Land

Reshmi Banerjee, University of Oxford
(ရက္ရႀ္မီး ဘဲနဂဵီး)

Sponsored by the Programme on Modern Burmese Studies at St Antony’s College and the International Gender Studies Centre at Lady Margaret Hall, University of Oxford

ေအာက္စ္ဖိုႚဒ္တကၺသိုလ္ စိန္အန္ေထာ္နီေကာလိပ္ရႀိ ေခတ္သစ္ဴမန္မာေလ့လာေရးဌာနတိုႚမႀ ကမကထဴပႂပၝသည္။
Myanmar has taken another important step toward democratization, following the 2015 election victory of the National League for Democracy (NLD), led by Daw Aung San Suu Kyi. But decades of military repression, ethnic conflicts, political exclusion, abuse of natural resources and the environment, neglect of health, education, and infrastructure, and mismanagement of the economy, have left serious challenges for this new government.

On Monday 15 February, 2016, the Programme on Modern Burmese Studies at St Antony’s College and the International Gender Studies Centre at Lady Margaret Hall convened a workshop entitled “Towards Democracy and Reconciliation: Challenges Facing Myanmar’s Incoming Government.” Co-organized by Dr Daw Khin Mar Mar Kyi and Dr Matthew J Walton, the workshop brought together over a dozen UK experts on Myanmar, drawn from academic, advocacy, and activist communities.

Presenters focused on the challenges facing the new NLD-led government, identifying key stakeholders, persistent and emerging impediments, and potential policy responses. Subjects considered included military legacies, governance concerns, social issues, land and resource management, and conflict and displacement.

With the success of the event, the co-organizers saw an opportunity to effectively channel the insights of the participants into policy-making conversations in Myanmar’s government, civil society, and other political institutions. They also sought to contribute to the developing public discourse on political reform in the country. Participants were asked to transform their presentations into short policy briefs that could be of use to ministries, parliament, and other decision-making bodies in Myanmar. The collected briefs were edited by the co-organizers and translated into Burmese.

Please note that the views and positions presented in these briefs represent the authors and are not necessarily the views of the Programme on Modern Burmese Studies, St Antony’s College, the International Gender Studies Centre, Lady Margaret Hall, or the University of Oxford. In some cases, the views of different authors may diverge or conflict. We believe that including multiple different perspectives in a collection of policy briefs is valuable in fostering public debate in Myanmar.

We intend for this to become a regular event and policy brief series, which can draw on existing expertise among those studying Myanmar, including increasing numbers of scholars and advocates from the country. These and future briefs will be available electronically at the Programme on Modern Burmese Studies website (www.sant.ox.ac.uk/research-centres/programme-modern-burmese-studies) and the Oxford Feminist E-Press (theoxfordfeministepress.wordpress.com/). Please feel free to contact us with any questions or feedback.

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စိန္အန္ေထာ္နီေကာလိပ္၊ ေအာက္စ္ဖိုႚဒ္တကၺသိုလ္ ေဒၝက္တာ မက္သဵႃး ေဂဵ ေဝၞလ္တန္၊ ေခတ္သစ္ဴမန္မာေလ့လာေရး ေဒၞေအာင္ဆန္းစုဳကည္ အဆင့္ဴမင့္သုေတသီဆုရႀင္က႗မ္းကဵင္သူမဵားထံမႀ အသိပညာမဵားဴဖင့္ ဤေဆၾးေႎၾးပၾဲမဵားပံုမႀန္ကဵင္းပဴပီး မူဝၝဒဆိုင္ရာ ေရၾးခဵယ္ေဆာင္ရၾက္စရာမဵား၏ အတိုခဵႂပ္ထုတ္ေဝမ듭ားကုိ မူဝၝဒႎႀင့္ပတ္သက္၍ ေရၾးခဵယ္ေဆာင္ရၾက္ႎိုင္သည့္အရာမဵားအဴဖစ္ အတိုခဵႂပ္ေဴပာင္းလဲေရးသားရန္ တင္ဆက္သူမဵားကို ေတာင္းဆိုခဲ့ပၝသည္။

တင္ဆက္ခဲ့သည္မဵားကုိ ဝန္ဳကီးဌာနမဵား၊ လၿတ္ေတာ္ႎႀင့္ ဴမန္မာႎိုင္ငံရႀိ ဆံုးဴဖတ္ခဵက္ခဵသည့္ အဴခားအဖၾဲႚအစည္းမဵားမႀ အသံုးဴပႂႎိုင္မည့္အလားအလာမဵား စသည္တိုႚကုိ ရႀာေဖၾေဖာ္ထုတ္ခဲ့ပၝသည္။ ထည့္သၾင္းစဥ္းစားခဲ့သည့္ အေဳကာင္းအရာမဵားတၾင္ တပ္မေတာ္၏အေမၾအႎႀစ္မဵား၊ သက္ေရာက္မailabilityရႀိသူမဵား၊ စဥ္ဆက္မဴပတ္တည္ရႀိေနသာ အတားအဆီးမဵားႎႀင့္ ထၾက္ေပၞလာခၝစ အတားအဆီးမဵား၊ မူဝၝဒအရ တုံႚဴပန္ႎႀင့္မေတာ္မတရားအသံုးဴပႂမႀ ကဵန္းမာေရး၊ ပညာေရးႎႀင့္ အေဴခခံအေဆာက္အဦတိုႚကုိ လစ္လဵႃရႂမႀ ပဋိပကၡမဵား၊ ႎိုင္ငံေရးအရပစ္ပယ္ထားမႀ သဘာဝသယံဇာတမဵားႎႀင့္ သဘာဝပတ္ဝန္းကဵင္တိုႚကုိ

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၄င္းေဆၾးေႎၾးပၾဲတၾင္ ပၝဝင္တင္ဆက္သူမဵားမႀ အန္အယ္လ္ဒီအစိုးရသစ္မႀ ရင္ဆိုင္ေနရသည့္ အခက္အခဲမဵားအေပၞ အေလးထားခဲ့ဴပီး 2012maryear@gmail.com, ma.khinmarmarkyi@lhn.ox.ac.uk

ကားးလ် အေမားအရှေ့အန်းတိုးတက်မှုအတွက် အေးအကြောင်းသို အလိုအလျော်လိုင်းမှုကို လေးလေးကြောင့် ဖျငါးလာသည်။

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Land has always triggered the most volatile conflicts in South and Southeast Asia and Myanmar is not an exception. Land is not only considered as a source of economic livelihood but also social prestige and political power. Since ancestral roots and identity are connected to land, the dispossession of it has led to strong emotional reactions which in turn have created some powerful disputes centered on this very crucial resource. All armed conflicts in Myanmar (especially in the border areas) have had an economic dimension with land being the main cause and effect of the turmoil. Fast paced appropriation of natural resources (construction of industrial and infrastructural corridors, huge hydropower projects, etc.) has been accompanied by policies which have helped in the commodification of nature.

Questions of indigenous sovereignty, rights of borderland communities, democratic agrarian development and inclusive rural policies challenge Myanmar today. An elitist self-serving oligarchy is dominating the new agricultural geography to the exclusion and neglect of the rural population. Restoration of land rights and creation of comprehensive land laws is an urgent need of the hour, a necessity for the future.

Problem Statement:

The Constitutions of Myanmar over the years (2008, 1974 and 1947) have always stated that the state is the owner of all land. Yet, the country paradoxically has witnessed the rise of landless households (where rural poverty is concentrated) along with the state acting as the de facto landed aristocracy. Non-recognition of customary and communal land rights has existed simultaneously with an increase in landlessness in ethnic minority areas. There is a lack of alternative employment opportunities and vulnerable groups like women are affected not only by landlessness but also by the existence of unequal land laws (usually land is registered in the name of the head of the family which is the husband). Excessive logging and mining have not only led to the increasing deforestation and pollution of soil and rivers but have enmeshed communities into a vicious circle of poverty. The resources (land, forests, minerals, etc.) on which their lives and livelihoods depend have been plundered and made lifeless.

A 2012 report by the Transnational Institute (TNI) titled ‘Financing Dispossession China’s Opium Substitution Programme in Northern Burma’ brought out the paradox in the policies which was quite evident with the Ministry of Agriculture’s 30-year Master Plan (2000 to 2030) stating that 4 million hectares of the wastelands would be targeted for permanent agricultural production although land continued to be given to companies for commercial farming. Kachin and Shan states have seen this trend on a mass scale. Although the foreign investment law requires consent and prohibits land confiscation if there is objection from affected communities, yet the National Human Rights Commission of Myanmar in 2011 noted that most of the conflicts were related to land grabbing. Land in Myanmar also cannot be used as collateral as often land is not registered (less than 15% in Myanmar have land titles), this is especially true of land governed by customary laws.

The laws in Myanmar have been criticized as they seem to have aggravated the existing conflicts instead of solving them. Land which has been kept fallow for retrieving the fertility of the soil (crop rotation practices) cannot and should not be declared as ‘vacant wastelands’ as and when it is convenient with genuine farmers being labeled as ‘squatters’. Neither re-settlement action plans nor livelihood restoration plans are recognized in law or policy in Myanmar.

- Procuring testimony and witnesses for land claims is a tedious task. Some ethnic groups have already started their own documentation and are developing a land distribution policy. For example, KESAN (Karen Environment and Social Action Network) and the Karen Agriculture Department are conducting mapping to provide input to the Karen National Union’s policy development. While productive, this could be problematic if overlapping claims appear between departments and groups, especially at the central and local levels. The situation is particularly complex as Myanmar also has to deal with high numbers of IDPs and refugees.

- Moreover, 10 of the 14 states and divisions of Myanmar are landmine contaminated. These regions...
embedded with land mines (especially in the border regions) can thus become easy targets of dispossession. Thus, it becomes critical to look into land claims and land rights before demining operations commence, especially because land mines are often seen by communities as ‘protective shields’ against state incursions.

Recommendations:

Firstly, Myanmar needs to take concrete steps in improving its system of land management and land laws. There is a need for a detailed review of previous land related legislations by constituting a committee which includes all stakeholders (not only Parliament representatives but also farmers, civil society groups’, private sector and academic experts). This committee could examine issues of overlapping provisions, confusing categorizations and current challenges in implementation of existing land laws.

Secondly, the former government has presented the sixth draft of the National Land Use Policy in 2015 which, if implemented, could tackle some of the challenges being faced. Its positive provisions include: livelihoods and food security of all (6b), protection of customary rights and procedures (6c), setting up of an independent dispute resolution mechanism (6d), providing easy access to information (7c), initiate inclusive public participation and consultation in decision making (7e), give restitution and housing rights for IDPs and returning refugees (7h), provide easy access to judicial review (7i), ensure equal opportunities for men and women (7k), give importance to prior consent (19e) and establish agricultural and ecological conservation zones (19h) etc. Proper implementation of this policy should be made a priority.

Thirdly, in August 2013, the Ministry of Defense announced its intention to surrender to the original owners one-sixth of the lands it had previously taken over. Even the deputy Defense Minister apologized in 2014 for the land seizures. This effort was supported by organizations like Max Myanmar who surrendered 106 acres of land to 13 original owners. This wave of realization of past mistakes and initiation of correction through initiation of a land policy is a step in the right direction and the government should work with the military to ensure it continues.

Fourthly, Village Rights Committees (VRCs) and Legal Clinics continue to assist the farmers in creating greater awareness and understanding of their land claims and property rights.

Fifthly, Corporate Social Responsibility (CSR) should be more active and a step in this direction has already been taken by the Myanmar Centre for Responsible Business which is assisting companies to ensure that their investment practices conform to international human rights standards. Such steps should be taken by
other organizations in the future too, and legal frameworks should include CSR provisions.

**Sixthly,** the government should support, not repress social activism, as informed community participation is essential for creating better public policies for the future. If fostered, social activism and civic engagement around land issues will continue to raise and debate critical issues around land, create a knowledge base and strengthen solidarity across regions in Myanmar. The Dawei Special Economic Zone is a case in point where the Dawei Development Association has not only raised issues related to land through its press releases but has also created an ‘across the border’ support base for these important concerns in countries like Thailand and Japan (raising the awareness of countries investing in Myanmar).

**Finally,** rural people ultimately need voice and representation in Parliament so that their concerns are discussed and more equitable agrarian policies are created. The Dawei Nationalities Party (DWP) sought to advance rural representation by fielding 14 candidates in the 2015 elections along with six other political parties, all of which have agriculture, farmers and land as their key concerns. Organizations like the *Land in our Hands* (LIOH) aiming at expanding the rural network should also get more support in the future.

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Financing Dispossession China’s Opium Substitution Programme in Northern Burma

Transnational Institute (TNI) 2012

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Changed at the 1995 meeting of the Myanmar National Assembly. The issue has been ongoing since 2016.

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(ကရင္မုန္တလာ)

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