

Challenges for the new institutional frameworks of land governance in transitioning Myanmar: A case study of the Dawei Special Economic Zone

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Abstract

Recent political and economic reforms in Myanmar have led to a qualitative shift in land governance. A new economic agenda, new land laws and special economic zone laws have set the grounds for change. Whereas previously, land confiscation and population displacement may have been conducted as a means of expanding state control, often through mechanisms of violence and coercion, the new trend requires legitimacy through discourses of development and economic prosperity, as well as institutional frameworks that tend to benefit the politically and economically more powerful. The rural poor, as has been the global trend, is invariably at the losing end of this much awaited transition. In this paper, I focus on the Dawei Special Economic Zone area, in the southern Tanintharyi region, looking at three causes of land tenure insecurity for the rural poor: large-scale industrial development in rural areas; land titling and formalizing of land rights; and speculation due to rising land prices. Although the cause for dispossession may be the expansion of market-oriented land relations, this occurs in combination with remnants of state abuse that have been a historic cause of land tenure insecurity in the country. It is noteworthy that the inefficiencies and the lack of capacity of the government are recently being compensated by the work of civil society organizations.

Keyword: Myanmar, land governance, development, liberalization, Dawei, land confiscation

Introduction

In recent years, Myanmar has undergone a political transition that has culminated in the landslide victory for the opposition party National League for Democracy (NLD) in the November 8th 2015 elections. Although the military Union Solidarity and Development Party (USDP) stays in Parliament with 25 per cent of seats guaranteed to unelected military representatives, the victory of the NLD is still a significant change after decades of military rule. On April 1st 2012, the Nobel Laureate Aung San Suu Kyi had already been elected to the Burmese Parliament after years of house arrest and a repressed political environment. A year earlier, in 2011, the reformist president Thein Sein had been appointed to office. The promise seemed to be of a better life, “freedom from fear” and a much awaited transition to democracy. The reforms indicated political and economic liberalization, allowing for the suspension of Western sanctions, which had been imposed as a form of pressuring the government against the ongoing human rights abuses in the country (Jones, 2014). However, the path to “disciplined-flourished democracy”, which has its roots more than ten years ago still has some way to go before being considered a full-fledged democracy (Kaspar, 2015).

What would these reforms mean on the ground? What consequences did the discourse of democratic change and economic development mean to the majority of the population in Myanmar? The focus of inquiry of the current research turned toward the rural communities, which comprise more than 75% of the country’s population (Woods, 2013: p.2). More

specifically, the investigation focused on the implications of new land policies and new visions of land for the rural poor. Together with new laws for foreign investment and for special economic zones these new land policies would facilitate and serve as guarantee for secure investments, resonating with the national development goals directed towards increasing GDP and changing the country from an agricultural to an industrial economy (Kudo and Kumagai, 2012).

Using the case study of the Dawei Special Economic Zone area in the southern Tanintharyi region of Myanmar, this paper looks at the emerging dynamics of land governance in the country, as well as the rise in land tenure insecurity for the rural poor as a consequence of three main aspects: the shift to industrial development facilitated by special economic zone laws, the new land policies formalizing land as saleable property, and the rise in land grabbing as a result of a sudden increase in land value and speculation. Although the emerging vision for land based on economic progress is linked to global trends that have facilitated land-grabbing (Borras and Franco, 2012), the mechanisms of land control, confiscation and governance in Myanmar are inevitably embedded in legacies of military rule and past state-society relations.

History of Land Laws in Burma/Myanmar

Land policies in Myanmar changed under the successive governments, under British colonialism (1931-1948), to independent democratic Burma (1948-1962), and during successive military regimes under the Revolutionary Council (1962-1974), the Burma Socialist Programme Party (1974-1988),

the State Law and Order Restoration Council, the SLORC (1988-1997) and its reformulation as the State Peace and Development Council (1997-2011) (Hudson-Rodd et al., 2003). The entrepreneurial turn began in 1989, after the economic stagnation during the phase of “Burmese Way to Socialism” (1962-1988), based on centralized state control and nationalization of the private sector (MacLean, 2008).

The current framework of land relations in Myanmar has its roots in the colonial history. Under British colonization, grids and wards were established to facilitate tax collection. This was applied mainly in Lower Myanmar: the central and lower delta area. The “frontier areas” in the highlands were under semi-autonomous indirect rule (Ferguson, 2014). While the lowlands developed commercialized rice agriculture, leading to concentration of land under formal land ownership through records established by the British, the uplands were used for shifting cultivation and forestry (Scurrah et al., 2015). During this period, landlordism developed, particularly through ethnic Indian and Chinese moneylenders. The Land Acquisition Act (1894) allowed the State to acquire ‘waste lands’ (often these were lands left fallow) for what the government may have determined as a ‘public purpose’. The right of the state to acquire land for such public purposes would continue under subsequent laws up to today.

A year before Burma’s independence, the 1947 Constitution determined that the State was ultimate owner of all land, in a strong anti-colonial affirmation. Post-independence, with the intention to take land back from foreigners and abolish landlordism – a condition that had left many farmers indebted during the colonial years – the 1953 Land Nationalization Act determined that the State formally owned all agricultural land, which now became subject to redistribution schemes (Scurrah et al., 2015). According to Article 4 of the 1953 Land Nationalization Act, all agricultural land came under exclusive state-ownership (UNHCR et al., 2010: p. 4), meaning all agricultural land was taken over by the government and put to lease to farmers. Farmers hence became tenants, and land was not officially transferable.

After the military coup that placed General Ne Win in power, in 1962, the single party Burma Socialist Program Party (BSPP) deepened state control over land. Under the Disposal of Tenancies Law, 1963, the government could terminate any landlord tenancy arrangement, and could stipulate conditions that, if tenants fail to comply (such as failing to grow the crops and quotas determined by the government), they could lose their land. The Law Safeguarding Peasant Rights (1963), was also enacted in this period, however today, much of the laws protecting peasants has been ignored (Oberndorf, 2012). Ne Win’s socialist model was disastrous, leading to inflation, unemployment and economic stagnation.

The SLORC came to power in 1988, putting an end to the

socialist regime after a violent crackdown on protests, leading the country toward a “military command economy”. This was marked by increased liberalization and incentives for the private sector, although favoring companies with connections to the military leaders. In 1991, the SLORC enacted the Wastelands Law (1991), encouraging the development of the “wastelands” through the private sector (Burma Environmental Working Group, 2011). In practice, lands that had no formal land titles were transferred to private individuals and companies for commercial exploitation, often ignoring customary rights to land. This kind of expansion was largely in the upland and the contested borderland areas.

Since the political liberalization in 2011, the entrepreneurial turn has deepened, and new land laws and policies have been implemented. Whereas previous policies had been marked by strong state control over land transfer and use, the new vision is more market-oriented, arguably risking land tenure security for the majority of smallholding farmers (Oberndorf, 2012). Economic liberalization has intensified through the opening up of markets to foreign investment, new FDI laws and the reforming of economic policy under guidance of international financial institutions such as the World Bank, the ADB and IMF.

In March 2012, two new land laws were passed by the Myanmar Parliament: the Farmland Law and the Vacant Fallow and Virgin Lands Management Law. The Farmland Law allows farmers to obtain a land-use certificate (LUC) granting “permanent land use rights to sell, transfer, mortgage or lease agricultural land” (Karen Human Rights Group, 2013: p. 21). It attempts to secure land tenure through land use certificate and registration, creating private land use property rights. Effectively, the Farmland Law allows for the development of a formal land market (Henley, 2014), although farmers must apply for LUC at the local level management body. It also allows land to be used as collateral to obtain credit. The Farmland Administration Bodies (FAB’s) at different levels of government were newly created to issue these certificates. However, according to critics, tenure security is still weak, as the state still ultimately owns the land and can remove these rights if conditions are not met or if the land is required to fulfill a ‘public purpose’.

Dawei Special Economic Zone

As part of the new development path toward industrialization, the Dawei Special Economic Zone (referred to henceforth as DSEZ) was created in the southern coast of Myanmar. It is one of three special economic zones (along with the Kyauk Phyu SEZ, in western Rakhine State; and the Thilawa SEZ, about 20km south of Yangon, which is currently being developed with Japanese participation) that were implemented as means of attracting foreign investment to the country.

The DSEZ is located 20km north of Dawei, the capital of the southernmost Tanintharyi region of Myanmar, which borders



Fig. 1 Research location: Dawei, southern Tanintharyi region of Myanmar (United Nations, 2012)



Fig. 2 The Dawei Special Economic Zone and link to GMS Southern Corridor (Italian-Thai Development Public Company Limited, 2013)

Mon State to the north, Thailand to the east and the Andaman Sea to the west (Fig.1). The initial investment requirement

estimated by the project was of US\$50 billion, with a designated area of 204.5 km² (Dawei Development Association, 2014). The



Fig. 3 The Dawei SEZ project (World Marifine News, 2015).

Table 1 Villages and people to be affected by the Dawei SEZ (Dawei Development Association, 2014: p.13)

Village Name	Households	Families	Population	Included in official list on		
				2011	At Visitor Centre	2/12/13
1 Yalaing	348	340	1623	×	×	
2 Pagawzone	410	421	2212	×	×	
3 Thabyu Chaung	169	162	746	×	×	
4 Kya Khat Tabinin	333	320	1524	×	×	
5 Kyauk Whet Kone	205	197	1060	×	×	
6 Daung Shaung	82	101	603	×		
7 Pein Shaung	369	378	2063	×	×	
8 Kyauk Thout	196	210	1900	×		
9 Mudu	343	347	2029	×	×	×
10 Paradut	321	314	1662	×	×	×
11 Htein Gyi	415	405	2253	×	×	×
12 Min Dut	92	93	451	×	×	
13 Myo Haung	242	287	2391	×		
14 Sin Pu Net	41	49	509	×		
15 Net Twin	236	268	2668	×		
16 Mayin Gyi	136	135	821	×	×	
17 Lae Shaung	610	626	3337	×	×	×
18 Nyaung Bin Seik	52	52	328	×	×	
19 Ngapidat	18	23	145	×		
20 Wet Chaung	104	99	449		×	×
21 Kha Maung	339	335	1453		×	×
22 Thi Teo Htouk	411	393	2111		×	
Total (22 villages)						

project plan includes a deep sea port, an industrial estate with heavy industries such as a steel mill, oil refinery, petrochemical complex, power plant and other utility services, a cross-border road and rail link with transmission lines to Thailand, as well as a town for residential and commercial development. The mega development project is set to become the largest industrial complex in Southeast Asia and serve as an important international trading and communications hub, linking Southeast Asia and the South China Sea to the Indian Ocean through the Andaman Sea (Fig. 2), allowing the passage of goods from the Middle East, Europe and Africa. It would also serve as a link to the regional transport network initiative of the Asian

Development Bank (Fig. 3), which connects with Thailand, Laos, Vietnam (through the East-West Economic Corridor), with Cambodia (through the Southern Economic Corridor) and Kunming, in China (through the North-South Economic Corridor) (Loewen, 2012; Dawei Development Association, 2014). In addition, there is an expected hospitality and tourism boom in the region, as foreigners seek opportunities near the pristine beaches (Loewen, 2012: p. 10).

Notes on terminology and methodology

Land confiscation is defined in the following paper as the “action of taking or seizing someone’s land property through

Table 2 Interviews conducted in February 2014

Date	Interviewee	Affiliation
06/02/2014	NGO activist 1	Dawei Development Association (Yangon)
10/02/2014	NGO activist 2	Dawei Development Association
11/02/2014	Women's rights activist	Tavoyan Women's Union
11/02/2014	Human rights activist	Dawei Human Rights Watch
12/02/2014	Farmer activist leader	Dawei Farmers Network
13/02/2014	Farmer activist 1	Dawei Farmers Network
13/02/2014	Farmer activist 2	Dawei Farmers Network
14/02/2014	Monastery monk	Local village temple
18/02/2014	Farmer activist	ThabyeChaung village
20/02/2014	Journalist/activist	Dawei Watch
20/02/2014	NGO activist 2	Tarkapaw
20/02/2014	Academic/activist	Dawei Research Association
21/02/2014	8 Farmers displaced in 1990s	ThabyeChaung village
21/02/2014	Village representative	Kadon villagers
23/02/2014	Lawyer volunteer	Dawei Lawyers' Group
24/02/2014	NGO activist 3	Dawei Development Association

legal or other means” (Oberndorf, 2012: p. 13). According to Oberndorf, “land confiscation can occur as a result of buying or leasing of land property rights by domestic and transnational companies, Government authorities, the military and individuals. Land confiscation can also occur when the Government takes land for a public or business purpose, such as development or a public infrastructure project or other development.” According to the author’s interview with NGO activist 1 (Table 2): “Nowadays money is more powerful than the gun; the people are more afraid of the pen than the bullet”, illustrating the transition from military authoritarianism to market-oriented development. The following questions have guided the research for this paper:

- How have the political and economic reforms in Myanmar changed the dominant vision over land and how has this affected land tenure security for the rural poor?
- What are the new mechanisms of land confiscation and how have they changed after the transition?

The research uses a qualitative case-study approach based on fieldwork. The data collection began with desk research, focusing on news articles, independent NGO reports and past publications on land policies and land confiscations in Myanmar. This was followed by one month of fieldwork in February, 2014, including one week in Yangon and the remaining time in the southern Tanintharyi division, where the DSEZ is located. Interviews were conducted with informants in the Dawei area including local NGOs, women’s rights organizations, farmer networks, villagers who had their lands confiscated in 2011 and earlier, in the 1990s, monks, ethnic civil society organizations, volunteer lawyer groups and the local media.

Local activists helped with the translation from Tavoyan to English language. Semi-structured and unstructured interviews occurred in informal settings such as in farmers’ households and

provided information on recent and past land confiscations involving the government, and increasingly involving domestic and transnational companies within and around the DSEZ area. Direct observation of protests and daily civil society engagement contributed to understanding the emerging land governance dynamics in the region.

Shifting to industrial development: A case study of the Dawei Special Economic Zone

The establishment of a Special Economic Zone Law in January 2011, as well as a law specifically referring to the SEZ in Dawei, the Dawei Special Economic Zone Law (2011), which has been revised since March 2013, has formed the legal framework within which investments could be directed towards infrastructural developments in the region. A Memorandum of Understanding (MOU) had been signed in May 2008 between the governments of Myanmar and Thailand, and amended in July 2012. The Italian-Thai Development Public Company Limited (known as ITD) was initially set to be the developer of the project, according to a Framework Agreement signed with the Myanmar Port Authorities in November 2010. However, the governments announced the withdrawal of ITD in March 2013, revoking the 75 year concession due to the inability to attract investors. A “Special Purpose Vehicle” (SPV), jointly owned by the governments of Thailand and Myanmar (50:50) was created in June 2013 to oversee the project.

The Thai government announced in October 2014 that it would revive talks with Myanmar and Japan (Hariraksapitak, 2014). The Japanese government expressed interest in investing in Dawei. Japanese companies are already engaged in developments in the Thilawa SEZ near Yangon, although NGOs such as Thilawa Social Development Group and Japan-based Mekong Watch have highlighted some of the concerns over social and environmental impacts of the project coordinated by Japan International Cooperation Agency (JICA), such as inadequate compliance to guidelines regarding land confiscation, resettlement and compensation for farmers (Sandar Oo, 2013). In October 2014, the Japanese representative of the Ministry of Economy, Trade and Industry (METI) reportedly said the country would invest US\$700,000 on three studies related to the planning of the DSEZ, and would also draw up the master plan for the SEZ (Ministry of Foreign Affairs of Japan, 2015a). The funding would come from Japan’s METI as well as the Economic Research Institute for ASEAN and East Asia (Zaw, 2014). Prime Minister Abe reaffirmed in Feb 2015 Japan’s intention to engage in trilateral consultation for the development of the DSEZ. He expressed Japan’s readiness to contribute to infrastructure development in Thailand, affirming the importance of “promoting DSEZ project through trilateral consultation among Japan, Thailand and Myanmar.” Mr. Abe reaffirmed the intention of supporting the necessary conditions

for equity investment in the SPV, providing constructive input in the Master Plan of the Project. Thailand also welcomed Japan's ODA, including the dispatch of Japanese specialists to the SPV and the launch of pre-feasibility study by Japan on the full-phased construction of a new highway road (Ministry of Foreign Affairs of Japan, 2015b). Abe committed to collaborating with organizations such as: JICA, Japan Bank for International Cooperation (JBIC), Japan External Trade Organization (JETRO), Japan Overseas Infrastructure Investment Corporation for Transport and Urban Development (JOIN) and the Economic Research Institute for ASEAN and East Asia (ERIA). A Memorandum of Intent on Cooperation of the Railway Sector was also signed between the Ministry of Land, Infrastructure, Transport and Tourism of Japan (MLIT) and the Ministry of Transport of the Kingdom of Thailand (MOT) and cooperation in the future (Ministry of Foreign Affairs of Japan, 2015b). In December 2015, it was announced that Japan would have a one-third equity stake in the SPV, jointly with Myanmar and Thailand. (Parpart, 2015).

Land tenure insecurity and projected land confiscations have increased since the declaration of the SEZ. According to a survey conducted by the local community organization Dawei Development Association (DDA) in 2014 an estimated 20-36 villages and about 22,000 to 43,000 people will be directly affected by the special economic zone project. Twenty-two villages (Table 1) will be directly affected by the construction of DSEZ and related projects, including industrial estate, ports, roadlinks, reservoirs and resettlement areas. In 2011, it was said that 19 villages would be removed. In August 2013, modifications were made to the original plan, and in September 2013, it was said that six villages would be included in the SEZ area. There has been no official confirmation to civil society groups, according to an activist of the Dawei Development Association (DDA).

Formalizing private property rights

Aside from the shift toward industrialization facilitated by the SEZ laws, the implementation of new land policies is also contributing to increased land insecurity in rural Myanmar. Two new land laws, The Farmland Law (2012) and the Vacant, Fallow and Virgin Lands Law (2012), as well as a new Draft National Land Use Policy (2014), made public for consultation, outline these new institutional frameworks.

The danger of formalizing laws governing land, as shown by research in other countries (Ho and Spoor, 2006), is that titling is not the same as reaffirming existing rights and does not necessarily result in greater land tenure security, particularly for the rural poor which may have had relatively safe customary recognition of land rights. The likelihood that formalization will lead to negative consequences such as facilitating those with access to institutional administrative bodies, cronies with

connections and those with bribing power is very high. Conflicts over land can also arise due to competition over property. The process of registering land under the Farmland Law to obtain LUC has also been criticized locally in Dawei. The procedures can exclude poorer farmers and privilege richer or better-connected interested parties. According to a women's rights activist of the Tavoyan Women's Union (TWU), who has been following the land confiscation cases since 2011 and who was interviewed by the author (Table 2), land registration often requires fees, procedural knowledge and documents that poor villagers often do not have. Such impediments were confirmed by declarations of another human rights activist interviewed by the author (Table 2).

Requesting government officials to measure and certify the land is often denied, deliberately delayed or delayed for lack of capacity and personnel of the farmland management bodies, said one activist of the Dawei Development Association (DDA), a civil society organization that has been following closely the developments of the DSEZ and advocating for accountability (interview with NGO Activist 2 – Table 2). Sometimes lack of knowledge by local farmers about the bureaucratic system may also complicate access. One village representative of Kadoe Village interviewed by the author, resident in the areas close to the DSEZ, also pointed out that disputes over land also occur between local villagers, illustrating the diversity of forms of insecurity linked to land. Although the major threats may seem the military itself and the large investments, mechanisms of solving local disputes also deserve further investigation. Some analysts have suggested that disputes are a national problem when there is no independent judicial body to hear such land disputes (Oberndorf, 2012). Although some may argue that local disputes may better be resolved by intra-village decision-making practices, the broader question of a judicial system is a challenge for Myanmar today.

The Vacant, Fallow and Virgin Lands Management Law allows the government to reallocate "wasteland" to private companies for agricultural production, livestock farming and aquaculture and mining that is considered of long-term interest of the state and the public. However, in practice, lands that are registered by interested investors as wasteland are often inhabited by local villagers and farmers or are being left fallow. Although there were some improvements to past laws such as the recognition of non-rotational *taungya* (slash and burn techniques) as a legitimate land-use, and the understanding that farmers are de facto using lands that are now designated as vacant or fallow without yet being formally recognized; the new laws are designed to promote large-scale agricultural investment and fail to create protection mechanisms for the majority rural population which consists of small-holding farmers (Oberndorf, 2012).

Local observers in Dawei interviewed in this research have

also pointed out the limitations in the land administration, recognizing that land policies are still weak and that there is poor management by the government. Often, there is a discrepancy between land records maintained by the government and the reality on the ground. Land marked on the land records office and the forestry office as vacant, in reality can be villagers' gardens or orchards. One young journalist from Dawei Watch, a local news agency established since the liberalization of 2011, was interviewed by the author (Table 2) and affirmed that often, authorities are unaware of the situation on the ground, or neglect village-level administrators who supposedly have more local knowledge of actual land-use and distribution. The author's interview with the DDA activist (Table 2) also revealed a lack of institutional capacity of the government to implement the new land laws, including lack of human resources to map and register land under the Farmland Law, and under-equipped in terms of GPS technology. The DDA (Table 2) and other local community-based organizations indicated to the author that the inefficiencies and the lack of capacity of the government was being compensated by the work of civil society organizations, in providing youth-training programs and obtaining GPS equipment funded by donations to proceed with the registration of land following the government format. Such civil society initiatives are also driven by a recognition that if local people do not engage in a participatory manner, the loss of land through corruption and cronyism is very high.

The Draft National Land Use Policy (October 2014), although marking a significant shift in terms of allowing consultation by civil society and the general public, still has several limitations and unclear components as pointed out by organizations such as Transnational Institute (TNI) and Global Witness "the draft land policy makes no reference to poverty alleviation or food security, and instead appears to be openly promoting commercial investment in large-scale projects, potentially at the expense of Myanmar's rural smallholders - the majority of the population." (Global Witness, 2014). Recommendation from both organizations includes considering the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (Food and Agriculture Organization, 2012) in future developments.

Nonetheless, there have been some positive developments since 2011. A Land Investigation Commission was set up by the Lower House of Parliament to investigate land disputes and confiscations, and although it has been considered an encouragement, demonstrating willingness from the Members of Parliament, the committee still has limitations, such as the lack of a mandate to follow-up on complaints (Karen Human Rights Group, 2013: p.19). Other development in this regard include the Rule of Law and Stabilization Committee that has also received hundreds of complaints related to land, and the Land Allotment Scrutiny Committee, which informs the parliament

about environmental and social impacts of investment projects as well as being responsible for reviewing the national land-use policy and make recommendations (Karen Human Rights Group, 2013).

However, in general, reports by human rights groups such as the Karen Human Rights Group (KHRG) and the Myanmar Food Security Working Group have critiqued the new policies, arguing that there must be a more comprehensive policy on land management that includes consultation with all stakeholders, including civil society, farmers and private sector companies. More specifically, policy and legal instruments should provide tenure security for smallholders, families and communities, with an explicit protection for the rights of women. Customary laws related to land resources and ownership, such as communal ownership should be protected, with particular regard to ethnic minorities. For land laws to be in greater harmony with discourses on human rights and sustainable development, there should also be the recognition of rotational fallow systems, the freedom to farm (with no imposition from national policies on crop choice). There is also a need for more flexible categorization of land (recognizing current land use), and the need for Free Prior and Informed Consent (FPIC) of affected communities. This last point is essential and applicable to all development projects such as the DSEZ in the present research. (Scurrah et al., 2015; Transnational Institute, 2015; Displacement Solutions, 2012).

Land speculation

Loewen (2012) has classified the land-grabs in Dawei as direct land-grabs (immediately within the SEZ zone) and indirect land-grabs (due to overall development of the area and speculation and urban expansion). Indirect land grabs include those that have been purchased for speculative purposes, where investors have foreseen the huge rise in land prices. Accounts indicate that local land price has risen 20 times compared to pre-2008 values.

In developing countries, "as land becomes increasingly marketized and commodified, the state should ensure that the emerging land market does not result in the rapid concentration of land in the hands of a mighty few". (Ho and Spoor, 2006: p. 583) In a country such as Myanmar where military-linked cronies have privileged access to information and to the institutions that grant formal titles, this is a tangible risk. Factors such as "the governance environment, the effectiveness of the state apparatus, and the distribution of socio-economic power" (Deininger and Feder, 2009: p. 233) may undermine such attempts.

Such trends of concentration of land in the power of a mighty few seems to be taking shape in rural Myanmar. In the country, "average farm size is around 7 acres (2.8 hectares) for land-holding households. However, preliminary results of the

Agricultural Census 201 indicate a concentration of land holdings with a sharp increase in parcels among those holding 50 acres and more, at the same time landlessness is on the raise.” (Food and Agriculture Organization, 2015: p. xi).

Legacies of corruption, violence and coercion

The multiplicity of land confiscations and the incapacitated institutional structure as well as the chronic and expanding cronyism of the military are the new challenges of a transitioning Myanmar. Although the global trends of market-oriented visions of land are expanding in the country, confiscation is facilitated by state institutional mechanisms and imposed in combination with prior mechanisms of land confiscation based on force, violence, corruption and lack of transparency and consultation. Methods of compensation payments are also ad hoc, lacking transparency and clarity in how they are stipulated.

Although the discourse of development and democratization has permeated recent politics in Myanmar, the reality in Dawei is illustrative of the continuity of past legacies. Despite attempts to demonstrate greater accountability and negotiation with local farmers, the general consensus seems to be that these attempts are only seeking political legitimacy for those in power and have not led to actual changes on the ground. While the government claims to negotiate with farmers, such ‘negotiations’ are rarely followed-up with decision-making favoring these farmers: “how the government defines negotiation is the problem”, said one journalist (Dawei Watch, interview 2014). Officials still have the “mindset like a king”, he said. Although the state is increasingly in need of legitimacy in the eyes of the public, such legacies of authoritarianism still permeates everyday state-society relations.

Although there has been a recognized liberalization of the press and right to protest, corruption is also still a pervading problem. According to the author’s interview with Dawei Human Rights Watch (Table 2), local observers in Dawei have condemned “business cronies” who have privileged access to information regarding the DSEZ and the value of land in surrounding areas. These so-called cronies are “rich, informed, and always get more before the project starts”. Military-linked businessmen or government officials themselves are often behind profitable land confiscations while poor villagers are often at the losing end.

Local farmers in Dawei who had their land confiscated in the 1990s in the areas surrounding the SEZ are now speaking up in the midst of a more open political environment, staging local protests. As part of the research, the author also interviewed villagers who were expressing their grievances from the past, in villages such as Thabye Chaung and Thet Yet Chaung in the area surrounding the DSEZ (Table 2). According to the interviews, land confiscations in the 1990s were often conducted by the

military under threats of violence and intimidation. Such practices still occur today, as exemplified by a group of small-holding farmers in the peri-urban areas of the town of Dawei. According to representatives of the Dawei Farmers’ Network (Table 2), the small-holding farmers have experienced threats, imprisonment and intimidation, including with bulldozers to give up their land for the military government’s constructions and private enterprises. Lack of FPIC, absence of or negligible compensation efforts are still commonly observed in and around the DSEZ.

Conclusions

The political and economic transition in Myanmar has led to a qualitative shift in the way land is understood institutionally. New land policies have marked a change toward formalized property rights through the new Farmland Law and the Vacant, Fallow and Virgin Lands Law. In the DSEZ area, land tenure insecurity has increased due to the shift toward large-scale industrial development, as well as the broader formalizing of land rights and the speculation around rising land prices. As new land policies are being implemented in a context where legacies of military abuse, violence, coercion and the favoring of military-linked business cronies remain, the promise of development and increased investment may exacerbate rural poverty and migration. Weak institutional capacity is also one of the contributing factors to the difficulty in implementing land governance that may better serve the rural poor. Small-scale farmers and villagers whose livelihoods are dependent on farming and orchards are in a vulnerable situation with regards to land tenure security. However, in a context of increased political freedom to protest and express social grievances, villagers are also now increasingly protesting over land confiscations from the past and seeking redress. A more human-rights based visions of land, as opposed to an economically-oriented vision of land, following the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (2012), may better serve to protect small-holding farmers, prioritize livelihood security, offer free prior and informed consent and provide alternative views on how such transitions may better serve the majority of the rural poor in Myanmar.

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日本語要旨 :

ミャンマーの歴史的転換期における、土地管理の新たな制度的枠組みの課題：ダウエー経済特別区のケーススタディ
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最近のミャンマーにおける政治経済改革は、政府が制定した新しい土地計画と深く関わっており、土地法、経済特区法、経済アジェンダの三つの方針に沿っている。過去のミャンマー政府は（圧政）、強制、暴力的手段により、土地押収や、人口移動等の土地計画を推進していたが、新しく制定された土地法は、従来のものと異なり、政治的にも経済的にもより穏健に行われるはずで、農村部に居住している貧困層からなは、期待の眼差しが向けられていた。しかし、結果的には、官僚や既得権益を持つ富裕層が利益を奪い、新法は初期の目的を達せず、ミャンマーの土地問題は更に拡大してしまった。

本研究では、ミャンマー南部（Tanintharyi）のダウエー経済特別区における貧困層の土地保有権について、三つの観点から検討した。①土地所有権の立証書類の作成や、形式化した土地権利について。②農村での大規模な工業開発について。③地価騰貴の予測について。この地区では、軍政時代から、政府が土地没収を行ってきた経緯があり、貧困層の不安は解消されていない。また、土地の没収は続いている。最近の土地没収は、土地活用を最大限に利用する市場経済メカニズムの影響が大きい。なお、最近は、政府の手が届かぬ部分を埋めようとする市民グループの動きも散見される。