

# Global governance/politics, climate justice & agrarian/social justice: linkages and challenges

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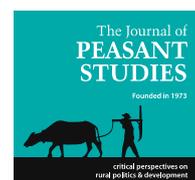
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# Land Confiscations and Collective Action in Myanmar's Dawei Special Economic Zone Area: Implications for Rural Democratization

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# Land Confiscations and Collective Action in Myanmar's Dawei Special Economic Zone Area: Implications for Rural Democratization

Yukari Sekine

## Abstract

*The recent political and economic liberalization in Burma/Myanmar, while indicative of some positive steps toward democratization after decades of authoritarian rule, has simultaneously increased foreign and domestic investments and geared the economy toward industrialization and large-scale agriculture. In rural areas, new institutional frameworks governing land, including a new Farmland Law (2012) and Vacant, Fallow and Virgin Lands Management Law (2012) have effectively created a land market through private land-use property rights and a new registration system with new land administration bodies. In a country permeated by legacies of corruption, coercion and military-linked cronies, land governance procedures and implementation tend to favour the more powerful and well-connected, with little protection mechanism for the majority smallholding farmers in the country. The Dawei Special Economic Zone (SEZ), in the southern Thanintharyi division of Myanmar, to be developed trilaterally with Thai, Myanmar and Japanese investment, is set to become one of the largest industrial zones in Southeast Asia, covering an area of approximately 200km<sup>2</sup>. The project plan includes a deep sea port, industrial estate, power plant and cross-border road and rail link to Thailand. The development of the SEZ, together with land speculation in surrounding areas and other confiscations linked to agricultural concessions, mining and military constructions has been met with collective mobilizations. The paper argues that although resistance against land confiscations are increasingly linked to global trends, such reactions are also responding to an expanding opportunity structure in the national political context. Collective action in the Dawei area takes advantage of histories of activism linked to democratic movements as well as human rights repertoires, social networks and trainings across the border in Thailand. Smallholding farmers, in alliance with activists, are also contesting land confiscations conducted by the military in the 1990s, encouraged by a greater political liberalization and testing the grounds for protest and engagement with the state. These contestations have implications for democratization and the transition of state-society relations more broadly. Although embedded locally, this process engages with transnational networks and alliances as well as global frameworks such as human rights, livelihoods and sustainable development.*

## Introduction

As Myanmar undergoes a political transition that recently culminated in a historic victory of the opposition party National League for Democracy (NLD), on November 8th 2015, shifting from a military dictatorship to a nominally civilian government, the challenges for rural populations, particularly small-holding farmers are surmounting. The process of political liberalization has been coupled with economic liberalization, opening up the country to foreign investment under a new Foreign Investment Law (2012). Economic sanctions that had been imposed by Western countries as a form of pressuring the government to address its human rights violations have been lifted. The institutional framework governing land has also changed, with two new laws: the Farmland Law (2012) and the Vacant, Fallow and Virgin Lands Management Law (2012). Under these two new laws and the administrative bodies responsible for their implementation, a sudden shift toward formalizing property rights to facilitate investment has created new vulnerabilities for rural populations. That those with less access to resources and power are at the losing end of this process is not surprising, particularly in a country marked by a history of power abuses by the state, violent internal conflicts, forced relocation and military expansionism.

The tendency for an emerging neoliberal-type development, favoring large-scale agriculture, large-scale industrial projects, often but not exclusively with foreign investment, resembles other trends in Southeast Asia and globally that are leading to increased deagrarianization (Hall et al., 2011). Woods (2013: 1) refers to “Burma’s emerging agro-industrial complex” under a “solidifying Burmese military-private capitalist class”, or as Jones (2014: 167) *state-facilitated crony capitalism*”, indicating the legacies of militarism in the emerging economy, where concentration of wealth and power in the hands of well-connected individuals, favored under an institutional structure that facilitates such concentration seems to be the nascent norm.

According to one activist who was referring to the contemporary land-grabs in the southern Thanintharyi division of Myanmar (the research site analyzed in the current paper): “*Nowadays money is more powerful than the gun; people are more afraid of the pen than to bullet*”<sup>1</sup>; indicating the changing nature of land confiscations in the region, from open threats and violence to institutionally-legitimized mechanisms. Although ethnic conflicts continue in northern Kachin and Shan states between ethnic armed groups and the Burmese military, fighting has reduced in the southern part of Myanmar due to recent ceasefire agreements. Land confiscations in the 1990s were largely due to military expansion as fighting continued with the Karen National Union (KNU). Recently, “militarisation is increasingly related to resource extraction and commercial development [...] Land confiscation is linked to the consolidation of garrisons, road construction and the establishment of new concessions for mining, logging and commercial agriculture.” (TBC, 2015). Such trends were observable in Dawei and surrounding areas during the fieldwork visit. Old legacies of military expansionism are combining with capitalist development. While in previous years the tendency may have been for small-holding farmers expelled from their land to be contracted into forced labor, migrate to Thailand to seek alternative livelihoods, or accept being relocated to smaller plots of land, the political scenario seems to be changing.

Under such bleak prospects, there has also been a changing opportunity structure for contestation. Although it may be argued that this widening of the opportunity structure has been shaped by the central government, in a top-down process as opposed to a bottom-up process from society, the changes are tangible on the ground, as farmers in alliance with other actors are increasingly protesting and mobilizing for access to land and against threats to rural-based livelihoods. Mobilization against land-grabbing has been a nation-wide trend. In the notorious Letpadaung copper mine case, in the Monywa District of Sagaing Division, hundreds of farmers continued to protest against the confiscation of more than 7000 acres of land for a joint mining project between the Chinese Wanbao company and military-owned Union of Myanmar Economic Holdings (Nyein, 2013). The violent crackdown on protestors in 2013, injuring more than 100 people, including Buddhist monks became widely known and illustrated the remaining legacies of violence and authoritarianism in the country. However, an investigation commission led by the opposition leader Aung San Suu Kyi was formed to

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<sup>1</sup> Author interview, Dawei, 24/02/2014

analyze the case, indicating growing legitimacy for rural collective action and alliances within the state to protect farmers' interests.

Measured amounts of protest, requiring authorization from the government have been allowed throughout the country, and political associations are no longer banned as they were since Ne Win's 1962 socialist regime and under the SLORC and SPDC governments. Rural-based mobilizations are also increasingly visible due to the suspension of press censorship and the sudden boom in telecommunications since the reforms. In the midst of new and old threats, and testing the grounds for change, farming communities, villagers, NGOs and a diverse civil society groups have stepped forward to fill in what Steinberg (1999) had referred to as the "void" of a civil society in Myanmar. Legacies of authoritarianism still remain, as threats of violence and the imprisonment of protestors still continue. However, state-society relations are being negotiated and tested, indicating visible changes in land governance and the political sphere more broadly. Although such mobilizations are increasingly linked transnationally, through contact with global discourses on human rights, sustainable development and environmental justice; particularly through the networks of international NGOs, such discourses seek legitimacy in the national context. Responses to land confiscations are multi-scalar (Turner and Caouette, 2009), through local, regional, national and global levels; however, they may best be understood within the changing national context and the shifting of state-society relations.

The present research uses the Dawei Special Economic Zone (DSEZ) as a case study for understanding the nature of land confiscations and contestation. The trilateral project between Thai, Myanmar and Japanese governments has been highly contested by civil society organizations on the grounds of its social and environmental impacts. Drawing from examples in the DSEZ and in surrounding areas in the southern Thanintharyi division of Myanmar, the observation is toward diverse forms of land confiscations including: a) the planning and initial construction of the Dawei Special Economic Zone (DSEZ) and related projects; b) increased land speculation due to an emerging land market and increased land prices; d) the formalizing of a new private property system based on the Farmland Law and the Vacant, Fallow and Virgin Lands Law e) present and past confiscations by the military for government constructions; e) mining and large-scale plantation concessions in the surrounding areas. Observing the diverse conflicts over land, between diverse actors, allows for the understanding of how diverse civil society actors are engaging in contestation, building alliances and contesting legitimacy for greater access to and control over land.

The paper engages with discussions on rural resistance and agrarian movements, as well as the concept of rural democratization, seeking to understand the potential developments in Myanmar toward greater democratic land governance, as defined by Borrás and Franco (2008:12). Democratic land governance is defined here as "*a political process that is contested by multiple state and societal actors to control the nature, pace, extent and direction of access to, control over, and use of land resources [...] categorically biased in favour of the previously marginalized landless and near-landless working poor people*" (4). According to this definition, it includes administrative and technical responses such as adequate land records and titles, but also addresses the deeper question of land-based wealth and power (re)distribution. For the authors, rural democratization cannot be separated from democratizing the state more broadly. Hence, they do not take the society-centered approach to understanding democratization, which sees the development of civil society as an end in itself, but considers that the engagement with the state is a necessary part of the process.

Fox (2004: 5) takes an interactive approach to institutional transformation that suggests pro-poor reform requires changes in the three arenas: within the state, within society, and in the state-society interface. And highlights the distinction between policy and implementation - where power imbalances affect both. Reforms that benefit the poor must necessarily be biased in favor of the poor and may have deeper impacts if accompanied by strategic interaction between policymakers and civil society counterparts. Institutional change involves formal and informal power relations and resources, where the former includes official mandates, underpinned by administrative, legal and political authority. The latter includes "social capital relationships - within the institution. In addition, political capital, which includes resources and capacity to change the balance of power - such as the capacity to use the media and inform public debates, is also necessary in such transformations.

While analysis of transnational agrarian movements is informative to the present study, indicating transnational linkages of domestic agrarian-based movements, it is useful to understand how such transnationally-linked movements require legitimacy in domestic level, through collective action frames that resonate locally.

The following research questions have guided the present study:

1. How have recent changes in Myanmar increased land tenure insecurity for rural populations, particularly small-holding farmers?
2. How has the increased opportunity structure for contestations over land shaped state-society relations at local, regional and national level?
3. How have activists constructed legitimacy among farmers through the use of common repertoires and known solidarity networks, and what strategies of collective action have they used?
4. How is collective action linked to previous forms of contestation such as democratic movements?
5. How can the current contestations over land be seen an indication of steps toward greater rural democratization?

The research draws on fieldwork conducted in the areas in and around the planned Dawei Special Economic Zone area, including the Dawei township and other villages in the southern Thanintharyi division of Myanmar in February 2014. Interviews were conducted with farmers who had their land confiscated in the 1990s, those who had their lands projected to be confiscated by the SEZ and other types of confiscation; local human rights organizations, farmers networks, community-based organizations, volunteer lawyer groups, ethnic-based organizations, monks leading resistance against development projects related to the SEZ, local media journalists, student activists and women's rights groups. Though diverse, all were somehow aware of, in support of or directly engaged in contestations over land in the region. Direct observation of protests, civil society events, social gatherings and political party meetings were also crucial in understanding the dynamics in the region. Secondary sources also include news articles, NGO reports, government reports and land policies.

## **Context: Changing Land Governance in Burma/Myanmar**

### *Background to New Laws*

Under British colonialism, the system of grids and wards were created to facilitate tax collection. This system was applied to Lower Burma, which was under direct central control, while the upland or 'frontier areas' remained under semi-autonomous rule. Landlordism developed in the commercial rice-growing areas in the lowlands while the uplands remained under use for shifting cultivation, rubber or forestry. The Land Acquisition Act (1894), created by the British allowed 'waste lands', often land left fallow, to be appropriated by the State for 'public purposes'. Such classification is still effective today, and the act is adopted by the military government to legitimize appropriation of land by the state, including in counter-insurgency campaigns. (Ferguson, 2014; Scurrah et al., 2015)

Until 1947, a year before Burma's independence, foreigners (non-citizens) had the right to own and transfer land. Well-known money-lenders of Indian origin known as *chettiers* had widely become agricultural owners under British rule. However, in 1947, the enactment of the Transfer of Immovable Property Restrictions Act suspended these rights to foreigners, and they were no longer allowed to transfer property and only leases could now be granted (UN Habitat et al. 2010). Further, under the 1947 Constitution of the same year, the state was declared ultimate owner of all natural resources and land (a condition reaffirmed by the 1974 and 2008 Constitutions). Similarly, the Land Nationalization Act (1953) "reiterated the state's ultimate rights to land while making landlordism illegal by nationalizing all land" (Mark, 2015), specifically focusing on land accumulated by *chettiar* moneylenders. Hence, agricultural Land was no longer transferable in accordance with the 1953 Land Nationalization Act (UN Habitat et al, 2010: 4). In this way, private lands were replaced by state-owned land, where all agricultural land was subject to state reclamation and redistribution schemes.

Although it was meant to protect small-holders, such process opened the door to widespread land confiscations and large-scale land acquisitions by the state (Scurrah et al., 2015).

When General Ne Win led the military coup in 1962, instilling the one-party state under the Burma Socialist Program Party (BSPP), the state again reinforced its control over the land, through the Disposal of Tenancies Law (1963), according to which the state could terminate tenancy arrangements if tenants failed to adhere to what now became strict conditions, such as the stipulation of what quantity and type of crop to grow or the prohibition of selling, mortgaging or transferring one's allocated land. The maximum penalty under the Disposal of Tenancies Law is 6 months imprisonment (UN Habitat et al, 2010: 5).

However, Ne Win's socialist model was disastrous economically, leading to stagnation, unemployment and inflation. The 1988 uprising against the regime was largely influenced by the deteriorating social, political and economic conditions in the country. However, the violent crackdown was followed by the instilling of a new regime, the State Law and Order Restoration Council (SLORC) – later renamed the SPDC – which entrenched military control and initiated a process of liberalizing the economy (Scurrah et al., 2015). The policy instilled in 1988 was directed at economic growth, encouraging domestic and foreign investment. During this period, the Wasteland Instructions (1991) “enabled both domestic and foreign investment in large-scale agricultural enterprises” (Oberndorf, 2012: 1), and use-rights of areas designated as “wastelands” were transferred to private individuals or companies, neglecting customary laws and increasing land appropriation and conflict, particularly in the upland regions of Myanmar. The granting of large agribusiness concessions to crony companies, large infrastructure development and natural resource extraction largely intensified during this phase. The Wasteland Instructions of 1991 were reaffirmed in the recent Vacant, Fallow and Virgin Lands (VFV) Law (2012).

### *New Land Laws*

The market reform initiated in the 1990s has intensified dramatically since 2011. Since the reformist president Thein Sein assumed the lead in 2011, three relevant laws have been enacted to facilitate investments in rural lands: the Farmland Law (2012), the Vacant, Fallow and Virgin Lands (VFV) Law (2012), the Foreign Investment Law (2012) and the Special Economic Zone Law (2012). The Draft National Land Use Policy (2014), in addition, was released for public consultation, and has been illustrative of a significant step toward including civil society in the process of policy discussion; the outcomes of which deserve further investigation.

Under the Farmland Law, farmers may apply for Land Use Certificates (LUC's) at the local Farmland Administration Body (FAB). The FABs were created at different levels of government to oversee the implementation of the Farmland Law. The LUC certificates grant “permanent land use rights to sell, transfer, mortgage or lease agricultural land” (KHRG, 21). As Sikor & Lund (2009) have argued, this process imbues the management body with authority and power, as it has the legitimacy of determining control and access over land. The new registration system has created private land use property rights and effectively allowed for the development of a formal land market. However, such process has been designed to promote large-scale agricultural investment and has failed to create protection mechanisms for the majority small-holding farmers (Oberndorf, 2012: III). The new land laws have been criticized by observers, who do not see the recognition of customary laws related to land resources and ownership, such as communal ownership, with particular regard to ethnic minorities (KHRG, 2013). Land tenure security remains 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’. (Oberndorf, 2012: 111)

Under the VFV Law, the government to reallocate “wasteland” to private companies for agricultural production, livestock farming, aquaculture and mining deemed of long-term interest of the state and the public. In practice, lands that are registered by interested investors as wasteland are often inhabited by local villagers and farmers or are being left fallow. The strengthening of an economic value of land is problematic not only for denying social, cultural and historic value, including customary laws, but due to the absence of a strong regulatory system within which a liberalized market could exist, such as an independent judiciary, protective mechanisms for farmers in the transition to a land market,

and a unified and streamlined legislative framework. Contradictions within the legal system and a legacy of “stacked laws”, in particular, have contributed to the challenges in formalizing private property rights (Mark, 2015).

Nonetheless, there have been some developments since 2011. A Land Investigation Commission was set up by the Lower House of Parliament to investigate land disputes and confiscations. It has been considered an encouragement, demonstrating willingness from the Members of Parliament, the committee still has limitations, despite the lack of a mandate to follow-up on complaints (KHRG, 2013:19). 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 with reviewing the national land-use policy and make recommendations. Such developments are indicative of a growing engagement and slight decrease in the historic state-society gap in Burma.

### *Emerging Civil Society*

After the coup in 1962, the Burmese armed forces had cracked down on social movements and instilled the National Solidarity Act prohibiting political organizations. All opposition groups were banned (Hlaing, 2007). The only organization allowed was the Burma Socialist Program Party (BSPP), and the government created Government Organized NGOS (know as GONGOS) to control the arena of action by independent organizations of workers, peasants, youths, literary workers and artists. (McCarthy, 2012). However, illegal political activities continued, such as informal study groups formed b lawyers, writer, students, monks and workers and the Burma Communist Party (BCP) (Hlaing, 2007)

During Burma’s successive military regimes, access to information about the internal politics was a challenge to researchers due to the lack of information. The denial of fieldwork for researchers, the prohibition of international journalists, the authoritarian and secretive nature of the state limited amount of published material, lack of opportunities to conduct “in situ political research, especially between 1962 and 1988” (Taylor, 2008: 228). Land confiscations were therefore largely undocumented until the recent reforms, save a few such as research by Hudson-Rodd & Htay (2008) and human rights NGOs usually based in the Thai-Burma border (KHRG, 2013).

In August 8, 1988, university students in Yangon, Mandalay and other cities took to the streets in protest against the military government, triggered by deteriorating economic and social conditions. The auspicious date would later be known as the Four-Eights Nationwide Democratic movement and gained ample support. The violent crackdown led to several hundreds allegedly killed or wounded. Students, Buddhist monks and workers were soon joined by diverse societal groups including lawyers, doctors, civil servants, businessmen, Muslim and Christian religious leaders. As Hlaing (2005: 289) argues, despite the major crackdown and the reassertion of military control in September 1988, “the military was never able to wipe out civil society organizations”. The military reclaimed control of the country forming the State Law and Order Restoration Council (SLORC), which was later renamed the State Peace and Development Council (SPDC). The Saffron Revolution (2007) in which hundreds of monks marched in protest and were again cracked down by the police would dramatically weaken the legitimacy of the government, marking the alliance of different groups, including religious groups in alliance under the pro-democracy movement. Cyclone Nargis (2008), and its disastrous consequences served largely as a trigger to the reemergence of a civil society based on previously existing social networks. Solidarities forged locally, regionally and across the border served to mitigate the humanitarian crisis and legitimize the formation of organized social networks.

### *Engagement between Civil Society and the State in Land Policy and Implementation*

At the height of emerging literature on transnational agrarian movements, Malseed (2008) had observed the absence of anything that could be called such an overt “agrarian movement” in Burma, as was occurring in Latin America and in other countries in Southeast Asia. Such a movement could hardly exist in a country where social movements were violently repressed under the military regime. Although Malseed documented everyday forms of resistance (Scott, 1985) in Karen state, they were

not comparable to other “movements” observed globally, such as Via Campesina contesting neoliberal policies. His critique and question was whether such movements based on emerging ideas of food sovereignty and solidarity were possible.

Although Jones argues that there is a systematic weakness and disorganization of the social forces which could potentially challenge the structural powers in the emerging model of state-facilitated crony capitalism such as labour organizations, peasantry, minority groups and the middle class (2014: 167), the recent emergence of alliances in favor of more democratic land governance has illustrated a challenge to the previous authoritarianism. It is possible to see the emergence of farmer networks and national solidarities over land contestation; including strategic participation in land policy and implementation.

Since 2011, the release of political prisoners, the suspension of press censorship and the allowing of measured amounts of protest and political participation have opened up the opportunity structure (Tarrow, 2005) for contestation. Environmental activism before the 2011 transition such as contestations against large-scale dam constructions, relying on the existence of a transnational activist diaspora, especially in the borderlands with Thailand, provided networks of collaboration between domestic and exiled groups (Simpson, 2013). This is exemplified by the Karen Environmental and Social Action Network (KESAN)’s campaign against the construction of dams in the Salween river, in Karen State. The Thai-Burma border has hence served as a zone of contestation. Arnold (2012) mentions that Mae Sot, where 200,000 Burmese migrant worker live has served as a “hub of the Burmese labour movement, and a globally-linked political center where exiled democracy activists consider the future of Myanmar”. The estimates are that 2 to 3 million Burmese migrants are working in Thailand more broadly, while around 150,000 refugees are living in nine camps on the Thai side of the Thai-Burma border.

This wider opportunity structure has widened the space for contestation over land, including an expanding structure for legal contestations, albeit still nascent and deficient. Using O’Brien and Li (2006) notion of rightful resistance, Mark (2015) shows how small-holding farmers are engaging with the law and using informal norms to gain legitimacy for their claims over land. Some obstacles remain such as the legacy of “stacked laws” that create conflicts and contradictions in the legal system, as well as the history of patron-client relations. The public consultation on the National Land Use Policy (2014) has also been indicative of greater opening to civil society on land policies. There is an increased engagement with international organizations and NGOs, the discourse on democracy, human rights and sustainable development are continually visible. Particularly in contesting for land rights, civil society organizations, locally and through connection with international organizations have contributed to greater participation in the political arena of land governance.

### **Case Study: the Dawei Special Economic Zone and Surrounding Areas**

As part of Myanmar’s new path toward greater economic liberalization, investment and industrialization, the Dawei Special Economic Zone (DSEZ) was created along with two other special economic zones: the Kyauk Phyu Special Economic Zone and the Thilawa Special Economic Zone, all of which are in accordance with the Special Economic Zone Law (2014). The Myanmar SEZ Law stipulates that the developer or investor may lease the land for up to 50 years upon payment of a lease fee, a period which can be extended a further 25 years. Although plans for the Dawei SEZ project had begun in 2008, ongoing discussions on the development of the project were stalled due to the difficulty of the initial developer, Thai-based Italian-Thai (ITD) Company, to secure adequate investors. The initial project plan in 2008 was a bilateral project between the Thai and Myanmar governments, confirmed by a memorandum of understanding (MOU) between the two countries in 2012. It has since evolved into a trilateral agreement including the Japanese government, after prime-minister Shinzo Abe declared support for the Dawei SEZ in July 2015, and agreed in December 2015 to contribute and share equal seats with Thailand and Myanmar in the special-purpose vehicle created to manage the project (Kyodo News, 2015).

The 204.5 km<sup>2</sup> delimited DSEZ is located 20km north of Dawei, the capital of the southernmost Thanintharyi region of Myanmar, on the Andaman coast, and 300km from Bangkok. As the region neighbors Thailand, it has strategic value as a commercial and transport hub. The 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, 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, 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; DDA, 2014). The initial investment requirement estimated by the project was of US\$50 billion (DDA, 2014).

### *Land Confiscations in Dawei*

In Dawei and surrounding areas, the establishment of the DSEZ since 2008, as well as the wider economic liberalization has brought new threats to local farmers. Threats to tenure security and livelihoods are attributable to several reasons: a) the planning and initial construction of the Dawei Special Economic Zone (DSEZ) and related projects; b) increased land speculation due to an emerging land market and increased land prices; c) the formalizing of a new private property system based on the Farmland Law and the Vacant, Fallow and Virgin Lands Law; d) present and past confiscations by the military; e) mining and large-scale plantation concessions in the surrounding areas.

### *Dawei SEZ and related projects*

Loewen (2012) has classified the land grabs in the Dawei area as ‘direct’ and ‘indirect’ land grabs, where the direct land grabs include those linked to the ITD and other SEZ affiliated companies for the construction of the industrial zone, deep seaport, road link and dam reserve. According to her data in 2012: 19 villages<sup>2</sup> within the 204,9km<sup>2</sup> SEZ designated area would be relocated for the mega development project. However, unofficial reports by EARTH & TERRA (2012) estimated that this number would be slightly higher, affecting 21 villages and relocating 32,274 people. However, an unofficial map by ITD in August 2013 indicated the area would see alterations; and another unofficial report by a working group supporting the DSEZ mentioned that the demarcated area of the DSEZ would include a lower total of 6 villages (DDA, 2014: 10). Conflicting information has therefore left local villagers unsure about their situation. Aside from the SEZ delimited area, other projected land confiscations include related projects such as a) the dam reserve in Kalone Htar village (7km<sup>2</sup>) where 200 households live; b) the 160km roadlink to Thailand where 35 villages have been or are being affected, particularly ethnic Karen villages; c) 4 separate relocation sites<sup>3</sup>.

In addition, ‘indirect’ land grabs related to the DSEZ are occurring, linked to land speculation and rising land prices. A hospitality and tourism boom is expected in the region (Loewen, 2012: p. 10), threatening livelihoods of local villagers and fishermen, as foreigners and domestic investors with links to the military or the land administration bodies seek opportunities near the pristine beaches. Conversation with residents in Dawei indicated that crony businesses were appropriated sections of land on the coastline for the construction of hotels and resorts, as the Thanintharyi division has a beautiful natural coastline that has not yet been exploited by the tourism industry.

### *Conflicts due to New Land Laws*

The Farmland Law has led to a rush to register lands at the local Farmland Administration Bodies, as small-holding farmers and businessmen seek to formalize and secure their control over lands. However, this process is not without its challenges. According to a women’s rights activist<sup>4</sup> the land

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<sup>2</sup> Ka Maung Chaung, Pu Gaw Zun, Ya Laing, Thit To Thaunt, Kya Khat Ta, Pein Shaung, Ka Myaing Swea, Mu Du (West), Mu Du (East), Pan Det Inn, Na Bu Lel, Le Shaung, Pa Ra Dat, Nyaungbin Hseik, Ma Yin Gyi, Htain Gyi, Hlaine, etcl) (Loewen, 2012)

<sup>3</sup> Bawar, Htet Wa, Wazwam Taw and an are 3km south of Kalone Htar

<sup>4</sup> Author interview with TWU activist, Dawei, 11/02/2014

registration process, being implemented under the Farmland Law (2012) requires money, knowledge and documents that poorer farmers and villagers do not have. “Authorities come for measurement only if you pay”, she said, referring to the financial burdens of the bureaucratic process in measuring and registering the land through the local Farmland Administration Body (FAB).

A journalist at the local Dawei Watch<sup>5</sup> observed that the government does not have the management capacity to implement the Farmland Law: “authorities don’t know the situation on the land”, and maps at the Land Records Office or Forestry Office are not up to date or inconsistent with the reality on the ground. “Businesses see the map and they think they can use (the land), but when they go, it is the villager’s garden.” A DDA activist<sup>6</sup> said of the local government registration body, that “they have only 3 GPS equipments to do the land-titling”. To which he added that local NGOs such as the DDA were assisting in the land-titling process to ensure less corruption and to compensate for the lack of technical capacity. Hence, civil society groups were actively engaging with the implementation process, in part to reduce biases against more vulnerable holders. GPS equipments were funded by international NGOs.

A Karen activist<sup>7</sup> mentioned that land is a major problem in the region, and still a source of tension between Burmese government and the Karen National Union (KNU), who control a part of the Thanintharyi division where the road between Dawei and Thailand was constructed. ITD negotiated directly with the KNU to construct the road, illustrating how disputed territories are being used for development. The recent ceasefire agreement in the region has allowed for the beginning of constructions, however, activists believe it is too soon to begin development projects. “Land registration must be done, before development projects”, she affirmed. She believed villagers do in fact want formal titles, as this provides greater security. Her NGO works in 30 villages within KNU controlled areas, and land registration is done with the KNU.

### *Local-level Corruption*

Local-level corruption is also widespread, as village heads often ally with businesses or are pressured by more powerful military personnel to allow for land confiscations. In one case highlighted by an activist from Dawei Human Rights Watch<sup>8</sup>; local authorities had confiscated some communal land in Kadoe village, shared by 70 households for grazing, to sell to Chinese businessmen who wanted to construct a cemetery. The activist said each acre could fit 200 bodies, at 200.000kyat/body and therefore it was a business investment for profit-making. According to a villager leading the resistance against the confiscation,<sup>9</sup> the military had confiscated 16 acres (12 acres had been used for grazing and 4 acres for farming). The Chinese had used the police to threaten the villagers, saying “if you don’t take the money...”, and subsequently began fencing the land. The incident had also created internal conflicts within the village between those willing to accept the money and those who were opposed to it. The leader of the resistance was now under a lawsuit by the farmers who wanted to sell. Although the villagers had applied at the local farmland administration body to register their land under the new Farmland Law, they had been denied the official certificate. This case is indicative of the corrupt nature of land confiscations; of alliances between village administration, local governments and private business; and how money is still able to pay interested registration schemes at the detriment of villagers’ interests in communal lands. It is also illustrative of the continued legacy of violence and intimidation by the police force.

In another case of peri-urban land confiscations in the outskirts of the town of Dawei, 64 farmers who later formed the Dawei Farmers’ Network to resist the confiscations, were having a total of 300 acres being threatened by military and military-linked private confiscations. Although most were small-holding farmers, since 2011 the local government had announced that they were no longer entitled to the land, affirming the land had been confiscated in the 1990s. They pressured the relocation through

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<sup>5</sup> Author interview 20/02/2014

<sup>6</sup> Author interview with DDA activist, Dawei, 10/02/2014

<sup>7</sup> Author interview with Tarkapaw, Dawei, 20/02/2014

<sup>8</sup> Author interview with human rights activist, 11/02/2014

<sup>9</sup> Author interview with community leader, Dawei, 21/02/2014

intimidation, trying to coerce them to accept compensations that farmers considered to be inadequate. One farmer claimed<sup>10</sup> that the division administrator Tin Thein was behind the confiscations, and his land, a total of 24 acres in 3 different locations, was being confiscated for government housing and for a rubber factory. They had already started building on 3 acres of his 8-acre plot, after having burnt his paddy and approaching the plot with a bulldozer. Other farmers claimed their land would be confiscated for the construction of military retirement housing, a private shopping mall and roads. In November 2013, in alliance with other villagers from the region, they staged a two hour protest with 5000 people. It was the first one in decades. Such manifestation would have been brutally cracked down prior to the reforms.

### *Mining and Large-scale Agricultural Concessions*

Although only a brief summary will be undertaken here, large-scale agriculture is also another reason for land-grabbing in the Thanintharyi region, particularly for oil palm and rubber. However, although such concessions were granted by the central government for the nation's oil palm development, companies have often used the land for speculation and logging. In Myanmar, from 2010 to 2013, the land area allocated for large-scale agricultural concessions increased by 170%, from 2 million acres to 5,2 million acres. (Woods, 2015: vi). In the Thanintharyi division, 671,594 acres were allocated in 2010-2011 and 993,887 acres in 2011-2012. "All Myanmar's oil palm concessions are located in Tanintharyi Region, covering 18 percent of the region" (Woods, 2015: xi), particularly in areas inhabited by Karen populations, taking advantage of the ceasefire agreements with the KNU.

### *Past Military Land Confiscations from the 1990s*

Farmers have not only been protesting against the current wave of land-grabs, but also against past military confiscations in the 1990s, responding to the opportunity structure and mobilizing collective action where previously they would have been severely repressed. Encouraged by the parliamentary Farmland Investigation Commission investigation, and the recent announcement that unused land that was confiscated by the military may be returned to the original owners, farmers throughout Myanmar have begun to organize and submit claims for land lost in the 1990s. "According to the report of Pyidaungsu Hluttaw's land confiscation investigation commission, 6 million acres of farmland were confiscated throughout the country while under military rule, of which only 237,615 acres have been restored to the previous owners." (Su, 2015). "The commission received 565 complaints between late July and Jan. 24" of 2013 [...] The report said farmlands were confiscated for six different reasons: the expansion of urban areas; expansion of industrial zones; expansion of army battalions and military units; construction of state-owned factories; implementation of state-run agricultural and animal husbandry projects; and land allocation to private companies with links the military." (Zaw, H. N., & Khaing, 2013 ). Defense Minister Lt-General Wai Lwin told Parliament that a fraction of unused land confiscated by the military would be returned to the original owners. (Mann, 2013)

In the village of ThabyeChaung, near Dawei, villagers began organizing to claim their lands back. According to one villager<sup>11</sup>, 500 acres had been confiscated in the village of 110 households between 1990 and 1993. Of those, 300 acres were appropriated by Battalion 302 to build a military camp, while the remainder was used for relocation of the villagers. However, only 50 acres were effectively used, while the remaining 450 acres was rented out to villagers, who had to plant coffee under a large-scale agricultural project that eventually failed. Without warning, cutting down villagers' trees, under threats and with weapons, the military confiscated the land while some villagers were relocated while others migrated. One person had even committed suicide, according to the interview. Although 1 acre was worth 100.000kyat, the compensation paid varied between 5000kyat, 6000kyat, 10.000kyat/acre (equivalent to approximately 4, 5 and 8 USD/acre) and nothing. Villagers had tax receipts for the land they had previously cultivated. Sustaining livelihoods since the land confiscations have been difficult, and as one villager<sup>12</sup> affirmed that since his 7 acres were confiscated in the 1990s, three of his six sons

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<sup>10</sup> Author interview 16/02/2014

<sup>11</sup> Author interview, Thet Yet Chaung, 17/02/2014

<sup>12</sup> Author interview, Dawei, 21/02/2014

have migrated to work in Thailand, and have supported him and his wife. This is not an uncommon trend among families who lose their land to confiscation.

Such extensive observation of diverse land confiscations is useful in illustrating the centrality of land in the current transition in Myanmar, particularly in potentially rebalancing power inequalities or exacerbating them. The diversity, in form and temporality of these confiscations has provided a network of dissatisfied and aggravated rural people who have come together under a widening political space for contestation.

### **Contestations over Land in Dawei: reducing the State-society Gap**

The argument presented here is that rural resistance is not a necessary reaction to land grabbing, but a response to the changing opportunity structure in domestic politics. As Mamonova (2012) has shown, resistance is not a necessary response to large-scale land acquisitions, as farmers may also choose to be beneficiaries within land deals or seek adaptive strategies. In Myanmar, not only have threats to rural livelihoods and tenure security increased, but space for contestation has also opened. While past legacies of military confiscations continue, open and organized resistance against it has only now been allowed, in a context where discourses of accountability, rule of law and democracy have increased legitimacy for rural collective action. Although the space for political contestation is still being negotiated, tested and constructed, they are arguable indications of increased democratic land governance in attempts to renegotiate the power imbalances in control over land and access to land-based livelihoods.

Further, repertoires and networks of contestation are based on existing knowledge repertoires, such as human rights and democracy movements, the National League for Democracy (NLD); and past social networks, such as Buddhist monks' leadership and legitimacy, national student movements, the cross-border migrant and activist networks in Thailand, and the financial and resource backing of international organizations. Political contention is a multi-directional processes of alliance-building that acts vertically, with claims directed at different local, national and transnational levels, and horizontally: across different political and social actors with different interests (Tarrow, 2005).

Localized repertoires are also being constructed, as exemplified in this case study in Dawei, based on ethnic identity (Win & Win, 2015) and calling on the historic division between center and periphery, Burmese and ethnic groups. As Tavoyans in Dawei seek to institutionalize their claim as ethnically diverse group from the Bamar, they are also politically seeking representation based on locality, which is legitimized by the historic oppression of ethnic minority groups in Myanmar. The present section will look at three aspects of resistance in Dawei and region: 1) strategies of contestation; 2) alliance-building at local, regional, national and transnational levels; 3) construction of legitimacy with allies, the state and the wider public, which includes the use of familiar repertoires of contestation. Through these, it is possible to understand the changing nature of state-society relations, and the implications for democratic land governance, where engagement of civil society in addressing the informal and formal mechanisms that determine distribution of wealth and power.

#### ***Strategies: Contestation, Negotiation, Engagement with the State***

At local level, farmers have actively refused to move when intimidated by officers, as one farmer from the Dawei Farmers' Network said that he and his wife laid down in front of the bulldozer in November 2013 to stop the destruction of their paddy and the confiscation of their lands. Farmers also have continued to plant their crops despite authorities declarations that their lands have been confiscated, as an act of defiance. Other forms of contestation have included road blockages, such as when villagers from Kaw Htee Lor (Thebyutchaung) east of Dawei blocked the road to protest against the lack of compensation paid to farmers for the damage caused by the road construction. (Karen News, 2013).

Overt protests and campaigns have taken advantage of this space, and become common since 2011. Although the political climate of repression and fear had permeated in previous times and is still sometimes a challenge for bystanders to become participants, farmer protests often organized by more

experienced activists show a changing political culture. One recently-turned activist<sup>13</sup> from the Dawei Farmers' Network whose family was having their land confiscated by the military in the peri-urban areas of Dawei said that she had never belonged to a civil society organization, but she went to protest for the first time, and after that, participated in the networks and discussed how to strike, becoming more involved. In January 2012, DDA and locals organized a campaign against the coal-fired power plant at the Maungmagan Beach, which was followed a few days later by the announcement by the Minister of Electric Power, U Khin Maung Soe, that the construction of that power plant would be suspended. It was an apparent victory of the collective action.

There have also been areas of engagement with the state and the use of formal mechanisms to make claims. The Karen-based Tarkapaw and the Dawei Development Association (DDA) were actively engaged in the land titling process, by assisting farmers in registering their land and participating in the bureaucratic process of titling and applying for land-use certificates. They were also engaged in writing complaint letters to different levels of the government for land confiscations affecting disadvantaged groups. One Karen activist said that for big issues, letters were sent to the national Human Rights Commission, the president and township administrators. In December 2011, DDA held a press conference in Yangon to express the concern for the displacement people linked to the Dawei SEZ, demanding compliance with international standards (DDA, 2014: 79). The Thabyechaung farmers who had their land confiscated by the military in the 1990s submitted a request to the Ministry of Defense<sup>14</sup> for the return of unused land, after it was announced in June 2013 that lands confiscated and not used by the military in that period would be returned. Such are cases of “rightful resistance” (O'Brien & Li, 2005). However, whether regional and local governments are responsive to demands from the center remains to be seen. One farmer from the Dawei Farmers' Network explained that although he had spoken directly to the Chair of Parliament (U Sein Mein) during his visit to Dawei, and received a response that they wanted to problem to be solved fairly, in reality, Myat Ko, the Division Minister was involved in the land confiscations (and also in the DDPC – Dawei Development Public Co.), in an example of the still embedded cronyism that pose a challenge to civil society actors.

Strategies have also been multiscalar, expanding vertically from local to national to transnational levels, as activists have also sought responses from the Thai and Japanese governments. The DDA held a press conference in October 2014 with the Thai Human Rights Commission to present their report on populations affected by the Dawei SEZ. A letter by DDA was submitted to Japanese Prime Minister Shinzo Abe, the Minister of Finance, the Minister of Foreign Affairs, the Minister of Economy, Trade and Industry, as well as the Governor of Japan Bank for International Cooperation (JBIC), and the President of Japan International Cooperation Agency (JICA) – in October 2013 (DDA, 2014: 83). DDA also issued a press release prior to the Japan-ASEAN Summit, urging Japanese investors not to invest in DSEZ, due to social and environmental impacts. (DDA, 2014: 84)

Rural populations are also increasingly seeking to represent their interests in the institutional political sphere. The Dawei Nationalities Party (DNP), based in the southern Thanintharyi Region, was founded in December 2013, responding to the political opening in the country, with U Aye Min as the senior member. In the 2015 general election, the DNP had 14 candidates. The party was “*born out of the civil society movement against the planned deep sea port and special economic zone near the Thanintharyi Region capita [...]* It was active prior to the 2014 census advocating for Tanintharyi residents to list their ethnicity as Dawei rather than Bamar, as they were often described. While a subgroup of the Bamar, Daweians speak a distinctive dialect” (The Myanmar Times, 2015). The DNP's objectives include the “development of cultural values and social status of ethnic peoples, and greater influence for ethnic peoples over the management of natural resources in their areas. The DNP also focuses on propagation of Dawei ethnic people's literature and culture”, with more than 3000 members. (Myanmar Now, 2015). Such appeal to ethnic rights resonates with national international discourses, while campaigns in Dawei have also drawn on global discourses such as indigenous rights in an attempt to gain legitimacy to their localized claims on land and territory.

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<sup>13</sup> Author interview 13/02/2014

<sup>14</sup> Author interview 21/02/2014

In the 2015 election, six other political parties also had farmers, agriculture and land as key issues - albeit in different positions of the political spectrum, indicating the rising relevance of rural representation in the political scene. The more conservative Myanmar Farmer's Development Party, who won the support of the ultra-nationalist Buddhist nationalist group Ma Ba Tha; the People's Party of Myanmar Farmers and Workers, seeking to represent farmers and workers with policies that include restitution of lost land and shifting away from large land holdings to businesses and officials to "those who are working the land"; the Union Farmer Force Party; the Confederate Farmers Party with the idea of "for farmers, by farmers"; Modern people's Party - with low chance of winning but standing for a free-market capitalist economy; and the Peace and Diversity Party, whose leader has campaigned strongly against land confiscations for years (The Myanmar Times, 2015).

### *Alliance-building: Local, Regional, National*

Alliances are forged at local level, as was observed between farmers facing diverse threats – from development projects, to military confiscations, to large-scale agriculture. In Dawei, the solidarity and collaboration between diverse groups were evident, in sharing knowledge, supporting each other in protests and conducting training sessions. Farmers groups, fisherfolk, women's rights activists, student movements, Karen ethnic organizations, volunteer lawyers, local journalists were closely networked in a dynamic way across diverse issues, particularly land. Cross-regional solidarities were also formed, as was illustrated by the training and workshop in February 2014 with activists farmers who had come from the Letpadaung mine confiscated area, in Sagaing Division, to connect and share information with activists in Dawei. The national-wide farmer network Land in Our Hands (LIOH) has also been indicative of the expansive rural network across Myanmar.

Alliances are also based on the historic cross-border social networks in Thailand, particularly on the Thai-Burma border, in towns such as Mae Sot and Chiang Mai, where many exiled activists and NGOs were stationed during the military regime and continue to be stationed in many cases. Several volunteer activists in Tarkapaw mentioned training sessions on land rights that they had participated in Chiang Mai with Earthrights International. The Tavoyan Women's Union also began as an NGO in Mae Sot before transferring its headquarters to Dawei. On January 2012, 18 Thai civil society organizations held a press release to question the Thai government's investment of public money in the Dawei deep seaport and industrial lands. (DDA, 2014: 79), indicating support on the other side of the border. Also, in August that same year, a prominent scholar and NGO leaders in Thailand organized a press conference questioning the DSEZ, with a statement endorsing a statement by 42 civil society organizations questioning the Thai government's spending. (DDA, 2014: 80) This is indicative of cross-border alliances as well as the "boomerang strategy" by Keck & Sikkink (1998), by which activists seek more responsive governments outside their own country that may potentially pressure their own national government to respond to their demands.

In September 2012, the Transnational Institute (TNI), an international organization based in the Netherlands, released a report indicating the land-grabbing issues, revealing this would affect an estimated 500,000 people. This is illustrative of the wide transnational networks and alliances across borders. Mekong Watch, an NGO based in Japan that monitors Japanese investments in Southeast Asia, particularly by JICA, also organized the visit of Dawei activists to meet with parliamentarians.

### *Construction of Legitimacy: National and Local Repertoires, Transnational Discourses*

Legitimacy of collective action is constructed with the general public, with allies and with the state, and must resonate with common repertoires. The Dawei Farmers' Network relied on the alliance and guidance of the Dawei Human Rights Watch (DHRW), an 88 Generation activist, who during his activist life had been imprisoned during the democratic movements in Burma. The "88 Generation Students group" were those students who in 1988 protested against the military regime, beginning an uprising in Yangon and Mandalay which spread throughout the country, only to be brutally repressed by the government. After being released since the reforms in 2011, 88 Generation leaders such as Ko Ko Gyi and Min Ko Naing have continued to be symbols of democracy and human rights, serving as inspiration for civil society. Their role in promoting civil society was observable during the Literary Festival, in February 2014, in which the notorious political prisoners who had recently been released

arrived in Dawei<sup>15</sup> and in nearby villages, received by huge crowds and providing the local movements with inspiration. Hence, current movements also seek connections with iconic leaders to legitimize their stance as representative of the people in Myanmar.

The Buddhist *sangha* (monastic community) has also historically been at the forefront of the democratic movements, as was the case of the 2007 Saffron Revolution, when monks led a massive protest in the streets of Yangon only to be cracked down upon by the military. Monks are still revered and in Kalonehtar, the village threatened by the dam construction linked to the Dawei SEZ, the monk has led the resistance, leading the youth groups and villagers in the resistance against its construction. References to Buddhism and Buddhist culture have also been used in claims that the Dawei SEZ will destroy historic religious sites and pagodas (DDA, 2014). Meanwhile, the Dawei Farmers' Network often used prayer and small shrines for good omens and for protection against the insecurity of their lands. Donation ceremonies to the shrine were used as an excuse to gather politically.

Beyond the historic and cultural repertoires, there is an increasing presence of transnational discourses, in large part due to the links with international organizations. The DDA campaigns against the DSEZ have done so on the basis of human rights, sustainable development and even “green development”, resonating the global environmental discourses that give legitimacy to less environmentally destructive forms of development. The reference to indigeneity and ethnicity have also served to legitimize claims based on transnationally recognized concepts. Although such discourses and repertoires may still be under construction, they indicate the growing transnational linkages and the global connections of local resistance.

## Conclusions

The political and economic transition in Myanmar since reformist President Thein Sein took power has led to growing vulnerabilities to rural populations and increased land-grabbing related to large-scale development projects, expansion of commercial agriculture and diverse investments in land speculation and constructions. The implementation of the new land laws, which effectively created a land market in Myanmar has also created challenges, particularly for the rural poor, as this process requires resources – financial, political and administrative – that they often have limited access to. Local-level conflicts have also arisen due to the new institutional frameworks governing land. The old legacies of corruption and cronyism are still prevalent and will probably worsen with the economic liberalization, while the past practices of violence and intimidation are still prevalent albeit slowly shifting to more institutionally legitimized forms.

However, at the same time, the political liberalization has also opened the opportunity structure for contestation, leading to the emergence of a vibrant civil society that is contesting claims over land. Legitimacy is constructed through association with the central government's claims to address past military confiscations, as well as the growing legitimacy of civil society in a widening democratic space. Contestations are occurring at diverse levels, local, national and transnational level, and through diverse mechanisms – from outright resistance to formal mechanisms through institutional and legal means. Increasing participation in the land policy-making and implementation process, as well as the direct engagement with the state by seeking allies and participating through political parties, are indicative of a negotiating and shifting of the historic state-society gap in Myanmar. Alliance-building across regional, sub-national and transnational levels are also indicative of the increasingly globally-linked activism; and discourses and repertoires are constructed within and across these spheres. The framework of transnational agrarian movements is hence useful in understanding such diverse linkages, as well as the idea of ‘rural democratization’, that sees the political process where contestation for control and access to land, biased in favor of previously marginalized rural people may be sought in incremental steps or in occasional outbursts.

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**Global governance/politics,  
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