

Fish Farms and Land Confiscation in the Ayeyarwady Delta: History, Impact and Prospects for Restitution

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Introduction

This policy brief draws on qualitative fieldwork conducted in Maubin township, Ayeyarwady – one of the most important locations for aquaculture (fish farming) in Myanmar. Local officials, community members, civil society leaders and operators of large fish farms were interviewed about the history and consequences of land confiscation for use in aquaculture, and the prospects for land restitution.

History

The promotion of industrial scale agriculture was a key policy goal of Myanmar's former military government. The 1991 Wasteland Instructions promoted the transfer of untitled lands to large scale farming operations. During the 1990s and 2000s in Maubin, land concessions were allocated to preferred companies, individuals and state institutions by the regional military commander. Those awarded concessions often opted to farm fish because it was easier to organize and more profitable than cultivating rice.

Impacts

The Department of Agriculture, Land Management and Statistics (DALMS) estimated that prior to this time, roughly 70% of all households in Maubin cultivated paddy, while the rest earned a living by fishing for wild fish in natural waterbodies and seasonally-flooded wetlands. Many paddy farmers also fished.

The allocation of land concessions resulted in loss of access to land and fisheries, severely impacting the livelihoods of large numbers of people. Fishing incomes

Key Recommendations:

- Consider joint compensation schemes in which government and concessionaires both bear a share of the cost.
- Increase the budgets of MPs offices, for a more independent and responsive land restitution process
- Improve the organization of the Land Reinvestigation Committee
- Facilitate socially-accepted processes of negotiation for communities where competing claims over land exist.

fell to between one third and one fifth of previous earnings, and many affected households reported the loss of up to 75% of their income in the first few years following confiscation. Food insecurity rose and older children dropped out of school to work.

Prospects for restitution

Government has supported land restitution (returning confiscated land or compensating households affected by land confiscation) since 2012. The current government continues to prioritize this goal through the Land Reinvestigation Committee (LRC).

An assessment of land use carried out in 2017, headed by DALMS, revealed that of 54,210 acres of land has been leased out under concessions in Maubin township. Most of the land has been developed for fish farming, which occupies 37,920 acres (70%) of concession land. The rest



is mainly cultivated by farmers, with or without the permission of the entities granted concessions.

The government plans to reclaim land not developed by concessionaires, of which some or all may be distributed to landless cultivators. Progress has been slow however. Maubin DALMS estimates there are roughly 300 cases lodged with the LRC, of which 100 involve fish farms. Out of these, only about 20 have been resolved, some with monetary compensation.

Delays have occurred for several reasons, most significantly: (1) companies believe they operate in the legal right because they possess formal lease agreements and, often, formal land use rights (LaNa 39); (2) the authorities, particularly the General Administrative Department (GAD) are often reluctant to pursue complaints against former military officers and tend to support companies over smallholder farmers as they believe that the former generate greater economic benefits for the country; (3) multiple conflicting claims to plots of land have arisen among some community members.

Options

The above factors are significant obstacles to the land restitution process. The remainder of this brief provides ideas for addressing them:

Consider joint compensation schemes in which government and concessionaires both bear a share of the cost. As large scale land concessions were initiated by a previous government, the implicit expectation by concessionaires being asked to return land or pay compensation is that the current government should bear part of the responsibility in this. This approach to restitution could encourage greater compliance among private sector actors.

Increase the budgets for MPs offices, for a more independent and responsive land restitution process. Members of the legislative and executive branch have expressed frustration that GAD officials are often unresponsive and even resistant to land restitution. Some perceive this reluctance to come from the GAD's embeddedness within the military and ties with economic elites. This situation is aggravated by the lack of transparency around land restitution data, which may have facilitated the transfer of some returned lands to new owners who were not the original claimants. Up till now, MPs have no budgets for administration, making it difficult for them to do their jobs in the restitution process. Going forward, granting operating budgets to MPs offices could allow them to operate more

autonomously. These types of changes could facilitate a more independent restitution process.

Improve the organization of the Land Reinvestigation Committee. While the LRC carries out commendable work, communities express frustration with the way it operates. The following are options for improving the functioning of the LRC:

1. Clarify guidelines for the composition of the Committee, at all levels. For example, if farmer representatives are included, use a fair and democratic process for selecting these members. Without clear guidelines on structure, the composition of local committees varies widely across the country, and limits their effectiveness.
2. Define how the LRC will engage with civil society groups and local community leaders. Many CSOs are already engaged in land claim dispute resolution and could offer useful experiences and insights to the Committee.
3. Recognize the role of mediation in resolving disputes. At present the LRC guidelines only state that disputed claims will be resolved by the courts, but in practice, most land disputes are resolved by negotiation and mediation.
4. Establish a procedure for determining a "reasonable" price for land when considering compensation payments. Regional land management committees could consider working with the Ministry of Finance to promote impartiality.
5. Ensure that the decision-making process is transparent, and that all stakeholders are kept fully informed of developments.
6. Mandate the timely release of necessary data and maps held by government departments to support the quick resolution of land disputes.

Facilitate socially-accepted processes of negotiation within communities where competing claims over land exist. At the community level, the conflict resolution process is often complicated by multiple claims to plots of land that have changed hands on one or more occasions. Farmers' claims are often not supported with official documents. When land is returned to a community, the land is often fought over by farmers. This will likely occur when the government reclaims undeveloped land from concessionaires and reallocates it to landless cultivators. Socially-accepted processes of negotiation facilitated by local brokers (well respected residents, trained in mediation and land law) may be a more appropriate way to resolve these conflicts than formal legal proceedings in the courts.

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