsone hydropower dam, such as for the Letpadaung copper mine – one of the most high profile land grabs in the country. These programs have mainly focused on infrastructure provision, such as educational and health outreach (Sun 2012).

DONORS

As land became the hottest reform issue in the country, various donors started land governance programs in the country, notably USAID and the Swiss Agency for Development and Cooperation (SDC). USAID initially steered and funded the lead-up to the NLUP initiative, in concert with the consulting company Tetra-tech. USAID also facilitated agricultural sector reviews by Michigan State University, whose published reports are cited in this paper. SDC has been instrumental in funding and orchestrating civil society engagement in the NLUP finalisation process, largely through the Land Core Group and the Transnational Institute. UN-HABITAT, on the other hand, initially provided technical support to the Settlement and Land Records Department (SLRD) under MoAI for the country's land titling program. This has, more recently, evolved into assisting the Myanmar government in developing a Land Administration and Management Program (LAMP). The program has several components, including generating knowledge on best practices in land governance, land resurveying and capacity building of government ministries. Meanwhile, the Livelihoods and Food Security Trust Fund (LIFT), a multi-donor agency focusing on rural land and livelihoods research and development in Myanmar, is a major donor for many large interventions underway in the country, such as funding a large portion of Land Core Group's research and advocacy.

The European Union is funding NGOs engaged in Myanmar's Forest Law Enforcement, Governance and Trade (FLEGT) and negotiating legal timber trade, which includes issues related to land and forest rights. The World Bank (through the Global Environment Facility), the UN (through the UN REDD Roadmap) and private donors are providing funds to NGOs, UN agencies and the Myanmar government to engage in REDD+ projects in the country. These projects are causing some land disputes in forested landscapes in Tanintharyi Region.

The World Bank provided a US \$100 million loan to the MoAI in early 2014 to support irrigation development and "modern farming practices". These practices include farm mechanisation and the production of foundation seed in targeted lowland villages in the Central Dry Zone, which the LCG accuses of purposefully avoiding land tenure security concerns. The FAO has also engaged in land governance reform by running projects for REDD+ (with World Bank funding), FLEGT, and potentially field testing FAO's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of Food Security for the case of Myanmar.

Ethnic political conflict and the well-funded and ongoing peace process has brought in another layer of donor support in land governance reform. Various organisations have become involved in land tenure projects in newly declared no-fighting areas as part of the peace process, working with government agencies to resettle internationally displaced people and refugees. Other programs, particularly from the World Bank and Japan's Nippon Foundation, have earmarked hundreds of millions of dollars for community development in post-war ethnic areas that involve land tenure indirectly through livelihood interventions — although part of the problem is the lack of attention to land governance issues.

However, so far no major development agency or international financial institution has stepped up to provide finance and lead the monumental task of titling the entire country as in some other countries of the region. Instead, titling is being conducted by the Myanmar government with technical support provided by donor agencies and the UN.

CIVIL SOCIETY

There has been an explosion of civil society activity advocating for stronger land rights for customary communities and ethnic farming households. Through the Land Core Group, NGOs and grassroots organisations have been able to engage with the government on policy issues related to land rights, foreign investment and the environment, with the NLUP drafting process a case in point. Engagement in the NLUP consultation process was an important landmark shaping state-civil society relations around policy formulation and this experience will certainly serve to inform future advocacy. Civil society groups also play an important role in land law implementation through educational campaigns, for example, around land registration procedures, but also on farmers' rights and the law.

Recent laws allowing peaceful demonstrations have seen local communities publicly express their grievances and make demands for more transparent and accountable processes for concession granting. Civil society challenges have often been met with violence, as demonstrated by the brutal suppression of a three-month occupation of Monywa copper mine in November 2012. In some cases, new laws purported to increase freedoms to assembly and association have been used by the government to arrest protest leaders and activists.

Inadequate mechanisms for resolving land disputes and accessing justice is another obstacle to the participation of civil society. In particular, the various government bodies and committees established under the 2012 land and related laws are vested with considerable power to allocate and revoke rights, but provide no recourse for appealing decisions or assist people in gaining access to justice. A growing trend among NGOs in Myanmar is the provision of legal aid to help fight expropriation and land seizures on behalf of smallholders. However, this is constrained by the questionable independence of the courts and the fact that the current land laws criminalise smallholders without LUCs who engage in agricultural practices.

Civil society movements have filled the opened political spaces, focusing particularly on land grabs and land rights issues. Farmers' associations and unions, community-based organisations and other grassroots movements from every state and region have been increasingly networking on the issue of resolving land conflicts in the country, although not without their differences, given the diversity of members from across the country. These movements are much less well-funded or otherwise supported by donors and, therefore, they often offer approaches and views that are different to those of more institutionalised and funded programs.

RESEARCH INSTITUTES

Decades of military rule with top-down decision making and implementation has left huge gaps in capacity in research endeavours for informed policy decision making. This is an area in need of development, both institutionally and methodologically. Many of the mainstream

research institutions that receive the bulk of funding from major government donors do not have sufficient distance from the government to warrant independence, presenting another serious constraint in empirically-informed policy making.

The Myanmar Development Resource Institute's Centre for Economic and Social Development (MDRI/CESD) is the main research and policy institute concerned with land and agriculture in Myanmar. Together with Michigan State University, the organisation co-authored the USAID-funded projects on agricultural reform in the country. The board members are quasi-government officials in the President's Office who are robustly pushing for liberal reforms. The Land Core Group has commissioned several research projects, funded by LIFT, which has offered a more impartial stance on government shortfalls in managing the reforms and in separating rhetoric from reality.

Many different foreign academic institutions have established memorandums of understanding with Yangon University (less so in Mandalay University) on research endeavours, although so far implementation has been very slow. It remains challenging to showcase much progress. Other small research-oriented institutes (such as Inya Institute, which is run by a handful of foreign academics), are working towards greater academic exchanges in the country. Meanwhile, growing interest in participatory action research has brought together many NGOs and researchers to try to promote a bottom-up participatory method in research/research uptake to support progressive policy making in the country.

CONCLUSION

Myanmar is at a crossroads. Major land policy and law reforms are currently underway that will determine how land will be formally used, by whom and for what purposes. Who stands to benefit and who stands to lose from current land law and policy reforms is still being contested. The stakes could not be higher for a country transitioning to a quasi-democratic system and embarking on neoliberal economic reforms after decades of direct military rule. Recently enacted land and related laws suggest that land reforms are primarily geared at modernising agriculture by attracting private investment in large export-oriented agribusiness. In this sense, Myanmar seems to be moving in a direction similar to some of its regional neighbours that have adopted a policy of “turning land into capital” and concomitantly, of turning farmers into labourers. With the opening up of the country to foreign investment, and ceasefire agreements in the country’s ethnic states, large-scale land concessions for agribusiness, mining

projects and other land- and water-based investments, have emerged as key drivers of dispossession affecting rural poor smallholders, ethnic minorities and women. This is a particular concern for communities relying on customary land tenure arrangements, for whom the new land laws fail to grant recognition of informal tenure and occupancy rights. Also of concern are the ethnic minority communities just emerging out of decades of war, with resettlement of internally displaced peoples and refugees the next monumental task. Civil society will no doubt continue to fill available spaces to advocate on issues of land rights and a greater role for smallholder farmers in local and national economic development. Key structural constraints to more equitable land arrangements and inclusive development in Myanmar include a violent legacy of dispossession, the continuing abusive power of the military, state-business-military complexes emerging from “ceasefire capitalism” in the borderlands, and state-sanctioned “crony capitalism”.

REFERENCES

- All Arakan Students and Youths Congress (AASYC), Pa-O Youth Organisation (PYO), Mon Youth Progressive Organisation (MYPO), 2009. Holding Our Ground: Land Confiscation in Arakan & Mon States, and Pa-O Area of Southern Shan State, http://burmacampaign.org.uk/media/HOLDING_OUR_GROUNDen.pdf [Accessed 30.08.15].
- Allens and Linklaters, 2012. Focus: Myanmar's New Foreign Investment Law, 7 November 2012. <http://www.allens.com.au/pubs/res/fores7nov12.htm> [Accessed 30.08.15].
- Alternative ASEAN Network Burma (ALTSEAN), 2014. Land Confiscation in Burma: A Threat to Local Communities & Responsible Investment, ALTSEAN, http://www.altsean.org/Docs/PDF%20Format/Thematic%20Briefers/Land%20Confiscation%20in%20Burma_5%20May%202014.pdf [Accessed 30.08.15]
- Arakan Oil Watch, 2012. Burma's Resource Curse: The case for transparency in the oil and gas sector. Chiang Mai, Thailand.
- Baver, J., Jonveaux, B., Ju, R., Kitamura, K., Sharma, P., Wade, L., Yasui S., 2013. Securing Livelihoods and Land Tenure in Rural Myanmar: UN-Habitat and Columbia University, School of International and Public Affairs.
- Boutry, M., Allaverdian, C., Mellac, M., San Thein, Tin Myo Win, 2015. Land tenure in rural lowland Myanmar: Understanding rural issues to engage comprehensive policy dialogue in Myanmar, Draft Report, September 2015, GRET.
- Bryant, B. L., 1997. The Political Ecology of Forestry in Burma: 1824-1994, University of Hawai'i Press, Honolulu.
- Buchanan, J., Kramer, T., Woods, K., 2013. Developing Disparity: Regional Investment in Burma's Borderlands, Transnational Institute, Burma Centre Netherlands.
- Byerlee, D., Kyaw, D., San Thein, U., and L Seng Kham., 2014. Agribusiness Models for Inclusive Growth in Myanmar: Diagnosis and Ways Forward, MSU International Development, Working Paper 133, Michigan State University.
- Dapice, D., Vallely, T and Wilkinson, B., 2010. Revitalizing Agriculture in Myanmar: Breaking Down Barriers, Building a Framework for Growth, International Development Enterprises – Myanmar, Harvard Kennedy School – ASH Centre.
- Directorate of Investment and Companies Administration (DICA), In Charltons Solicitors, Myanmar Highlights, April 2014. <http://www.charltonsmyanmar.com/dica-release-revised-fdi-figures/> [Accessed 30.08.15].
- Displacement Solutions, 2013. Bridging the HLP Gap: The Need to Effectively Address Housing, Land and Property Rights During Peace Negotiations and in the Context of Refugee/IDP Return – Preliminary Recommendations to the Government of Myanmar, Ethnic Actors and the International Community, <http://displacementsolutions.org/wp-content/uploads/DIS2383-Bridging-The-Gap-v13.pdf> [Accessed 30.08.15].
- Ferguson, J., 2014. The scramble for the Waste Lands: Tracking colonial legacies, counterinsurgency and international investment through the lens of land laws in Burma/Myanmar, Singapore Journal of Tropical Geography, 35: 295–311.
- Global Witness, 2015. Guns, Cronies and Crops: How Military, Political and Business Cronies Conspired to Grab Land in Myanmar.

-
- GRET, 2014. Myanmar Land Briefing: Understanding rural land issues to engage comprehensive policy dialogue. Newsletter No 3, July – Sept 2014.
- GRET, 2015. Myanmar Land briefing: Understanding rural land issues to engage comprehensive policy dialogue. Newsletter No 4, Nov 2014 – Jan 2015.
- Hagbalde, S., Boughton, D., Cho, K. M., Denning, G., Kloeppinger-Todd, R., Oo, Z., Sandar, T., Than, T., Wai, N., Wilson, S., Win, N., Wong, L., 2014. Strategic Choices Shaping Agricultural Performance and Food Security in Myanmar, *Journal of International Affairs*, 67(2): 55-71.
- Hickie, S., 2014. Stalled hope? The resource conflict risk to Myanmar's political and economic transition, *Open Briefing*.
- Human Rights Foundation of Monland - Burma (HURFOM), 2013. Disputed Territory: Mon Farmers' Fight Against Unjust Land Acquisition and Barriers to Their Progress. HURFOM Report, October 2013. <http://burmacampaign.org.uk/media/Disputed-Territory.pdf> [Accessed 30.08.15].
- Jones, L., 2014. The Political Economy of Myanmar's Transition, *Journal of Contemporary Asia*, 44(1): 144-170.
- Kachin Development Networking Group (KDNG), 2010. Tyrants, Tycoons and Tigers: Yuzana Company Ravages Burma's Hugawng Valley.
- Kaino, T., 2006. Rural Credit Markets in Myanmar: A Study of Formal and Non-Formal Lenders, *Asian Journal of Agriculture and Development*, 4: 1-15.
- Karen Environmental and Social Action Network (KESAN), 2012. Land lost and future land problems in Karen State, Eastern Burma/Myanmar, KESAN Report.
- Kramer, T. and Woods, T., 2012. Financing Dispossession: China's Opium Substitution Programme in Northern Burma, Transnational Institute.
- Kurosaki, T., 2008. Crop choice, farm income, and political control in Myanmar, *Journal of the Asia Pacific Economy*, 13(2): 180-203.
- Land Core Group (LCG) of the Food Security Working Group, 2009. The Role of Land Tenure Security for Smallholder Farmers in National Development: A policy discussion brief.
- Land Core Group (LCG) of the Food Security Working Group, 2012. 13 Case Studies of Land Confiscations in Three Townships of Central Myanmar.
- Larkin, S., 2012. Myanmar at the Crossroads: Rapid Industrial Development or De-industrialization. http://www.burmalibrary.org/docs12/Stuart_Larkin-Myanmar_at_the_Crossroads.pdf [Accessed 30.08.15].
- Lynn, T., Oye, M., 2014. Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing. Discussion Paper No. 4, Myanmar Development Resource Institute Centre for Economic and Social Development (MDRI/CESD), June 2014.
- Maung, M., 1998. *The Burma Road to Capitalism: Economic Growth versus Democracy*, New York: Praeger.

Michigan State University (MSU), Myanmar Development Resource Institute Centre for Economic and Social Development (MDRI/CESD), 2013. A Strategic Agricultural Sector and Food Security Diagnostic for Myanmar, MSU, MDRI/CESD, USAID, July 2013.

Obendorf, R., 2012. Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgins Lands Management Law: Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar, Land Core Group.

Organisation for Economic Cooperation and Development (OECD), 2014. OECD Investment Policy Reviews: Myanmar, <http://www.oecd.org/daf/inv/investment-policy/Myanmar-IPR-2014.pdf> [Accessed 30.08.15].

Paglietti, L. and Sabrie, R., 2013. Review of smallholder linkages for inclusive agribusiness development, FAO Investment Center, FAO and World Bank Cooperative Programme.

Rammohan, A. and Pritchard, B., 2014. The Role of Landholding as a Determinant of Food and Nutrition Insecurity in Rural Myanmar, *World Development*, 64: 597-608.

Shrinivas, S. and Hlaing, U.S., 2015. Myanmar: Land Tenure Issues and the Impact on Rural Development, FAO.

Smith, M., 1999. *Burma: Insurgency and the Politics of Ethnic Conflict* (Politics in contemporary Asia series), Zed Books, Second Edition.

Sun, Y., 2012. China and the Changing Myanmar, *Journal of Current Southeast Asian Affairs*, 31(4): 51-77.

Ta'ang Student and Youth Organization (TSYO), 2011. Grabbing Land: Destructive Development in Ta'ang Region, http://www.burmacampaign.org.uk/images/uploads/Grabbing_Land_Report_in_English.pdf [Accessed 30.08.15].

Taylor, R.H., 2009. *The State in Myanmar*, Singapore: Singapore University Press.

Transnational Institute (TNI), 2013. Access Denied: Land Rights and Ethnic Conflict in Burma, Burma Policy Briefing, TNI and Burma Centrum Nederland, <http://www.tni.org/files/download/accesdenied-briefing11.pdf>.

Transnational Institute (TNI), 2014. Pro-business or Pro-Poor; Making Sense of the Recently Unveiled Draft National Land Use Policy, October 2014.

Turnell, S., 2009. *Fiery Dragons: Banks, Moneylenders and Microfinance in Burma*, Copenhagen: NIAS Press.

United States Agency for International Development (USAID), 2010. USAID Country Profile – Property Rights and Resource Governance Burma, http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Burma_Profile.pdf [Accessed 30.08.15].

Woods, K., 2011. Ceasefire capitalism: military-private partnerships, resource concessions and military-state building in the Burma-China borderlands, *Journal of Peasant Studies*, 38(4): 747-770.

Woods, K., 2012. *The Political Ecology of Rubber Production in Myanmar: An Overview*, Yangon.

Woods, K., 2013a. *Agribusiness Investments in Myanmar: Opportunities and Challenges for Poverty Reduction*, Oxfam Hong Kong.

Woods, K., 2013b. "The politics of the emerging agro-industrial complex in Asia's 'final frontier': The war on food sovereignty in Burma." Food Sovereignty: A Critical Dialogue. International Conference, Yale University, 14-15 September.

Woods, K., and D. Aguirre. 2014. "Protecting profits over people." Myanmar Times. 24 November.

Woods, K., 2015a. CP maize contract farming in Shan State, Myanmar: A regional case of place-based corporate agro-feed system, BICAS Working Paper 14, May 2015.

Woods, K., 2015b. Commercial Agriculture Expansion in Myanmar: Links to Deforestation, Conversion Timber and Land Conflicts, Forest Trends and DFID.

Mekong Region Land Governance

Unit 11, House No. 262, Ban Saphanthong Kang,
Sisattanak District, Vientiane Lao PDR

PO Box 2973, Vientiane Lao PDR 01000

P +856 21 454 807

F +856 21 454 807

E info@mrlg.org