

Series Foreword

The monographs that comprise the Critical Perspectives on Regional Integration series have emerged from dissertations based on original primary field research, and written as a major part of the requirements for the Master of Social Science (Development Studies) program of the Regional Center for Social Science and Sustainable Development (RCSD), in the Faculty of Social Sciences, Chiang Mai University.

As Senior Editorial Adviser, I was engaged by the Center to conduct an overview of the dissertations—dating back to 2001 and now well over 100 pieces of work—and select which of them would best illustrate the quality of graduate student research. This was by no means an easy task, but it was decided to choose primarily those written in the past few years, given that empirical research in social science tends to date rapidly. Another consideration was that the monographs should give expression to the main theme of the series of Critical Perspectives on Regional Integration.

As the selection and editorial work proceeded it was then decided to organize the publications into sub-series focused on different parts of mainland Southeast Asia. The first several volumes focus on Myanmar, covering such subjects as livelihood strategies, changing ethnic identities, borders and boundary-crossing, and the commoditization of culture within the context of ethnic tourism. Following volumes are devoted to Thailand, Lao PDR, Vietnam, and Cambodia.

The series also illustrates the concern to bring together social science and natural science knowledge in order to further the understanding of sustainable development issues. Over some 20 years Chiang Mai University has developed considerable research expertise in such fields as resource management, environmental impact assessment, upland agricultural systems and indigenous knowledge, health, and ethnic and gender relations. Teaching and research in development issues also deploys social science concepts within the development field to address decision-making, policy and practice, and the responses and adaptations of local populations.

This current monograph series also focuses on the processes of social, cultural, economic, political and environmental change among populations and territories undergoing rapid transformations within the Greater Mekong Subregion (GMS) and the ASEAN Economic Community (AEC).

Victor T. King

Senior Editorial Adviser, Critical Perspectives on Regional Integration Series

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Land Grabbing as a Process of State-Building in Kachin Areas, North Shan State, Myanmar

L Gum Ja Htung

The author L Gum Ja Htung takes a comprehensive look at how large-scale land concessions in Kachin areas of north Shan State in Myanmar are perceived and responded to by local people. Through careful analysis of the history of conflict in Myanmar it is illustrated that economic development projects in this area rarely deliver what they promise and instead can be interpreted as a state-building strategy by the central government to gain access and control in ethnic conflict zones through land grabbing. Gum Ja's insider perspective offers a fascinating assessment of why and how diverse actors collaborated to successfully resist the government's plans for a 600,000 acres biofuel plantation crossing Muse and Lashio Districts.

L Gum Ja Htung completed his Master's in Development Studies at Chiang Mai University. He has worked with various agencies in development and human rights, and spent several years as a Program Coordinator at World Concern Northern Shan State. At the time of publication he is the Research Coordinator at Land Core Group in Yangon, Myanmar.



Myanmar
in Transition



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Chapter 1

Introduction

Background

Land is symbolically prestigious in many societies. It is a means to power, prestige and a form of social security. It also can be considered as the single most important asset for the rural economy of South East Asia. Since land is a critical source of wealth and power, disputes, increasing demands and land distribution have been a major concern of governments in the region. The most significant land problems are associated with issues of inequality, landlessness, and poverty.

To achieve goals such as economic development and poverty reduction in rural areas, since 1986, many governments in the region have pursued policies to attract investment from large corporate entities both domestically and internationally, to undertake projects on “vacant” and “unused” land, that promise to bolster the economy and create jobs. However, the reality is that these policies often lead to conflicts because in many places, on this “vacant” and “unused land”, local people have been practicing their subsistence agriculture with customary land use for centuries. As a result, conflict over land tenure in Southeast Asia’s rural areas has emerged as a key issue for the region (Cherry, 2013)

Since land conflict has become a key issue for the region, it is needed to look at the background of land grabbing on a global scale to have better understanding about land grabbing. In the midst of the 2008 food and financial

crises, the world began to witness a “global land grab”; a growing demand for land characterized by the purchase or long-term lease of vast tracts of land from mostly poor and developing countries (Daniel, 2011). In most cases, investors from industrialized and richer countries rent land from governments in the developing world for a comparably low price or receive exploitation rights for long periods. Contracts between governments and investors often include additional investor commitments on investment levels, employment creation and infrastructure. Thus, both sides, investors and government authorities, tend to describe land grab deals as win-win situations for investment and for enhancing development in poorer countries. The land, which is bought or leased from governments, is usually used for the production of food or biomass (for biofuels) to be exported to other countries (Gerstter, 2011).

According to Gerstter et al. (2011), there appear to be three main causes behind the strong push for large-scale land acquisition in the developing world: food security, increasing agriculture and biofuel production. In recent years, food security has once again become a main political topic. According to Deininger et al. (2011), the world population will increase by 40% by 2050, which will require a significant increase in food production to meet the higher demand. In turn, this could require agricultural production in developing countries to double. Investing in large-scale land deals abroad and concerns over food security in many countries are mainly related to limited water resources and arable land, such as in the Gulf States (GRAIN, 2008). In addition, World Bank (2008) described that food demand in new emerging economies like India and China can no longer be met by domestic agriculture with their populations growing, moving to urban areas and becoming wealthier. Therefore, investment-thirsty countries ensure a steady supply of food for emerging economies by renting land to grow crops in resource-rich countries.

Another reason to attract financial investors and speculators is rising agricultural commodity prices. Investors identified investments in land as a new source of profit after the financial crisis of 2008. To them, land is a “strategic asset” from which they expect to reap high economic returns from adding value to the land through food and fuel crop cultivation. The land purchase would also secure access to two key resources: water and fertile soils, both of which are expected to become scarcer in the future (World Bank, 2008).

The growing production of biofuel is another significant driving force for the current interest in land acquisitions. The demand for biofuel has increased rapidly over the past several years as oil-dependent countries establish ambitious targets for biofuel production and for incorporating biodiesel and bioethanol with traditional transport fuels (Bailey, 2008). Between 2004 and 2008, the total area of land used for biofuel production reached 36 million hectares, most of which was in the European Union, United States and Latin America. Therefore, securing land for the production of energy crops in countries where land prices are low is an attractive business investment (World Bank, 2008).

In addition, it is also needed to look at land grabbing issues in a broader global and political context. Relatively, policy reforms in African, Asian and Latin American countries have made investments easier. For example, investment treaties, land reform, improved banking, taxation, and customs regimes have paved the way for more large-scale land acquisition. Furthermore, economic liberalisation, expanded economic relations between developing and developed countries and the increasing globalization of transport and communications make land acquisitions more attractive (Cotula et al., 2009).

Cotula et al. (2009), also demonstrated that there were many actors involved in land grabbing. For example, in each land acquisition project, on the provider side, several government agencies are typically involved, such as the Ministry of Agriculture or the agencies responsible for foreign investment. On the buying side, land deals are often a public private venture; the purchasing country's government signs and sponsors the land contract, and then brokers deal with a private entity to implement and carry out productive activities. It is also common that the buyer involve a number of advisors, consulting firms, and international lawyers to acquire the necessary local knowledge and capacity to carry out the purchase.

Land grabbing is one of the biggest problems in mainland Southeast Asian countries, in particular, Thailand, Myanmar, Laos, Vietnam and Cambodia. Many of the land grabbing cases in these countries comprise large-scale acquisition (normally 200 hectares or more) by a corporate investors or government entities through buying, leasing or accessing land in order to produce food or non-food crops or to use this land for extractive purposes, such as hydropower dams and logging. They make these acquisitions for the

purpose of increasing supply of goods for domestic and foreign markets or making a favorable return on an investment. The Food and Agriculture Organization of the United Nations (FAO) definition of land grabbing adds that these acquisitions undermine food security in the host countries (Marks et al., 2015).

Marks et al. (2015) stated that land grabbing caused a number of people in these five countries to become landless. This is because they do not have legal security over the land they live on, some of them living on state-owned land. Others have been evicted after the state or companies with backing from the state have seized their land. Millions of hectares of land have been grabbed and handed over to either foreign or domestic investors. By reforming land laws to favor the interests of investors, national governments have accelerated land grabbing.

In Myanmar, land problems are not a new phenomenon. In the decades since independence, through successive forms of governing bodies, there has been a process by the state of taking land for commercial or infrastructure projects (Hudson-Rodd and Myo Nyunt, 2001). In 1947, the independent Union of Myanmar established the state as the ultimate owner of all land in the first constitution of the country (Mark, 2015; Scurrah et al., 2015). Scurrah et al. (2015) analyzed that the post-independence government through the 1953 Land Nationalization Act sought not only to take back land from foreigners, but also to reduce or abolish landlordism, with a specific focus on the land accumulated by “*Chettiar*” moneylenders. Under this law, private land rights were replaced by a system in which the state formally owned, and could exert claims over, the country’s land.

Although the intension of this law was to protect smallholder farming and limit large-scale land acquisitions, it opened the doors for the government to control land and to lease large-scale land acquisitions legally in the lowland areas of the country (Scurrah et al., 2015). However, after independence, in the ethnic upland areas of Kachin, Kayah and Shan States and the Burma-China frontier areas, the 1947 Constitution of the Union of Burma issued special regulations such as the Hill Tract Regulations, the Kachin Hill Manual, and the Shan State Manual which dated from the colonial period, to govern various ethnic groups and areas. These special regulations protected these ethnic areas from land problems, as the administration of ethnic affairs including land and

land tenure were regulated through traditional system by the elders or customary leaders before socialist time (Sai Kham Mong, 2005).

Under the centralized military government headed by the Burma Socialist Program Party (BSPP), many farmers in lowlands, especially in delta areas lost their land because of confiscations and forced paddy procurement from 1974 to 1988 (Mark, 2015). Farmers had to sell a quota of twelve baskets of paddy per acre to the government at about half the market price, which was used to feed civil servants, soldiers and to gain export earnings. Those who could not meet the quotas had their land confiscated and allocated to other farmers who were close to township authorities. The legacies of this policy continued until the early 2000s when farmers challenged the fairness of land lost under the rice quota policy (Mark, 2015). Moreover, a new twist in this policy occurred in the late 1990s with the advent of corporate rice farming under a new land reclamation program. In 1999, the military regime announced that 200,000 acres of paddy land in Irrawaddy, Yangon, and Magwe Divisions had been transferred to nine unnamed entrepreneurs licensed by the military government to reclaim 'wetlands, vacant, fallow and virgin lands' (Hudson-Rod et al., 2003).

Again, around the mid-1990s, large areas of land across the country were granted to corporations in order to cultivate crops promoted by the government under the agriculture development program. For example, a nationwide '*Jatropha*' campaign (which targeted 0.5 million acres per region, for a national total of 8 million acres), was set aside for rubber plantations in lowlands and ethnic upland areas for the Chinese export market. This program was implemented widely across the lowlands and ethnic upland areas of Myanmar by private agribusiness companies. Subsequently, this large-scale land concession for agribusiness became one of the main causes of land grabbing across the country (Woods, 2013).

In the late 2000s, land concession for agribusiness and industrial development has been on the rise with a total of nearly two million acres allocated to private sector by the military government of the State Peace and Development Council (SPDC) (TNI and BCN, 2013). Since the advent of the U Thein Sein government in March 2011, land issues have risen to the top of the national political agenda. News reports on protests by farming communities

across the country against land grabbing have increased day by day (Transnational Institute and Burma Centrum Nederland [TNI and BCN], 2013).

In ethnic upland areas, especially in northern Shan State, the whole area can be divided into three categories in terms of security; 'black' zone (controlled by insurgent group), 'brown' zone (jointly administered by the government and groups under ceasefire agreements), and 'white' zone (government controlled). In each of these territorial configurations, agribusiness operates differently, with different players directing financial capital flows into the areas under their authority. For example, most agribusiness contracts in 'white' zone, government controlled areas of northern Shan State are carried out by local Chinese businessmen. Most of the rubber plantations in 'brown' zones are facilitated by ceasefire and local militia groups. In addition, local militia groups are also facilitating agricultural concessions with Chinese businessmen in the conflict areas which have increased resentment among local people and ethnic armed groups (Woods, 2013).

Therefore, it can be seen, that different from the lowland land conflict, upland land conflict is interconnecting with ethnic conflict and militarization in ethnic nationality areas. It is this complex land conflict situation in ethnic upland area that has drawn my attention and stimulated me to carry out this study on one particular land grabbing action covering a widespread area across Muse and Lashio Districts, northern Shan State, Myanmar. In order to fully understand the entirety of processes involved in this action, it is necessary to explore in detail the current political, social and economic situation in ethnic areas, history of ethnic armed conflict, border area development and role of China's investment in the recently established open market economy of Myanmar.

A useful beginning place to explore these processes is a study of the history of ethnic armed conflict in order to understand the current ethnic conflict situation in Myanmar. The period of 1948 to 1950 might be noted as the general civil armed conflict chaos in the country. The root cause of political crisis in Myanmar is not only ideological confrontation between democracy and a military dictatorship, but ethnic problems rooted in the failure to implement the 1947 Panglong Agreement. At that time, General Aung San held a conference at Panglong in Shan State to persuade the Chin, Kachin, Shan and other non-Burman (non-Myanmar) nationalities to join an

independent Burma (the country name Burma was changed to Myanmar in 1997). Since the Chin, Kachin and Shan had already signed the Panglong Agreement to join the interim Myanmar government, the real meaning of the Memorandum of Agreement for joining the Union would be a federal basis with a strong emphasis on the federal principles of both “self-rule” and “shared-rule”, and the right to secession from the Federation at any time after the attainment of freedom (Sakhong, 2012).

However, after independence, there was a growing sense of frustration expressed by ethnic peoples as the rights of ethnic minorities were neglected. Centralization and Burmanisation form of government in Yangon had been implemented. For example, Christian Kachin complained that the country’s second President, U Nu was advocating for Buddhism as Myanmar’s official state religion, running counter to the voluntary spirit of the Union. This was one of the main reasons for the Kachin Independent Organization (KIO) to fight for their rights. At the same time, losing Shan Sawbwas’s rights to administrative power in Shan State was one of the causes of uprising in Shan State because these rights were granted to persuade the Shan leaders to join the new Union. Therefore, since independence, all these factors have led to the ethnic problems including over sixty years of armed conflicts and civil war.

As ethnic and communist armed conflict, and threat of uprising by Shan Sawbwas were major causes of anxiety of the Myanmar military government, the Ka Kwe Ye (KKY), followed by the ‘People’s Militia’ (Pyi Thu Sit) were created in 1963 as anti-communist and counterinsurgent activities. Initially, the local leaders such as Khun Sa, Lo Hsing-han and the Wa prince, Maha San, in northern Shan State were allowed to keep their arms and continue policing and taxing local trade as long as they gave no support to the communist and ethnic armed conflict. Later, these KKY leaders had become heavily involved in the opium trade to finance their armed groups. As the KKY also failed to force the armed groups to abandon their struggles, the commanders of KKY were asked to disband in 1973, but some groups refused and simply crossed over to the ethnic armed group’s side, while others joined the Burmese Army (Boucaud and Boucaud, 1992; Smith, 1999). Currently, in northern Shan State, many local militia groups are still allowed to take arms to serve under the local authority for policing their area. Through these militia units, the state can access to local power holders and rural resources and can also extend its power to control territory in the ethnic nationality areas.

Making ceasefire agreements between the Myanmar government and ethnic armed groups in 1990s was one of the main factors that gave opportunity to both local and foreign companies to extract natural resources and land. After years of self-imposed isolation, Myanmar changed its country's economic policy to practice open economic policy during the 1990s to attract foreign investment and acquire foreign exchange (Pan Kachin Development Society and Karen Environmental Social Action Network, 2004). To be able to implement economic growth activities in the borderlands, the Myanmar government negotiated with ethnic groups to have ceasefire agreements. In the early years of 1990s, the government made ceasefire agreements by promise of development as a key component in its peace negotiations with armed ethnic organizations, proposing ceasefire first, then development, and finally a national political agreement (Kachin Development Network Group [KDNG], 2012).

Although this ceasefire agreement put an end to the bloodshed, it had several dramatic consequences for the economy. The end of fighting allowed government to implement economic activities in ethnic lands. However, the uncertainty of the situation has created a "ceasefire economy" where all parties in the conflict including people militia groups have made deals with companies from neighboring countries, especially China and Thailand, to exploit the natural resources through resource extraction projects including large-scale agriculture, mining, logging, and hydro-power projects in Myanmar's borderlands. Therefore, this ceasefire economy has not led to any significant economic development in border areas, rather it has provided benefit for local elites and cross-border investors. As well, the military government gained territorial control in ceasefire zones by granting business opportunities to national and transnational business companies (Kramer, 2009).

As China is the biggest investor in extracting natural resource projects and agricultural business among neighboring countries and influencing Myanmar economy, the role of China needs to be considered. China supported the Communist Party of Burma (CPB) until late 1980s, so there was no formal relation between China and Myanmar during that time. However, after the fall of the CPB in the late 1980s, the relationship between China and Myanmar become formalized. Political and economic relations between the two countries have deepened ever since the military government took over Myanmar in 1988. At that time, China became Myanmar's most important strategic regional ally and its main supplier of arms. Since that time, Myanmar has had to rely on

China, in part because of Western sanctions which pushed the military government to turn to China to obtain recognition as the legitimate government in Myanmar. For China, Myanmar is geopolitically significant because it can access to the Indian Ocean and to the extensive natural resources ranging from dense forests and untouched rivers to vast reserves of minerals, oil and natural gas. Exploration of such natural resources has become more important to China as its rapid industrialization and urbanization require an increasing amount of energy and raw materials (Earth Rights International, 2008a).

Myanmar has been focusing on bilateral trades with both the Chinese central government and the Yunnan regional government, located over its northern border after signing border trade agreement with China in 1988 (Kramer and Woods, 2012). China also began to increase their economic investments inside Myanmar through its various State-Owned Enterprises (SOEs) especially in hydropower, mining and the oil and gas sector (Shee, 2002). For example, Lapadaung copper mine project in middle part of Myanmar is one of the biggest investment projects of China. This project is a joint venture of Wanbao, a mining company subsidiary of North China Industries Corporation and Union of Myanmar Economic Holdings Limited (UMEHL), a military-run state company also known as U Paing. The project has a 60 year contract and started in 2010 (ALTSEAN-Burma, 2014). In addition, China's agriculture investment has significantly increased especially in northern Myanmar. Promoting food security in Yunnan Province and China's eradication of opium program are key factors of increasing contract farming and agricultural concession by Chinese companies in Myanmar (Kramer and Woods, 2012). Therefore, these are the main reasons why Myanmar is important to China today (Shee, 2002).

Reciprocally, China offers interest-free loans, economic aid to the military government for the construction of basic infrastructure such as bridges, roads, dams, ports as well as industrial projects. Although the previous military government made many economic ties with China to improve the country's economy, it can be interpreted that it was instrumental for the survival of the military regime in the midst of economic sanctions by Western nations, and the support of China was only for the benefit for military regime (Kudo, 2008).

After 1988, the past military government created market-led land policies reform which resulted in land concession for large-scale farming to companies

which were closely affiliated to the military, including state-owned enterprises, joint ventures and private corporations (Hudson-Rodd and Nyunt, 2001). Precisely, the government introduced a new category in land classification known as ‘wasteland’ in 1991, covering land without a title (the Wasteland Law), to allow expropriation and reallocation of land. Although theoretically, smallholders could apply to access wasteland, the government did not make any small-scale allocation on the ground for farmers lacked capital to develop this land effectively. On the other hand, although foreign companies were prohibited to apply to access the ‘wasteland’ in policy, they could access this land through joint-ventures with local companies (Henley, 2014).

In 2012, two new land laws were passed – the Farmland Law and the Vacant, Fallow and Virgin Lands Management Law (VFV Law) – as an attempt of poverty reduction. The Farmland Law allows for the development of a formal land market so that land can be legally bought, sold and transferred on a land market; however, farmers must apply for land use certificates (LUCs) through the local level of Farmland Management Body (FMB). This legalization of land market without government safeguards is extremely problematic for anyone who doesn’t have an official land use title because they can’t possess legal land use rights. The allocation of the farmland can also be problematic because of the larger context of high inequality, combined with corruption (TNI and BCN, 2013).

The Vacant, Fallow, and Virgin Land Law (VFV Law) governs the allocation and use of virgin land (for example, land that has never before been cultivated) and vacant or fallow land (which the law characterizes as for any reason ‘abandoned’ by a tenant) (USAID, 2013a). Therefore, this law legally allows the government to reallocate villagers’ farm and forestlands (both upland and shifting cultivation land, especially fallow and lowlands without official land title) to domestic and foreign investors for agriculture development, mining, and other purposes. Under this law, up to maximum of 50,000 acres lease is allowed for industrial crops for thirty years with the possibility of renewal (ibid.).

As most farmers especially in upland ethnic communities have been practicing a customary land use system, they have no legal certificate for the land they have been using. These two new land laws have put upland ethnic communities under threat of losing their land, which are precisely the areas