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Access to Justice in Land Dispossession and the Barriers

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Abstract

Myanmar whose economy heavily relies on agriculture has been plagued by land disputes and land dispossession over the past few decades. The government has formed The Farmland Administration Bodies/Committees (FAB) at village, township, region, and division levels to tackle land disputes. However, FABs have yet to produce favorable outcomes as disputes continue. Drawing upon the in-depth interviews with farmers, legal support groups, community-based organizations, land activists, Non-Government Organizations, and members of the village-level FAB, this paper investigates the functions, strategies and approaches of FABs. Analyses are made to closely look at the efficiency and outcomes of FABs' activities. This paper argues that the process implemented by the FABs lack transparency, efficiency and authority to make right decisions, but is rooted in corruption. Therefore, it deprives farmers of their access to justice. This analysis is focused on the performance of FABs and enables us to understand the challenges of farmers in their attempt to get access to justice in land disputes.

Keywords: Farmland Administration Bodies, Non-government organizations, corruption, land disputes.

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I. Introduction

Agriculture sector is the backbone for Myanmar's economy. According to a World Bank report, "between 35 and 40 percent of gross domestic product (GDP) in Myanmar is from agricultural sector and up to 70 percent of the labor force (of 32.5 million) is directly or indirectly engaged in agricultural activities or depends on agriculture for people's income in rural areas. Moreover, it is estimated that " agricultural products generate between 25 and 30 percent of total export earnings" (The World Bank Group, 2014, p. 7). Over the past few decades, Myanmar has seen escalating land disputes and land dispossession, and this has had negative impact of the lives of farmers leading to social unrests and poverty. Maubin, a township in Irrawaddy Division, is one of the many places in Myanmar where farmers have experienced a large number of land disputes and dispossession. Maubin has a population of 314,093 (Ministry of Immigration and Population, 2015, p. 80). The total landmass of Maubin is 322,211.25 acres and farmland accounts for 224,481 acres according to Maubin Settlement and Land Record Department. There are 315 land cases according to the information provided by the same department. The cases of land disputes in Maubin are handled by FABs, first and foremost at the village level; and if the cases could not be resolved by the village level committee, they would be relayed to the township level Committees. There have been criticisms and complaints from farmers regarding the slow process, the behind-the-door approach and inefficiency of FABs. This has created difficulties for farmers to get access to justice.

It is important to establish the relationship between Accesses to Justice and Right to Land. "Land rights refer to the inalienable ability of individuals to freely obtain, utilize, and possess land at their discretion, as long as their activities on the land do not impede on other individuals' rights " (CEN, 2014). This is not to be confused with access to land, which allows individuals the use of land in an economic sense. Instead, land rights address the ownership of land that provides security and increases human capabilities. Land is a crosscutting issue and is not simply a resource for one human right

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in the international legal framework. “While rights have been established in the international legal framework that relate to land access for particular groups, numerous rights are affected by access to land (equality and nondiscrimination in ownership and inheritance), an explicit consideration of the legal implications of access to land for a broad range of human rights is necessary” (Wickeri and Kalhan, 2010). This includes increased land rights for impoverished people that will ultimately lead to the higher quality of life. Under the civil and political rights (ICCPR) and in the UDHR (Article 17) states that “everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property.” Access to justice remains a debated question in underdeveloped countries with issues on access to courts, access to legal representation on this subject for the poor and marginalized. In Myanmar, following almost 50 years of military rule, country’s politics and economy is supposedly being loosened with military officials and their cronies retaining firm control of the country’s land sector. There are a number of formal and informal channels that may be utilized for redress when land has been confiscated or appropriated by another. Farmers can obtain compensation or re-claim their land, however, in practice it has been very difficult to secure land or compensation. Today, farmers are trying to get access to justice using the legal channels provided by the government. Thein Sein’s government established Parliamentary Land Investigation Commission in July 2012 to tackle land issues, however, there has been a small degree of success to obtain compensation or re-claim the land in dispute (Karen Human Rights Group, March 2013).

“The problem is there is no government body that can make the final decision for the cases,” complained Si Thu of Land in Our Hands Network which has been mobilizing and facilitating farmers to get access to justice in land issues. According to him, farmers have come forward with evidence and documents demanded by FABs. Besides, they are confident that they have strong cases and expect the committee to bring justice. However, It has not been clear whether these committees are in capacity to make decisions for the cases. He said, “These committees are dead.” The reason why FABs on all levels are unresponsive and ineffective is that they are directly under the control of the Ministry of Home Affairs, which has not provided the committees with power to make decisions. Si Thu listed FABs, Parliamentary Land Investigation Commission, and the Land Allotment

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and Utilization Scrutiny Committee as government bodies formed to tackle land issues. However, there is uncertainty as to which one is holding which responsibility and this has confused farmers and civil society organizations alike. Min Zaw from Peasants and Fishermen Development Organization explained the process of filing a case to FABs. Firstly, a farmer has to file the complaint with the village FAB; if the case cannot be resolved at this level, it is transferred to the township level FAB. According to Min Zaw, cases are always lost at the village level, and the township level FABs are not equipped with power to decide cases. Finally, the case will go all the way to the district level, and at that point, the slow and questionable process would have taken months. Farmers have to stop working to go to FABs and spend more money than they could. A lot of farmers decide to pursue their cases further and even when they do, there is no guarantee that the cases would be resolved.

This paper draws upon the in-depth interviews with farmers, legal support groups, community-based organizations, land activists, Non-Government Organizations and members of the village-level FAB to evaluate the performance of FABs, designated to tackle land issues. The implications are made to reflect on the legal process for land issues and to study the functions and capacities of FABs. The paper also discusses the role of different civil society actors in land issues, especially their involvement in the legal process. This all feeds into the broader analysis of the access to justice in land disputes and dispossession in Myanmar.

This paper begins with an explanation of the research methods. Afterwards, the overview of land disputes and land dispossession will be discussed, followed by an analysis on the functions and capacities of FABs in their attempt to tackle land issues. The legal process provided by FABs that allows farmers to file complaints to get access to justice is critiqued by laying bare its inefficiency and the challenges it poses to farmers. The factors contributing to the perpetuation of farmers' challenges to get access to justice at different levels of the power hierarchy are examined while the role of civil society actors in promoting access to justice in land issues is also looked at. In the conclusion, this paper argues that even though they have been formed to tackle land disputes that plagues the country's economic and social development, FABs are

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inefficient, secretive in nature and exclusive in operation. Therefore, they are not able to effectively solve land issues, but rather extend the long-preserved traditions of corruption, cronyism, and social injustice of Myanmar governments past and present.

II. Research Methods

The data for this paper were extracted from field notes and interview transcripts collected over the period of one month in Maubin and Yangon. This paper is focused on land issues in Maubin Township that is situated in Irrawaddy Division. In Maubin, “Some 1,000 acres (400 hectares) of land that used to be paddies field had been confiscated by a private company 10 years ago, with half of it bulldozed and turned into fishing ponds” (RFA, 2013). Land disputes and land dispossession are still occurring today affecting hundreds of farmers’ lives today in this township. For this reason, I chose to conduct my research in this township. Maubin is a township of Maubin District seated in Irrawaddy Division of southwest Myanmar. The inhabitants of the town, as well as the district, are mainly Bamar and Karen. Maubin is 50 km away from Yangon.

In-depth interviews were conducted with ten farmers involved in land disputes and different actors involved in land issues with different capacities, who were four Community Based Organizations, four NGOs, one government attorney, one lawyer, one legal support group, the deputy officer from Settlement and Land Record Department of Maubin, one village administrator and one team member of the Maubin’s Member of Parliament. Through these interviews, the role of FABs and the outcomes of their activities were explored. The details of the legal channels they provided were looked at and the process that farmers went through to get access to justice was investigated. These interviews also touched upon the role of civil society organizations in facilitating farmers to get access to justice. The paper also utilized records and documents provided the Maubin MPs; these records and documents show the profiles of land disputes with different categories in his authoritative area. These are important numbers as implications on the performance of the FABs in Maubin can be drawn from them.

There were no ethical issues during my field research. The understanding and agreement were attained from victims of land dispossession and key informants before the interviews were conducted. The names of some farmers, CBOs leaders, lawyers and

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government authorities who gave comments upon sensitive information are not mentioned in the paper in order to protect them. Before conducting any interview or questionnaire, the explanation about the purpose of the research, expected duration, procedures and what and how the information would be applied were clearly provided. I also secured the consent from the interviewees regarding photographing and voice recording.

III. Land Tenure Security

“Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and an institution” (FAO, n.d.). FAO describes land tenure as how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints to the assurance that the land one owns or holds for an agreed period of time or purpose is certain. Lack of secure land tenure exacerbates poverty and has contributed to social instability and conflict in many parts of the world. Traditionally, people live and farm on land with a customary management. This may take on different forms of laws and agreements that often include recognition within an area. These forms of management are always informal in their nature and have had little to do with bureaucracy and administration of the state. However, over the past few decades, the Myanmar government has started to intervene with these forms of local land management. According to land laws and policies prescribed by the state, land ownership requires a legal document, or a land title, to prove that one can live and farm on a piece of land. This has clashed with traditional land management of local communities while the state, coupled with their development projects and increasing population, needs more land.

Land and land related resources are associated with political economy of every state. It is the power to decide how and for what purposes the land can be used now and in the future. It means to the capturing of power to control land. This practice has usually portrayed the exchange of land ownership as an illegitimate seizure of land from a person or people that leads to their expulsion from the land. Some governments have seized land for redistribution to others as ‘State Interests’ and under the name of ‘Country Development Purpose’. By focusing on this process, land seizers and government violate

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principles of transparency and accountability. As mentioned in the above section, in Myanmar, the government holds the sole ownership over land, and people are just entitled to rent it. Oftentimes, land laws and policies of government are weak and not clear. People have to go through a very difficult and long process to get access to land security, and, very often this process proves to be long and inefficient. The promise of restored property, raising expectations generates tension and division between farmers, state officials and land owners.

IV. Land Disputes and Land Dispossession in Myanmar

Myanmar is an agricultural country, its economy relying on the agricultural sector. The government has aimed to “Build a modern industrialized nation through the agricultural development and all round development of other sectors of the economy” (The New Light of Myanmar, 2011). Taking this into account, the modernization of the agricultural sector seems to have been a top priority in the economic and social development agenda of Myanmar. However, the continuation of land disputes and land dispossession will negatively affect this objective. At the same time, social disparities and poverty among farmers have increased as a result of land issues. Over the past few years, farmers’ protests have emerged all over the country. These protests have been violently cracked down by the government resulting in arrests and imprisonment. “Almost 200 farmers from five villages have been arrested since 2012 for protests over land confiscated by the military” (Aljazerra American, 2014).

Under the Myanmar's 2008 constitution, the state is the ultimate owner of all land and natural resources above and below it. Even after the recent political reforms, an increasing amount of land dispossession and land-related problems are still taking place continuously within the country. Land dispossession was a common practice under the former military regime. Many current land disputes date back to the period before the 2010 general elections, being related to land taken in the 1990s during under the leadership of Gen. Than Shwe. Government bodies, particularly military junta units, have been able to grab large area of farmland without compensation. Land has been used under the name of the expansion of military bases or infrastructure projects that have been used either by military units for their own purposes or sold to private companies.

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“The government has authorized cronies and companies to accumulate large swathes of land to expand agricultural sector in its bid to develop the country’s economy. Cronies and companies have colluded with the Land Record Department to get access to land” said Thaug Myint from Agriculture and Farmer Federation in Maubin Township. This phenomenon has resulted in farmers losing their land without getting any compensation. Myint Thwin, a lawyer and member of M Law Firm, said, “Most of the land cases are between farmers and companies, farmers and government departments, farmers and the military. The Land Record Department has a lot of responsibility for all this.” He added that all of the land acquisitions that come before and after 2012 are unlawful because they do not abide by the Land Acquisition Act (1894). This law prescribes that people whose land has been confiscated must be compensated. The same law states that if a local authority or a company who has acquired land does not use the land for 6 months, they are required to return the land to the original owners. More than one hundred farmers from Pa Long Village lost 550 acres of land to a company 13 years ago. Nyein Maung, one the villagers, said that the company has not used the land since it was confiscated from them. However, the company has refused to return the land to the farmers.

In the beginning, there was only limited grassroots opposition to land confiscation and there were few ways to receive adequate compensation. Under the new democratic order, local communities and social organizations have worked together to get access to justice.

V. Mechanisms and Legal Processes for Access of Justice

The government formed Land Investigation Committee on August 8, 2012 and continued to form The Farmland Administration Bodies/Committees (FABs) at village, township, district and region/division levels in order to tackle land disputes. Normally, a case starts at the village level and then if the case is not resolved at that level, it will be transferred to another level and so on. The village level FAB is made up of five members: the village administrator, the officer-in-charge of the Settlement and Land Record Department, an office clerk and two village representatives. The village administrator is usually in charge of a village tract that may include several villages. The officer-in-

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charge from the Settlement and Land Record Department works for a cluster of villages and the office clerk usually undertakes administrative duties. The village representatives are chosen by the members of the village tract where they are from, and very often, these representatives happen to be farmers. A farmer with a land case would file his complaint with this committee first. The committee would look into the case by cross-checking the evidence the farmer provides and make a decision within 15 days. If this case is lost at this level and the farmer wants to go further, he can take the case to the township level FAB within 30 days.

The township level FAB is comprised of five members: the township administrator, the chief officer of the Settlement and Land Record Department, the chief officer of the Township Planning Department, the chief officer of the Livestock Breeding and Veterinary Department, and the chief officer of the Irrigation Department. They all hold township level positions. If the farmer is not happy with the decision made by this committee, he can take it to the district level within 30 days. The district level FAB consists of five members just like those in the township level FAB with one exception that the district level committee members hold district level positions. The farmer can take the case to the division/region level within 60 days from the final decision made by the district level committee. However, according to the interviews, very few cases reach the division/region level. Firstly, farmers cannot afford both time and money for the long process. The second reason is, at this stage, farmers do not feel hopeful for their cases anymore since they have lost their cases at the district level.

VI. Performance of Farmland Administration Bodies

This part will look at the performance of FABs at different levels. As discussed above, a case is filed with the village level FAB first, and the committee is responsible to reach a decision within 15 days. According to a villager administrator who is also a member of a village level FAB, cases that involve relatively smaller companies can be solved by reaching an agreement between the farmer and the company through negotiation facilitated by the committee and village leaders. However, if the case involves a high profile crony, a high-ranking military officer or a government department, the committee usually transfers such cases to the township level FAB. The

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village administrator said, “when it comes to dealing with a big company or a government department like the Ministry of Livestock, Fisheries and Rural Development, we cannot do anything. We have to send the file to the township. There are many cases we have sent along, but we haven’t heard anything back. It’s been months.” According to this, it can be concluded that the township level committee does not fulfill its responsibility which is to reach a decision within 30 days. This has caused a lot of frustration among farmers and community-based-organizations (CBOs) working with farmers. From this situation, the limitations and performance of the village level committee can also be examined. According to Min Zaw from Peasants and Fishermen Development Organization, cases are always lost at the village level, and he implied that the village level committees were powerless.

From the interviews with CBOs, there have been cases of corruption within FABs at the township and village levels that has led to conflicts among farmers. Corruption cases include village administrators and officers of the Settlement and Land Record Department colluding with companies to create receipts that show the company has paid tax and used the land for years even though in reality, it has not. These receipts can be used to apply for the Form No.7, which is a kind of land use certificate and allows the owner to transfer and sell the land. The lawful procedure is if a person wants to apply for the Form No.7, he has to start at the village level by sending the application to the village administrator with signatures from villagers who approve the applicant has worked on the land for years, together with the tax receipts. According to Nu Nu Aung, a land activist and member of 88 Generation Students Group, companies do not follow this procedure, but collude with village administrator and officers from the Settlement and Land Record Department to get this land use certificate resulting in farmers losing land. This is a serious case of corruption within FABs, and poses a massive challenge for farmers to get access to justice.

There have been cases in which township level committees did arrive at a decision in favor of farmers. These committees would release their verdicts asking companies to give compensation to farmers. However, in many of such cases, companies or government departments has not really followed the instruction of the verdict and hold back compensation. This puts farmers in a difficult situation and they would report to the

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village level committee, again, about not getting compensation. The village level committee would report these complaints to the township level committee again, making the whole process a “wild goose chase.” There are a lot of farmers in Maubin holding the verdict paper and waiting for their compensation for months. Here lies a very detrimental issue. Most of the government officials who can take actions against companies are coopted and collude with cronies for their own business and financial interests. So there is no action taking against companies and cronies for not compensating farmers. Many of cronies have strong links with high ranking military officials and FABs members do not have enough authority to pressurize them. The same village administrator said, “It’s the higher ups who can make things happen, not me, not the committees members. We have done what we could. We sent the complaints up the ladder. It’s their call to take action.”

VII. The Role of Community Based Organizations in Promotion of Access to Justice

Community Based Organizations (CBOs) in have been supporting farmers to get access to justice in Maubin. CBOs give technical support and legal consultation to farmers who wish to file complaints to the government. They also mobilize farmers’ communities to be involved in activities to claim justice such as plow protests and farmers’ meetings. They have different approaches in doing so. However, according to the interviews, many CBOs have expressed their frustration saying they cannot do much. Htike Htike of Pyo Khinn Thit Humanitarian Group said, “our group has downsized our involvement in land issues because however hard and however long we have worked, we haven’t seen any success. In the end, farmers have lost whatever money they have and their time to go to the court besides the loss of their land.” According to Min Zaw of Peasants and Farmers Development Organization, farmers suffer and suffer, but nothing has come out in their favor. A lot of farmers have been arrested and even when they get compensation from smaller companies through negotiation, the amount is little. Many of the interviewees conceded that CBOs including lawyers’ groups have limitations as to how much they can be involved. They can facilitate farmers and give consultation in order to file complaints. They can sometimes negotiate with companies for compensation on behalf of farmers. However, they admitted that they could not really bring the final

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results, and pointed out that land issues are complicated in nature and it will take a long time and a responsive and transparent government to tackle these problems.

VIII. Conclusion

Myanmar's economy relies on agricultural sector. However, the country has been plagued by land issues of a chronic nature for a long time. Corruption, cronyism and militarism have contributed to social disparities and poverty over the past 50 years, and farmers are at the forefront of adversities. Land disputes and land dispossession are key issues challenging farmers' lives, who account for 70 percent of the country's labor force. The government has formed The Farmland Administration Bodies/Committees at different levels to tackle these issues. However, these Committees have not performed efficiently and transparently enough to solve the issues while farmers continue to suffer. Thaung Myint, the Chair of Agriculture and Farmer Federation of Myanmar, Maubin Branch, said that as long as there were biases and corruption in the legal system and within bureaucracy, these issues would continue to exist; and that fundamental structural changes were needed to eradicate these problems.

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ⁱ Biography:

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2005-2011: Working at Media Company as Marketing Assistant for 6 months, volunteering at Myanmar Anti-Narcotic Association (MANA), attending one-month course of Volunteer Social Worker (Drug Abuse) training conducted by Ministry of Social Welfare, volunteering to help ex-addicts in Mayangone Township (Yangon), attending three-month scholarship course, Community Development and Civic Empowerment program (CDCE) in Chiang Mai, Thailand, participating as an Implementing leader funded by 3D Fund via UNODC at Youth Empowerment Team (YET),

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forming MANA with peer ex-drug users, joining World Concern in Northern Shan State, Myanmar-Chinese border area, working to Help Age International as a Community Outreach Officer that handled Emergency Response Project at Delta area, joining ACTED as an Assistant Project Manager for implementing Women Livelihood Recovery Program at Laputta where is hard hit by Nargis under the fund of DIFID and UNFPA, working at AAR-Japan as a Field Coordinator in Community Based Rehabilitation Project(CBR) targeting for Disable people and their communities.

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