

# MYANMAR:

## Land Tenure Issues and the Impact on Rural Development



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## ACRONYMS

AEC	ASEAN Economic Community
ASEAN	Association of South East Asian Nations
CCNLRM	Central Committee for National Land Resources Management
CF	Community Forestry
CFI	Community Forestry Instructions
CPR	Common property resources
CSO	Civil Society Organization
DRD	Department of Rural Development
DZGCP	Dry Zone Greening Comprehensive Plan
ESIA	Environmental and Social Impact Assessment
FAB	Farmland Administration Body
FAO	Food and Agriculture Organization of the United Nations
FD	Forest Department
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	Free, Prior, and Informed Consent
FSWG	Food Security Working Group
FUG	Forest User Group
GAD	General Administration Department
GDP	Gross Domestic Product
GIS	Geographical Information System
IDP	Internally Displaced Person
L-GAS	Land Governance Assessment Studies
LIS	Land Information System
LUC	Land Use Certificates
LULC	Land Use and Land Cover
MADB	Myanmar Agricultural Development Bank
MIC	Myanmar Investment Commission
MLFRD	Ministry of Livestock, Fisheries and Rural Development
MoAI	Ministry of Agriculture and Irrigation
MoECaF	Ministry of Environment and Conservation of Forestry
MSS	Myanmar Selection System
NAPA	National Action Plan for Agriculture
NFMP	National Forestry Master Plan
NLIS	National Strategy for Land Information System Development
NLUP	National Land Use Policy
NSDI	National Spatial Data Infrastructure
NTFP	Non-Timber Forest Products
NWFP	Non-Wood Forest Products
PRIA	Principles of Responsible Investments in Agriculture
RDS	Rural Development Strategy
SLORC	State Law and Order Restoration Council
SLRD	Settlement and Land Records Department

UNEP	United Nations Environment Programme
UN-CFS	United Nations – Committee on World Food Security
UN-HABITAT	United Nations Human Settlements Programme
USAID	United States Agency for International Development
VFV	Virgin, Fallow, and Vacant
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
VLMC	Village Land Management Committees
VTC	Village Tract Committee
WB	World Bank

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# EXECUTIVE SUMMARY

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Myanmar's agricultural sector has for long suffered due to multiplicity of laws and regulations, deficient and degraded infrastructure, poor policies and planning, a chronic lack of credit, and an absence of tenure security for cultivators. These woes negate Myanmar's bountiful natural endowments and immense agricultural potential, pushing its rural populace towards dire poverty.

This review hopes to contribute to the ongoing debate on land issues in Myanmar. It focuses on land tenure issues vis-à-vis rural development and farming communities since reforms in this sector could have a significant impact on farmer innovation and investment in agriculture and livelihood sustainability. Its premise is that land and property rights cannot be understood solely as an administrative or procedural issue, but should be considered part of broader historical, economic, social, and cultural dimensions.

Discussions were conducted with various stakeholders; the government's inter-ministerial committee mandated to develop the National Action Plan for Agriculture (NAPA) served as the national counterpart. Existing literature was also reviewed. Limitations of the review included:

- maintaining inclusiveness without losing focus of critical aspects such as food security;
- the lack of a detailed discussion on the administration and management of forest land which is outside its purview; and
- an evolving regulatory environment with work currently underway on the new draft of the National Land-Use Policy (NLUP) and Land-Use Certificates (LUCs) for farmlands (Phase One work).

## **Land Administration Arrangements and Current Status**

Myanmar's current land administration, a colonial inheritance, is characterized by overlapping laws and multiple agencies with similar responsibilities. The General Administration Department (GAD) and Settlement and Land Records Department (SLRD) play a major role in all levels of non-forest land administration. The Ministry of Environment and Conservation of Forestry (MoECAF) assumes primary responsibility in areas designated as forests. These agencies are responsible for protecting the land under their jurisdiction from encroachment and squatting and ensuring adherence to prescribed land use. Others like the Ministry of Mines hold sectoral land responsibilities, but land maps and data responsibilities rest with the SLRD. The GAD acts as the central government's representative with branches at the township and state/region levels. In urban areas and the three major cities — Yangon, Mandalay, and Nay Pyi Taw — activities related to land use and ownership are managed by development committees. The military has acquired large tracts of land for its encampments and retained control over “conflict zones” where it holds management responsibility, while technical functions often rest with SLRD, however few of these areas have been mapped or data maintained.

Myanmar's land administration is a combination of past institutional legacies and various governments' exploitation of land to harness political and economic benefits. The most recent resource nationalization (with the State as the owner of all land and resources) has eroded

public trust in land administration. It translated into arbitrary enforcement and abrogation of rights, disregard for customary tenure and practices, and neglect of opportunities to redistribute land to address rural poverty. Land has thus fallen into private hands and Myanmar has emerged as a resource-extractive economy based on client-patron relationships common to several political regimes in the region.

The forests underpin the development of different socio-economic sectors and local livelihoods; land records were prepared primarily for revenue mobilization. There are many reports of authorities violating the rights of forest-dependent communities in allocating land use and setting concession boundaries. Myanmar's governments also seemed to have ignored customary practices on land management. As a result, numerous people have either lost or are at risk of losing the land they have occupied and used for generations.

### **Lack of Consistent and Reliable Land Data**

Reliable and updated land information and access to it is limited in Myanmar. Information on non-prime agricultural land in the uplands, including land used for long-fallow subsistence agriculture, is non-existent. Land-related spatial information is managed by separate departments, and is not standardized.

In principle, all land data is maintained by SLRD. While SLRD holds data on agribusiness ventures and other permits for State land leases, forest land and fishery lease data is with MoECAAF and the Department of Rural Development (DRD)/GAD respectively. The government has no unified database on land concessions or land permits for development. Methodology to coordinate data sharing or management at the district, provincial, and national levels is also lacking. SLRD's capacity to use Geographical Information System (GIS) data is rather limited. Training in remote sensing, access to satellite imagery, and a universal mapping system for the whole country are urgent requirements.

In the absence of sufficient and accurate data – and access to it - the land administration only gets more opaque, inequitable, and therefore, dissatisfying for the people whose life it affects.

### **Concession, Acquisition, and Confiscation**

In Myanmar, land-related discussions frequently circle back to (a) land confiscated without due process or compensation (and probably using force or political authority); (b) land acquired through a largely faulty process; and (c) limited-period permits granted for use of land for development and production/extraction.

Since the early 1990s, development planners have conceived ambitious national projects to achieve economic benefits from natural resources. However, fertile tracts targeted by investors are usually occupied or used by rural communities. This resulted in, and continues to cause land conflicts that negatively affect the livelihoods of many households and social and political stability.

The government's policies and regulations on classifying land as "fallow" and acquiring land from current holders are rather vague. Antiquated laws such as the 1894 Land Acquisition Act give the regime the right to take over any land, making local people extremely vulnerable to forced displacement without any remedy. Large-scale concessions for investors were established by the General Ne Win government in the 1960s and refined by the State Law and Order Restoration Council (SLORC) regime from 1991. Land acquisition was facilitated by

the police and armed forces and uncertain laws and administrative procedures were used to take over land for “public purposes.” Contradictory regulations and instructions, manipulation, coercion, and confusion were reportedly used to acquire land from farming households and allocate it to favored individuals or groups.

Civil society groups have expressed concern that despite awarding numerous concessions since 2001, few long-term jobs have been given to local residents as compensation. Reports published by the Ministry of Agriculture and Irrigation (MoAI)/SLRD and MoECAF on land use and State-land leases suggest that about 20 percent of all of Myanmar’s land has been awarded to foreign or joint venture investors for 30 to 70 years. MoAI’s 2014 report (Myanmar Agriculture in Brief) indicated that only close to 20 percent of the five million hectares approved for land concessions had been developed. Senior government officials conceded that State land leases/concessions have been negotiated and awarded in haphazard and inconsistent ways with negligible quantification and qualification of their impacts. The government’s experiment with land concessions has yielded little positive economic or social results. Investors are reluctant to invest anything more than nominal sums on land. Consequently, few concessions have generated expected revenue streams for the government.

### **Shrinking Landholdings and Related Issues**

Myanmar has 167 million acres (67.66 million hectares) of land, 26.7 million acres (10.79 million hectares) of which are arable; this has increased at a relatively moderate 0.86 percent between 2006 and 2011. Average farm size is around 7 acres (2.8 hectares) for land-holding households. However, preliminary results of the Agricultural Census 2010 indicate a concentration of land holdings with a sharp increase in parcels among those holding 50 acres and more, at the same time landlessness is on the rise. Data indicates that close to 69 percent of farmland is now controlled by 20 percent of rural households, while less than 30 percent of agricultural land is controlled by smaller farmers and sharecroppers. Some reports and field studies indicate that the government “clears” around 600,000 acres each year, moving existing occupants or cutting down forests, to grant agribusiness leases.

Landlessness or near-landlessness seem to be on the rise in land-abundant Myanmar, especially in the Ayeyarwady delta and dry zone (Bago-Bagan-Mandalay region), where more than 20 percent of the households in several villages are landless and engaged in wage-labor. And an equal number (20 percent) of households had landholdings of less than an acre. Village Tract Leaders and residents reported that landlessness had been increasing over the past 4-5 years, partly due to frequent crop failures in recent years. Rates of landlessness in Upper Myanmar were generally ranged from 25 to 40 percent in every village.

Various factors have contributed to the dwindling size of smallholdings in Myanmar: traditional inheritance norms that subdivide landholdings over generations; lack of policies and programs to support supply of new land to communities; unfavorable policies that deter land investment; difficulty in accessing fertilizer; and increasing indebtedness. Smallholdings are being converted to non-agricultural uses or sold in the informal land market and farmers are being forced to look for wage labor or non-agricultural occupations to make ends meet, often venturing to cities in search of employment. This pattern should raise concerns as such land sales could result in economic inefficiencies and decreased investments and production (owing to less intensive-cultivation), compromising Myanmar’s capacity to feed itself.

The government remains largely inactive on confirmation of land rights of communities living inside forest areas (currently under the authority of MoECAF) and formally distributing land

to the households that use it. This has created uncertainties as a number of families now farm land without any formal record. In recent years, landholders have received some compensation for land acquired by the government, but less is offered to those holding land on the basis of tax receipts or under customary law, and no compensation is offered to squatters and informal occupants.

State land leases have also shrunk the local populace's access to common property resources (CPRs or communal land areas, including grazing pastures). In the past, these contributed significantly to food security, especially for the poor. The degradation of CPRs and the ever-increasing dependence of the poor on these represent an invisible process of rising poverty.

Another issue is access to markets to sell agricultural produce. Power inequalities in the market are serious enough to erode the marginal incomes that smallholder farmers rely on. Small-scale farmers lack power in the marketplace and are often undermined by powerful interests. Across the country, land development is disorderly and land-use planning is weak, triggering an uninformed land market that relies on unregistered transactions and speculative deals. This affects the ability of farming households to subsist and climb out of poverty.

### **Weak Urban Land Management**

Both urbanization and the natural increase in population will have the net result of reducing the land rural households can be made available for farming. On the other hand, the sheer scale and pace of urban growth is one of the important phenomenon in transforming human settlements in Myanmar today. As a result, urban centers and peri-urban areas are facing rapid increases in demand for land placing further burden on farmland and rural communities. Existing and progressive land fragmentation compromise the productivity of farmland as it reduces the size of family parcels and their harvests. Ultimately family economics may favor conversion of farmland to non-agricultural uses and movement of rural populations to urban areas. With large-scale investors in land leading the urbanization process, reportedly there are numerous speculative deals on farmlands and that development controls are ineffective and unable to discourage urban sprawl. Further, in the absence of supply of adequate serviced land at affordable prices, most urban poor and low-income communities remain at the risk of eviction. In that sense, there is a need to empower planners and build institutional capacities for better land use practices and land management planning in the rural and urban areas.

### **Signs of Change and Emerging Opportunities**

The Farmland Law (2012) is considered indicative of the government's intention to reform land laws. In a first-of-its kind move, it requires LUCs to be issued to all farmlands for which SLRD has Kwin maps. On the face of it, this offers farmland holders the security they have so long been denied. However, concerns remain.

Areas for which SLRD has no records, land other than farms, or areas plagued by conflict have not been covered. The LUCs were manually drafted and land records are still being maintained on paper and could easily be destroyed by bad weather, erasing all the effort (money and human resource) that was put into this exercise. Since farmers have not fully understood the benefits of LUCs, subsequent land-related transactions do not seem to be recorded consistently, hindering the establishment of a formal land market. Numerous errors reported in LUCs have not been corrected and information on resolving land disputes is lacking, causing considerable frustration to landholders. Parcel boundaries seemed to have been defined without consulting landholders. Like most government programs, LUCs use the

“head of family” concept, usually identifying a male for land or resource allocation. No special effort has been made to address women’s special needs to ensure their understanding of and participation in registration and titling. Little information was provided to women on the option of joint titling (registering land under the names of both husband and wife).

### **Growing Civil Society Voices on Land Issues**

Myanmar has an increasingly large presence of non-governmental organizations (NGOs) and civil society organizations (CSOs) working on various issues affecting the poor and disadvantaged. In the standoff between the government and the people over land rights, such organizations generally ensure that the voices of farming, forest-dwelling, and urban poor communities are heard. The government has gradually demonstrated its willingness to create mechanisms to include CSOs in its work to understand grassroots issues. However, considerable ambiguity persists over the role of CSOs in Myanmar. CSOs exist in a limbo with only partial government acknowledgement of their role. Their capacity is nascent, fragile, and rife with both risks and opportunities, especially on land sector engagement in rural and urban areas.

### **RECOMMENDATIONS**

Sustainable development of natural resources in Myanmar and greater investment in the agricultural sector require pragmatic solutions to land-tenure problems. Such solutions must take into account technical, organizational, legal, and socio-cultural factors. The set of recommended engagements proposed here are directed at the government, NAPA, and its development partners for consideration and action.

**Support policy dialogue at national and local levels.** This support should emphasize strengthening good land governance from the perspective of agriculture and rural development. It should be anchored on the government’s ongoing NLUP work, drafting of the land law, and other policy and regulatory instruments. Policy dialogue should be cross-sectoral, aimed at building food security and livelihoods for farming communities.

**Undertake theme-based Land Governance Assessment Studies (L-GAS) to understand land-tenure issues.** Structured diagnostic reviews of the land sector must be undertaken immediately to build knowledge and support policy-making and program implementation. Studies should be limited to six months and structured as a learning and capacity-building process on agricultural and rural development.

**Disseminate good practices on strengthening tenure security.** NAPA should consider establishing a platform for disseminating good practices in smallholder tenure security and Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) through stakeholder workshops and forums. This should be pursued widely around thematic areas such as development of smallholders, social inclusion, and protection and recognition of tenure rights.

**Build custodianship model.** Myanmar needs a single land-agency for administration (including registration) of public forest and non-forest lands. This agency should be responsible for determining landholding rights and issuing land certificates/titles. Specific line agencies must be held responsible for thematic use of land such as forestry, agriculture, and mining. This would reduce duplication, make land administration more efficient, and make it easier to monitor and enforce compliance.

**Streamline institutional arrangements, upgrade systems and bolster capacity.** The new land law should reduce existing multiple and overlapping land tenure regimes into manageable number with clear and concise criteria for their administration and management. The draft of the new land related legislations should include support for the development of locally based dispute resolution mechanisms to address the land conflict. These mechanisms should be made as legally enforceable and realistic. The government, while preparing the new land law, should consider the land ‘custodianship’ model for land administration. In addition, the government will have to prepare and issue thoroughly revised set of regulations and guidelines, replacing the existing ones, on forestland management.

**Put in place better land management practices.** With rapid urbanization taking place, urban and rural land uses in Myanmar are no longer mutually exclusive, but rather exist on a continuum of community types that are increasingly interconnected. In moving forward, a comprehensive rural development strategy should also consider features of ongoing urbanization and the development of integrated land information and mapping systems for sustainable land use management. In that sense, the government should reformulate its urban (including peri-urban areas) policy and harmonize it with broader land and land-based sector reforms. It should include procedures for strengthening urban land management practices (acquisition and transfers, land use planning, zoning, permits, taxation, de jure and de facto systems) to support infrastructure development too so that farmland and rural communities benefit from the broader reform process. Such a comprehensive approach will lead to better land administration and governance too.

**Support the establishment of a National Land Parcel Inventory (forest and non-forest land).** The government should fund a nationally complete, geo-referenced land parcel inventory database and procedures for sustainability and information access as a forerunner to implementing the National Land Parcel Inventory. This will improve transparency on all decision-making about land, including land allocation, concessions, acquisitions, and land-use planning. It should lead to a standardized geospatial information system.

In addition, Myanmar needs a modernized land-information system for sustainable economic and social development. Capacity building at township/district levels (of SLRD, MoECAAF, and GAD) will help improve awareness and understanding of land laws. A fully functional land-information and land administration system and improved property valuation and taxation systems and procedures could generate wide-ranging benefits.

**Recognize and gradually formalize customary rights and usages and existing land tenure transactions and agreements.** To protect the land rights of traditional land users (and customary tenure holders), including those associated with shifting farming and land used for grazing and forest products, the issuance of “collective territorial type” rights could be considered. Appropriate solutions must be developed through experimentation to encourage gradual, voluntary, and transparent progress from traditional, customary systems to more formal land-tenure regimes. This should include a law on the Recognition and Protection of Customary Tenure.

**Promote social land concessions.** The government should design a land-distribution program at the village and township level. It should support the development of: (a) a policy for land distribution; (b) a land database; and (c) clear criteria for land distribution. Support services must reach all land recipients.

**Establish a “green village” program and support its implementation.** This would be a village/community development program based on sustainable use of land and natural resources. It would benefit farming and poor families and the community as a whole, while improving agricultural production. It would require significant technical capacities and developing a specific delivery approach.

**Adopt territorial approach to land-development programs.** Land-tenure issues often relate to community boundaries rather than administrative demarcations, especially in case of common pasture land and water bodies and where customary tenure arrangements dominate. The government should develop criteria for creating village administrative boundaries based on community perceptions rather than statistical standards. This will also help informally enhance tenure security.

**Support the development of local dispute-resolution mechanisms.** Although the fairness of compulsory acquisition has been contested, Myanmar lacks effective dispute-resolution mechanisms to provide redress. The draft of new land-related legislations should include mechanisms that are legally enforceable and realistic and a clause on dispute resolution, underscoring the importance of indigenous courts.

**Promote projects to rehabilitate degraded land and supply it to local landless or near landless families.** Financial support and technical advice should be provided for design and implementation of such plans.

**Provide project support for the rehabilitation and maintenance of community water bodies.** Rural communities are often situated around degraded water bodies. Numerous measures can be taken to improve water quality through activities that can be implemented by village committees.

**Respond to discontent over State land leases.** Data on State land leases must be gathered and reviewed systematically and transparently. The government must respond to escalating social, economic, and environmental concerns expressed on land concessions. A moratorium on new concessions would clarify existing tenure claims and address past shortcomings.

**Encourage, regulate, and monitor farmland investments.** Prior to granting a large-scale land lease, the government should engage in public consultations that elicit people’s views on land use and investment decisions. Measures to protect areas against degradation should be implemented with public input and independent monitoring.

**Support preparation and enforcement of guidelines for the private sector working with small and marginal farmers.** Guidelines should be put in place to promote more transparent and equitable contracts and minimize risks to the farmer. Support should be provided for preparing and enforcing a regulation to monitor contract farming and private sector participation in agriculture.

**Support benchmarking priority land governance indicators for monitoring.** This will assess and prioritize indicators for national-level monitoring. This should include indicators crucial to tracking progress in implementing the land-governance agenda and achieving the country’s priority development goals.

## CONCLUSIONS

Several studies have assessed critical areas of land governance in Myanmar, such as rapid changes in land use associated with large-scale land leases, economic development (or lack thereof), climate change, urbanization, and growing demand for food and industrial materials. These studies generally conclude that Myanmar has poorly managed its agriculture and urban expansion, poverty is evident in rural and urban areas, and land tenure and tenurial rights were unclear, resulting in conflicts over land.

This review found that Myanmar needs comprehensive programs and projects to support improved tenure security among smallholders and develop land-resource planning information and programs for land conservation and rehabilitation. This will help balance land fragmentation and consolidation, so that sectoral investments are well-targeted, and support the development of livelihoods for the marginalized sections of rural society. Myanmar must build on its most important asset base — millions of small and medium scale farmers — by facilitating their access to credit, inputs, and markets. Such an approach is needed to jumpstart rural growth, increase food security, capture export markets, generate jobs, and reduce poverty.

Transparent land governance is needed for the new paradigm of pro-poor land access to succeed. It should include specific approaches and modules to reach out to particular stakeholders like ethnic minorities, families living in conflict zones (and thus affected by land mines), women, and disadvantaged groups. The government can draw on available knowledge and global best practices and good land-governance experiences to gradually improve its regulatory and policy environment. The drafting of the NLUP and Land Law offers the ideal opportunity to break new ground with State and non-State actors concurrently and constructively linking their work to improve land governance.





## MAP 1. MYANMAR: STATES/REGIONS & TOWNSHIPS OVERVIEW MAP



# SECTION I

## INTRODUCTION

Myanmar is spread over approximately 670,000 square kilometers of land, about half (48 percent) of which is covered by forests. It is geographically and ecologically diverse with about 800 islands and a coastline of about 2,000 kilometers. It has a multi-ethnic, multi-cultural, and multi-religious population of about 53 million, with an average of 76 people per square kilometer. Close to 70 percent of its population lives in rural areas and average farm household size is six people. Yangon, Ayeyarwady (or also known as Irrawaddy), and Mandalay states/regions have much higher population density than Chin, Kayah, and Nay Pyi Taw that have less than 32 persons per square kilometer. Around 30 percent of the population lives in mountainous or forest areas, which constitutes about 25 percent of the landmass.<sup>1</sup>

Myanmar is a low-income country with a high poverty rate. With some 35 percent of the population living on less than \$ 1 a day, Myanmar is one of the poorer nations in the region.<sup>2</sup> Poverty in Myanmar is predominantly rural: more than two-thirds of the country's population and 70 percent of its poor live in rural areas. The livelihoods of Myanmar's poor, both rural and urban, depend primarily on agriculture, as at least two-thirds of the total labor force is engaged directly or indirectly in agriculture-related enterprises.<sup>3</sup> Both urbanization and the natural increase in population will have the net result of reducing the land rural households can avail for farming.

Myanmar's agricultural sector has long been suppressed by poor policies, a chronic lack of credit, deficient and degraded infrastructure, and an absence of tenure security. These woes, which counter Myanmar's bountiful natural endowments and immense agricultural potential, have engendered the dire poverty that characterizes the lives of the country's rural populace. Reforming Myanmar's agricultural sector and rural economy is reportedly on the agenda of the current administration under President Thein Sein. An important part of any such reform would involve clarifying and strengthening tenure security.

This review was undertaken to contribute to the ongoing debate on land issues in Myanmar. It also serves as input for a national approach on the government's rural development engagement. Its overall objective is to outline an improved approach to tenure security that will enable government-enhanced interventions, better services, improved risk-management in rural development, and better livelihoods for farming communities. It was undertaken within the framework and guidance of the international principles on land and resource

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<sup>1</sup> All demographic and economic data cited is from the Population and Housing Census of Myanmar, 2014 (provisional data), and socio-economic data published by the National Statistical Office unless otherwise specified. Also, refer to Central Statistical Organization, CSO (2014): Population Census, Ministry of National Planning and Economic Development, and National Population Census, 2014, and provisional details published by the Department of Population, Ministry of Immigration and Population. The references, sources and citations in all sections are mutually inclusive.

<sup>2</sup> All monetary denominations are quoted in US dollars unless otherwise stated.

<sup>3</sup> See Central Statistical Organization (2011): Myanmar Statistical Yearbook, Ministry of National Planning and Economic Development, Government of Myanmar.

governance, commonly known as *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT)*.<sup>4</sup> The premise of this review is that land and property rights cannot be understood solely as an administrative or procedural issue, but should be considered part of broader historical, economic, social, and cultural dimensions. This throws up concerns over political economy, development opportunities, constraints, and risks posed for the poor, ethnic minorities, local communities, women, and disadvantaged sections of society.

### **1.1 SPECIFIC OBJECTIVES OF THE REVIEW**

This review aims to ascertain current status and opinions on land tenure issues vis-à-vis rural development and farming communities. It examines whether current land-tenure systems support or constrain farmer innovation and investment in agriculture and sustain their livelihoods. This review was undertaken in November-December 2014 with the following objectives:

- To improve current understanding of the links between land-tenure systems, food security, and sustainable rural development in Myanmar;
- To assess current land-tenure reforms within the context of the implementation of the Farmland Law and Virgin, Fallow, and Vacant (VFV) Land Law of 2012 and explore how they enhance food security and rural development, and identify major constraints; and
- To make policy and program recommendations to assist the government in addressing land-tenure reform and thus improve food security and the stewardship of land and natural resources.

The larger objective is, of course, examining the extent to which ongoing land reforms are geared towards achieving secure tenure, access to livelihoods, and rural development and how land-tenure issues are being integrated into broader development and governance strategies. The report aims to initiate a dialogue by analyzing available data and information on land tenure, food security, and sustainable development in the context of Myanmar and is intended as a starting point for a collective learning effort.

### **1.2 SCOPE OF THE REPORT**

Through a sectoral analysis, this report seeks to provide preliminary reflections on:

- Which existing tenure regimes and institutional arrangements create tenure security and, in turn, food and water security for communities?
- How should farming communities engage with the law — given the weak policy structure — to strengthen the legitimacy of their land claims and protect their rights?
- What measures should be considered to strengthen tenure security in promoting rural development?

The results of this review must be appreciated within the following limitations: (a) land and natural resource debates encompass many, if not all, social, economic, political, and cultural issues that affect Myanmar today. Thus, the challenge is to maintain inclusiveness without losing focus of critical aspects such as food security; (b) when this review commenced, several land-related policy measures had come into play. A draft of the National Land-Use Policy (NLUP) was made available to the public for comments and the issuance of Land-Use

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<sup>4</sup> UN-FAO has provided leadership for formulating and disseminating the VGGT since 2006. Since its adoption in 2012, the VGGT has been mandated to support governments in mainstreaming these principles in their respective policies, strategies, laws, and programs.

Certificates (LUCs) for farmlands (Phase One work) was nearing completion by December 2014. These may fundamentally change the way government and other stakeholders work and might allow for further reforms. Therefore, the review served to assess and document experiences and lessons learned in a broader sense.

### **1.3 APPROACH AND METHODOLOGY**

Discussions for the study were conducted in November-December 2014 with the inter-ministerial National Action Plan for Agriculture (NAPA) serving as the national counterpart. In view of the enormity of the tasks involved, the review was divided as follows:

Part 1: Available research was considered and critical policy, legal, institutional, technical, social, and other issues and lessons learned were synthesized. These were confirmed through key stakeholder interviews and land-sector needs were identified and confirmed.

Part 2: Priority needs were identified and developed into recommended engagements.

Meetings were held with several government and non-government stakeholders to narrow down research issues and questions. Subsequently, research questions were framed and a checklist prepared for interviews and data gathering. Specific concerns included land-tenure rights of the farming community, customary access to land, use practices, policies and plans for implementing programs and projects under the Rural Development Strategy (RDS), non-forest and forest land issues, State-land leases and concessions, and land acquisition for public purposes or private investment.

Initially, existing literature was reviewed to identify gaps and issues raised on links between land and tenure in rural development. A dialogue was conducted with civil society in Myanmar. A debriefing was convened in late December to discuss the review, seek inputs, and share observations. This process helped validate findings and confirm conclusions and recommendations.

The review has synthesized critical issues and wider pressures on land. It presents, summarizes, and endeavors to interpret evidence that has emerged so far. The review, thus, draws its conclusions from this vast body of evidence and the contextual factors that have shaped the current situation in Myanmar. Importantly, these conclusions and recommendations have been confirmed with officials and representatives from several ministries, academics, civil society groups, and development partners.

As a sub-sectoral review, the report limits itself to land-tenure issues from the spectrum of farming and non-farming communities. Due to time constraints, field visits were limited to a few agro-ecological zones in the country. Hence, states like Chin or Kachin could not be covered. Some critical issues like increased access to serviced urban land, community forestry, or land problems confronted by ethnic minorities are also not examined in detail.



# SECTION II

## INSTITUTIONAL ARRANGEMENTS FOR LAND ADMINISTRATION

Myanmar's current land-administration system retains many features of the one established during British colonial rule. Subsequent governments have added to it, creating a multiplicity of laws and regulations that have confused the issue further. Lack of clarity in the demarcation of powers and responsibilities allocated to various government agencies is also troubling. With little to no expenditure on updating systems, a lot of data is obsolete, incomplete, or inadequate. Land records maintained by Settlement and Land Records Department (SLRD) are, to a large extent, still operated for revenue purposes and not as a record of land rights. Consequently, administration is more opaque, inequitable, and therefore, dissatisfying for the people. Moreover, Myanmar's governments seemed to have ignored customary practices of land management. As a result, numerous people have either lost or risk losing the land they have occupied and used for generations. These deficiencies must be fixed. The current government seems to be targeting this goal through land-reform policies, particularly the announcement of a national database that will use modern technology to update land information for easy access at central and local levels. To be truly effective and address long-held grievances, policy must translate into action through measures that would build public confidence in Myanmar's land-administration system.

### **2.1 LAND ADMINISTRATION THROUGH VARIOUS POLITICAL ERAS**

The genesis of Myanmar's land problem is a politico-economic structure established through decades, especially by governments seeking to build their power base since 1991. The country's land administration can be broadly classified into six time periods — prior to British colonialism; the British era; from independence (in 1948) to 1962; 1963 to 1988 (socialist regime); 1988 to 2010 (military government); and after 2010 (democratically elected, reform-seeking government). The following paragraphs summarize the land-administration practices of each period.<sup>5</sup>

Pre-British Era: Erstwhile Burma was a nation inhabited by a diverse range of ethnic groups with their own political and social history. These groups governed themselves on the basis of strong local traditions, communal management and use practices with regard to land and

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<sup>5</sup> Land and property issues have been part of the legal and political history of Myanmar (erstwhile Burma). Between the eleventh and nineteenth centuries, Burma was an absolute monarchy. During this period, land and property rights were embedded in the social structure and governed by customary traditions. When the British took over in 1825, Burma was administered as a province of India. The British implemented complete legal and administrative reform by replacing Burmese law with Anglo-Indian law. Refer to various reports and documents available on the History of Agriculture in Burma on the website of Ethnic Community Development Forum in Burma i.e., [www.ecdfburma.org](http://www.ecdfburma.org)

To understand land administration in Myanmar, it is important to recognize that it is a multi-ethnic nation with different cultural and social practices, internal migration, and shifting cultivation. As a result, villages or sub-districts may be homogenous or heterogeneous. Ethnic groups exhibit different levels of integration with the modern economy, mainstream cultural norms, and the political system. Such socio-cultural differences are commonly reflected in the ways in which communities access, use, and govern land and resources.

natural resources. Agriculture formed the stable foundation of the society. Through wars and changes in government, the peasant remained the backbone of Burma. Farming families worked on small parcels. Many communities held traditional lands in common where local people could graze their livestock. Most people lived at a subsistence level, using what little they grew to feed their family. The king's ability to tax farmers was essential for the administration and continued control over communities and resources. These taxes were periodically stipulated by the king (usually 10 percent of all farmers' produce) and collected annually by local officials. Apart from taxes, the king or local leaders had little authority or control over land and resources. Local peasants across much of Burma could buy, sell, transfer, or mortgage their land in an informal system of private property. Local agreements, customary law, and tradition governed land use. The central government tried to control agriculture, but in practice cultivators and local leaders made their own decisions. The struggle between peasants, local leaders, and royal officials continued perennially. From time to time, the king would attempt to enforce his laws further from the center. Local people in turn pushed back and tried to retain their surplus grain and continue their traditional practices unharassed. Peasants had many methods of resistance, ranging from bribery and trickery to outright violence. When all else failed, peasants had the option of moving further into the forested mountains where the soldiers could not follow. This practice persisted until the British colonial wars in the early nineteenth century. It also set the pattern for local autonomy in farming and administration that continues in many ways to this day.

Colonial Era (from late 1700s till 1948): In the 1800s, the British reformed the agricultural structure by assuming control of all land administration and management. Farmers could gain permanent titles to land after cultivating/using/holding it continuously for 12 years and on payment of relevant land taxes. Thus, by adopting progressive land and revenue laws, the British created, for the first time, a legal arrangement recognizing private land holding and a system of land tax collection. Later, when Lower and Upper Burma were annexed, separate laws were enacted. The Land and Revenue Act of 1879 was the first major land law enacted. It governed the acquisition of land rights for private persons and procedures for assessing and collecting land taxes.

Post-independence (1948-62): After gaining independence in 1948, the then government continued the earlier "rice bowl" approach to land administration and emphasized the development of the agricultural sector. The 1948 Constitution established the "State as the ultimate holder and owner" of all land in Burma (now Myanmar). Land concentration and the system of landlords were abolished and specific laws were promulgated.<sup>6</sup>

Socialist Era (1963-89): Under the socialist government (1963-89), farmers were considered the State's tenants and compelled to farm specific crops (such as rice) as per State policy. If farmers failed to meet production targets, their land was reclaimed by the State (through its local representatives). As paddy production was not profitable, in 1956-57, farmers decreased investments in land. As later events have shown, efforts to nationalize land and redistribute agricultural land were unsuccessful due to political constraints. The socialist government enacted the 1963 Tenancy Law and the 1965 Amendment of Tenancy Law.

From the 1980s, the government issued each farmer a booklet entitled Farmer Agricultural Production Record. It was a grassroots-level document for the government's "paddy

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<sup>6</sup> It included: The Tenancies Act, 1948; the Agricultural Laborers Minimum Wages Act, 1948; the Land Nationalization Act, 1948; the Land Nationalization Act, 1953; and the Land Nationalization Rules, 1954. The objective of the Land Nationalization Act was to end large-scale landholding and landlordism and usher in an era of collective farming.

production” plans, as it kept track of land used and paddy produced. The Farmland Law of 2012 and the issuance of LUCs replaced this booklet in some way.

Military Government (1988-2010): After Ne Win’s Burma Social Program Party government collapsed in 1988, the State Law and Order Restoration Council (SLORC) came to power and reigned till 2010.<sup>7</sup> By 1988, the land sector was already in disarray. Rural poverty, landlessness, and a deteriorating economy posed challenges for the new government. In addition, neighboring countries and Western powers had imposed sanctions and economic blockades. The military government retained several key laws such as the Land Nationalization Act (1953) and the Tenancy Law (1963) along with a focus on paddy production and crop prescriptions. To overcome the food crisis and social instability, in late 1988, the government issued an order on farm production (primarily paddy and cash crops). Produce was to be sold first to the government and cultivators could retain only the surplus. A slew of government regulations evicted “squatters” from vacant public land and asserted the government’s right over land for public purposes.<sup>8</sup> Along with these measures, the military government perpetrated large scale displacements of often ethnic nationality populations in border states, particularly in the mid 1990's, as a consequence of conflict with non state armies, for development purposes or for control over strategic resources.<sup>9</sup>

In 1991, the military government introduced a major land-administration measure through a notification prescribing the duties and rights of the Central Committee for the Management of Cultural Land, Fallow Land, and Waste Land (Wasteland Instructions) to allow expropriation and reallocation of land categorized as “wasteland,” a category covering land without a title.<sup>10</sup>

The implementation of the Wasteland Instructions of 1991 marked a policy change favoring large-scale agricultural investments rather than small farmers and the rural poor.<sup>11</sup> In theory, smallholders could apply to access wasteland. However, the government did not allocate any land to small-scale farmers on the grounds that they lacked the capital to develop it effectively. The government granted land leases to private and public companies, chiefly those affiliated to the military, including State-owned enterprises, joint ventures, and private corporations. In numerous instances, land was forcibly acquired to make it available to investors as part of the wasteland development policy. Such leases generated substantial political heat and social strife that persists even today. According to available anecdotal evidence, land redistribution under the Wasteland Instructions chiefly benefited a few large landholders (holding more than 50 acres). Through this process, they accumulated

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<sup>7</sup> The political economy of the second phase (1988-2010) is discussed later in this section.

<sup>8</sup> Although the government used the term “squatters,” it was hotly contested by political activists and commentators. In reality, these were farmers who tilled the land but were denied occupancy rights by the then government.

<sup>9</sup> Refer to Lanjouw. S and Vickey Bamforth (2000): Internal Displacement in Burma, Disasters Vol. 24 No. 3; September, page. 228-239.

<sup>10</sup> The Central Committee received and assessed applications for land and granted use rights. First-time applicants could receive up to 5,000 acres (2,023 hectares) of land for industrial crops, which, if developed, could be expanded up to 50,000 acres for up to 30 years. Although the committee reserved the right to take back unused land, this has not yet happened. Applications for wasteland by foreign-owned companies were prohibited in theory, although foreign companies could create joint-ventures with local enterprises and agents to access land.

<sup>11</sup> This 1991 Act, along with the earlier Tenancy Act, also provides for State recovery of land lying unused for two consecutive years.

considerable resources in the area. This allowed a well-entrenched client patronage system to develop in the land sector.<sup>12</sup>

Elected government after 2010 to date: Following the adoption of the 2008 Constitution and elections in Myanmar, a new government assumed power in early 2011. It confronted formidable challenges not only in rebuilding the economy but also due to growing calls for restitution of land confiscated during earlier regimes.<sup>13</sup> Violent conflicts arose in some areas against monetary incentives and land access to favored business groups. While the widespread protests did not stop the government from issuing new land leases/concessions, it led to some “healing efforts.” To assuage growing dissatisfaction over efforts to resolve forcible land takeovers and lack of compensation for the same, the government initiated a set of measures.

The establishment of the Land Allocation Utilization Scrutiny Committee (formed in July 2012), an inter-ministerial cabinet-level committee, led by the Ministry of Environmental Conservation and Forestry, marked a sign of reforms to come. The committee was to focus on preparing a national land-use policy, land-use planning, and allocating land for investment including agricultural projects. By October 2014, it was converted into the inter-ministerial Central Committee for National Land Resources Management (CCNLRM) to implement the land-use policy upon adoption and draft an umbrella national land law.

The government also established the Parliamentary Land Confiscation Commission in August 2012; it finalized its report by February 2014. The commission was mandated to address allocation abuse and recover land from unauthorized holders. The Ministry of Home Affairs (through General Administration Department, GAD) was assigned to take action where necessary following the commission’s recommendations. The commission could only investigate and had no authority to resolve land disputes. It developed numerous reports on historical land-acquisition disputes that needed to be addressed through payment of appropriate compensation. The reports were detailed but the commission also prepared a set of summary reports for follow-up action. Analysts claimed that the commission’s work started to break down at the level of summary reports as the essence of issues was either diluted or submerged. In many complicated cases with poor historical records, the commission had to sort out what happened when, who had what rights, and how compensation should be calculated. Such cases were not considered in detail, causing further discontent among civil society and communities in general.<sup>14</sup>

Myanmar lacks a consolidated land policy or land law. Land records were mainly used for revenue mobilization and not as a record of land rights. Provisions related to the recognition and protection of land rights are dispersed across various parts of the Constitution, sectoral acts, and implementing regulations. Since 2010, the government has taken some steps to remedy this situation. In 2012, two land laws were enacted — the Farmland Law and the VFV Law — and in 2014, the NLUP was drafted and disseminated for public debate. The government also announced its intention to enact a comprehensive land law that would serve

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<sup>12</sup> For a discussion on the political economy of land and smallholders, refer to other sections of the report.

<sup>13</sup> Since 1963, all land in Myanmar has been under State ownership. The 2008 Constitution reinforced this State ownership but guarantees citizens the right to choose where they want to settle in the country, protection of their lawfully acquired movable and immovable properties, and the privacy and security of their abodes (Chapter VIII).

<sup>14</sup> Interviews with the Land Core Working Group and communities affected by land confiscation in the Bahan area.



as an umbrella legal instrument.<sup>15</sup> The significance and impact of these policy reforms are discussed later in this section.<sup>16</sup>

## **2.2 LAND ADMINISTRATION HIERARCHY**

Despite changes in governments and in the legal environment, the land-administration structure has remained intact. Responsibilities are distributed among 10 different government entities (refer to Table in Annex 1). In general, the Ministry of Home Affairs (through GAD) and SLRD (through the Ministry of Agriculture and Irrigation or MoAI) continue to play a major role in all levels of non-forest land administration. The Ministry of Environment and Conservation of Forestry (MoECAF) assumes primary responsibility in areas designated as forests.<sup>17</sup> Others like the Ministry of Mines hold sectoral land responsibilities, but land maps and data responsibilities rest with the SLRD.<sup>18</sup>

The GAD, of the Ministry of Home Affairs, has branches at the township and the state/region levels and acts as the central government's representative at these levels. The SLRD under the MoAI is responsible for maintaining land registry and cadastral maps and has branches at the state, district, and township levels. Each township is further divided into a number of circles, each headed by a land inspector (assistant staff officer) responsible for, among other things, validating and checking land records.

Administering land and its uses mainly falls under the purview of three ministries — Ministry of Home Affairs/GAD, MoAI/SLRD, and MoECAF/ Forest Department (FD). These administrators are also responsible for protecting the land under their jurisdiction from encroachment and squatting and ensuring adherence to prescribed land use. Any transfer of tenancy rights (all farmers being tenants) and any request for change in land use must be initiated at the village tract or ward level and must go through successive tiers in the structure to be eventually endorsed/approved at the state level, after going through factual verification by the SLRD branch at the township and district levels. The township-level GAD branch is responsible for processing such applications. Thus, land-rights transfer or land-use change is a lengthy process, requiring considerable time and frequent visits to various offices.

In urban areas and the three major cities — Yangon, Mandalay, and Nay Pyi Taw — activities related to land use and ownership are managed by development committees. These enjoy a broad range of authority in reclassifying use, acquiring land and buildings, and transferring “ownership” titles. In urban areas, the Land Revenue Department is also involved in validating the transfer of titles and other deeds.

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<sup>15</sup> However, CSOs caution that under the VFV Law, close to 50 percent of the country's land may be technically classified as “fallow,” triggering displacement of farming communities. A considerable proportion of land in ethnic areas in particular is governed by customary land practices that are not officially recognized by the VFV or Farmland Law. None of the farmers we interviewed had an understanding of the VFV Law and its impact.

<sup>16</sup> Oberndorf (2012) has reviewed the two laws of 2012 and provided a framework for understanding the legal and policy environment in the country.

<sup>17</sup> A detailed discussion on the administration and management of forest land is outside the purview of this review.

<sup>18</sup> A number of agencies are involved in land management or are authorized to initiate actions that affect the efficacy of land administration. While the administrative structure at the state level and below are changing, in general, the Ministry of Border Areas and Development Affairs (now renamed Department of Rural Development) and the Ministry of Agriculture and Irrigation (MoAI) play important roles in land administration.

The military's role in land administration and management is, in theory, limited to protecting national boundaries. However, post-1991, the military has acquired large tracts of land for its encampments and retained control over "conflict zones" in Kachin, Mon, Karenni or Kayah, Shan, Kokang, Wa, Rakhine and Karen states. SLRD has not mapped or maintained data on several of these conflict zones. The military's role in land matters remains a serious concern in discussions on reforms. The fragile peace process and the military's continued influence further complicate land administration. Thus far, no comprehensive peace agreements have been finalized, although progress has been made towards political dialogue on many fronts. Several groups have documented increased land grabbing and land confiscation in the context of ceasefire agreements and peace negotiations in Karen and Mon states in particular and to a certain extent in Karenni and Shan.<sup>19</sup>

State interventions in land tenure and control structures are hallmarks of Myanmar's land administration and management, particularly farm, forest, and, in recent years, urban land. Community and individual rights have become essentially dependent on government discretion, causing conflicts between the State and people. Land-tenure arrangements involve social relations and institutions, have complex histories, and are multi-dimensional. Thus, to understand Myanmar's land-related problems and appreciate related reform challenges, it is necessary to understand the history of land's role in Myanmar's political economy and land legislation and ownership. A closer study of pre-colonial, colonial, and post-Independence eras must be prioritized to understand different governments' approaches to land and related issues. The results of such a study should feed into the government's current efforts to streamline the legislative framework and the institutions that administer land (SLRD, GAD, and MoECAF).<sup>20</sup>

### **2.3 FORESTLAND ADMINISTRATION**<sup>21</sup>

In Myanmar, forests underpin the development of different socio-economic sectors and local livelihoods. The relationship between individuals and communities with their land and resources is commonly defined through customary regulations and practices in several states and regions, like Chin, or by dividing various geographical domains into zones and specifying their function and management as the upland communities do. The ownership and use rights for various land areas and zones are also clearly identified by such traditional arrangements.<sup>22</sup> As noted earlier, land records were prepared for revenue mobilization. Across different land tenure types, revenue mobilization and institutional arrangements were split between MoAI/SLRD and MoECAF/Forest Department and the local government led by GAD. This complex legal and regulatory environment allowed governments to treat both agricultural and forest land as State property, freely selling or allocating it for logging or plantations or for

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<sup>19</sup> Several non-armed groups in ethnic areas have expressed concern over land grabbing and the creation of conditions that facilitate it. Unlawful seizure of newly de-mined land can only have a negative impact on the peace process. Refer to reports published by the Karen Human Rights Group and other CSOs.

<sup>20</sup> In discussions, it would be useful to differentiate between the government and the military, particularly in border and conflict zones as regional commanders have largely been given a free hand to run their own affairs, irrespective of government reforms. The regional Commander of Kachin state for instance has become parliamentarian of Hpakhant township, the Jade mining region in Kachin State without being from the township or from Kachin State.

<sup>21</sup> Refer to the sectoral report prepared for NAPA for a more detailed discussion on the forestry sector. However, this review team is of the view that the forestry sub-sector report (draft, January 2015) has generally discussed shifting cultivation practices and rights of communities living inside the forest areas from the perspective of foresters.

<sup>22</sup> Refer to reports published by the Food Security Working Group, 2012.

extractive purposes to mobilize revenue. It was frequently alleged that authorities violated the rights of forest-dependent communities in allocating land use and setting forest industry concession boundaries. Instead of addressing weaknesses in forest administration, a government-sponsored land-concessions program (mid-1970s to late-1980s) for revenue mobilization was launched. This led to grant of forestland to investors, although this was on a modest scale in comparison to other forest-rich nations in the region like Indonesia. As the economy started deteriorating, the government enacted the Transfer of Immovable Property Restriction Act, 1987. This Act restricted the ability to sell or give away immovable property to foreigners or foreign-owned companies. In the event of a landholder's death, it also allowed the government to confiscate the land or let his/her family inherit it. Nonetheless, the impact of forestland concessions has been the subject of intense debate over a decade. These concessions are often believed to undermine alternative approaches to rural development that respect customary or legal claims of local communities to their historical lands. In this context, despite a focus on generating revenue from forestland, discussions on forestland administration are dominated by the need for the recognition and protection of customary tenure arrangements, enhanced support for community access to forests and forest resources, and for programs like community forestry.

## **2.4 ADMINISTRATION OF URBAN LAND AREAS**

The Ministry of Home Affairs has presence down to the Township level, and acts as the link ministry between local governments and the central (Union) government. In the past Ministry of Home Affairs, through its Department of General Administration (GAD) and branches at the Region, District and Township levels exercised considerable influence over local development affairs including land management<sup>23</sup>. As the representative of the central government, GAD at the local level was also the reporting and decision making center for all other branches of the central government. For all practical purposes, the role of GAD office remain important in land administration as well. Thus, while an SLRD branch at a particular local level (Regional, District or Township level) may have had a work program of its own, on all day-to-day matters they reported to and provided relevant technical services to the GAD office at the corresponding level. With the expected emergence of municipalities as local self-government across the country municipal governance (processes of making decisions and the way these are implemented) will be a determining factor in urban land management.

With regard to land administration, areas classified as “town land” form the core of urban land in Myanmar. “Town land” is an area declared by the Ministry of Home Affairs by notification to be a town for the purpose of Towns Act. This type of land is urban land that does not fall under the freehold or grant land categories and is often referred to as ‘La Na 39 Land’. Having access to this form of land enables the rights-holder to use the land for agricultural, construction of housing or other purposes. Town land is transferable and can be transformed into grant land. At present, GAD along with the Ministry of Construction is responsible for administering residential urban land.

In discussing land tenure issues, it is equally important to note that Myanmar's urban demographic profile is changing rapidly.<sup>24</sup> The population in urban areas of Myanmar increased from 4.7 million in 2000 to about eight million in 2014 (about 15 percent of the

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<sup>23</sup> Refer to United Nations Development Program (2012): Democratic Governance in Myanmar: Preliminary Situational Analysis.

<sup>24</sup> Interviews with senior officials at UN\_Habitat Program in Myanmar.

total population) and is projected to reach 25 percent by 2025. In addition, Myanmar's current demographic profile places a huge strain on poor people's access to land and housing. As per National Population Census of 2010, growth in urban areas and peri-urban villages is occurring at more than twice the national average.

As of 2014, Myanmar had only two medium-sized cities in the one to five million population range (Yangon and Mandalay). Migration accounts for 53 percent of its urban population growth. In Yangon alone, it is estimated that approximately 10,000 new households every year seek land for housing and a majority of them are poor and recent migrants from rural areas. With rapid migration and changing settlement patterns, new forms of urban, sub-urban development alter patterns of land use and development. The impact of urban growth is beginning to be substantial: displacement of farmers, dislocation of settlements, loss of forests and land and water pollution. Further, food supply issues deepen and become more urgent as large tracts of farmland are converted to non-agricultural uses in order to meet the voracious demands of progressively larger urban and peri-urban populations. In sum, urban and rural land uses in Myanmar are no longer mutually exclusive, but rather exist on a continuum of community types that are increasingly interconnected. There is lack of land that urban poor and low-income households could access.

It is widely accepted that limited land availability and distribution in urban areas, inadequate access to basic services, and limited income-generating opportunities have weakened tenure security for many urban poor. Consequently, there is a high demand for land for infrastructure, housing and other facilities in the cities and urban centers. This has resulted in loss of farmland areas and pressure on rural lands. This has resulted, directly or indirectly, in increased number of socio-economic problems in the urban and peri-urban areas. Informal settlements continue to spring up, but in most cases they lack basic services such as water supply and sanitation, posing serious public health risks. These informal settlements are also potential sources of social discontent. Such pressures on land lead to increased conflicts when incursions on urban or peri-urban land occur.

Further, urban and peri-urban land prices are escalating and pushing out the urban (peri-urban) poor and low-income families from access to adequate, affordable housing, serviced land areas. Urban and peri-urban land prices are escalating and pushing out the urban poor and low-income families from access to adequate, affordable housing, serviced land areas. According to analysts interviewed during the course of this review, land prices in Yangon have on average doubled between 2007 and 2012. Large-scale investors and political-economic elite lead the urbanization and urban development in Myanmar. In that sense, this political-economic dynamics has virtually disempowered land use planners and spatial planners. With large-scale investors in land leading the urbanization process, development controls are ineffective and unable to discourage urban sprawl (phasing of urban land use; specific policies for amendments to designate new land as an urban area; restrictions on expansion of urban areas; urban service areas). There is a need to reverse this process empowering planners and building institutional capacities.

While the urban poor lack access to the formal land market, they do have informal land ownership which now needs to be regularized. Informal land holding is common among the urban poor in Myanmar. In general, the formal land registration system is weak and the public sector lacks administration capacity. This has further burdened the urban poor groups. Numerous factors prevent the urban poor, squatter and slum dwellers, and other vulnerable groups from attaining formal land ownership status: complicated laws, high registration costs (money and time), increasing number of speculative land transactions and land alienation

from farming households. Under these circumstances, an informal system exists in place of a formal one, defined by transactions involving exchanges of money, documentation and endorsement by local public officials, as well as payment of land taxes, etc.

With regard to land for housing the urban poor and low-income communities, available reports confirm that there was a great deal of apprehension in urban communities over any government led initiatives to improve infrastructure because of the way earlier governments (particularly between 1988-2010) managed land and land-sector based development programs in the country. here were fears that the improvement projects could lead to evictions, and civil society and human rights groups, since 1970s, had indeed monitored and documented such instances. Critics pointed out that conversely, continuing to embrace the on-site improvements will also surely lead to increased levels of insecurity while various approaches and projects in the past have been criticized and overly simplistic and potential harmful to the right of the poor, it seems timely to consider whether more flexible and innovative approaches to secure tenure or so other path might stand to best chance of achieving the most desired outcome

## **2.5 CUSTOMARY TENURE AND COMMUNITY FORESTRY**

Myanmar has different types of customary communal tenure systems. In most cases, agricultural land with rotational fallow farming is considered common property in upland communities.<sup>25</sup> The 1948 Constitution of Myanmar recognizes the existence of culturally diverse communities but not their institutions, organizations, laws, and rights on land matters. This weakens tenure security for such groups. Nationalizing land and resources and placing every village chief in the government's hierarchical system has stripped communities of their territorial and resource autonomy. Only a handful of village leaders kept defending customary tenure and helped customary practices survive to bounce back in current discussions. Social structures among ethnic groups and upland communities are crucial for building sustainable land- and resource-management systems within those groups and the territories they occupy.<sup>26</sup> When customary institutions and arrangements are weak or co-opted, as was the case following the 1963 Tenancy Law, the community cannot protect resource access. However, numerous reports indicate that even today customary institutions and practices are important in defending the land and natural resource rights of local communities. Legal and policy frameworks will have to be centered on these institutions to strengthen and revitalize them while implementing community-based programs. It is in this context that the importance of customary practices (and shifting cultivation) in land matters will have to be understood.

Shifting cultivation practices (*taungya*) and lack of tenure security: According to available information, the number of shifting cultivators are estimated to be between 2 to 20 million farming at different intensities covering about 23-25 percent of land area. This is about half of Myanmar's upland population<sup>27</sup> Traditional shifting cultivation systems appeared to be self-

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<sup>25</sup> Field surveys in Southeast Asia have shown that secondary vegetation following rotational cultivation with longer fallows often has a diversity of species that is comparable with more mature forests. Its disappearance may be detrimental for the gathering of food, medicines, firewood, and other forest products that poor people depend upon.

<sup>26</sup> Customary systems of rotating fallow agriculture among ethnic nationalities have many advantages, including sustainable land management. Inside the village territory, forests for watershed protection and collection of firewood and non-timber forest products are considered as belonging to the community.

<sup>27</sup> Refer to U San Thein (2012): Study on the evolution of farming systems and livelihoods in Chin state, GRET, and the report published by the Food Security Working Group on the subject in 2011. Also, refer to the recent draft concept note prepared by the Land Core Working Group.

sustaining. The most common form of traditional tenure that still holds good and is also recognized by law is *dama-ucha*, literally “the one who wields the machete first is the owner,” even if the field has been fallow. This also applies to *taungya* and paddy land. Although the Constitution of 2008 recognized *taungya* as a land-use practice, lack of inputs and formal support is leading to increased marginalization and wide-spread deforestation. Individual *taungya* holdings are not formally registered or surveyed. To accommodate the rotating system of shifting cultivation, large areas of land have to be maintained as fallow. These are recorded as “wastelands” in village records and under the provisions of Wasteland Act 1991, they become available for allocation to entrepreneurs or commercial ventures. Rule 116 of the Farmland Rules under the Farmland Law, 2012 seeks to abolish shifting cultivation and does not see fallow land as indispensable to the agricultural system. In contrast, the 2014 draft Land Use Policy recognizes traditional systems of rotational *taungya* and assures that they will be protected (Articles 68 and 70). Through access to secure land-tenure guarantees and investment inputs, smallholders, including *taungya* farmers in the uplands, can be encouraged to make a meaningful contribution to national goals of poverty eradication.

## **2.6 CURRENT STATUS OF LAND MAPPING AND LAND-INFORMATION MANAGEMENT**

*Land Mapping:* In Myanmar, “cadaster” forms the core component of land-administration systems and facilitates the implementation of land-use policies. While the primary objective of most cadastral systems is to support the operation of land markets, they increasingly play a key role in a broader land-administration infrastructure that supports economic development, environmental management, and social stability in developed and developing countries.

Cadastral surveys in Myanmar commenced in 1876. Thereafter, all land was classified according to ownership and use. The SLRD, which is now under the MoAI, was established during this period. It subdivided the country’s smallest administrative unit — the village tract in rural areas and the ward in urban areas — into “Kwin” which is a survey unit not more than 600 acres in size. The Kwin are carefully surveyed to record each land parcel on a map with predefined accuracy. Each Kwin map is associated with three kinds of registers:

- Area statement (in which the area of each land parcel is recorded);
- Owner of holdings, where “holding” means a group of land parcels owned by a person (this register also records the history of the owner);
- Land parcels (this register groups farmland parcels by holding and non-agricultural land parcels by land classification).

During British rule, the Boundary Act of 1880 was enacted and land was surveyed for cadastral maps by the Indian Survey Department. The SLRD was formally established as a department under the Ministry of Agriculture in 1907. The British tied cadaster with tax-collection registry and the SLRD was mandated for this task. In practice, the SLRD prepared and issued “tax receipts” for land parcels. These generally included information such as name of cultivator, location, crop produced, and land area. The tax receipts were linked to Kwin maps, for revenue collection. They were not legal evidence of ownership but simply de facto rights to cultivate as long as payments were made to the government.

The SLRD also took on the responsibility for creating Kwin maps with associated registers as legal documents. A manual of Settlement Instructions dictated how legal work should be conducted. All farmland and other land-tax paying parcels were duly marked with clear

boundaries and geodetic details. Legal Kwin maps and registers were transferred to the Land Records Unit of SLRD for annual supplementary surveys. The Land Records Unit had a land record manual for reference.

After independence, the SLRD continued its functions without disruption or modification. In fact, it was one of the few government institutions that continued their technical work post-independence without much variation or disruption. This led to better farmland record management and crop statistics in the country for years to come.<sup>28</sup> However, land records were not regularly updated and data gathering for crop statistics was not improved in line with modern technology or methods. This review found that data collection remains manual, tedious, labor-intensive, and error-prone. The current manual data gathering and records management at SLRD is slow and tedious, possibly leading to staff fatigue and resultant quality problems that may require considerable post-processing.

*Land Information Management:* In Myanmar, reliable and updated land information is limited. Information on non-prime agricultural land in the uplands, including land used for long fallow subsistence agriculture, is non-existent. Land-related spatial information is managed by separate government departments, is not standardized, and varies in quality, compatibility, accessibility, and usability, especially for non-technical users and citizens. Information held by different mapping and spatial information agencies must be standardized to make it compatible and easy to analyze across agencies.

A modern democratic government depends on high-quality spatial information to conduct its statutory land services and functions, including ensuring transparent ownership/use rights, participatory land-use planning, and natural resource development. However, Myanmar lacks adequate investments in technological upgrades to support land administration and a long-term strategy to strengthen its land-information system (LIS). Consequently, support facilities, data verification and validation processes, and staff training are all inadequate. The government must acknowledge that introducing modern technology for land administration is a long-term program and needs adequate upfront investments.

SLRD needs to consider migrating records and data management to digital systems. Digitizing is easy to learn and thus does not require expensive skilled labor; attributes can be added during the digitizing process, and high accuracy can be achieved through manual digitizing (there is usually no loss of accuracy compared to the source map). The best strategy for data conversion would depend on many factors including data availability and time and resource constraints.

At present, SLRD's Kwin maps are the legal basis for land tenure for paddy cultivation (and the land is further classified by soil quality for tax purposes). These are exclusively paper-based, held at the township level, and may be outdated.<sup>29</sup> Elsewhere in this report, it is noted

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<sup>28</sup> The SLRD is made up of two main functions: land records and registry management and crop statistics. The land records and registry functions of the Director of Settlement and Planning include: registering deeds, registering land, verifying history of urban land in terms of local authorities' urban land adjudication process, and land taxation data. The functions of the Director of Land Administration include: monitoring rural land adjudication by farmland management bodies and monitoring the rules and procedures of the existing land laws. The function of the Statistics Division includes compiling historical data on land parcels such as crop output, land area cultivated, types of crops, and land utilization.

<sup>29</sup> The UN-HABITAT's Land Administration and Management Project (2012-15) is starting work with SLRD to help update its records and build a digital land cadastral map. The project plans to pilot its work in *parts of* either Bago or Thayarwaddy districts. SLRD is likely to need many years to prepare land cadastres across the entire country. As the data is generated, it could be incorporated into the government's proposed "OneMap" system. However, prior to moving into

that Kwin maps formed the basis for the issuance of LUCs for farmlands in 2013-14 after the adoption of the Farmland Law 2012.

The accuracy of cadastral maps and standardization of data sets and land registry would be vital if Myanmar decides to establish a computerized LIS and develop a National Spatial Data Infrastructure (NSDI) framework. Resurveying the country for this purpose would demand considerable resources, extensive equipment, skilled land surveyors, time, and political commitment. Nevertheless, Myanmar needs to start thinking about this since having a functional LIS will help the government ensure efficient land administration.

Geographical Information System (GIS) capacity within SLRD is used only for cartography. SLRD has highlighted an acute need for training in remote sensing and access to satellite imagery, which is currently unavailable due to budgetary constraints. It has noted the benefits to be derived from “a universal mapping system for the whole country.” Any future investments (or technical assistance from donors) to MoECAAF should include capacity building to enable SLRD to access and use products derived from remote sensing imagery and GIS analysis.<sup>30</sup>

## **2.7 KEY OBSERVATIONS**

For good land governance, public administration of land must be separated from land use and from any responsibility to dispose State land or buy land for the State. Public administration of land includes initial registration, transfers, surveying, and property valuation. In these stages, the government institution is a custodian of the land.

Myanmar’s current land administration is characterized by overlapping laws and weak land classification (many areas classified as “fallow” are actually farmed or may include roads and human settlements).<sup>31</sup> Such arbitrary classification results in a mismatch between the law and the reality on the ground.<sup>32</sup> The division of land-administration responsibilities across various agencies, again with overlapping authority, is also confusing. The GAD is responsible for administering and managing all non-forest, non-farm land in the country. These include town, village, religious, and disposable State land, riverbanks, ponds, cemetery, and grazing pastures. While it holds management responsibility, technical functions rest with SLRD in most cases. Given the administrative practices in Myanmar, this dual arrangement also deserves attention as the country moves forward to pursue reforms in land administration and management in the country. It is important to note that as the regional governments start consolidating their functions the land sector will become more complex and challenging for three main reasons: a sharp increase in the number of actors, more transparent decision-making on land related issues, and increasing pressure on land.

Persistent voices among various land-reform proponents argue that a return to fundamental customary tenure and respect for local land administration is essential so that Myanmar can avoid commercialization and retain national control of its wealth, especially land. Stronger

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OneMap, the government will have to establish an infrastructure system for land data and information management through the National Spatial Data Infrastructure (NSDI) framework.

<sup>30</sup> Refer to Jewell, N. (2012).

<sup>31</sup> Land Core Working Group and Woods. K., 2013.

<sup>32</sup> Land Core Working Group and Woods. K., 2013.



smallholder tenure is seen as a bulwark against loss of national control and more importantly strengthening the access and use rights of local communities.

Further land-administration complications arise from indeterminate entitlements to land; lack of a comprehensive land registry and related geospatial information; lack of formal ways and means to protect and recognize customary rights to land; lack of processes allowing free, prior, and informed consent; excessive application of the State's power of eminent domain; and a policy for allocating land concessions that ignores or overrides the customary rights and interests of other rights holders. Myanmar needs a unification of easily accessible data and a clear delineation of responsibility among government agencies. Land-administration must also consider effective customary practices and decentralization to render itself more participatory, useful and accessible. Modernization of these customary practices will ensure that discrimination on the basis of gender is rooted out.



# SECTION III

## RURAL LAND, LANDHOLDING AND USE PATTERNS, AND FARMING COMMUNITIES

Myanmar is largely an agriculture-oriented economy. According to available statistics, total land under cultivation in Myanmar has increased by 0.67 percent annually from 21.48 million acres in 1960-61 (net sown plus current fallow area) to 30.47 million acres (2013-14).<sup>33</sup> During the same period, population growth averaged 2 percent annually.<sup>34</sup> Government estimates suggest that about half the rural population lives in subsistence.<sup>35</sup>

Myanmar has 167 million acres (or about 67.66 million hectares) of land, 26.7 million acres (10.79 million hectares) of which are arable; this has increased at a relatively moderate 0.86 percent between 2006 and 2011. The 3.6 million acres (1.46 million hectares) under permanent crops have increased rapidly at 8.97 percent from 2006 to 2011. Forest cover of 77.7 million acres (31.46 million hectares) decreased at 0.96 percent between 2006 and 2011. Land availability is at 0.6 acres (0.23 hectares) of arable land per capita, which corresponds to 1.48 acres (0.6 hectares) per active population in agriculture.<sup>36</sup> Most farm plots are used for paddy production, which uses low-level seed-production technologies. At present, the agricultural value added per agricultural worker is estimated at \$ 194, which is half that of Vietnam (\$ 367) and Cambodia (\$ 434) and 3.5 times lower than that of Thailand (\$ 706).<sup>37</sup> Overall, Myanmar is resource-rich but has low productivity.<sup>38</sup>

### **3.1 SMALLHOLDERS FORM THE BACKBONE OF MYANMAR'S NATIONAL AND RURAL ECONOMY**

According to official national account estimates for 2010, Myanmar's agricultural sector employed 52 percent of the country's workforce — mostly comprising small and marginal landholders — and generated almost 37 percent of its Gross Domestic Product (GDP).

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<sup>33</sup> By the early 1960s, only 15.98 million acres (about 6.5 million hectares) of the available 21.48 million acres (or 8.7 million hectares) were cultivated. [Agricultural Statistics (1985-86 to 1995-96), published by Central Statistical Organization, 1997].

<sup>34</sup> Refer to Provisional Results of the National Population Census, 2014.

<sup>35</sup> Also refer to World Bank (2014).

<sup>36</sup> Refer to World Bank (2014) and FAO-STAT (2013)

<sup>37</sup> Refer to (a) Haggblade. S., et al. (2014): *Strategic choices shaping agricultural performance and food security in Myanmar*, Journal of International Affairs, Vol 67, No. 2; and (b) Haggblade. S., et al. (2013): A strategic agricultural sector and food security diagnostic for Myanmar, Report for USAID.

<sup>38</sup> All agricultural data drawn from Agricultural Census of 2010 and also (a) Aung, M.M. (2012): Production and Economic Efficiency of Farmers and Millers in Myanmar Rice Industry, BRF Series no. 471, IDE, JETRO, Japan; (b) Dapice. D., et al., (2011): Myanmar Agriculture in 2011: Old Problems and New Challenges, Harvard Kennedy School, Ash Center for Democratic Governance and Innovation: Harvard Kennedy School; and (c) Haggblade. S., et al. (2014): Strategic choices shaping agricultural performance and food security in Myanmar, Journal of International Affairs, Vol 67, No. 2.

Smallholders accounted for around 90 percent of total parcels devoted to annual crops. These occupied 93 percent of the total area of household crop holding. Paddy was produced on 22.87 million acres in 2010. Over the years, Myanmar's paddy production has averaged less than 5 acres per household. By 2010, about five million households were engaged in the agricultural sector which employed approximately 20 million people (total estimated labor force in agriculture was 26 million in 2010) as against a total rural labor force of close to 36 million.<sup>39</sup>

Average farm size is around 7 acres (2.8 hectares) for land-holding households, with regional variations of 4.16 acres (1.6 hectares) to about 8 acres (3.1 hectares).<sup>40</sup> Parcels of small and marginal farm households (holding less than 3 acres) in 2010 were at 1.8 million, a decrease of 9.84 percent from 2003. Increase in number of parcels was registered by farms of 3 to 5 acres (16 percent), 5 to 10 acres (17.7 percent), and 50 acres and more (107.3 percent) (refer to Table no. 2). Between 2003 and 2010, the highest increase in number of agricultural households occurred in the dry zone and delta area. These numbers suggest land consolidation. Often these large tracts of land are used (or merely held) to cultivate perennial crops, which does not redress food shortage in the country or improve food security. Meanwhile, the area held by smallholders is beginning to shrink.

### **3.2 GROWING TREND OF LAND CONCENTRATION AND LARGE-SCALE LANDHOLDINGS**

The preliminary results of the Agricultural Census 2010 indicate that the sharpest increase in parcels occurred among those holding 50 acres and more, who form a small proportion of the country's total farmers. The 2010 census showed a major increase (more than 100 percent) in the number of large holdings (50 acres or more) and in the number of households holding large farms (about 114 percent).

Data indicates that close to 69 percent of farmland is controlled by 20 percent of rural households, while less than 30 percent of agricultural land is controlled by smaller farmers and sharecroppers. To improve agricultural production and the national economy, a push for large-scale land development in agriculture was made in the early-1990s. This led to a surge in large-scale plantations, in particular agribusinesses. As a result, large-scale plantations accounted for 30 percent of total agriculture in the 2010 census. Available anecdotal evidence and field studies show that the government regularly clears lands (reportedly around 600,000 acres per year) for granting agribusiness leases or for non-farm purposes.<sup>41</sup> While some aggregate numbers may suggest increased agricultural potential, they also show a corresponding increase in land concentration among large-scale holders.

In terms of area used, in 2010, households with less than 10 acres were increasingly engaged in rubber plantations and perennial cash crops. By 2014, formally registered agricultural enterprises were dominated by firms (13,441) growing tree crops on 359,170 hectares (0.9 million acres) of forest land. By the mid-1990s, sugarcane and cotton factories were

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<sup>39</sup> Between the mid-1960s and the mid-1980s, the proportion of land used for agriculture stayed constant at around 12 percent of Myanmar's total land. However, from the mid-1980s to mid-2010, this number rose to almost 18 percent.

<sup>40</sup> Ministry of Agriculture (2013): *A Report on Myanmar Census of Agriculture, 2010*. A census carried out in collaboration with UN-FAO.

<sup>41</sup> Agricultural Census, 2010. Also, note that of the total net sown area of 33.5 million acres, 58 percent was held by farms that were less than 10 acres in size.

transferred from the Ministry of Industry to the MoAI as part of policy measures that focused on agribusiness development. This move, in turn, was based on the rationale provided by the Wasteland Instructions of 1991 that allowed allocation of large-scale land concessions (refer to discussions on Wasteland Instructions for more details).

### **3.3 GROWING TREND OF LANDLESSNESS IN A LAND-ABUNDANT MYANMAR**

The number of farm-dependent households increased steadily between 1993 and 2010, from 2.7 million to 5.4 million. However, average farm size decreased from 6.23 acres in 1993 to 4.5 acres per household in 2010. Landlessness or near-landlessness seems to be on the rise, especially in the Ayeyardwady delta and dry zone (Bago-Bagan-Mandalay region), where one-fifth of the households in some villages were landless and engaged in wage labor; an equal number had marginal landholdings of less than one acre. Village tract leaders and residents reported that landlessness had been increasing over the past 4-5 years, with forced sales due to indebtedness being the leading cause of land alienation. Rates of landlessness in Upper Myanmar were generally lower but still ranged from 25 to 40 percent in every village. In relation to landlessness it is equally important to know whether farm dependent households continue to have access to cultivable land which they rent.

The team asked different interviewees to compare current conditions (e.g., depressed prices, lack of credit, few off-farm employment opportunities, etc) with earlier periods in their lives. The universal response was that the current situation was the worst they could recall. Many households claimed that their landholding had dwindled drastically from their parents' time, indicating fragmentation or loss of land. Most households asserted that it was not just the poorest who were suffering but that everyone was affected by the economic downturn.

In the dry zone and the delta region, assets like livestock and poultry are gradually declining and in Upper Myanmar farmers reported having to pawn possessions to make ends meet. Combined with high indebtedness and a lack of wage labor opportunities, people's assets are rapidly dwindling, with little or no margin left.

### **3.4 OCCURRENCE OF LAND SUB-DIVISIONS AND FRAGMENTATION**

The Agricultural Census of 2010 indicates that close to 20 percent of Myanmar's farmland is controlled by 20 percent of rural households, while less than 30 percent of agricultural land is controlled by smaller farmers and sharecroppers. A large number of households have less than five acres (or about two hectares), which is the bare minimum to support a household (as per government poverty estimates). From the early 1960s, access to adequate amounts of agricultural land has become difficult for Myanmar's farming community as governments (especially post the 1990s) laid down crop prescriptions and quota. Land fragmentation became more frequent as the military-backed government of the mid-1990s launched a program to reclaim "fallow and vacant land." Land supply for farming households became non-existent and sub-divisions or informal transactions occurred within families. The situation was exacerbated by unequal distribution of farmland in rural areas and households made every effort to protect their meager holdings by sharing land among family members.

The government also remains inactive on confirming the land rights of communities living inside forest areas (currently under the authority of MoECAF) and formally distributing land to the households that use it. This has created uncertainties as a number of families now farm

land without any formal record.<sup>42</sup> Consequently, investments in land are declining and gaps in food security are widening. However, smallholders still contribute to the majority of the country's rice production and its agricultural labor force.

Government policies have accelerated the promotion of agribusiness to attract private capital and increase productivity. However, family farming remains the backbone of rural livelihoods and has been shown to be dynamic, responsive to change, and an important source of agricultural investment although it is confronting numerous challenges. Across Myanmar, capital-intensive and family farming-centered models co-exist, although the former have easier access to research, development, credit, and extension support. With the agricultural elite holding disproportionately large land holdings, credit for smallholders has become costlier and less accessible. Anecdotal evidence and recent field studies suggest that agricultural elite may restrict smallholders' access to finance, aided by the government's continued focus on agribusiness ventures and large-scale investments in agriculture. Currently, no mechanism exists to correct this focus and provide a better roadmap for the future.

**BOX ITEM 1**  
**Subsistence farming**

In Myanmar, an average farm holder has about 2.5 hectares of land. This can generate only about half the minimum income required for the average farm household (of six persons) to lead a life of sufficiency, if current levels of farm productivity and price structures remain constant. Such farmers have little or no surplus for investment and input purchase. Shrinking farm sizes also lead to a shortening of fallow cycles and rotation. As a result, soil quality and fertility in some highland areas is declining. Many consider the average farm size too small to allow sustainable intensification of smallholder agriculture. The probability of adopting fertilizer and better quality seeds decreases with declines in farm size. Households with smaller farm sizes have lesser cash income, lesser access to agricultural input and credit, lesser ability to deal with drought, and less profitable technologies given higher transaction costs of acquisition and application of fertilizer per unit of operated land. Experiences in neighboring nations and in the Association of South East Asian Nations (ASEAN) region suggest a landholding of about 3 hectares (three crops) and an incremental price structure is required for a smallholder household in Myanmar to move out of poverty.

Several farmers and local officials interviewed during the review noted that while the sale of land provided households high amounts of cash immediately, in the long-term it deprived them of a secure livelihood. While the study could not confirm this trend, growing informal land markets in rural areas (particularly along main road corridors) have registered higher land prices, probably enticing several small and marginal farmers to sell their landholding. Data from the Agricultural Census 2010 suggests that the reverse — small and marginal farmers buying new land and adding to their existing holding — may not be occurring. This is cause for concern. Such land sales could result in economic inefficiencies and decreased investments and production (owing to less intensive-cultivation), compromising Myanmar's capacity to feed itself.<sup>43 44</sup>

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<sup>42</sup> Formal declassification of "forestland" is done by MoECAf and MoAI, which recommend the issuance of certificates to SLRD which undertakes survey, adjudication, registration, and issuance of titles.

<sup>43</sup> In discussions, MoA officials confirmed the growing trend of farmers sub-dividing land parcels and selling a portion of their holdings (informal transactions). A policy brief prepared by the MDRI (2014) reiterated these trends.

<sup>44</sup> Most parcels were operated under owner-like tenure. Data collection for the Agricultural Census of 2010 was undertaken before the approval of the new land laws. Hence, the impact of LUC issuance has not been assessed.

### **3.5 TRENDS IN FARMING AND FARM LABOR**

In areas visited by this team, at least half the rural households depended on wage labor for all or part of their livelihoods. Landless farmers, farm workers, and families not engaged in agriculture fall into this category, but so do many land-poor families. Some farmers reported that opportunities for wage labor, either in agriculture or in nearby towns, were scarce. Farmers with larger landholdings reported that they planned to hire less labor as they had reduced acreage or intensity of cultivation. Significantly, nearly all farmers — even those with larger holdings — said they would engage in wage employment if it were locally available at prevailing wage rates. The Agricultural Census and other research reports cited in this review indicate that a number of household members dependent on agriculture do not own land (or have very small holdings) and work as laborers on family-held farms or on others' farms or on large-scale farms operated by companies (known as estates). This is largely true of rubber plantations. Contract farming practices are increasingly used in sugarcane, oil palm, poultry, fruit and vegetable crops, and export horticulture, with smallholders opting to sign up for seasonal crops. According to field studies and the review team's observation, most contract farms are family-owned and operated.<sup>45</sup> The structure of the rubber plantations industry is unequal, with a majority (close to 40 percent) of growers holding less than 20 acres each and relying on family labor. In such cases, as regional experiences show, contract farming is not a viable subsistence option.

### **3.6 CONTRACT-FARMING PRACTICES**

Contract farming is mostly practiced by food-processing firms.<sup>46</sup> Since they have high interest costs, they are interested in keeping raw material inflow levels close to their capacity. Contracts generally specify planting dates (and thus, indirectly, delivery dates) and quantities to be delivered. It reduces uncertainty and the firm can maintain control over production without having to invest in land or labor. In actual practice, contract farming is more complex than it appears. In Myanmar, it also raises serious concerns.

The agricultural elite needed small and marginal farmers to cultivate their lands to increase income (and prevent land from being classified fallow). This led to some sort of tenant-farming arrangement with small and marginal farmers. In addition, since 2005, the government has encouraged entrepreneurs from China, Thailand, Bangladesh, and Kuwait to invest in contract farms in Myanmar. As of 2014, more than a million hectares of farmland in the Ayeyarwady delta and other regions are estimated to be under some sort of contract farming. For most smallholders in the dry zone region in Myanmar, irrespective of economic status, contract farming is emerging as an important, though not chief, income source. This new model contributes to the deteriorating rights of smallholders and landless laborers, but as anecdotal and media reports indicate, its popularity is increasing. Around one-fifth of the country's smallholders are engaged in mass production and export of seasonal crops, mostly through contract farming. A careful study of labor dynamics in such farms shows that contract

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<sup>45</sup> Haggblade, S., et al. (2013): A strategic agricultural sector and food security diagnostic for Myanmar, Report for USAID.

<sup>46</sup> In Thailand, smallholders engaged in contract farming generally produce several crops at the same time. The most important factor is access to land and labor. Farmers who have land fit for the purpose will continue to grow paddy with additional crops as per contract farming arrangements, i.e., farmers produce both cash crops for sale and paddy, vegetables, and fruits for subsistence and self-consumption. In Myanmar, such diversification is rare while excess use of pesticides and chemicals to meet contract targets occupy farmers' minds. This triggers more economic and capital risks for the farmers.

production has strongly reshaped labor relations in the area. Piece-rate and contract labor arrangements have emerged in response to tightly regimented production and cost schedules. Such arrangements are facilitated by the displacement of poorer households from their villages either seasonally or permanently.

In spite of this, the popularity of contract farming is likely to increase. Food security is a key agenda for the ASEAN community. Since 2008, member nations have agreed to establish a single economic community i.e., ASEAN Economic Community (AEC) to deepen the degree of economic integration within the hub while enhancing connectivity. The AEC Blueprint is organized along four main characteristics: (a) a single market and production base; (b) a highly competitive economic region; (c) a region of equitable economic development; and (d) a region fully integrated into the global economy. This will lead to investment liberalization and facilitation.<sup>47</sup> The implementation of AEC is likely to lure farmers into contract farming although they might not understand its consequences, leading to loss of land to foreign investors and infrastructure projects. This issue deserves detailed investigation to better protect the rights and economic security of the farming community.

### **3.7 RIVERBED FARMING**

In the dry zone and delta regions of Myanmar, this is a popular off-farm income source. Close to one-third of the villages visited by the review team farmed riverbeds. Households noted that income from such farming covered nearly two months of family requirements. Access to riverbeds is generally allowed by village headmen. However, riverbeds do not feature in rural development programs or long-term strategies to improve landless households' access to land. The government should consider promoting "riverbed farming" to improve livelihoods and income-earning opportunities among landless and land-poor households. Land distribution and allocation for riverbed farming and appropriate training for farmers should be considered. This will allow farmers to make the most of large areas of fallow land near riverbeds which are normally unclaimed and uncultivated. Alluvial soil and moisture makes riverbeds suitable for seasonal vegetable cultivation, particularly during the dry season.

### **3.8 GROWING FOOD INSECURITY IN ASIA'S "RICE BOWL"?**

For several decades, Myanmar (erstwhile Burma) was described as the "rice bowl" of Asia. Rice was one of the country's primary farm outputs. Since the 1960s, however, rice production has progressively declined. As of 2010, close to 20 percent of demand for arable land could not be met. Although more than half the arable land is still used for paddy production, total production has fluctuated around 30 million tons in the past five years (2008-14).

Based on interviews, we believe that crop output has been declining and will continue to fall significantly unless considerably greater credit and support become available and crop prices improve markedly. With increasing land fragmentation in rural areas, a significant reduction in paddy production is all but certain if conditions remain unchanged. Current estimates for the number of net rice buyers versus net sellers in Myanmar is unavailable, but based on international experience the country is likely to have more buyers than sellers.<sup>48</sup> As a result,

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<sup>47</sup> ASEAN Integrated Food Security Framework, 2009.

<sup>48</sup> World Bank (2014): *Myanmar: Analysis of Farm Production Economics, Phase 1 Report*. Also refer to Ian Brown (2005): *A colonial economy in crisis: Burma's rice cultivators and depression in 1930s*. RoutledgeCurzon.

an average 61 percent of the total expenditure of Myanmarese consumers is on food.<sup>49</sup> The expenditure share of rice ranges from 25 percent for wealthier people to 50 percent for the poorest, suggesting that rice, once the country's staple diet, is becoming increasingly difficult to afford.<sup>50</sup>

Rice production is a livelihood for about 70 percent of Myanmar's population. Higher and more profitable rice exports improve farm incomes and food security for rural poor. Increasing rice exports will spur inclusive growth and poverty reduction in Myanmar for the next decade. Demand suggests Myanmar could increase diversified rice and vegetable exports over the next 1-20 years, particularly to neighboring nations and Europe, earn higher incomes, and diversify risks along different markets. Obstacles to this are low productivity, lack of access to credit and farm inputs, and tenure insecurity that discourages investments in land. Improving infrastructure and extension services with a broad menu for small-scale investments and use of land areas would help raise agricultural productivity and change farm practices, including the choice of crop varieties, to match evolving market demands. However, this would require conducive agricultural policy to modernize the value chain in the farm sector.

### **3.9 LAND TENURE–FOOD INSECURITY LINKAGES<sup>51</sup>**

Various factors have contributed to the dwindling size of smallholdings in Myanmar. Traditional inheritance norms subdivide landholdings over generations; each generation receives a smaller holding. Policies and programs to support supply of new land to communities are lacking. Unfavorable government policies deter land investment. As a consequence of water scarcity, difficulty in accessing fertilizer, and increasing indebtedness, smallholdings are being converted to non-agricultural uses or sold in the informal land market. Farmers are being forced to look for wage labor or non-agricultural occupations to make ends meet, often venturing to cities in search of employment. This implies increasing landlessness and rapid urbanization. The Agricultural Census of 2010 seems to confirm these trends of land consolidation, land fragmentation, and growing landlessness and near-landlessness among farming communities. These trends need a policy fix or they could spell economic problems like food shortage, since Myanmar's smallholders are responsible for 90 percent of the country's paddy production.

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<sup>49</sup> All the data on agriculture and farm analysis is cited from the following sources unless otherwise stated. Refer to (a) World Bank (2014): *Myanmar: Analysis of Farm Production Economics, Phase 1*. A study conducted by a consultant team and financed by LIFT/UNOPS; (b) Ministry of Agriculture (2013): *A Report on Myanmar Census of Agriculture, 2010*. A census carried out in collaboration with United Nations - Food and Agricultural Organization (UN-FAO); (c) Aung, M.M. (2012): *Production and Economic Efficiency of Farmers and Millers in Myanmar Rice Industry*, BRF Series no. 471, IDE, JETRO, Japan; and (d) Dapice, D., et al., (2011): *Myanmar Agriculture in 2011: Old Problems and New Challenges*, Harvard Kennedy School, Ash Center for Democratic Governance and Innovation: Harvard Kennedy School.

<sup>50</sup> Our observations were confirmed by a recent World Bank study — (2014) Myanmar: Capitalizing on Rice Exports Opportunities. Myanmar has the potential to more than double its rice exports by diversifying and increasing rice production, opening its rice milling sector to direct foreign investment, and reducing export transaction costs, thereby helping many rural poor to escape poverty. Acknowledging this, the government has asserted that improving agricultural productivity and promoting rice exports are top priorities. Despite its plans to export four million tonnes of rice by 2020, annual rice exports only reached 1.3 million tonnes in 2013-14. The rice-export strategy also favors the production of low-quality rice, largely sold in Africa and China. Consequently, farmers have earned minimal profits and agribusinesses have skipped necessary investments. The situation is worsening as global demand for low-quality broken rice is shrinking.

<sup>51</sup> The review observed that at least one-fifth of farmland areas had “on-farm fish ponds” and reportedly contributed toward household food source and income.



Across the country, land development is disorderly and land-use planning is weak, triggering an uninformed land market that relies on unregistered transactions and speculative deals. This affects the ability of farming households to climb out of poverty. In the future, focus must be on strengthening national capacity to identify and prepare better programs and projects to support improved tenure security among smallholders and develop land-resource planning information and programs for land conservation and rehabilitation. These efforts should be undertaken at all levels. This will help balance land fragmentation and consolidation, so that sectoral investments are well-targeted, and support the development of livelihoods for marginalized sections of rural society. Myanmar must build on its most important asset base — millions of small and medium farmers — by facilitating their access to credit, inputs, and markets. Such an approach is appropriate to jumpstart rural growth, increase food security, capture export markets, generate jobs, and reduce poverty.



# SECTION IV

## STATE LAND LEASES, LAND ACQUISITION, AND LAND CONFISCATION

In Myanmar, three terms recur in discussions on economic development policies and programs — land confiscation, land acquisition, and land concessions. These highlight features such as (a) land confiscated without due process or compensation and probably using force or political authority; (b) land acquired through a largely faulty process; and (c) limited-period permits granted for use of land for development and production/extraction.<sup>52</sup> These methods of land acquisition have a similar effect — rendering households landless or without access to vital livelihood resources. Smallholders and the poor are the hardest hit. They face an uncertain future, mounting debts, and no immediate way to start rebuilding their lives without access to resources. As a result, most discussions on land in Myanmar tend to overlap with these three distinct but related issues. The general understanding of “land confiscation” is rather straightforward. The current legal framework in Myanmar defines land acquisition (refer to Land Acquisition Act of 1894) but describes “land grants/permits.” In official discussions, no clear distinction is maintained between these terms.

### **4.1 HISTORY OF LAND LEASES AND CONCESSIONS**

Since the early 1990s, development planners conceived ambitious national projects to achieve economic benefits from natural resources. Myanmar’s government developed investments in land through land leases/concessions granted for agro-business/forestry. The objective was to boost intensive agricultural and agro-industrial activities to generate revenue and increase rural employment by intensifying and diversifying livelihood opportunities. However, land allocation for this purpose has neither been straightforward nor has it yielded expected results. Fertile tracts targeted by investors are usually occupied or used by rural communities. They are acquired by ousting traditional occupants and users, without adequate compensation, often enforcing poorly framed policies and regulations. This means that land leases/concessions inhibit households’ access to land, forests, fisheries, and other community-held resources. This resulted in and continues to cause land conflicts that negatively affect the livelihoods of many households and social and political stability.

Between 1991 and 2010, the government appropriated land to facilitate national economic development. However, no formal or uniform definition of “land concessions” was provided. In general, the following permits/allocations are considered land concessions: (a) land allocated for agribusiness ventures under Wasteland Instructions and later the VFV Law, 2012 and (b) land allocated for commercial ventures owned by the military and various ministries as “State-owned enterprises;” some analysts include mining and other concessions too. Such land leases/concessions were theoretically allocated using a concept of “fallow or vacant” land to identify unused land tracts, which were “acquired” by the State and allocated to

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<sup>52</sup> In this section, for want of a better term to describe the situation, the term “lease of State land” or “State land lease” is used and refers to land areas claimed to have been allocated by the government to various entities for development, including land tracts compulsorily (or forcefully) acquired and cases listed by civil society as land confiscation. It also covers instances reviewed by the President-mandated *Land Use Management Committee* at the central, state/regional, district, and township level to systematically address cases.

investors based on applications. In practice, land acquisition was facilitated by the police and armed forces and uncertain laws and administrative procedures were used to take over land for “public purposes.” Public purpose was broadly defined as the interest of the nation, the State, and all people. The lack of a clear definition led to disruptive differences of opinion among various stakeholders. Broad discretionary powers were granted to State administrators to define public purpose. Contradictory regulations and instructions, manipulation, coercion, and confusion were reportedly used to acquire land from farming households and allocate it to favored individuals or groups. These factors, coupled with the urgent need to industrialize, put land acquisition at the heart of the land-law reform debates in Myanmar after 2010.

Antiquated laws such as the 1894 Land Acquisition Act give the regime the right to take over any land, making local people extremely vulnerable to forced displacement without any remedy. Although no reliable data is available, Civil Society Organizations (CSOs) estimate that since the early 1990s, close to five million people (including ethnic groups) may have been permanently and involuntarily moved out of their homeland. An equal number have lost their landholdings due to deforestation or land concessions.<sup>53</sup> Existing large-scale concessions may now cover 4-5 million hectares (around 12 million acres). Where shifting cultivation (*taungya*) is practiced, farmers’ land rights are not secure, and many concessions have encroached their farmland, fallow land, and other forms of livelihoods (e.g., grazing pastures). This has generated considerable uncertainty for ceasefire processes, as demonstrated by the continued fighting in Kachin over the years.

Rights holders are losing out to local elite and domestic or foreign investors, because they lack the power to claim their rights, and defend or advance their interests. In Myanmar, land leases/concessions are seen as an opportunity to secure large tracts of land at rock bottom prices for large-scale mechanized farming. This does not support smallholder farmers, particularly women-headed households whose livelihoods depend on their meager land assets.

## **4.2 STATE LAND LEASES**

The government generally grants leases/permits for: development (e.g., infrastructure), industry (special export zones and industrial parks), extraction (logging, mining, and energy), agro-industry, and forestry. The military government has granted large-scale State-land leases since 1991; the adoption of the Wasteland Instructions that year accelerated the process. The policy assertion was that large-scale land allocations would trigger national economic development and provide better food security and income opportunities to farming communities. These leases favored large-scale investors, who gained access to land at low rents and loans from State-owned banks as an incentive to cultivate land granted to them.

Available data with MoAI/SLRD and other sources compiled by this review team indicates that by end-2014, about 400 national companies and 19,000 small-scale growers had been allocated about 2 million hectares (nearly 5 million acres) of VFV land and deep-water land, and 0.40 million hectares (one million acres) of forest land, totaling about 5.4 million hectares (12.5 million acres). The deep-water lands were abandoned but held as a land claim by the respective concessionaire. Forest allocations were mostly for rubber plantations, presumably to small-scale planters. MoAI/SLRD reports for 2014 indicate that at least one company controls over 200,000 hectares (about 420,000 acres) of land. These concessions are managed by MoAI, MoECAAF, and GAD. Important commodities grown under these concessions are

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<sup>53</sup> As some of the land leases were for specific, time-bound purposes, some analysts and CSOs advocate restitution of land to the original occupants. Whether these original landholders will get back their land remains unclear.

rubber, oil palm, and rice; cotton, sugarcane, or jatropha are also grown. Foreign direct investment in Myanmar is concentrated in energy and extractive sectors.<sup>54</sup>

A contract (often called a permit or concession agreement) is prepared for State land leases, allowing the investor to carry on specific commercial or development activity in an area. This could be developing land/natural resources, exploring for minerals, or operating a concession stand. Such an understanding generally covers agribusiness ventures, mining concessions, oil and gas exploratory permits, and logging in forest areas. It also includes water-treatment plants and hydropower or gas projects approved under Build-Operate-Transfer arrangements. Small- to medium-scale conditional leases in urban areas are also included.<sup>55</sup> Exploratory permits are a different category of land-use rights; they are for a limited duration as extraction rights are not included.

All land data is maintained by SLRD. However, with regard to State land leases, SLRD holds data on agribusiness ventures and other permits while forest land and fishery lease data is with MoECAF and the Department of Rural Development (DRD)/GAD, respectively. The government has no unified database on land concessions or land permits for development. Organized methodology to coordinate data sharing or management at the district, provincial, and national levels is also lacking.

### **4.3 LACK OF DUE PROCESS AND COMPENSATION**

The government's policies and regulations on classifying land as "fallow" and acquiring land from current holders are rather vague. The government generally takes over the land of communities living in forest areas or mining or hydropower zones, on the basis of: (a) assured jobs in the mine/plantation for a specified number of days; (b) replacement of land; and (c) cash support for dislocated families. The government inferred that private investors would provide compensation in kind (improved infrastructure and other facilities) and cash (for displaced families) although evidence of actual provision is unclear and often unreported.

Civil society has expressed concerns that despite awarding numerous concessions since 2001, few long-term jobs on farms, mines/mineral plants, and plantations have been given to local residents. Such job offers are likely to have been proposed by investors as "bargaining chips" to get pre-concession agreement from local families. If local claims are to be believed, jobs are either given to middlemen who claim to represent the communities or labor is imported from elsewhere including investors' home countries. The government recently acknowledged that several State land leases operate outside the active oversight of any of its agencies and often import labor. Some sources even cited anecdotal evidence of migration of local families, forced out of traditional habitats, to urban centers in search of livelihoods and better living conditions; however, this has not been verified.

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<sup>54</sup> Data source: Ministry of Agriculture and Irrigation (2014): Myanmar Agriculture in Brief. Also, personal interviews with officials at SLRD/MoAI in Naypyitaw.

<sup>55</sup> It is not clear how land allocated for electricity transmission lines are classified and managed.

#### **4.4 REVIEW OF STATE LAND LEASES**

Large-scale concessions for investors were established by the General Ne Win government in the 1960s and refined by the SLORC regime from 1991.<sup>56</sup> The need for rapid economic growth based on better land use was offered as the reason for this allocation. Favored business groups were provided monetary incentives, loans from State-owned banks, and access to cheap land to encourage investment in modern large-scale farming and plantations. Investors paid low rents (about \$ 3 per acre per annum for perennial crops) and these and taxes were exempted for the first 2-8 years depending on the crop.<sup>57</sup> Initially, up to 5,000 acres was allocated on first application and more when the investor performed well. As available reports indicate, this aided large-scale land allocation between 1991 and 2010.<sup>58</sup>

In principle, the government can only allocate fallow land to an investor. However, it is difficult to find suitable large tracts of fallow or unoccupied State land. Therefore, the government acquired (requisitioned) fallow and privately used land. Communities and families depending on this land had no opportunity to negotiate or receive adequate compensation. In neighboring countries, investors have to agree to provide, for immediate requirements and as part of the business plan and contractual agreements, some cash support and a package of services as compensation, in addition to assured access to employment and income for long-term needs. No such scheme exists in Myanmar.<sup>59</sup>

Evidence from MoAI's 2014 report (Myanmar Agriculture in Brief) indicated that only close to 20 percent of the five million hectares approved for land concessions had in fact been developed. This report indicates that government inventories provide information only on reported concessions with no data on yield. SLRD is preparing a six-month report on State land leases granted under the Wasteland Instructions and other regulations. Available inventories confirm a significant under-reporting of details on land permits and their uses. This is largely due to: (a) fragmentation and lack of upstream monitoring of approval, reporting, and regulating processes and procedures and (b) lack of accountability within and across responsible State institutions. Evidence also indicates that many concessions awarded since 1991 may not be performing or contributing to national economic development.

Senior government officials readily conceded that State land leases/concessions have been negotiated and awarded in haphazard and inconsistent fashion with negligible quantification and qualification of their impacts. (For instance, details on fee payments required and made, revenue-sharing, labor requirements, actual inputs for land development, and the socio-environmental impact have not been considered.) The principal modalities of land concessions have attracted greater public scrutiny and attention since 2012 when different sectoral reforms were launched. This included the Farmland Law, the VFV Law, and the

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<sup>56</sup> Land areas were allocated under the Wasteland Instructions of 1991. This was seen as an agri-business model providing economies of scale.

<sup>57</sup> MoAI, Agriculture in brief. 2014.

<sup>58</sup> The allocated land may be titled under the Farmland Law of 2012 if approved by the Central Committee for land-use conversion (Section 35 of this Law). However, so far, these lands have not been reclassified. Once such reclassification is completed, these parcels can be issued a LUC. Some analysts argued that such a reclassification would further reinforce rights that had not been allocated on a transparent basis. Any such classification should first be tested for transparency so that land grabbing is not formalized.

<sup>59</sup> The assumption here is that when land-use rights are transferred, the family not only loses its landholding (or access rights) but also its source of livelihood. Therefore, when determining land values, costs and fair land valuations should be included. These should enable the resumption of livelihoods for families that lose access to those lands.

enactment of the Environmental Conservation Law, which mandated that Environmental and Social Impact Assessments (ESIAs) be performed for every land-based investment.

Government entities at different levels have issued numerous land-use permits for agricultural development, plantations, and mining operations. It is currently the most notable feature of land use and management in Myanmar, and one of the most significant challenges to the sustainability of the national development process. Reports published by MoAI/SLRD and MoECAF on land use and State-land leases suggest that about 20 percent of all Myanmar's land has been awarded to foreign or joint venture investors for 30 to 70 years.

#### **4.5 IMPACT OF LAND LEASES AND CONCESSIONS ON FARMING COMMUNITIES**

Another important impact of State land leases is the local populace's declining access to productive resources. In rural Myanmar, common property resources (CPRs or communal land areas, including grazing pastures) contribute significantly to food security, especially for the poor. The degradation of CPRs and the ever-increasing dependence of the poor on CPRs represent an invisible process of growing poverty and declining access to land and resources. Several farmers interviewed claimed that their access to grazing lands and lakes/ponds, required for livestock, is declining largely due to government takeover of land for other purposes and lack of new sources. Non-recognition and non-enumeration of communal pastures and community water bodies and the poor's dependence on them are responsible for growing rural poverty among farming communities. The poor must be offered alternatives to reduce their dependence on CPRs or increase the productivity of CPRs and regulate their use to enhance regeneration and supply. With increasing focus on industrial agriculture and agribusiness ventures, CPRs are unlikely to receive policy attention from the government.

Evidence suggests that malnutrition and food insecurity in Myanmar has attained chronic proportions because most rural household incomes are marginal.<sup>60</sup> Anecdotal evidence shows that because of the numerous land leases awarded to date, many rural households are rapidly losing access and use rights to traditional land holdings (and communal lands). This situation is relevant to any one of the 130 or so officially recognized ethnic groups distributed across the country, who try to maintain close ties with traditional lands. In addition, land used by farmers and ethnic groups is most frequently targeted for awarding State leases. The compensation offered to communities, including the possibility of wage-labor in plantations is insufficient to realistically maintain or improve household/community welfare and livelihoods. Civil society studies widely reported an increase in the number of families across Myanmar that have had some or all of their land expropriated, mainly due to lack of transparent governance, weak rule of law, and the work culture of local authorities. In peri-urban areas, landholders become victims of speculation that drives up the opportunity cost of holding on to their land.

Another issue is access to markets to sell agricultural produce. Power inequalities in the market are serious enough to erode the marginal incomes that smallholders rely on. Small-scale farmers lack power in the marketplace and are often undermined by powerful interests. They have limited bargaining power and not enough clout to negotiate and set prices, with the result that they participate in the market on poor terms.

In sum, this government policy has generated significant debate on (a) the method for identifying land as "suitable for agricultural investments and earmarked for grant as per State lease/concessions;" and (b) the economic and social impact of these leases/concessions. Poor

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<sup>60</sup> UNICEF and WFP Nutritional status report

communication and consultation between communities and government entities has marked the implementation of such policies. The gradual damage caused to rural communities' economic systems by land concessions will force them into new unfavorable economic systems. It would also result in extensive land-use changes; displacement; loss of access to and control of local natural resources for dependent communities, especially indigenous people; and destruction and loss of the rich biodiversity of primary and naturally regenerating forests. Local populations are unfamiliar with the contract labor methods practiced by concessionaires and stand to lose as a result. Compensation income provided is often insufficient to survive after access to CPR has been removed or destroyed. In such a situation, it is worth considering whether rural communities should be able to review and refuse to give up their land when the State demands it for other uses.

#### **4.6 KEY OBSERVATIONS**

The challenges associated with State land leases have been substantially documented by CSOs and independent researchers. The government's experiment with land concessions has not yielded positive economic or social results. Investors are reluctant to invest anything more than nominal sums on land. Consequently, few concessions have generated expected revenue streams for the government. Further, the impact of land concessions on communities and livelihoods and the damage caused to existing economic patterns within the local context raise serious concerns. Insufficient and poorly conceived compensation and other service packages have failed to rebuild livelihoods, further impoverishing the majority of impacted families.

Lack of transparency, unclear understanding of social issues; incorrect interpretation or uneven application of laws and regulations in awarding contracts; misuse and abuse of public powers to support private developments; issues related to compensation and communication; and lack of accountability among decision-making agencies and individuals have resulted in numerous non-performing and/or poorly performing concessions. As a result, State control over natural resources has slipped (as land areas are under concessional arrangements) and State revenue has suffered losses. Critical challenges remain in areas such as screening methodology for reviewing business plans/proposals received for land concessions/leases, valuation, social protection measures, and public disclosure.

One of the critical steps the government should undertake is a two-step review of available data/information on land concessions. This could commence with an examination of how concessions are currently monitored and who is responsible for them. Current data on State land leases already awarded must be gathered and reviewed systematically and transparently. The government must respond to escalating social, economic, and environmental concerns expressed on land concessions. A moratorium on new State land leases and concessions is urgently required to clarify existing tenure claims and address past shortcomings. Any lapses in addressing such issues will erode public trust in the government and compromise efforts to ensure good governance structures. Without significant efforts to deal with tenure issues through land reforms, addressing economic growth or moving forward with programs like LUCs will remain paradoxical.



# SECTION V

## UNDERSTANDING THE LAND REGISTRATION SYSTEM IN MYANMAR AND THE ISSUANCE OF LAND-USE CERTIFICATES (FOR FARMLAND AREAS)

The Farmland Law of 2012 is considered indicative of the government's intention to reform land laws. It requires LUCs to be issued to all farmlands for which SLRD has Kwin maps. This was the first time the government formally prepared and issued LUCs to farmland holders. Nationally prescribed procedures and guidelines were created for this process. On the face of it, this offers farmland holders the security they have so long been denied. LUCs will allow them to legitimately use their land as collateral to access credit or sell or transfer land or conduct other land-related transactions. The process was completed largely within deadline and more than seven million LUCs were prepared and issued (against a target of nine million); work is on to complete the rest. However, concerns remain. Areas for which SLRD has no records have not been covered. Areas plagued by conflict or land other than farmland have not been covered. The fine print on the LUCs continues to ratify the State's right to usurp land and procedures for appeal against such land takeovers are unclear. Minimal information was made available to the public and work was largely carried out by respective Farmland Administration Bodies (FABs) and village headmen. Oversight and quality monitoring was marginal. The LUCs were manually drafted and land records are still being maintained on paper and could be destroyed by bad weather, erasing all the effort (in terms of money and human resource) that was put into this exercise. The benefits of LUCs have also not been fully understood by farmers. As a result, subsequent land-related transactions do not seem to be recorded diligently, which hinders the establishment of a formal land market. It is important to utilize the momentum generated by this process to put in place an effective, reliable, and transparent land-administration system.

### **5.1 PAST AND EXISTING SYSTEMS**

Customary laws and local traditions and practices continue to operate alongside statutory laws in many remote, ethnic areas of Myanmar. This is also because the British annexed Myanmar over a period of time.<sup>61</sup>

Land documentation in Myanmar has been rather disorderly. Three institutions in Myanmar determine who has land rights: socio-cultural structures, the market economy (largely informal), and the State.

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<sup>61</sup> Several Burmese territories, including Arakan and Tenasserim were annexed by the British after their victory in the First Anglo-Burmese War in 1824-6; Lower Burma was annexed in 1852 after the Second Anglo-Burmese War. After the Third Anglo-Burmese War in 1885, Upper Burma was annexed, with the Chin Hills being acquired a decade later in 1895.



The Burma Land Act of 1898 defines “State land” as “all land of which no absolute and revenue free grant has been made, recognized or continued by or on behalf of the government.” It further stated that “no right of any description as against the Government shall be deemed to have been, or shall hereafter be, acquired by any person over any land.” This Act also provides for State recovery of land not used for two consecutive years. The 2008 Constitution moved a step further and declared the State “owner of all lands” and reinforced government control over land. The implementation of the Farmland Law of 2012 and the issuance of LUCs will have to be reviewed and understood against this background.

Local land-documentation systems have long existed across Myanmar. These include letters or written notes acknowledging physical control and customary ownership when land is sold, inherited, or parcels divided. These documents are prepared by the owners (sellers or buyers) for review and endorsement by the head of the Village Tract Committee (VTC) and are often witnessed by representatives of the parties involved. Copies of these documents should be forwarded to the local SLRD to amend the name of the property tax payer, but the parties involved often forego this step primarily due to the lack of a specified procedure. As a result, many localized land documents exist but are not included in formal land agency records.

In Myanmar, land-use “rights” can be acquired through multiple means, all largely informal. Despite dubious transactions and the lack of a land market, informal land transfers continued until 2012. Land-use rights could be obtained through inheritance, purchase, and allocation or entitlement from the government or individual holder. In the past, village headmen validated contracts (*lu-mu-yei*) based on customary practices. Such contracts were accepted by local authorities and concerned parties generally requested SLRD officials to record the transfer. Village headmen and SLRD officials were paid, at generally acknowledged rates, for services provided. This approach combined customary practices and formal mechanisms, but was not guided by official procedure. Such transactions resulted in land disputes later.

Since the 1980s, the government issued each farmer a booklet entitled Farmer Agricultural Production Record. This “farmer booklet” specified the landholder’s name, area held, crop produced, and other details. It is used to assess tax and procurement quotas. It prevents land transfers and neither it nor a tax receipt can be used as proof of ownership. Only State-land leases and agribusiness concessions are deemed formal and legal as they are granted based on a legal instrument. The issuance of this booklet was managed by local authorities and SLRD confirmed the name and land area held (as per tax register). Some land areas were sold or bought using this booklet as a reference. However, these were not official land transactions. Between 1962 and at least until 2012, land was transferable only for continued farming and such transfers were endorsed by the government in some way. Local land-tenure practices and customary arrangements could not accommodate such a restrictive framework and land transfers continued. The Farmland Law of 2012 replaced this booklet to some extent.

## **5.2 PREPARING AND ISSUING LUCs**

The Farmland Law came into force on August 31, 2012. It required the MoAI to issue LUCs to all farmland parcels in use, for which SLRD held Kwin maps (basic cadastral maps for farmlands). The MoAI established a system of land registration for farmers that ostensibly provided LUCs. These LUCs would create rights to sell, exchange, access credit, inherit, and lease the land to which farmers held rights. However, the government retained ultimate ownership of farmland (in other words, leasehold tenure instead of freehold would prevail). Only lands officially classified as farmland (as opposed to forest, town, or military land, for example) are eligible for LUCs. The MoAI does not have jurisdiction over other types of

land. Significantly, a considerable amount of currently farmed land is not officially classified as farmland, does not have Kwin maps, and therefore, is not eligible for LUCs.

Most landholders were able to claim LUCs by presenting some evidence of continuous use (or productive occupation) of land parcels, primarily through endorsement from village heads or by providing a copy of land-tax receipts. This was easier in areas where village heads or traditional leaders could give evidence of possession of a land parcel. Some families had no documents but their land was recorded in existing Kwin maps. Some disputes over land ownership arose when documentation was prepared. Preparing and completing documents required was not a hurdle for many but many grievances were cited against local officials processing LUCs. Disappointment was voiced over: (a) numerous errors in LUCs that were reported but were not corrected by the SLRD and (b) lack of information on resolving land disputes, which caused considerable frustration. Several beneficiaries claimed they had not reported errors in certificates because they were either afraid of being asked to pay for corrections or did not know what to do if errors were found.<sup>62</sup>

In theory, issuing LUCs demanded a lot of communication between SLRD personnel, FAB members, and communities. However, there was little evidence of more than one formal meeting for public consultation being convened by village heads. Similarly, parcel boundaries seemed to have been defined by the SLRD without consulting landholders. Information on LUCs was usually orally disseminated to landholders, i.e., a general public meeting was held and village heads distributed forms to be filled. Often, village heads themselves were unfamiliar with the Farmland Law and the process for issuing LUCs. Thus, discussions were limited to filling forms as directed. Women were less likely than men to have received information directly from the SLRD team or village heads and more likely to have received it from a family member or from printed materials (probably referring to maps and parcel lists).

In interviewing landholders, the review team observed that beneficiaries seemed to understand that LUCs would not be issued for parcels under dispute (over ownership or location of parcel boundaries).<sup>63</sup> Several disputes were intra-household or among neighbors; 12-15 percent were moderate to serious conflicts. The review team found that the Farmland Law had reactivated several old land disputes as original owners felt confident about raising the issue with FABs. Some disputes related to land confiscation under the crop prescription, i.e., farmland seized from “irresponsible” farmers who could not produce the government’s minimum paddy requirement and thus lost land (transferred by village heads to farmers who could produce the required amount of paddy). During the LUC preparation process, several “original owners” submitted their objections and claims that the VTC and FAB attempted to resolve. At least in one district in the delta region, several farmers raised the issue of land seizure with the Parliament’s Land Investigation Committee in 2012.<sup>64</sup>

According to VTC heads and local officials interviewed, if the disputes were serious, the FAB referred them to the judiciary rather than mediating. FAB members and local officials acknowledged that SLRD’s field teams were ill prepared to assist village leaders and FABs to

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<sup>62</sup> It is important to note that the entire process of preparing LUCs was manually carried out, leaving SLRD officials exhausted.

<sup>63</sup> SLRD officials claimed difficulty in identifying the land holders as a factor responsible for some of the delay in issuing LUCs. It is caused by absentee owners in many cases and the death of owners in others.

<sup>64</sup> Details on action taken by the Committee were not readily available.

resolve serious land conflicts.<sup>65</sup> The review team came across several instances where farmers had raised land-acquisition issues when FAB/SLRD teams assembled to prepare LUCs. The FABs/SLRD received complaints of corruption, irregularities, and protests against compensation rates far below prevailing market prices.

### **5.3 CONCERNS POST-ISSUANCE OF LUCs**

LUCs were prepared and delivered by FABs and SLRD offices under a very tight timetable with insufficient orientation and resources to support the work. This raises a number of concerns on the quality of the process and outputs. A field validation of the LUCs distributed should be a priority for the government so that public confidence in the process, the product, and the land-administration system is enhanced.

It is not clear whether LUCs will help address some land concerns and develop capacity to deal with the multiple challenges in land governance or generate additional challenges (widespread dissatisfaction with LUCs delivered and consequent social unrest, speculative land markets, etc). As land markets gradually open up and expand, existing safeguards to protect the farming community should be examined and strengthened to ensure that village and township administrations can adequately protect community rights and promote social equity. This should include community participation in compulsory social assessment of land when investments are proposed, before further steps are initiated to design and implement a development plan.

Myanmar needs a modernized land-information system to secure the full benefits of the LUCs issued so far and for sustainable economic and social development in the long run. Capacity building at township/district levels (of SLRD, MoECAf, and GAD) is also needed to improve awareness and understanding of land laws. A fully functional land-information and -administration system and improved property valuation and taxation systems and procedures are expected to generate wide-ranging positives.

On land parcels for which LUCs have been issued, successive land transfers often go unrecorded. The LUC issuance program has not been supported by any long-term plan to promote economic stability or environmental protection. It is also not clear how some critical areas like shifting cultivation (*taungya*) or land-mined zones in conflict areas would be covered under a land-registration program in the coming days.

Importantly, certification efforts need to be accompanied by capacity building at the village level to improve awareness and understanding of land laws. The land rights of traditional land

<p><b>BOX ITEM 2</b></p> <p><b>Are LUCs for farmlands enough to build a sustainable land administration and governance system?</b></p> <ul style="list-style-type: none"> <li>▪ Were LUCs delivered to eligible and legitimate landholders? Validation is essential to build public confidence.</li> <li>▪ What is the public perception of LUCs and their use?</li> <li>▪ Will LUCs minimize fears/ anxieties over land loss or land grabbing?</li> <li>▪ Have LUCs protected the rights of women and vulnerable groups in the country?</li> <li>▪ How will new land records be stored and maintained?</li> <li>▪ Has a strong land-based economy emerged and/or have socio-economic progress patterns and power relations changed?</li> </ul> <p>Ground realities give rise to these questions. A field validation would help in building a land-administration system in the long run.</p>
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<sup>65</sup> FAB or SLRD has no systematic method to record and monitor land disputes. Lack of reports on disputes has left SLRD with incomplete records and is likely to weaken the agency's ability to analyze and resolve these cases in the future.

users (and customary tenure holders), including those associated with land in long fallows and land used for grazing and forest products, must be protected. Another issue relates to granting forest land to small and medium farmers, given the lack of rights among those who moved to erstwhile forest areas and restrictions on crops to be cultivated on farmland. Drawing from the LUC experience, one promising option is the issuance of “collective territorial type” rights (which will also address land rights of those engaged in shifting cultivation). This will not be an easy task as modern State notions in Myanmar, as elsewhere in the world, advocate that formal institutions like land agencies should be responsible for collective land-use rights. The potential conflict between formal and forest-dwelling communities and the ability of formal institutions to undermine customary entities like shifting cultivators, ethnic group leaders, and representatives is significant. Only long-term engagement with all stakeholders, building trust and confidence, would help revive customary institutions in a modern context.

Recent policies suggest government intent to pursue reforms in a phased manner. The issuance of LUCs, within the prescribed timeframe, is an important step in reclaiming public trust, although complete information on LUCs may not have been appropriately disseminated. Unless this is followed by validation and measures to secure and store relevant data, this will go down as another ineffective policy exercise. Poor households in rural and farming communities will then continue to suffer and trust in government bodies will erode further. Myanmar should also consider undertaking farmland-governance analysis to establish a baseline against best practice and monitor progress in tenure security of farm households over a period of time.



### **BOX ITEM 3**

#### **Attention to Gender Issues**

Commonly, government programs tend to use the “head of family” concept, identifying a male for land or resource allocation. As a result, few have significant female beneficiaries or even pay attention to gender as a critical category. Myanmar is no exception. The Farmland Law is gender-neutral, leaving the issue unaddressed. Evidence gathered during field visits indicates that although 20 percent of women were involved in preparing applications for LUCs or assisting field surveyors, FAB or SLRD made no special effort to address their special needs to ensure their understanding of and participation in registration and titling. Significantly, almost all FAB members were male.

Little information was provided to women on the option of joint titling (registering land parcels collectively under the names of husbands and wives). In areas visited by this team, 15-20 percent of LUCs were issued jointly or in women’s names. As per the 2010 Population Census, on an average, women-headed households formed little more than 10 percent of the families in the country. Hence, based on the field review, it can be assumed that close to 20 percent of LUCs were issued jointly or in women’s names. However, such LUCs may have been issued to women who were heads of households and not as affirmative action on the part of the land offices. Some land offices undertook some positive steps to ensure inclusion of women as a land rights holder in the LUCs but such instances were not common or systematically pursued.

The study team identified some obstacles to women’s participation: lack of female representation in FABs, laws that required LUCs to be issued in the name of heads of households (usually a male), insufficient female field staff, community meetings held at times that were inconvenient for women, absence of gender-specific information on the land-registration process, and lack of women-only socialization meetings (which tend to deny women a conducive environment for meaningful participation). Within the work of the SLRD/FAB, the issue of women’s access to land must be given increased and critical attention. The challenge here is creating a conducive and enabling environment for women to participate equally and benefit from the FAB/SLRD’s work. This is particularly important in areas where customary tenure arrangements predominate.

# SECTION VI

## LAND GOVERNANCE

Myanmar has accumulated a body of knowledge on land-governance issues over the past two decades and researchers and policy-makers drawn from several areas of specialization have contributed to it. Studies have assessed land governance in critical areas such as rapid changes in land use associated with large-scale land leases, economic development (or lack thereof), climate change, urbanization, and growing demand for food and industrial materials. They found that Myanmar has poorly managed its agriculture and urban expansion, poverty was evident in rural and urban areas, and land tenure and tenurial rights were unclear, resulting in conflicts over land. They argued that these issues justify land administration and policy responses to strengthen tenure security and create an environment for economic development.<sup>66</sup>

### **6.1 LAND POLICY AND LEGAL ENVIRONMENT**

The complexity of Myanmar's legal and institutional environment is obvious from the number of existing laws and regulations alone. By the end of 2014, the land sector was governed by an estimated 70 laws and regulations, creating ambiguities and overlaps. Historical scars from land confiscations and forced acquisitions since 1990s have yet to heal; the enactment of new laws in 2012 (Farmland Law and VFV Law) have only added a new layer of administrative mechanisms. The impact of these new laws is not yet clear. Tenure uncertainty affects farmers' views on these new laws. The unclear provisions of the VFV Law cause concern over government authority to declare land "fallow" without due process and thus confiscate land from farming communities for "public purposes."

The work of land-administration agencies is fragmented, with significant overlaps. Lack of clear judicial authority and sectoral approaches to land management and administration result in inconsistent and discretionary application of policy. A sectoral and compartmentalized approach differentiating between land administration, land-use management, and State land results in policy inconsistencies that have not been reconciled. Customary tenure rights are "invisible," largely ignored in practice. It is also not clear how inputs from public participation, particularly on land acquisition and spatial management, will be incorporated into actual decisions, more so following the adoption of the proposed Land Use Policy (some observations on this policy are provided later in the Annex).

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<sup>66</sup> This commentary on land governance issues is also based on various discussions on economic development projects in the country. Recently, the Kyaukpyu-Kunming oil and gas dual pipeline was targeted by protestors, including farmers who want compensation for land confiscated to build both the pipelines and military bases to secure the area. Other large-scale investments in land that have triggered widespread protests include: Myitsone dam in Kachin state; Monywa Copper Mining, Sagaing division; Salween river hydropower project (six dams to be built across the river); Tavoy Special Economic Zone deep-sea project in Tenasserim division, and Thilwa Special Economic Zone project near Yangon.

## **6.2 MANAGEMENT OF STATE LAND<sup>67</sup>**

Myanmar does not pursue a system of “custodianship” over land, but government agencies are seen as “owners.” This concept of “State ownership” limits MoAI/SLRD’s ability to administer non-forest land. In fact, SLRD now functions more as a land data storage agency. Mechanisms for SLRD’s institutional coordination, apart from farmland areas, have yet to be established. Little information on State-held land is publicly available and regional governments and departments lack data on the amount of State land under their control.<sup>68</sup> CSOs note that the government’s inability to award and oversee land leases transparently prompts concession holders to exploit land with little consideration for long-term sustainability and leaves local communities with few opportunities to participate in revenue streams from resources. In recent years, landholders have received some compensation for land acquired, but less is offered to those holding land on the basis of tax receipts or under customary law and none at all to squatters and informal occupants. Delays in compensation payments are frequent; the fairness of compulsory acquisition has also been contested.

## **6.3 LAND DISPUTES AND CONFLICT RESOLUTION**

Since the late-1990s, protests against land grabbing have been increasing. A majority of such cases are attributed to arbitrary grants of State-land leases by the government as part of the Wasteland Instructions of 1991 and thereafter for various economic-development projects. In 2012, the government established two bodies to deal with land disputes and confiscation — the Land Allocation and Scrutinizing Committee and the Parliament’s Farmland Investigation Commission (with a mandate to accept complaints from the public and propose resolution). The Myanmar National Human Rights Commission established by the President in 2011 has also been mandated to deal with land grabs and disputes.<sup>69</sup> Under the Farmland Law and as part of implementing the LUCs, the government mandated FABs (in a hierarchical manner) to resolve farmland disputes. This assignment represented a conflict of interest as FABs hold both administrative and resolution responsibilities at the same time.

At present, different institutions in Myanmar possess parallel and overlapping mandates and competencies to handle land-related conflicts. However, as several reviews indicate, these bodies are limited to largely treating the symptoms rather than the causes of conflicts and resolving them. This is partly due to lack of orientation, capacities, and coordination between different agencies and inconsistent policies and guidelines. As the formal dispute-resolution system generally favors government agencies, they are less effective in settling disputes between communities and the State. Access to justice is hampered by local political instability, geographical conditions, costs, or lack of familiarity with procedures. Several of these bodies, though familiar with local customary practices, rely on broader government templates, often inappropriate to the context, to address disputes. Appeals are costly and time consuming. People thus tend to look for alternative dispute-resolution mechanisms. Informal and community-based dispute-resolution methods have yielded some positive results,

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<sup>68</sup> During its field visits, this review team came across many periodic supervision reports prepared by SLRD on large-scale State-land leases. These reports were prepared according to a format and should allow proper oversight too. However, it was not clear how such reports have been used or disseminated within the government except that administrative type data was regularly gathered and stored.

<sup>69</sup> International Labor Organization (2013): Update on the operation of the complaint mechanism in Myanmar. A report to the 319th ILO Session in Geneva. On the civil society front, the Myanmar Legal Aid Network supports the resolution of numerous reported cases through formal mechanisms too.

particularly in upland areas where customary traditions are respected. The government must examine available informal and quasi-formal, community-based dispute-resolution mechanisms and pilot them to resolve land conflicts. A proper dispute-resolution mechanism would strengthen good land governance if well managed and resourced.

#### **6.4 CIVIL SOCIETY ENGAGEMENT**

Myanmar has an increasingly large presence of Non-Governmental Organizations (NGOs) and CSOs working on various issues affecting the poor and disadvantaged.<sup>70</sup> Like many other countries, rural and urban land rights have caused conflict between the government and the public, especially farming, forest-dwelling, and urban poor communities. In the resulting standoff, CSOs generally ensure that the voice of the people is heard. They have also taken on the responsibility of disseminating pertinent information to increase awareness. Since the mid-2000s, CSOs have taken an active role in facilitating dialogue on pro-poor and impartial land reforms by highlighting historical land confiscation and poor enforcement of land-acquisition principles, and a fair and adequate compensation [within the understanding of Free, Prior, and Informed Consent (FPIC) although it is often not directly cited] in case of land concessions. Their work has been strengthened through consistent research by organizations such as Food Security Working Group, Land Core Working Group, Myanmar Environment and Natural Resources Network, Mine Action Network, etc. In policy and legal debates, CSOs remain critical of ineffective government policies and processes that sideline the rights of weaker groups in favor of wealthy corporates and the national elite, including families that own large plantations or large-scale land concessions.

While the “tussle” between the government and CSOs continues on several policy and program issues, positive developments have occurred in the past decade or so.<sup>71</sup> In recent years, the government has been willing to create mechanisms<sup>72</sup> to include CSOs in its work to understand grassroots issues.

Despite such positives, there is considerable ambiguity around the present and future role of CSOs in Myanmar. They exist in a limbo with only partial government acknowledgement of their role. Their capacity is nascent, fragile, and rife with both risks and opportunities, especially on land sector engagement in rural and urban areas. CSOs are under pressure to do more to engage the government and the public as the main stakeholders on land issues. Opportunities exist for future engagement between the government and CSOs on land-tenure issues in forests and surrounding areas. For example, the government is currently establishing instruments to implement its commitments on REDD+, tenurial reforms, etc. These will need policies aligned across land and forestry sectors and synchronized with broader political and economic plans. For this, the government will have to work with CSOs, who will play a critical role in coordinating and strengthening efforts between implementing agencies and those responsible for land allocation, and forest uses.

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<sup>70</sup> Data from Pyoe Pin.

<sup>71</sup> Reports regularly published by Land Core Working Group, Myanmar Environmental Group, the Burma Environment Working Group, and other CSOs on Myanmar’s management of land and natural resources, and consequent weaknesses in governance and loss of public revenue provide an example of this.

<sup>72</sup> For example, MOECAF’s OneMap and proposed NSDI as platforms for highlighting land-information management and thereby raising land-governance issues in a broader sense. Refer to Nick Jewell, 2012.



## **6.5 RAISING PUBLIC AWARENESS ON LAND ISSUES**

Past experiences suggest that increased public awareness and community participation in land governance is critical. Recognizing the need to work in partnership with the government, CSOs have started educating the public about proposed policy reforms (e.g., consultations on the draft NLUP and preparation of a road map for recognition of customary tenure and the rights of forest-dwelling communities). It is also important to note that in various ethnic nationality areas, particularly those that have conflict dimensions, CSOs linked to the Non-State Actors and working above ground have been in the vanguard of environmental and land dispute issues. This is most evident in the Kachin, Mon and Karen areas. The government, in turn, understands the benefits of popularizing policies and programs, creating room for a more positive relationship between the government and CSOs. Effective and comprehensive public awareness and communication are essential for the successful implementation of land administration and management policies and programs. Unless people and communities are well informed before programs commence, they will not participate in a systematic and substantive manner. The public must also understand mechanisms to address their grievances and disputes. Government mechanisms are often not well-publicized or understood and lack expedient resolution and transparency. Thus, any land-related investment project should incorporate mechanisms to enhance public awareness, community participation and community monitoring, and must include functional, complaint- and dispute-resolution mechanisms.

## **6.6 STRENGTHENING LAND GOVERNANCE**

In understanding land governance in Myanmar, it is important to consider the dispersal of administrative responsibilities across different agencies, which prevents coherent land management. Land-use planning is inhibited by arbitrary government land acquisition and change in land use by private parties who enjoy influence with the government. Complicated and time-consuming land-related costs drive land transactions into the informal market, which translates into loss of revenue for the government and also makes the position of landholders more precarious. Land information, which is critical to land management, is often incomplete or erroneous. As a result, people struggle to establish their rights. With unfavorable government policy, decreasing productivity, and limited access to credit driving farmers to landlessness and penury, land-related conflicts are inevitable. Unfortunately, Myanmar lacks effective dispute-resolution mechanisms, although it has customary practice templates that could be sensitively tweaked to effect satisfactory conclusions. Another issue that merits attention is the neglect of women in land-related policies and measures. For good land governance, Myanmar needs to address these issues and establish transparency, greater public participation, consultation and cooperation with civil society representatives, and an educated officialdom that is sensitive to the problems and needs of the people.

A Working Group on Land Governance could be established to help set up a national framework and mechanism for monitoring and reporting on priority land governance indicators. This would entail engagement with appropriate government agencies, civil society, and other stakeholders.

A series of advocacy and awareness-raising sessions should be organized to demand better land governance. This should generate an agenda to address bottlenecks identified, including land-information management. Reports from such events should serve as a tool for monitoring implementation of the proposed agenda. The Voluntary Guidelines on

Governance of Tenure of Land, Fisheries, and Forests (VGGT) is good resource material and should be disseminated through a set of workshops and seminars.

Without extensive capacity-building programs, GAD, MoAI/SLRD, DRD, and MoECAF local offices cannot deliver. The government will have to support such local offices and governments (states/regions, districts, and townships), providing training and capacity building for efficient and transparent functioning. Land conflicts and the weaknesses of the judicial system will also have to be addressed through capacity building. Transparent mechanisms should be created to link the poor to State institutions, particularly those that mediate disputes and conflicts. Strategies and mechanisms must be developed for preventing and reducing land disputes through education and dissemination of information.

The government should seriously consider establishing a single land-agency for administration (including registration) of public forest and non-forest lands. A single agency should be responsible for determining landholding rights and issuing land certificates/titles as allowed by the provisions. Specific line agencies must be held responsible for thematic use of land such as forestry, agriculture, and mining. This would reduce duplication, make land administration more efficient, and make it easier to monitor and enforce compliance.

Efforts also need to be made to access and use modern technology and mobilize geospatial information under a structured format to produce detailed land maps for both forest and non-forest land. The priority for the government and SLRD offices (along with MoECAF and GAD) should be to ensure that geospatial data in Myanmar is safely organized and stored and is more accurate, with all geospatial and mapping activities using common reference points.

Transparent land governance is needed for the new paradigm of pro-poor land access to succeed. It should include specific approaches and modules to reach out to particular stakeholders like ethnic minorities, families living in conflict zones (and thus affected by land mines), women, and disadvantaged groups. In pursuing this, universal templates and frameworks for communication with landholders must not be blindly replicated.

Against a backdrop of institutional deficiencies and a weak enabling environment are numerous examples of landholders pursuing good and sustainable practices in land transactions at the local level. These demonstrate that innovative land administration practices are possible. The government should seek to build on landholders' desire to comply with rules and regulations and provide an enabling institutional framework for land administration that will aggregate dispersed social capital to create concentrated nodes of tenure security and effective demand for good land governance.

The government can draw on available knowledge and global best practices and good land governance experiences to gradually improve its regulatory and policy environment. The drafting of the NLUP and Land Law offers the ideal opportunity to break new ground, with State and non-State actors concurrently and constructively linking their work to improve land governance. Such an effort will generate insights of practical relevance for land administration and management in Myanmar.



# SECTION VII

## KEY FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

An effective, transparent, and accountable land-administration and -management system is crucial for Myanmar's overall development agenda. It is essential for promoting sustainable economic and social development, maintaining social cohesion, establishing legal certainty on which economic growth is dependent, and promoting and protecting the socio-economic-cultural rights of the population. The government faces numerous challenges in its efforts to deliver these critical inputs, particularly for the farming, ethnic, and upland communities and the poor, who together form a majority of the population. Land confiscations continue, causing disputes that are often difficult to resolve and could trigger social instability. It is also difficult to meaningfully move forward without addressing the historical scars from land confiscations and acquisitions. At stake are not just the overall economy and infrastructure, but also the country's social and political stability and the future well-being of its people.

Despite criticism, evidence suggests that the government is pursuing reforms and willing to learn from experience (e.g., public consultations on the draft NLUP). With growing local voices, government apprehensions on land-tenure rights are dwindling. This could be helpful for longer-term policy reforms. As discussions with several government officials, policy makers, village leaders, farmers, community members, and civil society during the course of this review demonstrate, constituencies for change and reforms exist and should be supported.

This review throws up the following key conclusions and recommendations aimed at strengthening tenure security for farmers, upland communities, and landholders in general, and for strengthening governance of land and land-based sectors overall. These include steps to enhance the policy, legal, and regulatory environment to protect and recognize land rights; field-level measures; policies to support the development of land information systems; and steps to develop capacity and facilitate changes at the national and local levels.

### **7.1 ADOPTION OF LAND POLICY AND COMPREHENSIVE LAND LAW**

The government must start by elaborating on the principles underlying land and land-based sector reforms and how it intends to strengthen tenure security. Reforms should be based on lessons drawn from past misguided policies and should explicitly state the government's willingness to invest in institutions to support proposed initiatives. In preparing the new land policy and law, the following principles and priorities should be considered:

- New instruments should reduce multiple and overlapping laws, regulations and guidelines and establish clear and concise administration and management criteria;
- While it is critical to limit land classifications and tenure regimes, diverse customary land-tenure arrangements must be respected and incorporated;
- State-held land should be clearly defined and criteria for its verification and confirmation provided. The definition should prevent the government from reinterpreting its jurisdiction;
- Measures to protect and recognize customary land-tenure arrangements must be proposed; and

- A custodianship model for land administration developed.

The proposed land law and other policy instruments should aim to promote a regulated and formal land market, reducing informality in land transactions. Realistic and simple land-assessment procedures and regulations will encourage landholders to pursue formal transactions and formalize past informal transactions. Considering the legacy of unresolved issues in the land sector, the new land policy and law must be straightforward in all aspects.

***Recommendation 1:*** *Adoption of a Land Policy (or an elaborated NLUP) is critical.*

***Recommendation 2:*** *Enactment of a comprehensive land law is the first, most critical step in reforming the land sector.*

The preparation of NLUP and the new land law is an opportunity for the government to eliminate overlaps and streamline institutional arrangements, enhance social inclusion and improve governance. To do so, detailed consultations must be held with the public and findings and suggestions from the ongoing dialogue on the draft NLUP incorporated.

## **7.2 BUILDING THE CONCEPT OF CUSTODIANSHIP IN LAND ADMINISTRATION**

Myanmar lacks an appropriate land custodianship (stewardship) model and fails to differentiate government administration of public and private lands from its “utilization” of the same. Good land governance requires a clear definition of “State land,” an agency to administer and manage land, and line agencies for specific thematic use of land (forestry, agriculture, and mining). The most recent example of the blurring of public and private lands under the State land category is the VFV Law of 2012, which allows land to be declared fallow without due process.

***Recommendation 3:*** *A government land agency must be designated as the custodian of all State land and public administrator of State and private lands. Appropriate checks and balances are necessary to ensure that this agency or its officers cannot rent-seek by selling or otherwise providing investors access to land. While preparing the new land law, the government should take on board the land custodianship model.<sup>73</sup>*

*In addition, recording and registering all non-forest land (e.g., farm, village, fishing, residential, and urban land) should be a national priority. The proposed land law should include clear guidelines to ensure that only one institution (such as SLRD or a new one) has authority over non-forest land. It should determine land-holding rights and issue land-use certificates for all non-forest land as per provisions. To this end, policy guideline, direction, and oversight for MoECA, GAD, and SLRD will be needed.*

## **7.3 FORESTLAND ADMINISTRATION<sup>74</sup>**

In Myanmar, forests underpin the development of several socio-economic sectors and local livelihoods. To reduce poverty and improve forest land-tenure arrangements, the government has pursued programs to improve people’s access to and use of forests and forest produce through the Community Forestry (CF) program and Community Forestry Instructions (CFI) in

<sup>73</sup> Under this model, the State will hold land and resources as a trustee but will allow private users greater rights, rather than just treating all lands as “State-owned.”

<sup>74</sup> Refer to Sectoral report prepared for NAPA for more details on this subject.

1995. These marked a significant development in decentralization of forest management. The Forest User Groups (FUGs) are focal points that mobilized and helped households manage resources collectively and benefit from it. Most of them are supported by CSOs. However, recent field research by the Food Security Working Group (FSWG) (2011) and others suggested that several FUGs have become dysfunctional over the years due to a small elite seizing forest land for cash cropping without community consultations. Since the CFI of 1995 did not elaborate on social inclusion, community participation depended largely on local leadership. The CFIs must be revised to make them more inclusive and prevent conflict of interests. MoECAAF must not jeopardize local socio-economic conditions, and its alternative livelihood programs must be realistic and must allow communities to use resources. Mere eviction of households from forestland will not yield positive results in the long run.

***Recommendation 4:*** *The CFI of 1995 should be revised to reform FUG formation, management, and practices to address issues over participation and equitable access to resources. Public information campaigns should form part of CFIs to raise awareness. Those involved at the village/township levels should be supported in local mediation and re-formation of FUGs. An inter-stakeholder oversight mechanism must be established to prevent elite capture of forest land under the CF banner.*

The review noted that many communities would like to improve the composition of the species they grow in the CF area. However, they lack resources to plant seedlings and need government support in terms of resources and technical advice. In terms of livelihoods, this area deserves particular attention.

Forest-dependent communities in rural areas would also benefit from logging oversight. Commercially important forests in Myanmar have been managed under the Myanmar Selection System (MSS) for numerous years. Excessive logging has hampered the tasks under MSS. The government is being urged to comply with the Forest Law Enforcement, Governance and Trade (FLEGT) Program and guidelines developed by European Union. Sustained work on FLEGT measures will be needed to help Myanmar tackle the risk of possible loss of large tracts of agricultural land producing rubber, coffee, cocoa, and other crops. To cope with this situation, the National Forestry Master Plan (NFMP) and Dry Zone Greening Comprehensive Plan (DZGCP) have been formulated to ensure supply of tangible and intangible benefits from the forests for present and future generations.

***Recommendation 5:*** *The government must prepare and issue thoroughly revised regulations and guidelines on forestland management. The new regulations and guidelines should cover the following as a priority:*

- *Protecting and recognizing existing occupancy rights of upland communities and forest dwellers. This should link up with efforts to formally protect and recognize customary tenure and communally held land areas through territorial mapping of current land use and legal processes to provide statutory protection for such use.*<sup>75</sup>

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<sup>75</sup> Preparation of a complete set of geospatial information on forest land by using both contemporary and historical geospatial information (e.g., satellite imagery, aerial photography, and maps). A further step will be to strengthen government's capabilities to undertake real-time monitoring so that it could respond to deforestation or illegal activities on forest land. This would also help to link human resources, technology, and security measures to monitor progress as part of FLEGT preparation too. Forest land data must be integrated into government (*OneMap*) databases and made available to the public for reference.

- *Revising CFI to allow communities to benefit commercially from CF activities and FLEGT provisions (the 1995 CFI only allowed for minimal use of CFs; this must be revised to meet current requirements).*
- *Systematically converting former forestland that is occupied or being farmed. At the same time, reserve forests that might have been allocated as concessions, but have not been developed or logged, must be reclaimed.*

#### **7.4 MECHANISMS FOR RESOLVING LAND CONFISCATIONS**

Confiscated land has rarely been returned to original owners and the recommendations of the Parliament's Land Investigation Committee are yet to be implemented. Such issues must be addressed in a transparent and socially acceptable fashion. The government should demonstrate political will by adopting a robust land-restitution policy that can be an effective remedy through CCNLRM.

***Recommendation 6:*** *The restitution of land to original owners remains the primary way to heal. The process is not without serious hurdles and socio-political challenges.*

Restitution of land should properly address the break in the long-term land tenure of people. This restitution policy should prohibit forced evictions, consistent with international human rights standards and good practices in the region (e.g., the Philippines, Thailand, where involuntary evictions are prohibited).<sup>76</sup> An independent administrative body should be established for this purpose and civil society involved in this work.

#### **7.5 A DEFINITION FOR (AND STANDARDS AND PROCEDURES FOR DEFINING) "STATE-HELD LAND" IS A MUST**

This review concludes that in the absence of a clear definition and standards for "State-held land," (state land) issues surrounding tenure security for farmland will remain murky and will be perceived as exploitative. In such circumstances, farmers will be unwilling to invest their time and resources in better cultivation practices.

This is a result of the adherence to the legal notion of the State (or Union) being "the owner of all land in Myanmar." The government also enforces the "eminent domain" concept to take over privately held property for "public purposes" without adequately compensating the owner or community. Such unbridled power translates into significant State influence in defining, allocating, and enforcing claims to resource entitlements. Disproportionate distribution of political power, derived largely from vast land tenure and resource access, upsets the balance between future access and entitlements to land and natural resources. Land-derived power directly influences future national laws and their enforcement, economic development plans, international trade, and investment. For example, the uneven distribution of power has limited Indonesian land use and economic planning such that neither the complexity nor the breadth of national and private land interests have been addressed.

The government is moving forward on the recommendations of Parliament Commissions and the draft of the land law. The time is right for developing a clear definition for "State-held

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<sup>76</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 7, Forced evictions, and the right to adequate housing* (1997): UN Doc. HRI/GEN/1/Rev.6; *Basic Principles and Guidelines on Development-based Evictions and Displacement*, 2007, A/HRC/4/18.

land.” This will help determine tenure security for farming communities and prevent disputes over land acquisition. It would require reconsideration of the notion that “the State is the ultimate owner of all lands” in favor of “all land in Myanmar belongs to the people of Myanmar.” The Constitutional notion of community land and resources would have to be incorporated. This will recognize shifting cultivation and the land rights of upland communities. The proposed land law and policies will also have to clarify that the government has no arbitrary powers over use of State land. Laws and policies should clearly acknowledge that such land is intended for long-term use and cannot be changed from public use without due legal process. Protection of public land from encroachment must be effective.

In sum, the government must define its jurisdiction with regard to “authority over land” to best enable the Constitution and statutes. However, it must not expand its jurisdiction to cover land claims and rights commonly allowed under customary arrangements. This balance is difficult to strike. The best definition of jurisdiction would be one that is readily apparent to landholders and farming communities. The definition should also be comprehensive enough to prevent reinterpretation of government jurisdiction.

***Recommendation 7:*** *The draft Land Law (and other policy statements) should clearly define State-held land and provide criteria for its verification and confirmation. Thereafter, the government should also undertake a program to survey, map, and record all State-held land. This database must be reliable, consistent, and available for public purposes. The government could consider a “No involuntary takeover of farmland” policy.*

Government land ownership should be for a specific purpose directly related to government functions. This specified purpose should be made known to the public and should not negatively affect individual rights or claims. In defining “State-held land,” the policy should also prevent individual government institutions from holding the right to transfer, lease, or mortgage land to another person or entity for the long term. This will prevent informal payments and malpractices.

The government should establish and maintain an open register of all of its property, which should be consistent in form and content with information in the title registers of privately-held land held by land-administration authorities. The register should record the condition of land under lease to the private sector. Such national and state/regional registers should be funded by the government under its land-use policy. They should be periodically audited and available, to some extent, for public scrutiny. These registers should be part of the proposed NSDI Framework.

## **7.6 LAND ACQUISITION FOR PUBLIC PURPOSES**

Persisting socio-economic conflicts (e.g., Kayin or Shan State) might necessitate the establishment of a transparent and fair compensation and dispute-resolution mechanism. A reconciliation of differences might be needed if and when all armed group territories are merged under the administration of the central government; a similar situation could arise with respect to protecting and recognizing tenure claims of landholders in areas where landmines exist.

As the government will retain an economic and political upper hand over small and marginal landholders, especially those holding customary rights or without formal land records/certificates, transparent and fair procedures and guidelines are needed for land acquisition for “public purposes” as part of the Land Law.

**Recommendation 8:** *Further, the government should develop implementation guidelines and mechanisms and standard market value reference points, to ensure investors provide a just and reasonable compensation package to existing landholders. These details should be made available to the public for reference and use.*

*An independent administrative body should be established for this purpose and it must engage with civil society in its work. The government must be seen as taking measures to heal past scars and anxieties.*

In addressing historical scars over past land confiscations and forced acquisitions, the government should demonstrate its political will by adopting a “land restitution policy.” It can be an effective remedy under the CCNLRM.

**Recommendation 9:** *The draft of the new land law and related legislations should include support for developing local dispute-resolution mechanisms to address land conflicts. These mechanisms should be legally enforceable and realistic. Legal, financial, and institutional support for local resolution of land disputes should also be provided. Dispute resolution should be linked to use of geospatial information and modern technology.*

The new mechanism should be community-focused and should help eliminate multiple and conflicting land uses, forcing the government to make policies and revise laws to address them. The government’s current focus on *OneMap* (within the realm of NSDI) should be encouraged. Parallel efforts are needed to access and use modern technology and develop procedures to mobilize geospatial information under a structured format to produce detailed land maps for forest and non-forest land.

#### **BOX ITEM 4**

##### **Conflict Areas, Internally Displaced Persons and their Land Tenure Claims**

The land policy should address tenure claims of populations forcibly displaced by conflict within and outside the country and who may wish to return. A significant number of such persons exist, including a large number along Myanmar’s borders, as a consequence of long-running conflicts. As such populations may put forward land claims, specific provisions should be included in the policy to allow these claims to be presented to the dispute resolution mechanism. Regulations and guidelines should also establish methods for displaced communities to register land claims, such as individual applications. The needs of such communities will also have to be included in the government’s standard land-administration processes such as land-use planning, land adjudication for title, land investigation for forest land tenure, etc.

This issue is significant and must be twined with the durable solution framework adopted by UNCR and also make reference to the guiding principles on Internal displacement and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (also known as Pinheiro Principles).

### **7.7 BETTER URBAN LAND MANAGEMENT, REGULATING LAND TRANSACTIONS AND PREVENTING SPECULATIVE LAND MARKETS**

With rapid urbanization taking place, urban and rural land uses in Myanmar are no longer mutually exclusive, but rather exist on a continuum of community types that are increasingly interconnected. For example, the Agricultural Census of 2010 and several other field studies of these farm households indicated that the effects of fragmentation of farm land directly result in economic inefficiencies and frequent fluctuations in household income and variations that families may not be able to absorb. This factor is attributed to large-scale seasonal migration for employment, rapid urbanization and increases in number of people employed in the



informal sector. In this regard, it is to be recognized that well-managed urban development and better urban land management practices would support sustainable use of farmlands.

***Recommendation 10:*** *The government should reformulate its urban (including peri-urban areas) policy and harmonize it with broader land and land-based sector reforms. It should include procedures for strengthening land management practices (land conversion procedures, land use planning, zoning, permits, acquisition and transfers, taxation, de jure and de facto systems) to support infrastructure development too so that farmland and rural communities benefit from the broader reform process. Such a comprehensive approach will lead to better land administration and governance too.*

In Myanmar, land transactions are largely conducted informally or with the help of VTC heads and community representatives. In much of rural Myanmar, government land agencies have limited financial resources and institutional capacity; government officers and the public often have poor legal awareness. Obtaining a deed for urban land is complex and expensive, encouraging informal transactions. Land is priced out of the reach of the poor and is difficult to acquire for housing projects for low-income groups. Improvement in land-information management has been slow. It is a challenge for local land offices to update information regularly. Inefficiencies in the land market are complicated by conflicts in land-use planning within the government. All this limits the emergence of a reliable land and property market in Myanmar. Additionally, a lack of awareness and clarity over official rules and institutions have limited the impact of otherwise worthy government efforts to provide legal protection and recognition of land rights through registration and titling of farmland.

According to available information, since 2010, an active and informal land market has emerged in rural areas. These land markets, though often small and still nascent, tend to disrupt the use of desirable land by families from traditionally organized farming communities. This makes it difficult for them to secure enough farmland for subsistence. However, such land markets (and the promise of land development by investors) also offer potential income for farming households. Together these phenomena break up farmer households with members opting for non-farm employment or working on others' fields.

The dry zone (and the delta area post Nargis) is extensively affected by degradation of natural resources; as a result, demand for cultivable land far exceeds supply. Consequently, many, especially young, people have migrated to potentially richer regions that offer employment. Declining fertile landholdings could restrict incomes in family units, thus splintering these units. To ensure its survival, many smallholders try to gain possession of a portion of the community inheritance, seeking to assert their exclusive right of ownership. As a result, concerns have arisen about informal land markets in rural areas. Unless laws and regulations streamlining transactions are adopted, land alienation would continue.

Land transactions must be made easy, simple, transparent, affordable, and relevant to the needs of millions of Myanmarese who currently hold land-use rights under Farmland Law or customary tenure. Formal land markets need formal property rights and land-administration capacity.

***Recommendation 11:*** *A comprehensive policy, laws, and guidelines are urgently needed to regulate land transactions in rural and urban areas, to prevent speculative practices and permit only planned land development that follows due process. These provisions should include penal action for land accumulation, such as higher taxation in case of holdings beyond a limit.*

**Recommendation 12:** *To increase public confidence and trust in the formal land market, the government should:*

- (a) Adopt clear and transparent guidelines to register land transactions in rural and urban areas;
- (b) Recognize land ownership of individuals, communities, and entities based on customary rights and practices (so that landholders can formally engage in land transactions), thus shrinking State-held land; and
- (c) Support maintenance of an updated land registry in the long run.

The proposed land law and other policy instruments should aim to promote a regulated and formal land market. This should include realistic and simple land-assessment procedures. Regulations should encourage landholders to pursue formal transactions and formalize past informal transactions. The current policy on land revenues is characterized by steep land-transfer taxes (one of the highest in the world), which encourage informal land transactions. This diminishes tenure security and results in low annual property taxes that cannot curb extensive speculation. The government should promote an efficient, transparent, and stable land market in the country. Only concerted efforts will prevent speculative practices, strengthen land databases, and contribute towards long-term land governance in the country.

## **7.8 LAND TENURE, SMALL AND MARGINAL LANDHOLDERS, AND RURAL LIVELIHOODS**

The government's RDS (2014) emphasizes improving agriculture and rural economies. This implies a significant role for small and marginal holders. Thus, opportunities for strengthening smallholders and their land tenure should be created and nurtured. The government indicated its commitment to this goal in the draft NLUP (2014) and agricultural policies that aim to preserve farmers' rights through subsidies, import restrictions on farm produce, and easier access to loans. Various studies on Myanmar's growth potential have indicated that investment in smallholder agriculture could contribute significantly to food security and economic growth, employment generation and the reduction of poverty and inequality.

**Recommendation 13:** *The government should rationalize the use and management of smallholder farms to benefit the economy directly by allowing degraded and unproductive lands to be allocated to land-poor and near-landless households within the community (or neighborhood) so that such land can be put to more productive uses.*

Clarifying tenure and access rules and minimizing land fragmentation would provide an incentive for increased investment in land and further minimize conflicts.

A medium landholder (with 10 acres of paddy land and cultivating at least 2 crops per year) could generate a sizeable income from cultivation. However, such landholders are, in fact, left with only modest disposable incomes after paying interest. This barely allows them to meet minimum consumption norms, with no capital for further investments. Only farmland holders with better yields (e.g., in Shan state where land productivity is fairly certain) seem to be comfortable in the credit market. The debt-driven infirmity of agricultural production is widespread in both delta and dry regions.

A well-prepared social land concessions program, with several windows for land distribution, for landless and near-landless people (land distribution along with a package of support for livelihoods including increased access to credit and farm inputs) should be considered. Such a

program will also counter land concentration and increase food security and households' access to new land for subsistence.<sup>77</sup> Social land concessions will promote redistributive reforms of land tenure. They will also help to establish collective or communal farming and change the contractual arrangements between landholders and those who cultivate the land.

***Recommendation 14:*** *At the village and township level, information about available land (i.e., land not claimed under any formal or informal tenure arrangements) will have to be provided and thereafter, a design for land distribution prepared and implemented.*

The government needs resources and advice: (a) to identify and develop a social land-concessions program that supports services and sustainable livelihoods and (b) to identify available land, beneficiaries, allocation procedures, and services support. The provisions of the NLUP and other policy statements must be studied to see how they could be effectively used to benefit smallholders, prevent speculative land banking, and promote a social land concessions program. Building a bridge between MoAI, MoECAAF, GAD, and DRD is critical for the effective and efficient implementation of such a program.

***Recommendation 15:*** *Promote projects to rehabilitate degraded land areas.*

The physical degradation of land and its consequent loss of fertility are exacerbating conflicts over land tenure. To strengthen the impact of organizational and legal measures, it is vital to undertake large-scale initiatives to restore soil fertility. This will need substantial resources. At the same time, conditions of land rehabilitation will need to be clearly defined and formalized with those who formerly farmed such areas. Once improvements have been made, the land should be redistributed to poorer community members by local committees as per established procedures, in a transparent and fair manner. Conditions of use should be formally laid down and steps taken to ensure that they are strictly followed by the new users.

Given Myanmar's socio-cultural land-management practices, the government should consider promoting riverbed farming to improve livelihoods and income-earning opportunities closer to home among landless and land-poor households. This will allow farmers to make the most of large areas of fallow land near riverbeds which are normally unclaimed and uncultivated. However, landless and land-poor households will need access to suitable plots and agricultural inputs and training to be able to farm riverbeds.

## **7.9 GRANT OF STATE-LAND LEASES/CONCESSIONS AND THEIR MANAGEMENT**

Land concessions have been negotiated and awarded haphazardly and inconsistently with negligible quantification and qualification of their impacts (e.g., the details on fee payments required and made; revenue-sharing; labor requirements and actual inputs; and social, economic, and environmental impact considerations). Few concessions have generated the anticipated social benefits and revenue streams for the government. While MoAI's database provides broad details on the number of concession permits issued, no consolidated database on their performance exists. The prevailing systems and processes for assessing and issuing concessions are opaque, with little oversight.

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<sup>77</sup> Some details on the recommended Social Land Concessions program are provided later. This subject requires thorough elaboration — identifying suitable land for distribution and beneficiaries, providing support services, and oversight — for operational purposes.

**Recommendation 16:** *The government should consider a moratorium on issuing new State-land leases/concessions for some time. During this time, an up-to-date, comprehensive, and transparent inventory must be compiled for existing concessions in terms of size, location, boundaries, name(s) of holders, issuing authorities, villages covered, duration, purpose and conditions, revenue arrangements, and number of households affected. Public access to information and details on land concessions (proposed or ongoing) is important to strengthen transparency and accountability.*

Based on this, areas where leases/concessions overlap or intrude on the land of farmers or local communities can be identified. Where conflicts exist or are likely, issuance of leases/concessions can be reviewed and a multi-stakeholder conflict-resolution process can be established to reduce and mitigate the impact on local communities and smallholders. Measures must be set up to

- *build capacities and competencies of government agencies responsible for issuing and managing leases/concessions;*
- *better assess lease/concession applications, monitor and manage those granted, and involve all stakeholders in management activities and benefit sharing; and*
- *improve overall governance (transparency, accountability, and participation) of concession allocation, corporate social responsibilities, monitoring and management.*

#### **7.10 A NATIONAL ACCELERATED PROGRAM FOR LAND REGISTRATION AND CERTIFICATION**

Experiences learnt from the issuance of LUCs for farmlands in 2013-14 shows that the demand for enhanced tenure security through formal land certificates is growing. In recent years, increasing land sales (and seizure) have become part of rural and urban lives, changing the perception of land records and formal documentation. Various field studies (UN-Habitat, 2010 and 2012) have noted that in urban areas too, because of increasing land values and shrinking land availability, households prefer to obtain a formal land record or certificate rather than rely on informal arrangements. For a reliable land-administration system and formal land markets that benefit smallholders, realistic land taxes are needed, with higher rates on unused land and exemptions for small and poor landowners. Land-conversion and capital gains taxes could also be used to pay for improved land delivery services.

An accelerated land registration and certification program will require regulations, guidelines, and measures to build capacities of SLRD/GAD staff and their district/township offices. Institutional development for managing land administration should include systematic capacity needs assessment, delivery of technical training, and supervisory support. At the national and local levels, capacity building is needed to produce effective spatial plans. Local land-registration and -certification teams, especially in remote areas, may require intensive skill building. Such efforts should also consider certifying upland areas (community titling as an option) and providing public access to land-use management processes.

Low-cost methods and people-friendly land administration systems are essential for recognizing tenure rights. Programs to recognize land tenure often involve demand-intensive work and pose formidable challenges to landholders and local authorities, including political opposition. The costs of recognizing land-tenure rights are likely to be higher in mountainous and densely forested areas, highly contested areas, conflict areas, and areas requiring significant technical expertise to initiate community mapping and train local government personnel. The costs of identifying and demarcating boundaries of community lands will increase when a higher degree of geographical precision is needed (i.e., more sophisticated

technology and higher resolution maps) and where a higher degree of formality is required by law (i.e., titling as opposed to local registration). Costs will vary based on differences in the economic status of the local government, willingness of communities to participate, and availability of in-province expertise for surveying and mapping (a lot depends on capacities at local land offices too). It is impossible to calculate the cost of social mobilization but that should not prevent the government from promoting community participation.

***Recommendation 17:*** *FAB/SLRD work and experiences gained so far through LUCs (2013-14) merit a systematic field validation and evaluation to determine the “building blocks” from policy components that can be helpful for strategic development.*

Processes used in preparing and issuing LUCs should support the formulation of a clear plan for institutional strengthening. This, in turn, should lead to measures to generate useful material for enriching “good practices” in land administration. Efforts to enhance the quality of service delivery must be comprehensive, participatory (involving multiple stakeholders) and sensitive to the needs of vulnerable populations, such as women, upland communities, ethnic minorities, conflict-zones, etc.

As part of an accelerated registration program, the government should build the land-information management system to ensure that databases are aligned, standardized, compatible and comparable. The government should also consider putting in place a strategy that would be demand-responsive. It must also create a comprehensive business plan for SLRD (national and local) as a unit that sets service standards and develop these standards.

***Recommendation 18:*** *Building capacities of land offices at all levels is critical. Without extensive capacity-building programs at all SLRD (and GAD which manages village land and residential areas) offices, land-administration services cannot be delivered at required levels and quality. The central government will have to develop capacity-development plans for training staff for efficient and transparent functioning.*

A fundamental feature of any land-administration system is the confidence its users and stakeholders have in it. This confidence is built on the quality of its information, its efficiency, accessibility, transparency, affordability, sustainability, etc.

## **7.11 LAND INFORMATION MANAGEMENT**

Despite advances in modern geospatial technology, Myanmar lacks a complete inventory of geo-referenced land parcels for forest and non-forest lands and available land information is scattered. While cadastral databases maintained by SLRD serve as basic reference points, these records are not updated with regular ground truthing. This situation, along with the large backlog in formally delineating land and recording relevant data present numerous challenges to good governance in the land sector.

This review recommends that the government consider adopting a national strategy to develop a national LIS. This strategy must include detailed guidelines for managing land information (textual and spatial) throughout land offices in Myanmar. A minimum standard of information access for land and property-based services must be incorporated in the draft NLUP (2014) and forthcoming land law. The government should also put in place national LIS guidelines to set the technical basis upon which SLRD land offices and MoECAAF manage their respective land information. Responsibility for drafting the detailed guidelines should rest with SLRD and MoECAAF with advice from the Central Committee on National Resource Management.

Guidelines should be drafted in consultation with ministries and civil society and feedback sought from LIS managers and GIS users through a national LIS workshop. The guidelines must support the NSDI vision and strategy for land-information use, production, acquisition and management and should be subject to cyclical review and update (approximately 3 years). Provision of geospatial information can aim to:

- Avoid proximity of conflicting uses (as residential and industrial);
- Identify land-development objectives for different time periods;
- Impose legal restrictions on land uses;
- Reduce disaster impacts with risk assessment and risk mapping.

The *OneMap* policy (2014) requires clear and approved standards and procedures for implementation. The government should prepare these procedures and disseminate them for enforcement. The government should address the lack of technical understanding of the benefits of *OneMap* and its usefulness in land administration as it moves forward with work on NSDI. It must develop a framework covering infrastructure, responsible agencies, and policies to promote: data sharing, use, acquisition, and standards to facilitate nationally consistent land information of all forms (including land information for planning, land use, environment, marine, air, natural and built environments, agriculture, and forestry).

***Recommendation 19:*** *Development of (a) LIS guidelines and (b) NSDI framework are critical for land information management. These should be consistent with Myanmar’s geospatial needs. NSDI framework will guide the development of physical and human resources along with capacities required for land administration and management in the country.*

Although Myanmar has access to significant donor funding to support *OneMap* and the Geoportal, its fundamental data sets must be defined and funding prioritized accordingly. Funding requirements should address initial data capture and ongoing sustainability through maintenance. One major data gap is the national inventory of land parcels — the cadastral data layer of NSDI. Access to nationally consistent and complete geospatial data, especially *OneMap*, through Myanmar’s proposed Geoportal, has the potential to improve land governance, and government accountability and transparency.

## **7.12 STRENGTHENING LAND GOVERNANCE**

Pragmatic solutions to various land-tenure problems are a pre-condition to achieving good land governance. The government has indicated its interest in and willingness to build adequate human, financial, technical capacities to support land policy development and implementation. It is also committed to delegating land-governance responsibilities to local governments to increase the accessibility of services while promoting accountability and transparency. Regional experiences and good practices show that timely dissemination of information to stakeholders is critical. This will have to be addressed as a priority.

In moving forward, the government needs a “reference point” to guide its policy development work. It could consider reviewing the draft land policy, NLUP, and the draft land law for compliance with the VGGT.<sup>78</sup> The VGGT includes many best practices endorsed over several

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<sup>78</sup> The VGGT was developed and proposed by the United Nations’ Food and Agricultural Organization (FAO) to address administration, management, and investments that affect tenure rights. It is an effort to boost food security, reduce hunger, and generally prevent challenges created by the global trend towards large-scale land-based investments in the developing world. The guidelines also provide the government and other stakeholders with context-specific advice to essential questions related to the recognition and allocation of tenure rights, the transfer thereof, and the administration of tenure, including the resolution of disputes.

decades of implementation, such as rights recognition and formalization; dispute resolution; transfers and transactions; modern land administration; principled compulsory acquisition; legal frameworks; rule of law; due process; and FPIC. The guidelines promote food security and sustainable development by encouraging transparent, equitable, and secure access to land, fisheries, and forests and by protecting the legitimate tenure rights, formal or informal, of millions of people, many of whom are poor and food-insecure.<sup>79</sup>

**Recommendation 20:** A structured review is essential to assess the land-governance system and take measures to strengthen it. For this purpose, a series of thematic Land Governance Assessment Studies (L-GAS) can be conducted immediately to: (a) finalize a policy dialogue for land and forestry sector reforms; and (b) identify immediate, medium- and long-term priorities in strengthening land governance.

**Recommendation 21:** VGGT Principles on Land Tenure must be disseminated among government bodies and civil society to anchor policy discussions and public consultations around a standardized reference point.

**Recommendation 22:** The ongoing dialogue, at national and local levels, on strengthening good land governance, through forums like NLUP or draft Land Law, should be continued and supported. It should be anchored around thematic areas such as urban land issues, development of smallholders, protection and recognition of customary tenure and the rights of ethnic groups and local communities.

### **7.13 SOCIAL INCLUSION, INFORMATION DISSEMINATION, AND PUBLIC EDUCATION**

The government should have mechanisms to promote open dialogues with and between communities and investors. Such dialogues should be based on thorough and verifiable information that the government should share with communities and potential investors beforehand to build a cooperative program of land development that is productive, fair, and equitable. An open approach will prevent land disputes or their escalation.

**Recommendation 23:** Local leaders must be empowered to better understand and facilitate change, particularly with regard to removing barriers to community participation. Political will at the national level must be galvanized to ensure that legislation within and across sectors is coherent on social equity and transparency in land administration and management.

*Political will and its place in reforming tenure security:* Conflicting legislation, the lack of political will, and a bias towards large-scale land investments are the major barriers in addressing the land rights of rural communities dependent on cultivable land for subsistence. Government focus should now be on disseminating the benefits of tenure security and building capacities of local leaders so they can better understand and facilitate the change-process, particularly with regard to tenure security of rural communities. Political will at the national level must be galvanized to ensure that requisite legislation within and across sectors is coherent on tenure. If the letter of the law is to be implemented in spirit, strong political will is critical, as entrenched pro-urban and pro-capital norms need to be uprooted.

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<sup>79</sup> The guidelines carry a normative legal force by providing a template, framework, and benchmark. They form what is part of “soft international law” and must be read and absorbed in accordance with existing policies, laws, and instruments in Myanmar. Meanwhile, the successful mainstreaming of the VGGT in national policies, strategies, legal instruments, and programs requires the establishment of functional and responsive monitoring systems and procedures.

*Need to encourage agents of change:* Evidence suggests there are constituencies for change at the local level, and decentralization, with checks and balances, could be a tool in the hands of these change agents. Recent pro-reform measures and progressive members in the government and bureaucracy support these change-seeking groups. They should be encouraged to advocate comprehensive land-related policies and regulations and more inclusive and accountable multi-level governance of land and natural resources.

*Identify and nurture alternative strategies:* The government must consider community-based strategies such as “collective land-use certificates” that adapt to changing ecological and social conditions and facilitate greater transparency and community participation. This could help balance power relations and improve public confidence in the land-administration system. In addition, while standardization of land-use certification (and titling) procedures is important, excessive template-focus on surveying and mapping should be avoided.

*Need for educating policy makers on tenure security:* More work is needed to transmit to policy makers the full costs of interventions to recognize tenure rights and operational best practices from the region and globally. CSOs can provide policy advice and methodologies to ensure that these processes and public inputs reach the necessary scale to impart real mitigation benefits. Continued research on the role of tenure in resolving inconsistencies in land administration and strengthening related systems will be essential to future endeavors.

*Social inclusion and mainstreaming gender concerns in land administration:* Affirmative action must be taken to build gender equity. Efforts to educate and disseminate information must be made from the start of land-development operations. Everyone concerned, especially CSOs, must advocate the recognition of gender-balance and customary practices that support women’s land and property rights. More women should be included in decision-making bodies at the local levels. To further gender-sensitize this process, FAB/SLRD needs to: (a) prepare a strategy to build in-house awareness on women’s land rights and gender concerns; (b) increase women staff in the field, in the back office, and in decision-making positions; (c) reach out to various actors, within and beyond the government, through constant information-dissemination activities to foster public support and build confidence in the concept and process of land certification; (d) maintain regular monitoring, quality control, and gender audit; and (f) establish and manage gender-specific databases and gender-related indicators on land and property rights at the grassroots level with aggregated results available for management and policy decisions. Traditional gender-sensitive practices must be researched and shared with local authorities and land-registration teams, who, in turn, must work towards a balance of tradition and existing legislation. Efforts should be made to educate local leaders and stakeholders to support women’s claims to land. Information materials should be prepared and widely disseminated.

*Recommendations for further research:*

- Exploring opportunities for developing potential platforms and mechanisms for continued dialogue on tenure security for smallholders and land-poor communities.
- Formalizing customary tenure arrangements, which is essential for rural poor communities to ensure continued access to land and resources.





# SECTION VIII

## RECOMMENDATIONS FOR PRIORITY ENGAGEMENTS

The review has shown that pragmatic solutions to various land-tenure problems are a pre-condition for achieving sustainable development. Such solutions must take into account technical, organizational, legal, and socio-cultural factors if they are to ensure the sustainable development of natural resources and a degree of security sufficient to encourage and increase investment in the agricultural and livestock sector. The recommendations made in this review address a range of priority issues, including the need to better target investments in promoting agriculture, land-governance systems, high quality and technical assistance to the government and communities in various areas. The set of recommended engagements proposed here are directed at the government, NAPA, and its development partners for consideration and action. For optimal effectiveness, the government may have to initiate a consortium of other stakeholders to participate in implementation.

### **8.1 IDENTIFIED PRIORITIES**

As the government plans accelerated development of policy and a regulatory environment for rural development, a set of priorities on land tenure have emerged and these are recommended for investment consideration. The areas include: (a) tenure security; (b) access to credit and services; (c) increased access to more cultivable land areas; (d) land dispute resolution; (e) technology; and (f) enhanced institutional capacities for good land governance.

Policy dialogue. Strengthening land tenure security will require more than a law. Community support and public confidence in the proposal is equally critical. It needs government-community-stakeholder consultations and consensus on methods for administering land and resources. While protection and recognition of existing land rights is a first step, ground realities are still poorly understood. Broader debate anchored by wider consultations and public information on proposed policies, legal instruments, and guidelines and their implication should be a prerequisite. This public engagement will have to be balanced against the risk of additional delays. A medium-term goal should be to develop a comprehensive land policy that focuses on tenure security and incorporates community priorities.

Dispute resolution. A strengthened mechanism and procedures for informal mediation alongside formal dispute resolution (administrative or judicial) is required. This must be accompanied by capacity building of land agencies at national, district, and community levels, and improved documentation to support processes and decisions.

Addressing the needs of informal land users and vulnerable and disadvantaged groups. Given the current problems they face in protecting their land holdings, farming communities and upland shifting cultivators will need information on changing policies and future investments. Those holding land in conflict zones are equally vulnerable. The government should commit to a “no eviction” policy to strengthen tenure security among these landholders. Specific measures will be required from the very beginning to ensure that informal land users are not disadvantaged by land policies and regulatory framework. A public awareness strategy and resources allocated for such activities will help towards this end.

Adequacy of institutional arrangements and capacities. The SLRD must develop reliable databases to inform planning and decision-making.

Adequacy of services delivered for smallholders (linked to land tenure). The current procedures and guidelines for service delivery (e.g., access to credit or farm inputs) were built on the traditional notion of government patronage for farmers. These are neither sufficient nor timely in meeting landholder requirements. Over-reliance on input credit has resulted in farmers gradually falling into a debt trap. This is a serious risk if, for example, a disease outbreak threatens the crop. Such farmers may seek informal moneylenders to meet their contract obligations (in case of contract farmers) or to meet household needs.

The data, analysis, and examples presented in the review suggest that forging the middle ground in strengthening land tenure requires a mix of policy and regulatory support for promoting rural development. Existing issues and challenges must be properly understood for an acceptable, socio-culturally appropriate, technically sound, and legally enforceable solution to be developed. Transparent and participatory development of policies, laws, rules and regulations targeting four key priority levels as below are suggested:

- First, look more broadly at the land sector to enhance overall governance to broaden options and extend the reach of laws and accountability. Efforts must ensure that land is used for equitable development and not to benefit a few influential persons.
- Two, work at the intermediate level to develop the capacities and skills of those engaged in land administration and management (e.g., SLRD, MoECAAF, and GAD). This includes working with non-state actors like the Land Core Working Group.
- Three, improve the government's land data and information management, to ensure that it is nationally complete, consistent, and accessible, and accordingly underpins good land governance. In a sense, land information and databases are both an issue of government capacity and political will.<sup>80</sup>
- Four, support community-based land uses (e.g., riverbed farming practices, use of community water bodies for increasing income opportunities) and livelihood programs linked to tenure to empower marginalized groups.

## **8.2 CONSISTENT POLICY DIALOGUE AND DISSEMINATION OF GOOD PRACTICES**

Policies and regulations are a powerful way of contributing to stronger tenure security. Recent experiences in land policy debates in Myanmar and regionally have provided a few critical principles that should underpin future NAPA initiatives and the government's Rural Development Strategies. This will encourage the government to reiterate its commitment to implement a comprehensive legal and policy framework that protects tenure security and promotes equal access for all, particularly the poor and the disadvantaged. Support for educating and strengthening capacities of policy-makers and local government officials and others on community engagement is essential.

**Recommended Engagement 1: Support ongoing policy dialogue at national and local levels.** This support should emphasize strengthening good land governance from the perspective of

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<sup>80</sup> It also means that data and information that is captured based on bad policies formalize such policies, i.e., not recognizing farmers' customary use of VFV land, and continuing to map this land as VFV; thus, the actual mapping of multiple and conflicting uses becomes an important step to prompt resolution of these conflicts.

agriculture and rural development. It should be anchored on the government's ongoing NLUP work, drafting of the land law, and other policy and regulatory instruments.

**Recommended Engagement 2:** Disseminating good practices on strengthening tenure security. NAPA should consider establishing itself as a platform for disseminating good practices in smallholder tenure security in the region and globally.

As part of the two engagements above, donors and development partners should consider supporting government/DRD/NAPA to disseminate VGGT principles on land tenure through stakeholder workshops and forums. This should be pursued widely within the government and among civil society in a *structured manner* and tailored specifically to the Myanmar context so that policy discussions and public consultations have a standardized reference point. The dialogue should also be organized around thematic areas such as development of smallholders, social inclusion, protection and recognition of customary tenure rights, and the rights of ethnic groups and local communities.

**Recommended Engagement 3:** Theme-based L-GAS should be undertaken to support land tenure issues in the context of agriculture and rural development. Structured diagnostic reviews of the land sector must be undertaken without imposing value judgments. For this purpose, a series of theme-specific L-GAS should be undertaken immediately to build knowledge and support policy-making and program implementation. Such studies should be limited to six months and structured as a learning and capacity-building process with a focus on agricultural and rural development.

The policy dialogue should be guided to be cross-sectoral with high-level engagement for successful implementation of reforms. In building food security and livelihoods for farming communities, discussion on tenure linkages in water (e.g., fisheries, access to irrigation facilities, and collective community water bodies) and forests must also be encouraged.

### **8.3 ADAPT LEGAL PROVISIONS TO PROTECT AND RECOGNIZE CUSTOMARY TENURE**

Any consideration of the future application of legislation governing land tenure must take into account the persistence of customary rights. Many land conflicts could be prevented by understanding the context and interpreting regulations to meet current requirements. This requires capacity building, independence of the civil service, and political support which is gradually beginning to occur. Similarly, new laws and regulations on land should consider customary tenure and existing socio-economic realities. Since the law exists to protect individuals and their goods, it can incorporate aspects of customary land-tenure systems.

**Recommended Engagement 4:** Support protection and recognition of (a) customary tenure, and (b) shifting cultivation (*taungya*) eligible for landholder registration and certification.

To devise effective methods for land administration and management, practical experimentation involving rural and farming communities must be undertaken. This should encourage gradual, voluntary, and transparent progress from traditional, customary systems to more formal land-tenure regimes. The first step in this process is to recognize various customary rights and usages, and existing land tenure transactions and agreements. The second is to gradually formalize these rights, uses, transactions and agreements, in response to requests from the people concerned. These operations must be supported by a dialogue between the parties concerned, so that good practice can be widely disseminated.

The law on the Recognition and Protection of Customary Tenure that intends to preserve,

protect and provide for continuing shifting cultivation and customary traditions should be adopted and implemented. The law should also clarify certain aspects of the scope of the rights of customary tenure based on local traditions and practices.

**Recommended Engagement 5:** Encourage local resolution of land disputes.

Legal, financial, and institutional support should be provided for local resolution of land disputes. The draft of new land-related legislations should include support for such mechanisms to address land conflicts. These mechanisms should be made legally enforceable and realistic.

The law should include a clause on dispute resolution, underscoring the importance of indigenous courts. Disputes over customary land rights between local communities and outside parties should be settled through a customary institution. Its decision can be appealed in a judicial court. This provision will help minimize time taken for resolving land issues involving upland communities and ethnic groups that follow customary tenure arrangements.

#### **8.4 INCREASE PEOPLE'S ACCESS TO LAND**

In areas, where agriculture is a main economic activity, access to land is fundamental for the poor to ensure household food supplies and generate income. The RDS (2014) has acknowledged this need and expressed its commitment to facilitating better land access as a basis for the direct participation of the poor in local development.

**Recommended Engagement 6:** Promote projects to rehabilitate degraded land areas. Support should be provided to identify degraded land to map out current use and landholders. Thereafter, a land-development plan should be prepared with local participation. The government should provide financial support and technical advice for designing and implementing area-specific programs to distribute degraded land to poorer community members as per established procedures in a transparent and fair manner. The project should include resources for identifying and recovering degraded areas through local labor, creating non-farm employment in the process. It is critical that such rehabilitation efforts are accompanied by formal government assurances of post-recovery tenure security for local landless or near landless families (to prevent expropriation by influential local leaders).

**Recommended Engagement 7:** Support programs and projects that would increase soil quality and provide wage labor. Eligible landholders, who are poor and whose land requires improvement, must first be identified. Conditions of land rehabilitation will have to be clearly defined and formalized with those who previously farmed the areas. The physical degradation of the land and its consequent loss of fertility exacerbate land shortage for subsistence and cause conflicts over land tenure. To strengthen the impact of organizational and legal measures, large-scale initiatives to restore soil fertility must be undertaken. Once a badly degraded area or poor soil has been improved, the responsibility for related rehabilitation programs should be assigned to local committees and only local residents or community members should be eligible to receive land. A package of support services and technical assistance for farming should also be provided to enable recipients to overcome investment and technical challenges. Conditions of use should be formally laid down and steps taken to ensure that they are strictly followed by the new users, particularly in terms of maintaining soil fertility by using appropriate farming systems and practices.

**Recommended Engagement 8:** Promote social land concessions. At the village and township level, information about available land (i.e., land not claimed under any sort of formal or

informal tenure arrangements) will have to be established and thereafter, a design for a land-distribution program prepared and implemented. This requires substantial training and capacity building for village and township officials and local representatives. Support should be provided: (a) to develop a clear policy for land distribution (in the context of NLUP and other instruments); (b) to develop a land database (starting with local land-use planning); (c) to develop clear criteria for land distribution and disseminate these widely; and (d) to ensure support services for land recipients (beneficiaries).

The government should consider providing technical assistance to (a) identify and develop a land-distribution program with appropriate support for services and sustainable livelihoods, and (b) identify available land, beneficiaries, allocation procedures, and services support.

Given that a significant proportion of the population still relies on the rural economy and farming, and the growing trend of landlessness and near-landlessness in a land-abundant nation like Myanmar, the government should prioritize these land-distribution programs to alleviate poverty and generate a major, positive impact on the livelihoods of landless, near landless, and marginal and small holders.

## **8.5 ENCOURAGE ACTIVE COMMUNITY USE OF ALL LAND**

**Recommended Engagement 9:** Establish a “green village” program and support its implementation. This would be a village/community development program based on sustainable use of land and natural resources. Such small-scale land investments would benefit the community in the short term while securing land for community or individual uses. It will require significant technical capacities and a specific delivery approach (standardized methods should be avoided).

Integrating tenure security into the government’s RDS requires a holistic approach that covers policy intervention, technical assistance, and tangible investments or activities. It requires active use of land by the communities themselves. The approach will have to be process-focused, allowing landholders to experience enhanced tenure security. NAPA and its development partners should consider supporting the establishment of a National Support Facility to enhance tenure security of small and marginal landholders through incentives for land-based agriculture production activities at household or community level. Support should be (a) small-scale; (b) limited to small and marginal holders; and (c) no newcomers to the area should be included.

An initial small-scale starter pilot should aim for limited geographical reach and test the application of a performance-based grant mechanism’s procedures. The facility should support awareness and understanding on land-tenure issues and willingness to collectively address it. Priorities could relate to land conservation, recovery of degraded land, and land investments for productive activities. These should be supported as part of NAPA’s focus on poverty alleviation and improved service delivery for communities. An “open menu” approach should be considered for flexibility and appropriate response to different tenurial needs. Regional experiences suggest that such an approach will be most effective in enhancing tenure security if illustrative land-focused activities are introduced as a guiding tool during the facilitation process. The following table provides some examples of such an approach in other countries in the region and globally.

**TABLE 1. EXAMPLES OF AN OPEN MENU FOR A GREEN VILLAGE PROGRAM**

Category	Sub-category	Illustrative Sub-project Activities
<b>Land management</b>	Preventing land degradation (family-held farmland area)	Improving soil fertility, application of organic farming methods
	Preventing lack of use of land	Home gardens, household fish ponds, river-bed farming (targeting landless households)
	Promote low-cost land certification methods (for farmers)	Collective use rights, streamlined tenurial user rights linking land to water access
	Community-based land-information management	Land-use mapping, gathering spatial databases within the community (vegetation, topography, tenure, assets, roads, farmland, village land, forest areas, etc), hydrology data on water sources including conditions during drought, land-tenure histories (written or oral), social and cultural context of tenure arrangements, etc
	Community land areas (pastures)	Livestock development projects with support for improving grazing areas
	Access to micro-credit for better land use	Land certificate as collateral for higher credit levels
<b>Natural resource management</b>	Management and utilization of village/community forest resources	Agro-forestry, timber tree planting, fruit tree plantation, reforestation
	Management and utilization of water resources	Land and forest conservation surrounding a spring or community water body (e.g., lake or large-scale pond)
	Management of biological resources (flora, fauna)	Fish cultivation, seaweed cultivation
	Management of environmental services	Small-scale eco-tourism (particularly in case of trekking routes and cave temples), management of local marine conservation areas
	Waste management	Waste management, composting
<b>Environmental conservation</b>	Management and utilization of water resources	Planting trees in catchment areas, mangrove planting, riverbank planting, land rehabilitation
	Erosion control	Retaining wall, spring water collection basin
<b>Small-scale fisheries (household or small-scale aquaculture)</b>	On-farm fisheries	<i>Promote fish ponds on a small-scale, educate farmers on the benefits of on-farm fisheries (along with fruit crops or seasonal vegetables)</i>
<b>Renewable energy</b>	Electrical energy	Micro-community (or inter-community) hydropower, photo-voltaic power (solar cell installation)
	Other energy	Bio-gas, fuel from cacao waste
<b>Capacity building and training</b>	Community training	Training on land-tenure issues and land-use mapping (as part of social mobilization and recording existing tenure claims and arrangements), training on biogas, waste management, composting

In addition to the menu, villages should be encouraged to opt for other land-tenure focused activities based on their specific requirements. This may include services to improve land use and access rights, engagement in small-scale community forestry in their neighborhood, and appointment of community patrols/rangers for conservation areas (rather than excessively relying on civil servants).

Grants under the open menu should be disbursed to incentivize sustainable land use and improve local livelihoods. All households in a community should be considered eligible for a grant or to participate and benefit from them.

**Recommended Engagement 10:** Provide project support for the rehabilitation and maintenance of community water bodies.

Rural communities are often situated around natural water bodies. In addition to being a source of water, they also typically act as drainage basins for waste and are often highly productive as a result. The best ways to rehabilitate and maintain community water bodies is to: (a) prevent pollution by roaming animals (animal dung and damage from wallowing) through tethering and cut-and-carry feeding systems; (b) replanting surrounding areas of denuded vegetation; and (c) providing other sources of potable domestic water. These activities can be implemented by village committees once most villagers accept the need to protect this important natural resource.

Efforts to promote rural development should include programs such as village fish-ponds. Experiences in Thailand and Vietnam have shown a relatively high retention of livestock when community bodies are part of a rural-development program. Cultivation of high-value vegetable and fruit crops around perennial ponds and successive plantings in the exposed sedimentation of seasonal ponds have also shown to have greater impact on household food security and income.

*Promote fishponds for diversifying small-scale farms with fruit crops or seasonal vegetables.*

Integrated water use for agricultural and domestic purposes is often the primary incentive for incorporation of fish culture on farms. *Farmers can be educated on the benefits of producing crops and feeding fish directly or for livestock or livestock manure being used as pond inputs.*

**Recommended Engagement 11:** Adopt territorial approach to land-development programs.

Often, land-tenure issues relate to community boundaries rather than administrative demarcations, especially in case of common pasture land and water bodies and where customary tenure arrangements dominate. Rural communities (especially upland communities and ethnic minorities) generally understand their territory and not modern administration boundaries created by governments. The government should develop criteria for creating village administrative boundaries based on community perceptions rather than statistical standards. Such a program will also help informally enhance tenure security.

## **8.6 POLICIES AND GUIDELINES AND INDEPENDENT OVERSIGHT MECHANISMS**

**Recommended Engagement 12:** Although the current wave of investment in farmland by businessmen (and urban dwellers) should be encouraged, they must be better regulated and monitored. Large areas of land being “leased” to these newcomers without regard for land availability and local demand raises socio-political tensions. Prior to granting a large-scale land lease, the government should engage in periodic and transparent public consultations that elicit people’s views on land use for policy-making and investment decisions.

Measures to protect areas against degradation should be implemented with participation from local communities and close monitoring to ensure rigorous application. Periodic assessments (by independent groups) are necessary on land use and availability. This should help regulate acquisitions by newcomers while respecting local availability and demand. All these tasks

come within the powers of government line agencies like GAD, DRD, MoECAAF, SLRD and others, which are responsible for drawing up guidelines at the district/township level to conduct tasks related to implementing decentralized rural development policies.

**Recommended Engagement 13:** Support preparation and enforcement of guidelines for the private sector in a manner that includes and respects small and marginal holder farmers.

Private sector participation, and contract-farming practices, is now increasing in Myanmar, through capital investment and accumulation of formal or informal coverage of land. The private sector and contract farmers should engage with small and marginal farmers, to minimize risks to and maximize benefits. Contract farming is still in its infancy in Myanmar and much can be done to promote more transparent and equitable contracts. Risks associated with contract farming are well known, but farmers choose to ignore these given lack of other options. Provision of model contracts, information such as market prices, and an independent facility to test compliance with agreed and tightly specified standards can also support farmers' bargaining powers. For commodity crops such as sugarcane, a negotiated price formula on a given percentage of the price in a major commodity exchange can be used to increase transparency. Government/NAPA programs should develop, document, and disseminate best practices in contract farming and private sector investment that maximize benefits for both farmers and the economy. Dissemination of good practices and Principles of Responsible Investments in Agriculture (PRIA) should be supported.

## **8.7 PROMOTING COOPERATIVES, REGULATING PRIVATE SECTOR AND CONTRACT FARMING**

**Recommended Engagement 14:** Strengthen the bargaining power of farmers by forming economically stronger and viable local entities. This will help build scale and economic efficiencies. Support should be provided for preparing and enforcing a monitoring regulation for contract farming and private sector participation in agriculture. This will be an intermediate step as the government develops regulations and guidelines for enforcement and monitoring. This will protect farmers from exploitation by outside investors or middlemen.

At present, the private sector and contract farming are not strictly regulated. No penal action is taken against those breaching obligations or imposing wrong and unsustainable land use or farming practices. Mechanisms could be introduced to ensure comprehensive land-use planning, encourage accountability, equity, and transparency. Clear regulations for investments in land allocation and use might benefit both farmers and investors, as would guidelines on how to engage with smallholder farmers and codes of conduct. This could be on the basis of studies undertaken by NAPA (or other stakeholders and development partners) on mutually beneficial means of engagement. The private sector should also take the initiative for self-regulation to move to international standards of accountability (e.g., PRIA) and equitability, adding value to products on the local market as a priority.

**Recommended Engagement 15:** Support an education program for smallholder farms on merits and demerits of contract farming.

In Myanmar, the intermediary model of contract farming is popular and largely prevalent. Under this model, investors do not maintain direct contact with farmers but function through an intermediary. The model is more common for short-season crops such as fresh vegetables for sale to wholesalers or supermarkets. The crops generally require minimal processing. These contracts do not usually involve minimal financial investment because individual promoters do not have large financial resources. Smallholders or individuals wanting to make



simple, informal “production contracts” with farmers on a seasonal basis usually use this model. Material inputs are not provided. The investor is under no obligation to provide extension or production support to the operators.

An education program could include elements of contract negotiation, sustainable cultivation practices, and management. It should include modules on access to inputs (e.g., irrigation facilities, fertilizers, and how to organize inputs), preventing post-harvest losses, increasing access to farming implements and infrastructure, better land preparation and improved electricity supply so that overall yields increase.

Public policy is critical in the establishment and maintenance of contract farming, particularly when it involves small and marginal landholders. It must establish a clear legal framework for contracts and allow accredited extension agents to provide technical assistance. However, contract farming should not be seen as a solution for increasing smallholders’ access to credit, market, and information. The Principles of Responsible Investment in Agriculture must be incorporated in drafting regulations to guide and monitor contract-farming practices. Farmers must be educated on contract farming. Civil society can facilitate contract farming in ways that maximize benefits to farmers. CSOs could play an important role in building the capacity of farmers’ organizations to be effective agents of change and advocate their interests with the government and private sector.

## **8.8 STANDARD AND COORDINATED INFORMATION-MANAGEMENT SYSTEMS**

***Recommended Engagement No. 16:*** Support an exercise for the establishment of a National Land Parcel Inventory (forest and non-forest land). This operation would fund a nationally complete, geo-referenced land parcel inventory database and procedures for sustainability and information access. This exercise should be preceded by quick measures to reign in or slacken land grabbing and compulsory evictions. Communities should be empowered to protect land and natural resources within their village and neighborhood. This step should be encouraged as a forerunner to the implementation of the National Land Parcel Inventory.

As a second step, support should be provided for preparing a comprehensive and complete fundamental geo-referenced database to improve transparency of all decision-making about land, including land allocation, concessions, acquisition, and land-use planning. This operation should lead to a standardized geospatial information system that is consistent and current including: (a) all land parcels mapped at an appropriate level of spatial accuracy; (b) details of ownership/user, land use, land cover, etc for each land parcel, systematically acquired and recorded; (c) procedures for the maintenance of inventory; (d) coordination arrangements between various ministries and line agencies (e.g., MoECAF, MoAI/SLRD, GAD, DRD, and the defense forces); (e) inclusion of the inventory in the NSDI/OneMap; and (f) South-South Exchange programs within the region to learn from other experiences and good practices in geospatial information management (e.g., the Philippines, Malaysia and Thailand).

## **8.9 STRENGTHENING LAND GOVERNANCE**

***Recommended Engagement No. 17:*** Support the government to benchmark priority land governance indicators for monitoring.

A quick land-governance assessment must be undertaken (based on select themes) to assess and prioritize indicators for national-level monitoring. Key considerations include indicators that: (a) are crucial for tracking progress in implementing the Land Governance Agenda, (b) are crucial to achieving the country’s priority development goals specified in Myanmar’s

Development Plans and priorities; (c) are cost effective; and (d) ensure data quality and availability. The selection should be undertaken through a consensus-building process, with due consideration to various options and the needs and priorities of various stakeholders and users of information at various levels. The dialogue should also be anchored around thematic areas such as urban land issues, development of smallholders, protection and recognition of customary tenure and the rights of ethnic groups and local communities.

Efforts to benchmark a set of indicators should also include a capacity building and awareness raising component on good land governance. For this purpose, this review recommends conducting a series of thematic L-GAS immediately, covering: (a) a policy dialogue for land and forestry sector reforms; and (b) assistance to the government and other stakeholders to identify immediate medium- and long-term priorities.

### **8.10 CLOSING REMARKS**

The purpose of this review is to demonstrate the importance of land tenure in rural development in Myanmar, where a large majority of the population depends on working the land for food and other needs. Since the 1980s and 1990s, the vulnerability of the rural population has increased steadily, as low yields and prices have kept most people in poverty. Every analysis of the problem confirms that land availability is not the real issue; available land is not saturated either despite population growth. Rather, poor management of land and natural resources, combined with an unfavorable policy and legal environment, has reduced the land area suitable for development. The parties involved differ in their view of the problem and seem unaware of future implications. Experience shows that there are no miraculous solutions.

Myanmar cannot hope to achieve inclusive social and economic development without a just and comprehensive framework that protects the land rights of small farmers, ethnic minorities, and the poor. In moving forward, secure and just land tenure, and sound management of land and natural resources are crucial to ease conflicts between farmers, the State, and the private sector, particularly extractive industries.

The secret to success is, first, acceptance of the problem and then a pragmatic approach to necessary measures. This review shows that land rights and tenure security are increasingly important and are embedded within the spectrum of food security. In this respect, the government's RDS is a promising option for sustainable land and natural resource management. Based on lessons drawn from the tenure security approach to local development, it seeks to mobilize available resources in seeking grassroots solutions to socio-economic challenges confronted by the rural population. However, results will depend on political will. In particular, they will depend on: (a) encouraging harmonization of approaches to clarifying land tenure for small and marginal holders, particularly eliminating their anxieties and concerns; (b) accepting modifications to legal provisions on land and natural resources to take practical realities into account; (c) allocating land for landless and near-landless within the community as a priority for promoting rural development; and (d) strengthening good land governance at all levels, clarifying the responsibilities of each of the parties concerned in the development process. Arrangements must also be made for monitoring and periodic evaluation of the impact of development interventions and the changing pattern of land tenure.

#### **BOX ITEM 5**

##### **Information from the Land Tenure Review Relevant to Elaborating the Rural Development Strategies**

- Landholders need policy/legal clarity and certainty on communal and community-held land.
- Concerns over potential dispossession or displacement are growing among the poor, particularly returnees and displaced persons.
- Landholders need clear information on procedures and guidelines for land acquisition and compensation.
- Communities and landholders are keen to access land information to understand and strengthen tenure security.
- The current legal and regulatory framework is not conducive to supporting tenure security, particularly of customary tenure and upland farming practices.



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## ANNEXES



# ANNEX I

## Key Data and Figures

**TABLE 2: EFFECTIVE COMMISSION/COMMITTEES FOR THE  
LAND MANAGEMENT AND ADMINISTRATION**

**(As of December 2014)**

Sr. No.	Name of Committee and Date of Establishment	Purpose	Chair Person	Secretary
1	Central Committee for the VFV Land Management (March 2012)	To permit the right to cultivate or utilize vacant, fallow and virgin lands within the State for the following businesses: (a) agriculture (b) livestock breeding (c) mineral production (d) other lawful businesses permitted by the Government	Minister of MOAI	Director General (DG) of SLRD
2	Central Farm Land Administrative Body or FAB (March 2012)	To provide guidelines for the issuance of LUCs for farmland areas (as per Farmland Law of 2012) and oversee implementation. Guiding and supervising in respect of registration and conversion of farmland to other use	Minister of MOAI; Deputy Minister of MOAI: Vice-chair	DG-SLRD
3	Nay Pyi Taw Council FAB (October 2012)	Responsible for the issuance of LUCs for farmland areas (as per Farmland Law of 2012) and oversee implementation at the respective jurisdictional responsibility for the body	Chairman of Nay Pyi Taw Council	SLRD-Nay Pyi Taw
4	Region/State Farm Land Administrative Body (October 2012)		Chief Minister of Region/State	SLRD-Region/State
5	District-wise FAB (October 2012)		District Officer – GAD	District Officer-SLRD
6	Township-wise FAB (October 2012)		Township Officer – GAD	Township Officer- SLRD
7	Village Tract / Ward FAB (October 2012)		Staff of GAD	Surveyor-SLRD
8	Land Utilization Allotment Scrutinizing Committee, June 2012 (which was replaced by the National Land Resources Management Committee in late 2014)	The committee's work is to focus on issues related to NLUP, land use planning and allocation of land for investment including in agricultural projects in the country	Minister of MoECaF	DG-Forest Dept. DG-GAD Joint Secretary-1 DG of SLRD Joint Secretary-2
9	Land Confiscation Inquiry Commission (August 2012)	The commission has responsibility to investigate in accurate and concise manner of	U Tin Htut, MP	U Thein Tun, MP- Secretary U Tin Mya, MP- Asst. secretary

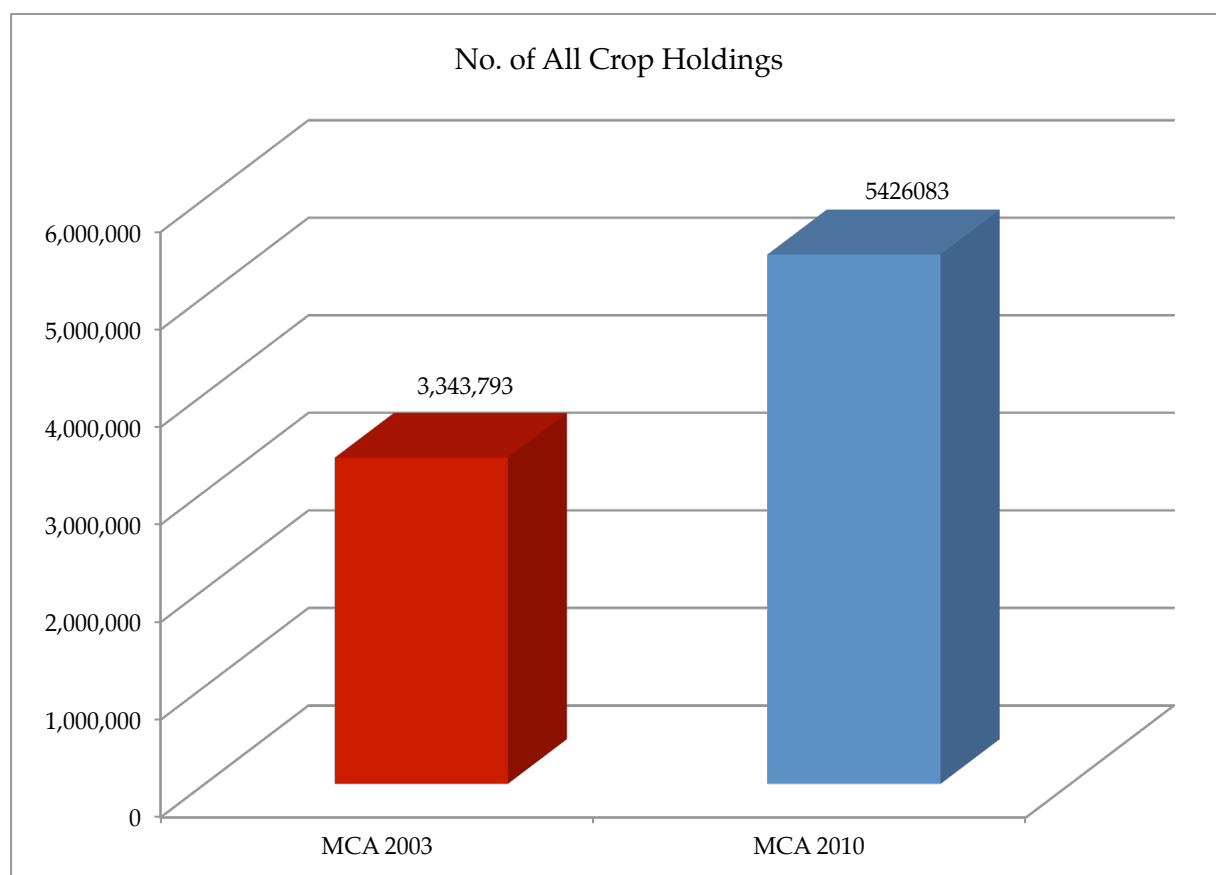


Sr. No.	Name of Committee and Date of Establishment	Purpose	Chair Person	Secretary
		complaints of farmers and to submit the findings with the comments and suggestions to Union Parliament.  Report submitted in disaggregated parts titled as Part 1 to 7 - and follow-up actions on recommendations awaited.		
10	Central Committee for National Land Resources Management (October 2014)	To draft the NLUP. To draft National Land Law. To provide guidelines to the works of Farm Land Administrative committees, and VFV land management committees. To supervise and provide guide lines for the land resource management of the country.	Vice-President-2 – Chair Minister of Home Affair: Vice Chair – 1 Minister of MoECaF: Vice Chair – 2	Deputy Minister of President Ministry = Secretary DG SLRD = Joint Secretary

TABLE 3: AN OVERVIEW OF THE DISTRIBUTION OF RESPONSIBILITIES ON LAND-RELATED FUNCTIONS WITHIN THE GOVERNMENT

S. No.	Ministry/Institution	Responsible for
1	Ministry of Home Affairs (General Administration Department)	Town Land, Village Land, Religious Land, River Banks, Ponds, Grave Yards (cemetery), Village Common Lands, Grazing Ground, and Disposable State Lands
2	Ministry of Agriculture and Irrigation	SLRD: Farm Land and VFV land (fallow and vacant). Also, responsible for cadaster for all land areas and land revenue registry.  Irrigation department: Irrigation facilities of different scales, and Community water bodies and lakes
3	Ministry of Environment Conservation and Forest	Reserved Forest, Protected Public Forest Areas, Protected Wildlife Areas, and Botanical Gardens
4	Ministry of Mines	Protected Mine Land and Gem Stone Land
5	Ministry of Construction	Residential Urban Land under Housing Department Primary roads as per Main Road Law
6	Ministry of Rail Transport	Railroad areas
7	Ministry of Culture	Cultural Heritage Zones and Protected Heritage Zones
8	Ministry of Transport	Riverine area, bank area, and strand area
9	Ministry of Energy	Oil field areas
10	Ministry of Livestock, Fishery and Rural Development	Fishery, fishery water, aquaculture area, fresh water fishery areas.
11	City Development Committee of Yangon, Mandalay and Nay Pyi Taw	Land under the management of the CDCs, land of Private owned, Grants, Lease, Permits and land disposable by state, land and assets held by various government departments, revenue free land and religious land areas within the City Development area.

**FIGURE 1. DISTRIBUTION OF ALL CROP HOLDINGS (2003 AND 2010)**



**TABLE 4. NUMBER OF HOUSEHOLD CROP HOLDINGS, BY SIZE OF CROP HOLDINGS (RoUM: 2003 and 2010)**

Land Holding	Number of Holdings		Growth (%)
	2003	2010	
Less than 1 acre	472,172	247,584	-47.56%
1 - 2.99 acres	767,252	1,345,024	75.30%
3 - 4.99 acres	636,122	1,102,363	73.30%
5 - 9.99 acres	797,008	1,336,222	67.70%
10 -19.99 acres	505,130	727,458	44.00%
20 - 49.99 acres	158,740	212,231	33.70%
50 acres-over	7,369	15,789	114.30%
<b>Total</b>	<b>3,343,793</b>	<b>4,986,671</b>	<b>49.13%</b>

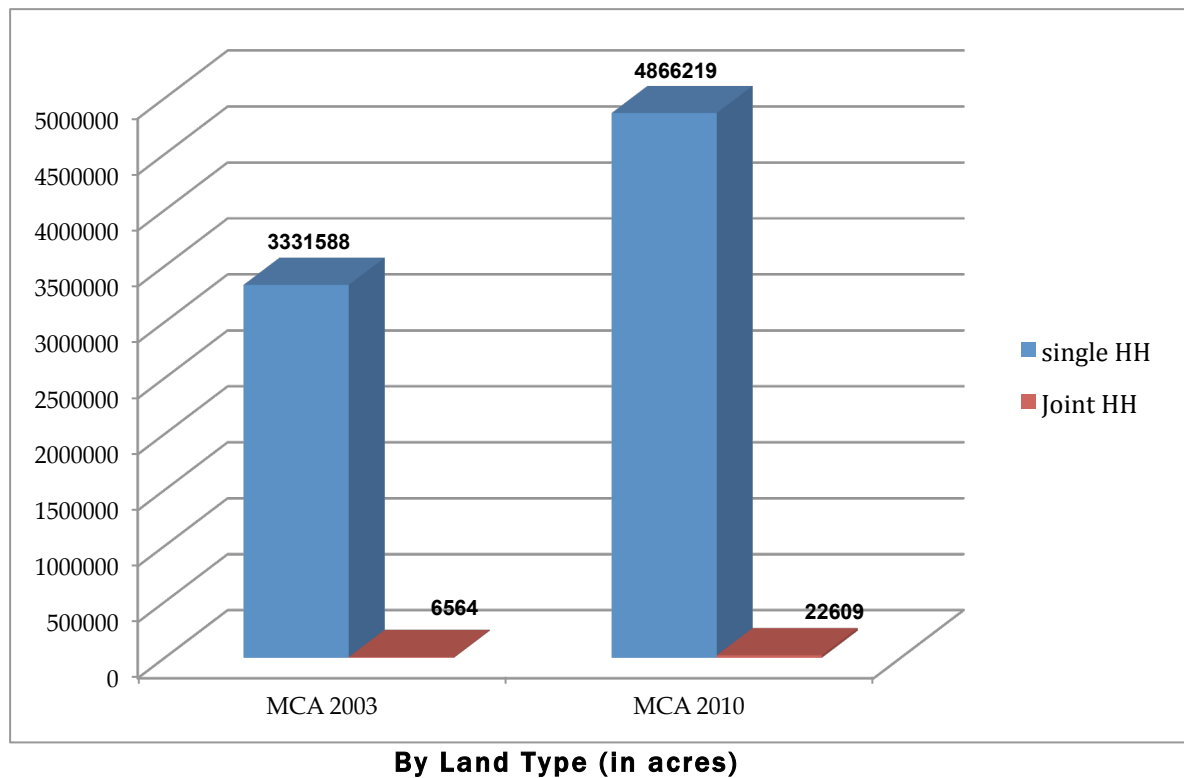
**FIGURE 2. PERCENT GROWTH RATE OF ARABLE LAND**



**TABLE 5. DISTRIBUTION OF THE NUMBER OF PARCELS, BY SIZE OF HOUSEHOLD CROP HOLDINGS (2003-2010)**

Size of Household Crop Holdings	Number of Parcels		Growth (%)	Percent to Total in 2010
	2003	2010		
Less than 1 acre	575,452	257,471	-55.3 %	3.4 %
1.00-2.99 acres	1,483,392	1,598,600	7.8 %	21.1 %
3.00-4.99 acres	1,362,840	1,580,935	16.0 %	20.9 %
5.00-9.99 acres	1,877,209	2,209,899	17.7 %	29.2 %
10.00-19.99 acres	1,294,639	1,405,431	8.6 %	18.6 %
20.00-49.99 acres	445,212	474,006	6.5 %	6.3 %
50.00 acres and over	17,001	35,245	107.3 %	0.5 %
<b>Total</b>	<b>7,055,745</b>	<b>7,561,587</b>	<b>7.2 %</b>	<b>100</b>

**FIGURE 3. DISTRIBUTION OF THE NUMBER OF HH CROP HOLDINGS BY LEGAL STATUS**



**TABLE 6. DISTRIBUTION OF LAND AREA OF PARCELS HELD BY HOUSEHOLDS PER CROP HOLDING**

Type of Land	Area of parcels in crop holdings (in acres)		Growth (%)
	2003	2010	
Paddy	11,807,376.88	18,312,891.89	55.10
Dry land	6,169,514.61	9,231,972.37	49.64
Kaing/ alluvial	911,165.12	1,361,087.13	49.38
Garden	752,890.73	1,247,496.88	65.69
Dhani	40,892.20	37,013.95	-9.48
Rubber	151,028.99	612,675.38	305.67

**TABLE 7. FRAGMENTATION OF PARCELS IN THE HH CROP HOLDINGS**

Number of Parcels	2003 (in number of parcels)	Percent to total in 2003	2010 (in number of parcels)	Growth (%)	Percent to total in 2010
Union of Myanmar	3,338,152	100	7,561,603	126.5	100
1 parcel	640,350	19 %	3,192,132	398.5	42 %
2-3 parcels	2,501,325	75 %	3,640,842	45.6	48 %
4 - 5 parcels	169,094	5 %	618,770	265.9	8 %
6 - 9 parcels	26,463	1 %	107,780	307.3	1 %
10 parcels and over	920	0 %	2,080	126.1	0 %

**TABLE 8. VFV LAND CONCESSION BY THE GOVERNMENT AND COMPLETION STATUS OF AGRIBUSINESS COMPANIES THAT DEVELOPED LANDS AND PLANTED CROPS WITH RESPECT TO STATES AND REGIONS**

(As of March 2013 and excludes deep-water areas of delta)

State/ Region	No. of companies granted	VFV land granted (ha)	Extent of land areas developed (ha)	Percent of land areas developed	Total Planted Area (ha)	Percent of Concession Areas Planted
Naypyitaw	6	4,126	1,519	36.8	1,070	25.9
Kachin	113	371,715	37,078	10.0	28,534	7.7
Kayin	1	409	155	38.0	85	20.8
Chin	-	-	-	-	-	-
Sagaing	29	166,631	3,282	2.0	1,477	0.9
Taninthari	41	126,464	73,673	58.3	73,324	58.0
Bago	15	6,227	2,626	42.2	2,210	35.5
Magway	19	35,835	20,397	56.9	10,612	29.6
Mandalay	10	7,190	1,500	20.9	1,192	16.6
Yangon	9	5,460	5,398	98.9	2,691	49.3
Rakhine	10	45,487	572	1.3	168	0.4
Shan	65	85,427	17,187	20.1	11,977	14.0
Ayarwaddy	59	89,019	61,423	69.0	37,514	42.1
<b>Union Total</b>	<b>377</b>	<b>939944</b>	<b>224814</b>	<b>23.9</b>	<b>170855</b>	<b>18.2</b>

Source: Personal interview with officials of the Department of Agricultural Planning (DAP) 2013 and MoAI in Brief, 2014.

**TABLE 9. LAND CONCESSION OF VFV LAND, DEEP-WATER FIELDS OF DELTA AREAS AND FOREST LANDS IN STATES AND REGIONS TO AGRIBUSINESS COMPANIES AND GROWERS**  
(As of 31 March 2013)

State/ Region	Land granted (Hectare)					
	VFV Land & Deep water lands	No. of Companies and growers granted	Forest Land Area (ha)	No. of companies and growers granted	Total land granted (ha)	Percent of land concessions by state/region
Naypyitaw	7,104	108	1,519	2	8,623	0.45
Kachin	558,950	846	13,729	6	572,679	30.17
Kayah	14,142	358	-	-	14,142	0.74
Kayin	-	-	8,172	200	8,172	0.43
Chin	706	13	-	-	706	0.04
Sagaing	215,866	187	36,178	26	252,044	13.28
Tanintharyi	197,355	248	201,539	296	398,894	21.01
Bago	81,000	770	16,211	82	97,211	5.12
Magway	88,862	121	7,304	9	96,166	5.07
Mandalay	22,682	199	2,425	20	25,107	1.32
Mon	-	-	34,323	12,619	34,323	1.81
Yangon	32,460	577	16,166	126	48,625	2.56
Rakhine	53,285	185	238	1	53,523	2.82
Shan	131,053	723	10,135	20	141,189	7.44
Ayarwaddy	135,707	516	11,230	34	146,937	7.74
<b>Union Total</b>	<b>1,539,172</b>	<b>4,881</b>	<b>359,170</b>	<b>13,441</b>	<b>1,898,342</b>	<b>100</b>

Source: MoAI, 2014. Deep water land areas in Ayarwaddy Region = 78249 ha (193,353 acres). VFVL= Vacant, fallow and virgin land; ABCs= Agribusiness companies.

## ANNEX II

### DEFINITION OF KEY TERMS

This note attempts to provide an understanding of concepts discussed in this report. First, the term “land tenure” is derived from natural resource tenure. “Tenure” is a social construct, defining the relationships between individuals and groups by which rights and obligations (with respect to control and use of resources) are defined. Specific concepts relevant to land tenure include:

- “Freehold”, a traditionally Western concept that implies the absolute right to control, manage, use, and dispose a piece of property;
- “Leasehold”, in which land belonging to one entity is, by contractual agreement, leased to another entity for a fixed period of time;
- “Statutory allocations”, a particular form of State land that is, by virtue of some statutory provision, allocated for the use of some legally constituted body; and
- “Customary systems”, in which tenure rights are ostensibly controlled and allocated according to traditional practice.

Across Asia, colonial governments (British in the sub-continent, Dutch in Indonesia, and various regimes in the Philippines) initiated and nurtured the notion of customary tenure with serious distortions around the community rights/individual rights debate, the definition of customary authorities, and the identity of “community”, which conflicted with that of a particular ethnic group.

Land rights have increasingly come to be perceived as embedded within the broad spectrum of human rights and are related to the notion of rights to food and existence. “Livelihoods” are the means by which households and communities derive food, shelter, and clothing to sustain life. Further concepts arising from the notion of livelihoods are:

- “Food security”, which refers to the capacity of households, communities, and the State to mobilize sufficient food through production, acquisition, and distribution, on a sustainable basis;
- “Sustainable livelihoods”, which refer to systems of human livelihood that can cope with and recover from stresses and shocks and maintain or enhance their human capabilities and assets without undermining the natural resource base.

Land policy, as it relates to the other concepts outlined here, is crucial to sustainable livelihoods and food security. Land policy-making encompasses the drafting of all aspects of land management and is usually led by the government. Some land reform policies tend to be more radical and are focused on restructuring the distribution of land-ownership rights. Land policy reviews have recently been conducted in Myanmar, leading to new land laws and/or redefinition of the necessary institutional framework under which land policy is administered. This takes into account the existence of various forms of “land markets” initially introduced in the colonial era as part of transfers within the community or to an outsider. However, it should also be noted that land markets existed before colonialism in some parts and have also emerged in areas where formal law has not made significant inroads.



## ANNEX III

### A NOTE ON THE LAND USE CATEGORIES AND TENURIAL RIGHTS

In Myanmar land tenure is defined in relation to land uses. There are nine classifications of land use, and various laws define the extent of the right the users may enjoy under each category.<sup>81</sup>

Agricultural Land: Land being utilized or kept in possession for agricultural purposes. With the enactment of the ‘Land Nationalization Act’ all agricultural land has come under exclusive State-ownership. Farmers become tenants and have right to cultivate only. Parcels under Agriculture Land are not transferable and the tenant must pay land revenue. Based on the continuation of cultivation on the land, normally the cultivation right is inheritable. However, the government retains the veto to revoke the cultivation rights and reallocate the land for “public purposes”. All the buildings on agricultural land can be removed if the agricultural land is not used for cultivation. Further, whoever uses agricultural land for purposes other than agriculture can be evicted and penalized under the Disposal of Tenancies Law, 1963.

Garden Land: In the legal concept, ‘Agricultural Land’ and ‘Garden Land’ belong to a single category. Garden Land is the land on which fruit trees and perennial plants are cultivated. The amount of revenue payable to the government with regard to garden land is much higher than paddy land. In theory, garden land includes farmland.

Grazing Land: Land being used only for grazing cattle owned by the people who are residents of the villages that are permitted access to it. No revenue is levied in respect of the lawful use of grazing land. It may not be used for residential or agriculture. For non-compliance, the Village Tract Administrator (VTC) will take action for certain offences, report to the competent (township) authorities for necessary action.

Cultivable Land, Fallow Land and Waste Land: Myanmar citizens have the right to apply for cultivating such land up to 5,000 acres per applicant. The area can be increased a maximum of 50,000 acres at the rate of 5,000 acres at a time upon satisfactory demonstration that the land was actually cultivated. The lease period on such land is a maximum of 30 years. This provision is normally applied for those interested in doing commercial farming – state-owned enterprises, joint-venture companies, private individuals. Exemption from payment of land revenue and income tax is also granted for specific period. The users have the right to apply for change in land use. If foreigners are involved in a group of applicants, the matter is referred to the Myanmar Investment Commission.

Forest Land: Forestland is demarcated and administered by the Ministry of Environmental Conservation and Forestry (MoECaF), in accordance with the ‘Forest Law’ and its rules and

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<sup>81</sup> Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land.

An objective assessment of land and forest governance or even broader economic developments in Myanmar is made difficult by the lack of quality data available. The government does not collect or publish much of the data that would be necessary for a deeper analysis and understanding of the land and forestry sectors. Available information is often outdated, ad hoc or conflicting. Many indicators are based on the application of outdated statistical standards. In addition, the government has also modified definition and criteria for a few terms making comparisons overtime more challenging.

regulations. Forestland may not be re-designated into another category of land unless the Ministry of Environmental Conservation and Forestry de-registers it from their registry. Permission of the Cabinet is required for change in land use. The Minister may alter/cancel the category of the forestland with the approval of the Union Government. Available reports suggest that close to one million people directly or indirectly depend on the forestry sector for their livelihoods and employment.<sup>82</sup> The contribution of forestry to GDP was an estimated 2 percent in 2010-11, but timber exports alone constitute about 12 percent of Myanmar's total official export earnings. Myanmar remains one of the world's few countries with no prohibitions on log exports with major export route shifting from Yangon to its borders with China, Thailand and India. Investments in rubber, timber and cashew plantations are growing rapidly since 1990s and often require the clearing of natural forest areas and has led to land disputes with local communities. These disputes are locally well-known but no comprehensive data is available. The 1992 Forest Law and 1995 Forest Policy enabled the 1995 Community Forestry Instructions (CFI), which gives legal backing for rural communities to co-manage forests. The overall principles in CFI are for local communities to fulfil basic livelihood needs for firewood, farm implements and small timbers, as well as reforest degraded forestlands. So far, no community forests have begun commercial harvesting, so it is too early to tell how they will factor into the country's commercial forestry sector, if at all. No government management plans have included community forests as providing timber for the country's wood sector, for example. There is also no certification program targeting community forests in the country.

Town Land: An area declared by the Ministry of Home Affairs by notification to be a town for the purpose of Towns Act. The parcels inside the town may be classified as either Freehold Land or Grant Land. Both are transferable.

Village Land: An area appropriated to dwelling-places not included in the limits of a town. It is transferable. Parcels in villages not exceeding 0.25 acre in size are exempted from assessment of land revenue. Village land is collectively owned and noted as such in the Land Registry.<sup>83</sup> Grazing pastures and community water bodies are included in this category.

Cantonments: The Ministry of Home Affairs may designate certain areas as 'Cantonment Area' for military use. Such land is exempted from paying land revenue tax. The land should be surrendered to the government if it is not required anymore for military use.

Religious Land: The Ministry of Home Affairs may declare an area of land as 'Religious Land'. Such land areas are exempted from payment of land taxes.

(Land use change, especially from agriculture to nonagricultural use is permissible by following a process commonly known as La Na No. 39 due to old farmland law but changed to No. 30 in new farmland law.)

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<sup>82</sup> UN-FAO (2009)

<sup>83</sup> Refer to The Lower Burma Town and Village Lands Act, 1899, Section 22©.

## **Different Forms of Land Ownership Rights**

As stated earlier all land in Myanmar is owned by the State, but individuals and private companies may enjoy a degree of ownership of parcels as prescribed by law. Broadly speaking there are three types of ‘ownership’.

**Freehold:** Freehold ownership of parcels is a rarity rather than the norm. The owner is not required to pay land revenue. It is inheritable and transferable. The government can acquire freehold land in its possession using the power granted by the ‘Land Acquisition Act’. Freehold land exists mostly in large cities and District level towns.

**Grant and Lease:** Right to make use of land at the disposal of Government may be awarded to public agencies or private individuals through grant and lease for approved purposes. The grant period can be 10 years, 30 years or 90 years. The land so obtained is transferable and the owner is required to pay land revenue on it. During the grant period the land is not at the disposal of government. However, it may be taken back during the grant period where the interest of the State requires but in accordance with the ‘Land Acquisition Act’, in which case the owner is entitled to compensation. The Lease instrument is also used for the same purpose but for a short period (10 years) whereas License is for shorter period of three years or less. In all the three cases a land certificate is issued to the user and details of the type of ownership, land classification and that of the owner is recorded in the land registry.

**Agricultural Land Rights:** The land under this category may be treated differently in the sense that no cultivator is issued a certificate of rights although his/her name is registered in the Land Registry kept by SLRD. Further, any cultivator can receive a copy of a proof of his or her right to cultivate a particular parcel(s) from the District SLRD office if s/he so desires. Land Use Certificates issued under the Farmland Law of 2012 to farmers forms part of this category of land rights with ‘terms and conditions’.



## ANNEX IV

### RECENT LAND-RELATED GOVERNMENT COMMITTEES TO PURSUE LAND GOVERNANCE REFORMS (POST-2010)

#### 1. Formation of New Land Administration Related Institutions (Post-2012)

Following the adoption of the Farmland Law in 2012, the government established the Farmland Administration Body (FAB) in every township and higher administrative levels (district, State/region and national). MoAI leads the FAB in terms of policy making and oversight while SLRD is the Secretariat for the work of FABs. The formation of FAB substituted the earlier Land Committees (that existed at all administrative levels in the country) which had a similar mandate. The FABs composed of representatives drawn from various land-related line ministries and agencies drawn such as MoECaF, GAD and others.

It is important to note that the Farmland Law did not define the precise roles and responsibilities of FABs at various administrative levels of Government (Ward, Village Tract, Township, District, Region, and State). However, the FAB's tasks at the Central level are listed in Article 17 of the Farmland Law and these were seen as guidance for further elaboration by the national FAB. In general, the FABs are responsible for:

- Reviewing applications for the use of farmland;
- Formally recognizing/approving rights to use farmland;
- Submitting approved rights to use farmland to the SLRD for registration;
- Conducting valuations of farmland for tax and acquisition compensation purposes;
- Issuing warnings, imposing penalties or rescinding use rights if conditions for use of farmland are not met; and,
- Resolve disputes that arise over the allocation and use of farmland use rights.

Simultaneously, in 2012, the government also established the Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFV). This is a multi-ministerial national committee formed in accordance with Article 3 of the VFV Law. The CCVFV oversees the granting and monitoring of use rights over VFV lands in the country for agriculture, mining and “allowable other purposes” under the law, in coordination with concerned Ministries and Regional or State Governments. The Minister of MoAI heads the CCVFV as Chair and the Director General of the SLRD as the Secretary of the CCVFV. The President has powers to appoint individuals from various Government organs, or other suitable persons as members of this committee. The CCVFV is specifically responsible to:

- Receive recommendations for the use of VFV land from various Ministries and Regional or State Governments;
- Receive applications for the use of VFV land from public citizens, private sector investors, government entities and NGOs;
- Reject applications or Grant “Permission Orders” for the use of VFV lands;
- Rescind or modify rights to use VFV land;
- Coordinate with MoECaF and other Ministries to prevent damage or destruction to forestlands and conserve natural regions, watershed areas and natural fisheries;
- Submit semi-annual monitoring reports on the use of VFV to the Cabinet of the Union Government;
- Provide input on the formulation of National Land Policy;

- Fix the rate of security fees to be deposited for use of VFV land;
- Fix the annual land revenue rate and suitable period for tax exemption in connection with the use of VFV land;
- Organize and delegate responsibilities to Task Forces and Special Groups for use of VFV land at the Regional and State level of Government;
- Help those with rights to VFV land secure assistance upon request (technical assistance, inputs, loans etc.); and
- Resolve disputes related to the use of VFV land in coordination with other Government departments and agencies.

## **2. Land Confiscation Inquiry Commission (established July 2012)**

The Legislative and Executive branches of Government have recognized that there are serious issues relating to land classification, land tenure security and land conflict in the country. In response, a commission has been established though this body does not have authority to directly address the problems it is examining, the information the body acquire will hopefully be used to inform and further develop the legislative and policy frameworks relating to land management in the country. Information gathered will also help Parliament to provide recommendations for resolving land grab issues to the executive branch of Government. This Parliamentary commission's work will focus on issues relating to land confiscation in the country, specifically whether land confiscation has been carried out in compliance with existing law, if land acquired has been utilized for its intended purpose, and if adequate compensation was paid to those whose land was acquired.

The Commission developed a number of reports on historic "land acquisition disputes and conflicts" that needed to be addressed, either through a process of payment of appropriate compensation for the taking or return of land use rights if the land had not been developed in accordance with the project (obviously cannot return land if someone built a factory on it). These reports very detailed, but summary reports were produced. Analyst argued that the preparation of the summary reports diluted evidence as most of these were complicated cases, with very poor historical records to sort out what happened when, who had what rights, and how compensation should be calculated.

Initially the GAD was addressing the cases in a very ad hoc manner, which was going nowhere fast. In response to political pressure and media coverage, the Union Government set up a Land Use Management Committee at the central, state/regional, district and township level to systematically address the cases. Unfortunately the President's office gave orders that the cases should all be solved and settled within a year, and impossible task considering the complicated nature of the cases and the evidentiary issues involved. GAD did develop procedures for the process of addressing the cases, but the procedures are woefully inadequate.

## **3. National Land Resources Management Central Committee (established in 2014)**

By the Union Government's ORDER (No-93/2014), dated 16/10/2014, the National Land Resources Management Central Committee was formed and this committee will be the highest power for the future land resources management activities. This committee is led by the Vice President will members drawn from all of the land-related government institutions as follows:

(a) Vice President – 2

Chair

(b) Minister of Home Affairs	Vice Chair – 1
(c) Minister of MoECaF	Vice Chair – 2
(d) Minister of Presidential Ministry – 5	Member
(e) Minister of MOAI	Member
(f) Minister of Transport	Member
(g) Minister of Energy	Member
(h) Minister of Mines	Member
(i) Minister of Finance	Member
(j) Minister of Planning & Economic Development	Member
(k) Minister of Construction	Member
(l) Chairmen, Myanmar Investment Commission	Member
(m) Chief Ministers of State/Region Government	Member
(n) Vice Attorney General	Member
(o) Chairman, City Development Council (NayPyiTaw)	Member
(p) Chairman, City Development Council (Yangon)	Member
(q) Chairman, City Development Council (Mandalay)	Member
(r) U Zaw Oo – Advisor of President	Member
(s) U Soe Naing – Chairman of Agri, Livestock and Fisheries Development committee	Member
(t) Deputy Minister, Presidential Ministry –1	Secretary
(u) Director General – SLRD	Joint-secretary

MoECaF serves as the focal point for the work of this Committee and its Secretariat.

Based on the information provided in the Presidential order for the establishment of this Committee, it appears that this new Central Committee is an attempt to streamline the multiple committees dealing with land that had previously been established.



## ANNEX V

### LIST OF PERSONS/INSTITUTIONS MET/INTERVIEWED

November 21 - December 29, 2014

S. No.	Name	Designation and Institution	Contact Details
November 22, 2014 (Yangon)			
1	Dr Thaug Tun	Executive Director, Institute for Peace and Social Justice	Tel: 95-9-421150536 Email: <a href="mailto:dthpece2012@gmail.com">dthpece2012@gmail.com</a> <a href="mailto:ipsjb2012@gmail.com">Ipsjb2012@gmail.com</a>
2	Dr. Myo Nyunt	Retired Econometrics	Tel: 61-S, 93101777: Australia <a href="mailto:burmavision@gmail.com">burmavision@gmail.com</a>
3	Mr Aung Kyaw Thein	Strategic Advisor, Pyoe Pin Program	79 Kanna Road, Kyauktada Tsp. Yangoon. Tel: 95-1254658 and 95-9-450042002 Email: <a href="mailto:aungkyaw.thein@pyoepin.org">aungkyaw.thein@pyoepin.org</a>
4	U Ba Hein	Agronomist	Tel: 09972649061 <a href="mailto:Bahein44@gmail.com">Bahein44@gmail.com</a>
November 24, 2014 (Nay Pyi Taw)			
5	U Thadoe Aung	DG, SLRD	Tel: 0949205062
6	Dr. Win Htut	Director, SLRD	Tel: 095181897 Email: <a href="mailto:winhtu@gmail.com">winhtu@gmail.com</a>
7	U Thein Win Aung	Assistant Staff Officer	Rakhine State
8	U Nyi Nyi Kyaw	DG, FD	<a href="tel:9567405400">Tel:9567405400</a> Email: <a href="mailto:nnkforest@gmail.com">nnkforest@gmail.com</a>
9	Dr. Thaug Naing Oo	Deputy Director, FD	<a href="tel:959448533635">Tel:959448533635</a> Email: <a href="mailto:tnoo71@gmail.com">tnoo71@gmail.com</a>
10	U Boni	Director, FD	Tel: 095164731 Email: <a href="mailto:uboni.mgv@gmail.com">uboni.mgv@gmail.com</a>
11	Wei Lin Htet Thwin	Township Head, SLRD Pyinmana	Tel: 0973020364
12	U Tin Tun	District Head of SLRD	Dekhina District, Nay Pyi Taw
13	U Tin Maung Myint	Assistant Staff Officer, SLRD	Nay Pyi Taw, Pyinmana.
14	U Win Naing	Assistant Staff Officer, SLRD	Nay Pyi Taw, Pyinmana.
15	U Myo Min Naing	Assistant Staff Officer, SLRD	Ottarathiri. <a href="tel:09448534783">Tel:09448534783</a>
November 25, 2014 (Nay Pyi Taw)			
16	U Thaug Htay	Farmer (49 yrs.), male	Mingone Village, Ottarathiri Tsp.
17	Daw Tin Kyi	Farmer (60 yrs.) female	Kywe Shinn VI, Mingone Vt
18	U Kyaw Myaing	Villag head (50 yrs.), male	Kywe Shinn VI, Mingone Vt
19	U Kyaw Shwe	Farmer (55 yrs.), male	Kywe Shinn VI, Mingone Vt
20	Mr. Nick Jewell	Consultant	Tel: 09254051419 Email: <a href="mailto:njewell@libero.iv">njewell@libero.iv</a>

21	U Kyaw Nyein Aung	Director, SLRD	Tel: 9567410124
November 26, 2014 (Pindaya, Shan State)			
22	U Zaw Lun	Chair, VTC	Pwehla Vt, Pindaya
23	U Mya Kyaw	Vice Chair, VTC	Pwehla Vt, Pindaya
24	U Khin Maung Oo	Secretary of PHECAD, Forest User Group (CSO)	Pwehla Vt. Tel: 0949352568
25	U Than Aung	Chairman of Vt. FAB	Pwehla Vt. Tel: 098357144
26	U Tin Zaw	Revenue Surveyor, SLRD	Pindaya, Shan State
27	U Shwe Maung	Assist. Staff Officer, SLRD	Pindaya, Shan State
28	U Than Zaw Win	Revenue Surveyor, SLRD	Pindaya, Shan State
29	U Myint Naing	Revenue Surveyor, SLRD	Pindaya, Shan State
30	Daw Sein Aye	Farmer, Pindaya	Setkyagone village, Pwehla Vt.
30	U Myo Win	Assist. Staff Officer, SLRD	Pindaya, Shan State
31	U Soe Than	Head of Office SLRD	Pindaya, Shan State Tel: 08166018
32	Ma Su Su Aung	Restaurant owner	Pindaya, Shan State
November 27, 2014 (Mandalay Region)			
33	U Win Ko Ko	District Officer, SLRD, Meiktila	Tel: 095404002
34	U Thein Tun Zaw	Township Head, SLRD, Meiktila	Tel: 092003234
35	U Soe Hlaing	Chair, Vt Admin, Leintaw Vt	Meiktila.
36	U Than Hla	Member, FAB, Leintaw Vt.	Meiktila.
37	U Zaw Thein	Member, FAB, Leintaw Vt.	Meiktila.
38	U Zaw Lwin Htwe	Assistant Staff Officer, SLRD	Meiktila, Tel: 06423387
39	U Zaw Lin Aung	Surveyor SLRD	Meiktila, Tel: 06423387
40	U Zaw Htwe	Surveyor SLRD	Meiktila, Tel: 06423387
41	U Hla Thaung	Farmer	Leintaw
42	Daw Ohn	Farmer	Leintaw
43	Daw Tin Myo New	Farmer	Leintaw
44	U Win Myint Tun	Registrar of Mandalay City	Tel: 092033426
45	U Than Htut	Head of MDY Div SLRD	Tel: 092000217
November 28, 2014 (Mandalay Region)			
46	U Tin Kha	Landless, Htanaunggaing VI	Tadaoo Township
47	Daw Pyae Tin	Landless family	Tadaoo Township
48	U Toe Toe	DRD staff	Digging village drinking pond
49	U Myint Soe	Farmer, ChinMyitKyin VI, Myingyan District	Tel: 09256297843; 096545195
50	Daw Hla Tint (wife)	Farmer, ChinMyitKyin VI,	Myingyan District
51	Maung Maung (son)	Farmer, ChinMyitKyin VI,	Myingyan District
52	Ma Nwae Nwae Win	Farmer, ChinMyitKyin VI,	Myingyan District
53	Ma Win Htay	Farmer, ChinMyitKyin VI,	Myingyan District
54	U Pan Aye	Farmer, ChinMyitKyin VI,	Myingyan District



55	U Aung Kyaw Myint	District SLRD, Myingyan	Tel: 066 21079
56	U Zaw Zaw Linn	Township SLRD, Myingyan	Tel: 066 22087
57	U Hla Wai	Farmer, Nyaungkan VI,	Taungtha Township
58	Daw Aye Myint Kyi	Farmer, Nyaungkan VI,	Taungtha Township
59	U Aye Khine	Farmer, Nyaungkan VI,	Taungtha Township
60	U Nay Myo Win	Township Head of FD,	Nyaung U
61	U Aung Hlaing	Township Head of SLRD	Nyaung U: Tel 0949334374
62	U Tun Myint	Assistant Staff Officer, SLRD	Nyaung U: Tel 06160268
63	U Aung Myint Naing	Deputy Staff Officer	Nyaung U: Tel 06160268
64	U Nyan Win	ASO, SLRD	Nyaung U: Tel 06160268
65	U Thet Tin Moe	ASO, SLRD	Nyaung U: Tel 06160268
66	U Soe Maung	ASO, SLRD	Nyaung U: Tel 06160268
67	U Myint Thein	ASO, SLRD	Nyaung U: Tel 06160268
68	U Kyaw Nyein	Surveyor	Nyaung U: Tel 06160268
69	U Win Maw	Surveyor	Nyaung U: Tel 06160268
70	U Aung Kyaw Myint	Surveyor	Nyaung U: Tel 06160268
71	U Hein Zaw Tun	Surveyor	Nyaung U: Tel 06160268
November 29, 2014 (Yangon)			
72	Ms Sue Sue Mark	Pyoe Pin Programme	Tel: 01 254658
December 1, 2014 (Yangon)			
73	U Myint Thein	UN-HABITAT	Tel: 09 254220329
74	U Aye Ko	UN-HABITAT	Tel: 09 5197153
75	U Yee Win	UN-HABITAT	Tel: 09 43124580
76	David Allan	Spectrum	Tel: 0943187244 Email: <a href="mailto:djallan777@gmail.com">djallan777@gmail.com</a>
77	Naw Mu Paw Htoo	PO, Spectrum	<a href="tel:09450051728">Tel:09450051728</a> Email: <a href="mailto:mupawhtoo.citone@gmail.com">mupawhtoo.citone@gmail.com</a>
78	Saw Mya Thinn	Project Coordinator, Spectrum	Tel: 095404098 <a href="mailto:smthinn@gmail.com">smthinn@gmail.com</a>
December 2, 2014 (Yangon)			
79	Celine Allaverdian	GRET	<a href="mailto:allavadian@gret.org">allavadian@gret.org</a>
80	U San Thein	Freelance Researcher	<a href="mailto:u.santhein@gmail.com">u.santhein@gmail.com</a>
81	U Nway Aung	GIS Manager, MIMU	Tel: 09450039935 <a href="mailto:Nway.aung@undp.org">Nway.aung@undp.org</a>
82	Bijay Karmacharya	Country Programme Manager	Tel: 09421170787 <a href="mailto:Bijay.habitat@gmail.com">Bijay.habitat@gmail.com</a>
December 3, 2014 (Mawlamyaing, Mon State)			
83	Ma Nwai Nwai Htwe	Small farmer, shopkeeper	Tadaphyu, Kyeikhto
84	Ma Khin Ti Wai (34)	Landless, watermelon seller	Kyauk yay Twin, Bilin
85	U Aung Myint Htoo + Soe Sandar	Landless, restaurant owner	Min Road, Thaton Tel: 0949816014
86	U Chit Ngwe	Asst. Director, DRD,	Tel: 09256048347

		Mawlamyaing	
87	U Maung Cho	Asst. Director, MoeCaF, Mawlamyaing	Tel: 09444002754
88	U Pan Thu KYaw	Asst. Director, SLRD, Mawlamyaing	Tel: 092034281
December 4, 2014 (Ye, Mon State)			
89	U Than Nyunt and Daw Aye Myint Htay	Rubber plantation owner, small farmer (8.0 acres)	Maukanin, Ye Township
90	U Win Aung	Staff Officer, SLRD, Ye	Tel: 09425355690
91	U Ba Nyar	Township Head, DRD, Ye	Tel: 09255744500
92	U Zaw Myo	Township Head, DIC, Ye	Tel:09425310788
93	U Myint Tun	Township Head, SLRD	Thanbyuzayat Township
94	U Tin Maung (62)+ Daw Khin Win Maw (daughter)	Village elder, fishing village	Setse, Damin Seik, Mudon
95	U Myo Naing (33)	Fisherman	Setse, Damin Seik, Mudon
96	U Win Kyaw Swar (27)	Fisherman	Setse, Damin Seik, Mudon
97	U Win Maw (42)	Fisherman	Setse, Damin Seik, Mudon
98	U Nge Nge (27)	Fisherman	Setse, Damin Seik, Mudon
99	U Win Aye (43)	Fisherman	Setse, Damin Seik, Mudon
100	U Zin Min Tun (37)+ Wife	Landless, teashop	Setse beach, Mudon
December 5, 2014 (Hpa-an, Bago)			
101	U Aung (47)	Director, Winner Land Production	14 miles from Hpa-an Township
102	U Sein Shwe+ Daw Ma Than	Home Garden (1.0 Acre) Rubber	Kawpalan Village, Hpa-an Township
103	U Khin Maung Win	Township Head, DRD, Hpa- an	Tel: 090931665876
104	Greet Trainees	Capacity Building Training	Hall of DRD of Hpa-an Township
105	U Tin Aung Kyi	District Head, SLRD, Thaton	Tel: 0949042290
106	U Thein Htwe (27)	Tenancy farmer of watermelon	Thagyohpyar village, Waw Tsp., Bago District
107	U Zwe (19)	Tenancy farmer	Waw Township
108	U Thant Zin Oo (37)	Tenancy farmer	Waw Township
109	U Aung Win (46)	Small farmer (12.66 acres)	Aung Chan Tha, Waw Tsp
110	U Kyin Soe	Small farmer (2.0 acres)	Aung Chan Tha, Waw Tsp
111	Daw Hla Myint (61)	Farm Labour	Aung Chan Tha, Waw Tsp
112	Ma Tar (23)	Farm Labour	Aung Chan Tha, Waw Tsp
113	Daw Nyunt Nyunt Win (41)	Farm Labour	Aung Chan Tha, Waw Tsp
114	Oo Agga Nanda (holds 10.0 acres of land)	Monastery providing voluntary free education	Aung Chan Tha, Waw Tsp

December 8, 2014 (Laputta, Delta)			
115	U Pyae Phyo Tun	Tsp Head, SLRD, Pantanaw, Ayeyarwady Region	Tel: 095025969
116	U Kyaw Myint	Assistant staff officer, Pantanaw	Tel: 046 30382
117	U Yan Naing Win (30)	Fish pond owner (150 acres)	Mayan Village, Pantanaw
118	Daw Nu (42)	Landless, mat-maker on the roadside	Ywathagyi, Pantanaw
119	Naw Htoo Phaw (45)	Landless	Ywathagyi, Pantanaw
120	U Tun Tun Naing (23)	Landless	Ywathagyi, Pantanaw
121	U Chit Zaw Oo (20)	Landless	Ywathagyi, Pantanaw
122	U Soe Moe Aung	Deputy Staff Officer	Myaung Mya District
123	U Hla Tun (40)+ Daw Phyu Ma (41)	Encroach in the Reserved Forest (Lei Pyauk RF)	Taung Tan Gyi village
124	U Khin Soe (48)	Encroach in the Reserved Forest (Lei Pyauk RF)	Taung Tan Gyi village
125	U Hla Htay (41)	Encroach in the Reserved Forest (Lei Pyauk RF)	Taung Tan Gyi village
126	U Kyaw Kyaw Aung	Asst: Director, District DRD	Laputta. Tel: 09250447532
127	U Aung Kyaw Myo	Township Officer, DRD	Laputta. Tel:09458032850
128	U Thein Zaw	District Officer, SLRD	Laputta. Tel:098578725
129	U Aung Than Oo	Deputy Staff Officer, SLRD	Laputta. Tel: 09 425279319
130	U Ye Win Tun	Deputy Staff Officer, SLRD	Laputta. Tel: 042 80127
December 9, 2014 (Laputta, Delta)			
131	U Tin Oo	Deputy Director, GA	Laputta District.
132	U Toe Toe Tun	Assist: Director, GA	Laputta
133	U Aye Naing	Tsp. Officer, Fishery Dept.	Laputta
134	U Kyaw Han (46)+ Daw Aye Aye Naing	Shrimp dealer	Laputta
135	Ma Win Thaw Da (17)	Labourer, (8th std:) Pankhin kabar Restaurent	Nyan Kwin Village, Myaungmya
136	Mg Chit Phyo (14)	Labourer, (4th std:)	Nyan Kwin Village, Myaungmya
137	Ma Sanda Lin	Labourer, (2nd std:)	Nyan Kwin Village, Myaungmya
138	Ban Mu ROUNG (58)	Farmer, 50 acres, (Hindu)	Pwesargon village, Letpangon Vt
139	Peik thalay (60)	Farmer, 50 acres, (Hindu)	Pwesargon village, Letpangon Vt
140	U Okay Lay	Paddy buyer	Kyakheth Kwin Village, Einme Tsp.
December 10, 2014 (Pyapon, Delta)			
141	U Ye Zaw Hein	Assistant Director, SLRD, Pyapon District	Tel: 09 250278819
142	U Win Kyaw Phyo	Staff Officer, SLRD, Pyapon	Tel: 09 422491785
143	U Mya Soe	AD, Planning Dept.	Pyapon

144	U Soe Tint	Deputy Director, GA,	Pyapon Dist. Tel: 098590444
145	U Win Kyaing	Asst. Director, Fishery Dept.	Pyapon: 045-40021
146	U Kyi Saw	DD, DRD, District Officer	Pyapon: 095043433
147	U Aung Zaw Myint	Asst. Director, DRD	Pyapon.
148	U Than Hla (35)	Farmer (7.00 acres)	Tawkhayan village, Kungyangone
149	U Hla Oo (47)	Landless	TawKhaYan Village, Kungyangone
150	U Lay Myint (61) + Daw Khin Aye	Farmer (7.00 acres)	Taw Pa Lwe Village, Kungyangone
151	U Aung Myat Khine	Township Head, SLRD	KunGyanGone. Tel: 0943118091
152	U Khin Hla	Asst. Staff Officer	SLRD, Kungyangone
153	U Zay Yar Myint	Asst. Staff Officer	SLRD, Kungyangone
154	U Aye Tun	Asst. Staff Officer	SLRD, Monywa
December 13, 2014 (Monywa, Sagaing Region)			
155	U Kyauk Khe	Farmer (60 acres), Leze Vt	Monywa, Tel: 09400516070
156	Attend NLUP consultation workshop (organized by GRET). About 60 participants (smallholder farmers and local CSOs)		Monywa
December 14, 2014 (Amarapura, Mandalay)			
157	U Kyaw Sint (48)	Farmer (2.00 acres)	Taungthaman pond, Amarapura
158	U Tun Kyi	Farmer (9.00 acres)	Taungthaman pond, Amarapura
159	Rama Oolar	Farmer (4.00 acres)	Taungthaman pond, Amarapura
December 17, 2014 (Yangon)			
160	U Nay Myo	Agri & Livestock Officer, LIFT	<a href="mailto:naym@unops.org">naym@unops.org</a>
161	U Zaw Naing Oo	Program Officer, LIFT	<a href="mailto:zawo@unops.org">zawo@unops.org</a>
162	Antoine Deligne	Specialist, LIFT	<a href="mailto:antoined@unops.org">antoined@unops.org</a>
December 18, 2014 (Yangon)			
163	U Than Tun	Vice President, MDRI	<a href="mailto:Thantun.cesd@gmail.com">Thantun.cesd@gmail.com</a>
164	Attend Workshop at Micasa Hotel by GRET		
December 19, 2014 (Yangon, Hmawbi TownshipYangon Region)			
165	U Shwe Thein	Land Core Group	Care Myanmar. Tel: 09 5065152
166	U Aye Min	Asst. SO, SLRD, Hmawbi	Tel: 0973197857
167	U Aung Oo Lin	Asst. SO, SLRD, Hmawbi	Tel: 095056374
168	U Thein Lwin	Asst. SO, SLRD, Hmawbi	Tel: 097312317
169	U Win Tun Naing	Surveyor, SLRD, Hmawbi	Tel: 0973125183
170	U Aung Zeya Myo	Surveyor, SLRD, Hmawbi	Tel: 09 4306654
171	U Htin Lin	Surveyor, SLRD, Hmawbi	Tel: 0979578731
December 24, 2014 (at FAO office)			
172	Dr. Tun Lwin	Director, DRD HQ office	Tel: 067 409416

## ANNEX VI

### A NOTE ON THE DRAFT NATIONAL LAND USE POLICY

In September 2014, the government developed a draft National Land Use Policy (NLUP) that seeks, as a first step, to put in place an overarching framework for land and natural resource governance. This document is the first attempt to articulate government's intentions and vision for the land sector. The document was also disseminated to public seeking comments and suggestions. The draft NLUP intends to address some of the most pressing issues on land and natural resources and represents an important step in building land governance in the country. It includes goals that appear to strengthen the security of tenure of marginalized and vulnerable groups, such as informal or non-registered land rights-holders, including particular attention for ethnic minorities and women. These are in line with international human rights law and standards, particularly as poverty and food insecurity are highly concentrated in Myanmar's rural areas. Additionally, the NLUP includes as a goal the enhancement of foreign investment in rural areas, as well as environmental protection. As it stands, the document seeks to pursue a variety of legitimate policy goals, although it is not evident that all of them can be feasibly pursued simultaneously. In sum, the draft has covered a number of land use related issues, proposed a framework and action plans too. The final version would feed into the preparation of the draft Land Law in the coming days too.

Several civil society organizations and informed people have provided comments and inputs to the government on the draft NLUP as there are a number of areas, wherein the draft NLUP could be improved to be more effective and inclusive. A few comments on the draft NLUP stand out and are summarized herein below.

One, the land-to-people relationship (social functions of land and resources) is not well defined in the existing draft – and also generally in law, the Constitution or this draft policy. It is important for the policy formulation to take note of the fact that conflicts on land, weak dispute resolution processes, land grabs without due process or compensation and reduced security of tenure which has occurred in the past and still occurs in Myanmar is due to a weak appreciation of this relationship which has resulted in a gap in understanding between government and the ordinary people.

Two, the NLUP should consider taking an affirmative stand on protecting and recognizing the rights of people to land and resources. Smallholder farms are backbone of the rural economy in Myanmar and their land rights should be protected and recognized in an explicit manner. It is much required to bring in reforms to any land consolidation program, land development or land acquisition programs. At the same time land rights for landless and low-income people should be addressed in respect to their needs for both land for shelter and farmland for food. Such an affirmative stand upfront would help in promoting social inclusion in a broader sense. In turn, such a positive policy statement will lead to priority actions required for securing tenure rights of those who have used land for long periods; ensuring access to land for landless peasants; and establishing as a principle the provision of alternative locations of comparable quality, compensation and mitigation measures when securing tenure rights proves not to be feasible.

Three, an important gap in the NLUP relates to lack of full range of remedies normally available to people subject to displace or eviction as guaranteed under international standards and practices. This is particularly important as Myanmar has weak procedures and guidelines

relating to land acquisition, compensation, resettlement, and rehabilitation. All of these should be included as integral to a land use policy along a prohibition on forced evictions and displacements. Further, given Myanmar's history and current challenges in the land tenure sector, restitution and reconciliation of past land confiscation should be a program of government so that the long term land tenure of people which was broken by an invalid process of compulsory land acquisition may be properly addressed based on the land to people relationship of Myanmar described in this policy statement. Policy could consider the establishment of an independent administrative body for this purpose.

Four, the policy would be socially beneficial if it makes a clear statement on the protection and recognition of customary tenure and collective land rights along with the rights of informal settlers in the urban and peri-urban areas.

Five, the draft policy clearly indicates creating a foundation for effective land information management which ensures updated, correct, complete and precise land records will be maintained and which promotes equal public access to complete and correct information. It also proposed an elaborated reform process to establish land information management. While these are progressive steps proposed, it is important to make a point on assuring 'affordability and easy access for a common citizen to obtain land information'. A National Spatial Data Infrastructure (NSDI) framework consistent with the internationally acceptable geospatial information standards, new land law (forthcoming) and other reform measures should be prepared and adopted. NSDI framework will guide the development of physical and human resources for land information management along with capacities required for it.

Six, at present there is no clear definition of the terms State land and State-held land. These terms are now generically used. NLUP should be an opportunity to address this deficiency. In general, the term State-land has the characteristics that all people may enjoy the use of the land and its land use cannot be modified without due process under law. On the other hand, State-held land is owned by the government for certain stated purposes. In addition, the policy may benefit from clarifying the use of the 'eminent domain' principles in land acquisition for public purposes. In parallel, the policy should mandate the government to develop implementation guidelines and mechanisms, standard market value reference points, to facilitate a fair process and the government/investor can afford to give a just and reasonable package to existing landholders and compensate them. These details should be made available to the public for reference and use. The dissemination of information and education on land matters is limited and knowledge of land rights amongst Myanmar's people is very poor. Unless the population understands their legal rights and responsibilities, policy goals cannot be accomplished and laws will not yield meaningful results.

Lastly, the draft NLUP should put in place (a) measures to enhance gender relationship in land and property and protecting land rights of women and other disadvantaged groups; (b) policies to protect field level implementation; (c) steps to develop capacity and facilitate changes locally so that land administration and management is socially inclusive. Importantly, the NLUP should prevent stereotyping that would lead to flawed policy prescriptions. It also requires inclusion of civil society in all discussions and continuous public engagement.

Taken together, land policy and land use planning are conscious efforts on the part of stakeholders to achieve national goals for resource administration, management and distribution. The strategy for national land policy is closely linked to sectoral strategies and overall socioeconomic and governance goals. It provides a sound institutional framework for clarifying and documenting rights to land, managing land resources for sustainable economic

and social benefit, and making provision for equitable distribution. It seeks to assure that ownership and use of land conform to well-defined, legally recognized criteria which help to achieve Myanmar's social and economic goals. The policy requires broad agreement to make it a consensual undertaking which has the support of people in all walks of life, whether they are farmers, fishermen, ethnic groups, investors, builders, soldiers, government officials, lawyers, bankers, tourism operators, industrialists, urban residents, or workers. It needs the support of women, minorities and the poor or least visible members of society. With consensus policy can be implemented in a way that will encourage confidence and security, and foster trust and transparency.

More importantly, the land policy should be woven as a set of coordinated principles, objectives and reasoning regarding land and resources which are expressed in laws, programs of action, and institutional arrangements and directed toward enabling the achievement of national goals of economic development, poverty reduction, social inclusion and good governance. The fact that modern-day land administration and management will impact on a wide array of institutions and stakeholders, the preparation of NLUP is an opportunity for the Government to eliminate overlaps and streamline institutional arrangements.

Based on discussions the review team pursued, the following issues, among others, were identified:

#### *Land Policy:*

- Uncoordinated land policy framework: At present, Myanmar lacks a broad land policy framework. A better and stronger articulation of vision, objectives, strategies, and implementation priorities through a land policy will help to resolve the gaps in clarity and coordination. This will enable a more sustainable and efficient use of resources for resolving tenure issues, and a closer coordination of land policy initiatives with other aspects of the State reform program that the government proposed in 2011.

#### *Land Administration:*

- Most landholders do not have formal land records or certificates (except those who received LUCs recently for their farmland parcels). Lack of formal evidence of land held by the farmers threaten the poor with potential land grabbing, impedes investment and holds back the development of a land market which could allocate land to those who need it and value it most. Scars from the past land confiscations and involuntary land acquisitions persist and it is more important now to get the formal evidence on land ownership in place.
- The land registration system is not well developed and transparent. As the land information management is weak and that land registration is lacking, there are overlapping claims, false claims and land disputes. Much land is not registered, which makes it vulnerable to dispute and insecure for investment. Registering a parcel may require significant sum of formal and extra-legal payments to village heads and officials.
- Relevant laws and procedures are not sufficient. The development of a strong market economy and decentralized public administration requires a clear legal framework on property rights, transfers, use of State and private land and the regulatory powers of the State over land use. Several necessary legal and regulatory frameworks are missing, allowing chaotic situations to go unresolved.
- Human resources, budget and equipment for land administration are inadequate. Insufficient training and resources prevent routine operation of land administration functions.

- Definition, delineation and demarcation of State Land are not clear. As the 2008 and earlier Constitutions have declared State as the ultimate owner and holder of all lands in Myanmar, it is often unclear on the ground what area are “State land” and which is ‘privately held land area’ and ‘State-held public’ property. Both public land protection and exploitation (e.g., forests) and the provision of concessions, leases or transfers (of State-held land) for economic development are complicated without this delineation. The demarcation of agricultural and forestry concessions is often unknown or unclear and frequently overlaps with human settlements.
- The land valuation system is not accurate. Land valuation is needed for public purposes of property acquisition, sale, lease, and taxation. It is also needed for private purposes of purchase/sale and mortgage. Thus both governance functions and private land markets also are constrained by the absence of valuation systems.
- Disputes are frequent and often remain unresolved. Approximately two-thirds of the land disputes involve government take over land areas. Estimates of the number of families involved in land disputes are in the tens of thousands.
- Land taxation system is weak. The unused land tax is under collected and not serving its purpose. The transfer tax on land is frequently evaded and the value of transfers underreported.

#### *Land Management:*

- Land use planning and natural resource management are not integrated. Encroachment onto protected areas, illegal logging, grant of land for economic development to investors without adequate protection of subsistence requirements of local communities, confusion about jurisdiction, land grabbing, and cancellation of rights to subsistence uses of natural resources result from a lack of integrated land use planning and natural resource management. This problem impacts the sustainable exploitation of forests and fisheries and economical use of water. It affects the livelihoods of the poor. It affects tourism and eco-tourism and it affects the growth of cities. Further, land use zoning needs to be determined through a proper spatial planning process with the hierarchy of cities, districts, and townships, settlement pattern and natural resources. Therefore, one would suggest that in the draft policy the actual zones should not be defined. Instead of defining the zones, it is more useful and realistic to define and refer to the zoning mechanism and principles
- State land is not defined, clearly identified and is not properly managed after the process of transition, which leads to accelerated land grabbing and destruction of forests. Many agricultural concessions are unused or inappropriately used. Illegal logging and clearing of forest is widespread. Encroachment onto environmentally sensitive and protected areas is occurring. The land rights of communities living inside the forest areas is not protected and recognized so far.
- Land use planning is hindered because many areas still suffer from land mines. Specifying the locations of suspected minefields, prioritizing areas for de-mining and making decisions about the use of de-mined land do not always occur in an integrated manner with local land use planning.
- Urban development and new investment is difficult There is a lack of land use planning guidelines, approved urban development plans and transparency about the process of acquiring and developing urban land. Lack of urban development policies impedes solutions to problems created by informal settlement, and impedes new investment because developers are unsure about future plans.
- There is a lack of experience and expertise in land management and land law and a lack of technical assistance. Land management decisions are often not technically or legally sound.



### *Land Distribution:*

In the past, people in Myanmar in need of land were traditionally able to acquire it through acts of occupation and use without much constraint. Acquisition of land through occupation is no longer feasible in many areas. Now available land resources are becoming gradually limited and the government ceases to recognize new occupation as the basis for legal possession, meaning that land acquisition must occur through market channels or through transfers of land from the state.

- Many poor people have no land or too little land to earn a living (due to population growth, lack of access to new land areas, etc.) Until such time as non-agricultural employment opportunities are more prevalent, the agricultural sector will be the most important source of livelihood for most of the poor. Therefore, households would seek land for subsistence and income opportunities.
- Some people cannot afford to buy or rent land. Land prices have increased rapidly in recent years, beyond the ability to pay of some citizens. Opportunities to secure land on rental basis are declining. This means that other mechanisms of land allocation such as social concessions or leasing of public land are needed for some groups to fill needs for shelter and livelihood.
- Productive land is not always in the hands of the most productive people. It is reported that many agricultural concessionaires have not made the investments designated in their contracts.
- Accumulation of land for speculative purposes is preventing land from being productively used in the present. According to anecdotal reports, speculative land purchases are increasing.
- Land confiscation. Numerous cases of land being claimed by powerful individuals, apparently without legitimate rights, have been reported. There is a need for healing the past scars over this subject through a process of reconciliation and restitution.



## ANNEX VII

### ACCESS TO IRRIGATION, CREDIT FACILITIES AND CROP FAILURES

According to the Food Security Information Network (FSIN) in Myanmar, the food security situation in the dry zone has been a concern for at least 3 months every year and more so since 2005, with more than half of the monitored townships reporting high levels of food insecurity even in the post-monsoon period. Data gathered by the network points out that close to one-third of the monitored households frequently reported severe food insecurity, which is little changed since for the last few years. Rainfall deficiencies in the early and late monsoon seasons have impacted key crop harvests and resulted in water shortages in various parts of the dry zone. Close to 15 percent of the townships were amongst the hard hit annually, with report of groundnuts, sesame and pigeon pea failures and multiple reports of premature depletion of many 'rainwater collection ponds'. As a result, the food security situation as well as the health and well being of communities are deteriorating. Generally, food stocks and purchasing power are lower than normal and lack of water is impacting hygienic conditions and placing additional stress on health of livestock. Data from Department of Meteorology and Hydrology (DMH) inform that certain townships frequently experience shortfalls in monsoon rain. This erratic rainfall pattern has regularly damaged key crops.

FSIN and UN-WFP reports also highlight widespread water shortages, particularly in the dry zone areas. While water shortages are typical in the dry zone, the extent of shortages and the speed at which water sources have been depleted add to growing crop failures and food shortages among farming households. The reports also point out that the increasing number of 'rainwater collection ponds' either already dry or very close to dry in the country – even in high-rain fall upland areas where ponds and lakes lack maintenance. The periodic reports talk about villagers accessing water by walking to neighborhood or purchasing water from tube-well owners. While water purchases are not unusual in the dry zone, they are happening more – and the land required to store water within household or farming areas is not always adequate. The purchases of water and need to prepare water storage facilities are beginning have financial impacts on households as dry season continues. In discussions, farmers advised that a better land management would lead to water retention, increasing ground water levels and common land for grazing and household fisheries. These are concerns that will have to be addressed in linking land tenure with food security and water. With regard to irrigation, Myanmar's total irrigated area was stagnant at about 2.5 million acres until 1991-92, but then expanded rapidly, reaching around 4.5 million acres in 1999-2000. Out of this, pump irrigation registered much of the increases during that period and helped to push summer paddy acreage in delta area. Reflecting amongst other things, the low cost of canal irrigation, the high profitability of paddy cultivation was a notable feature for a few years at least till 1997-98 period. Despite its relatively higher cost structure arising from the local usage of pump irrigation, the high rice prices allowed farmers to obtain reasonably high profits from summer paddy production. However, once the rice prices declined, the intrinsically expensive nature of pump irrigation emerged as a serious drawback for farmers and curtailed their household subsistence economy too. The farmer's household debt cycle extended beyond a point of self-management. According field studies, in fact, the agricultural development of Myanmar since 1988 has owned a lot to self-sustaining growth of smallholders, in crop categories that have fallen outside the concerns of the government. In this respect, the role of the government has been minimal. Another notable feature is that development has not been

supported by improvements in productivity. It was around this phase in late 1990s that the economic status of smallholders began to dwindle and the risks of continued lack of support for farmers went unaddressed. Some of the recent studies (Ash Center, 2011, for example) challenged some of the positive claims with regard to agriculture as per capita rice production in Myanmar dropped from 2006 to 2010 and also that price of paddy and of many pulses fell by half in real terms, diminishing the incomes of farmers. It is possible that many more workers migrated to neighboring countries (Thailand or Malaysia, for example) since 2003-04 and that their remittances are a major factor that is hard to measure, since most money is sent back through informal networks.

During the field visits, farmers reported that the 2014 monsoon unleashed widespread infestation throughout Ayeyarwady region and that many farms were affected. The average yield declined to 20 baskets of rice per acre, compared to an average of more than 70 baskets in a good year. The spread of the disease was attributed to inadequate understanding of the issue among farmers and lack of government resources to support them overcomes the challenges. At times, farmers also try to salvage their crops by using costly and harmful pesticides that are not as effective as the preventive measures are.

The agricultural policy during the socialist period was crop planning. This was officially abandoned in 1987. However, farmers continued to face the threat of seeing their tillage rights to land revoked if they deviated too much from crop plans formulated by the government, especially with respect to paddy. The government has given high priority to the expansion of paddy production, since it believed that a stable supply of rice is a pre-requisite for political stability. Under this program small to medium-sized water check dams were constructed, while private investments in diesel pumps were promoted. This led to 'summer paddy cropping' in the 1990s. However, as later results show, this program weakened due to the exhaustion of easy opportunities for irrigation and low paddy prices for producers. Due to the ban on private sector rice exports, the low quality of rice and managerial inefficiency of the government entities did not lead to increase in rice exports or better income for the farmers. Such misinformed agricultural policies did not consider frequent weather variations, lack of further investments in irrigation or the excessive use of pesticides (affecting soil quality) and resultant crop failures that began to occur at regular intervals since mid-1990s.

One of the suggestions provided by farmers is worth mentioning here. Everyone acknowledged that there is a significant difference in yields between areas in which farmers are able to channel water to or drain it from fields in which farmers rely on rain and gravity for water control. Farmers in dry zone and delta generally claimed that they could produce at least 20 baskets more per acre with better water management. However, they are unable to do this as cost of diesel pumps has increased over the years and currently somewhat at unaffordable to most farmers. A better rural electrification would be able to reduce cost of pumping water or control water flow to allow better production and reduce uncertainty.

All through 1980s to mid-2000s, for most farmers, credit was scarce and expensive. Even as recently in 2009-10, the Myanmar Agricultural Development Bank (MADB) provided only 8,000 kyat per acre, less than a tenth of sum needed to cover the average cost of inputs in paddy farming. Though loan amount has increased to about 100,000 kyats acre in 2014, there are no other formal-sector lenders for farmers and that most households seek informal money lenders who charge around 6 to 12 percent a month and is not always available or provided with additional clauses. Along with increasing irrigation costs, depressed input use hold down production, reduced farmers' incomes, and ultimately increased their indebtedness.

The review team in its interviews and discussions found that farmers are in a debt cycle, the intensity of which is hard to measure and outside the scope of this review. However, we did notice that the current debt burden is often times larger than expected incomes for most farmers. If they have high-debt cost, many farmers may have to sell their assets (usually part of land holding). At least one-fifth of the farmers we interviewed informed that the ‘new’ loan secured in 2014 could not be fully used for buying inputs and that puts them at further risks. At least there is a problem of cash liquidity among farmers. The VTC heads we interviewed acknowledged that circumstances like this are common and may eventually lead farmers to lose their landholding and a reason for growing landlessness (or near landlessness) among them. Will better credit facilities resolve some of the issues among farmers? Probably not, as the challenges are not merely access to good credit facilities but better cropping pattern, price for farm produces, restructuring loan repayment schedules, off-season employment, etc.



## ANNEX VIII

### GIS AND REMOTE SENSING CAPACITY WITHIN MOECAF AND MOAI

The capacity of the GoM to analyze and use information from remotely sensed data is critical because it means the ability to make real measurements of actual current land use and make this available in such a way that land policy and management is based on actual physical evidence. Accurate information needs to be at the heart of any transparent process and needs to be shared and used across all government departments at all levels that are concerned with land management and land use planning.

No information exists for non-prime agricultural land in the uplands, including land used for long fallow subsistence agriculture. There exists some GIS capacity within SLRD, but this is used only for its cartographic function. SLRD expresses an acute need for training in remote sensing and access to satellite imagery - which is currently unavailable due to budgetary constraints - and the benefits to be derived from '*a universal mapping system for the whole country*'. Any future technical assistance to MoECaF should include capacity building to enable SLRD to access and use the products derived from remote sensing imagery and GIS analysis.

Administrative responsibility for nearly all land in Myanmar is split between MoECaF and MoAI, whose areas of jurisdiction are defined by its land use classification, much of which dates from the colonial period. Although both organizations acquire and maintain spatial data, only MoECaF has the technical capacity to extract information from remote sensing imagery, and even then, the most current MoECaF imagery (2009) has been used to prepare reconnaissance level information on forests only, rather than detailed data on all land use classes. MoAI is responsible for large areas of upland but has no spatial information on its area or condition.

#### MoECaFs GIS and Remote Sensing Unit

MoECaF is responsible for administration of Reserved Forest land and Protected Public forestland and Protected Areas Systems. Although MoECaF has a remote sensing and GIS unit, located within the Division of Planning and Statistics, its emphasis on national, regional and local forest inventories and databases means that the data that produces is much more specifically related to the needs of forestry rather than land in general.

MoECaF has prepared a national land cover map in 2010 based on IRS 24 meter resolution data. Other outputs include forest data prepared from Landsat data for FAOs global Forest Resource Assessments. The quality of this data is adequate at a reconnaissance level, but as a national land cover/land use map its value is limited because of the limited number of land use classes derived from the 30m satellite data. There is a very limited level of detail on land use and land cover outside reserved and protected public forestland and public forest, especially the crucially important class of 'land under long fallow subsistence agriculture' upon which 80 percent of upland rural populations in Myanmar are dependent. This land use type is grouped together in the general classes 'other land' and 'other wooded land' rather than identified as long fallow agriculture, agro-forestry, or similar.

The limited scope of current national land use data in MoECaF derives from its origins as a service centre to support forest inventory and forest management objectives, rather than land in general, and this represents a limitation in terms of its ability to address land management planning across the whole country, where a complete and detailed set of spatial data is required, to allow for example land management planning at the landscape scale to take place, a strategy which is now being promoted by UNEP as landscape level approaches to sustainability.

As the sole government agency with statutory responsibility for the environment as a whole, including biodiversity, habitats and conservation (in addition to land management in general) MoECaF urgently needs to address the current data limitations (inadequate land use and land cover) by acquiring recent satellite imagery of adequate resolution and converting these to accurate information. This process will also require upgrading and improving current technical capacity to be proficient in the use of software that implements image segmentation for information extraction rather than standard maximum likelihood methods, which are known for limitations in accuracy, especially in areas of mountainous topography.

In addition to forestry, MoECaF also has statutory responsibility for the environment and conservation in general, and therefore requires spatial information on the environment in addition to that normally required for forest management purposes. This should include all areas of land degradation and erosion and zones at risk, important habitats within the landscape and zones connecting these, high conservation value forest and rare forest types at risk and forest providing environmental services such as watershed protection. All of this information, required as part of the National Biodiversity Strategic Action Plan is not yet available to MoECaF.

As the only GIS unit within government with basic GIS and Remote Sensing skills and capacity, the MoECaF GIS unit would be the obvious agency to assist the LUASC preparation of land cover statistics and all the above data to inform the ongoing land survey process.

#### Land Survey Department's 1:50,000 Topographic Maps and Sharing of Data

Land Survey Department is now under MoECaF. All government departments concerned with land management planning require open access to digital data. The survey department produces a set of detailed national topographic maps at 1:50,000 scale, but maintains exclusive control over the digital version of this data. MoECaF currently does not have full access although this data should be an essential input into land management planning nationally. Given the importance of this type of data in spatial planning at a number of scales it is vital that any explicit restrictions on government departments rights to share and access to digital spatial data are removed. At the moment, MoECaF does not have full access to digital data at 1:50,000 scale and is required to manually re-digitize the data if it is needed in vector format for its own use.



## ANNEX IX

### A NOTE ON ONEMAP

In early 2014, GoM in collaboration with its development partners discussed the idea of building land inventory. Out of this discussion, the concept for '*OneMap Myanmar*' emerged as a method for building unified database that would link, update and share all government-held, land-related spatial information for use of government departments and the public. The '*OneMap Myanmar*' system when operational is intended to offer a single access point to spatial data on land cover, land use holdings, administrative boundaries, other natural resources, and possibly social and economic information. Under the OneMap approach there is an intention to put in place a system to incorporate data currently becoming available through the linked Forest Department's District Land Use Mapping pilot initiative, the potential Land Inventory, Survey Department data, as well as the *kwin* maps proposed to be digitized by the SLRD, among others.

Proponents of *OneMap* system reasoned that it would involve a comprehensive process of checking and making compatible the range of valuable information held by different agencies. The system will allow systematic spatial analysis and so support better policy making and development planning. In sum, '*OneMap Myanmar*' is advocated as an useful tool for the national and local Land Committees, and help government fulfil its commitment to "e-governance". The OneMap concept received a high-level traction in December 2014, at a high level meeting at MoECaF, the Vice President announced a number of priority activities with regard to land sector that included elaboration and the establishment of OneMap Myanmar. As per current proposal, the *OneMap* system would function under the guidance of the Land Use Council, and hosted by MoECaF as Lead within the government for that work.

Unifying spatial information under a single unit that provides access as a public service is standard international practice, and in Asia, a number of nations have examples of best practice in government-managed open access spatial data platforms. One of the key drivers for *OneMap* has been the lack of clarity over designated forests and currently used land areas.

A better examination of the OneMap proposal indicates a number of technical flaws and highlight the need for NSDI. To start with, *OneMap* concept has overlooked some of the basic tenets on a national SDI - including protocols on metadata, common map datum, projection etc - some of this can still happen in Operations and Manteance but the some of the NSDI technical specifics (Metadata server etc) can be bypassed as we're 'only' on land here.

Firstly, the proposed mapping scale under OneMap. Generally, *OneMap* is envisaged as being a basic map at 1:50,000 scale and Land Survey Department (under MoECaF) would seem to see it as a national coverage of 1:250,000 topographic and some thematic mapping, and selected areas completed at 1:50,000 scale. However, there are many government requirements where these scales are simply too small. Land registration requires much larger scales of 1:500 to 1:2,500 in urban areas and 1:10,000 in other areas. Local spatial planning (zoning) would require similar scales to that used for land registration, while regional spatial planning (master land use planning) would certainly use the smaller scales of 1:250,000. Those agencies working on soils, crops, resources, climate and so forth would be using mapping at scales of smaller than 1:250,000 and smaller.

The merits of a single authoritative, nationally consistent spatial database for Myanmar where information is captured once and used many times cannot be challenged. However, *OneMap* must be authoritative; accurate and assured and accepting mapping from unofficial sources must require validation. The *OneMap* concept has been placed for discussions at the government and civil society alike. The proposal to standardize mapping is a good sign. However, the current thinking has several obvious technical flaws or weaknesses including<sup>84</sup>:

- Fundamental Core Data Sets: The government has failed to adequately define these and has largely leapt to the national topographic mapping and the geodetic reference system. A list of fundamental core data sets *for land purposes* now exists and once ratified will be the foundation of OneMap Myanmar. While this can be a starting point, it may not sustain the system in the longer run.
- Scale: The current technical specifications (proposed) will not be able to meet expectations as the mapping scale is very small and because huge resources are required for larger scale mapping. The national “basic” map scale is 1:250,000. There is a specific program to produce 1:50,000 scale mapping to meet the requirements of protection of the rights of forest-dependent communities and protected areas (as part of say, REDD+). Mapping is being pursued largely on the traditional map-sheet approach rather than regional coverage as geographic information system approach facilitates. As such the true benefits of a Myanmar National Spatial Data Infrastructure (NSDI), which would mean scale-less data, are unlikely to be realized. Also, in the longer term, there is an inherent risk that the traditional national mapping approach of Land Survey Department will simply be re-produced without qualitative and ground level attention.

It is obvious that OneMap Myanmar must not simply be a vehicle for Spatial Data's topographic sheets. On the other hand, proponents of OneMap argue that the reality is that acquisition of scale-less data requiring all the resurveying with GPS (e.g., community land, community forest, ethnic reserved land and so on and field checking of poor quality Kwin maps (for farmland areas) and other information that will make it accurate will take a very long time indeed and while an incremental process it has to start somewhere

- Incorporation of community mapping may not be effective: With civil society beginning to consider preparing land use maps or other methods to protect and seek recognition of customary land tenure rights, mapping scale is critical. In general, land use or community mapping is produced at a very large scale. Realistically, the smallest scale to effectively incorporate community mapping inputs, i.e. so you can actually discern boundaries, is probably 1:10,000 and in villages, even larger.

It is important take note of similar experiences in other regions show that outputs could be expected to take some years to produce as field or ground-truthing programs will be required even when the claimed high resolution imagery (1 meter and half meter pixels). Such ground-truthing is especially necessary in dense forest areas where ground detail is obscured.

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<sup>84</sup> In discussions, SLRD and MoECaF's senior officials acknowledged the technical challenges reported here. Some technical officials described the national basic map scale as being 1:50,000, yet Land Survey Department, the responsible agency, confirms it is 1:250,000 scale, but with increasing coverage at 1:50,000 scale.



It is important for Myanmar to learn from ongoing experiences and best practices on *OneMap* type approach. Earlier work of the World Bank in Indonesia suggested that the challenge for national mapping agencies going forward is to provide the information frameworks, innovation platforms, ease of access and ease of use of accurate maintained geographic information which are needed to address local to global challenges, efficiently and effectively. The four key challenges that confront national mapping agencies are:

- a) Provide geographic information frameworks as a critical means of ordering and managing information complexity, most of which resolves to location or place. In addition, user generated content can also be ordered within these frameworks thus making best use of information collected, i.e., neo-geography.
- b) Governments globally are increasingly looking to civil society organizations as channel of service delivery to their communities. High quality service delivery requires, accurate, current, trusted, and maintained geographic information, and national mapping agencies must be familiar with this.
- c) Provide for ease of use and ease of access to geographic information at users' time, point and context of need. Providing the right information at the right time in the right way to meet users' expectations in a given situation is a requirement of good information service.
- d) Provide geographic innovation platforms and support networks that encourage open and user led innovation from communities of users in government, business and civil society. Both business and social value can be derived from these networks, growing the market for geographic information.

In moving forward, national agreement is required on fundamental core data sets for NSDI:

- Geocoded Addressing
- Administrative Boundaries
- Positioning
- Place Names
- Land Parcel and Property
- Imagery
- Transport
- Water
- Elevation and Depth
- Land Cover.<sup>85</sup>

In recent years, Australia, South Korea, and the Philippines have defined its fundamental core data sets for NSDI and designated the respective responsible custodian agencies mandated to maintain the data<sup>86</sup>. It would seem that Myanmar's *OneMap* has failed to give adequate consideration to fully defining core datasets for the NSDI, especially regarding land administration and management.

Development of a Geoportal for Myanmar: A geoportal is a type of web portal used to find and access geographic (geospatial or spatial) information (geospatial information) and associated geographic services (display, editing, analysis, etc.) via the Internet. Geoportals are

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<sup>85</sup> World Bank (2014): Towards Indonesian Land Reforms: Challenges and Opportunities, A review of the land sector in Indonesia.

<sup>86</sup> Refer to Keith Bell's work on this. Philippines Geoportal One Nation One Map, Keynote Presentation to the FIG in Kuala Lumpur in June 2014. *Geospatial Cooperation Towards a Sustainable Future*.

important for effective use of GIS and a NSDI. Geoportals are now being established in many countries around the globe, and in the East Asia region the most advanced is in Malaysia and beginning to take shape in Thailand, South Korea while countries like the Philippines are pilot testing. The software for the Geoportal generally includes such as: (a) ArcGIS for Server; and (b) Geoportal Server.



## ANNEX X

### LAND CONFISCATED BY MILITARY

Sr.	State/Region	No. of complaints received	Supplementary details received (1+2+3)	Total Number of Complaints	Area (Acres)
1	Mandalay	111	42+2+1	156	18,418.67
2	Yangon	23	3	26	6,061.5
3	Ayayarwady	23	2	25	5,006.12
4	Magway	32		32	167,339.63
5	Bago	55		55	7,328.24
6	Sagaing	13		13	8,003.89
7	Tanintharyi	3		3	11.5
8	Kachin	1		1	120.6
9	Kayah	1		1	1212
10	Kayin	13	1	14	4,810.68
11	Chin	0		0	
12	Mon-No (4) Taining	3	110	113	1,393.48
	Mon-Battalion	25	6	31	592
14	Rakhine	23	15	38	4,808.08
15	Shan	57		57	21,970.66
	<b>Grand Total</b>	<b>383</b>	<b>182</b>	<b>565</b>	<b>247,077.05</b>

Note: According to a media report (for example refer to Myanmar News, July 18, 2013), between July 2012 and January 2013, the Land Investigation Commission received a total of 565 complaints from farmers who alleged that the military had forcibly seized 247,077 acres (almost 100,000 hectares) of land, mostly in Irrawaddy Division, central Burma and some ethnic regions. The Commission after an investigation on the reported land confiscations had recommended that undeveloped lands are returned to their owners or handed over to the state. In cases where land has been developed, affected farmers should receive adequate compensation from the military. In response the Defense Minister informed the Parliament in July 2013 that the military had reviewed 238 complaints by then and decided to return about 18,364 acres of land (out of the total of 247,077 acres claimed) only a fraction of the confiscated land to the affected farmers. He also advised that returning remaining land areas is not possible for security reasons. However, the minister did not address the issue of compensation or alternative arrangements for livelihoods for those affected.

## ANNEX XI

### A NOTE ON THE EMERGING ISSUES IN LAND MANAGEMENT IN MYANMAR

First of all, as in most nations in the region, in Myanmar too landholding accords social esteem and spatial identity to the landowners. In rural areas land is the primary source of livelihood. In that sense the amount of land one possesses determines their status in the society and prosperity of their family. Security of access to land is highly valued and thus remains the cornerstone of human security. The above-described situations exist in both rural and urban Myanmar.

In reality, there exists loss of tenure of smallholder farmers throughout Myanmar's history. In the Post independent period (1948-1962), there were loss of tenure due to mismanagement under the land nationalization and redistribution process; in Socialist economy period (1962-1988), there were loss of tenure of small holder farmers due to unsuccessful paddy high yield programs and quota purchasing with fixed price of paddy; In present market oriented period (1989-up till now), loss of tenure due to unjust resolves of tenure disputes by local farm land management bodies.

In the rural context, since more than 70 percent of its population live in rural areas under subsistence agriculture, the lack of security of tenure means many things to farmers: fear, anxiety and feelings of insecurity; potential displacement by government projects and programs, involuntary labour works, and various forms of subjugation. While some of these practices (involuntary labour, eviction and displacement) are thought to be in the decline in the recent times, other government programs are having similar overall effects. For example, centralized land management remains unsympathetic to local customary ways of managing land. Similarly, the policy to encourage commercial farming has narrowed the range of choices enjoyed by the farming communities and has encouraged farmers dispossessed of land to enter into contract labour with little security. The protracted land use system has also created a monolithic management system that does not readily respond to local imperatives (such as relocation) in the event of disaster, for example.

In urban setting the ascriptive value of land is determined by its location as well as access to services and infrastructure like water, drainage, roads, electricity. Location is not absolute but is defined in relation to other uses like markets, social services, industries and so on. Urban land value (worth) is determined by a number of factors: quality inherent to a particular parcel, assigned use, development options, supply, and the working of land market. As urban (serviced) land is suitable for many competitive uses (high-rise, low-rise, commercial development, parks, offices, etc.) and since serviced land is in short supply land the price is very high and beyond the affordability of the majority of the lower middle class and the poor. This becomes particularly problematic when it comes of housing. The poor have to live near the city centers where the jobs – whether permanent, occasional or menial – are more likely to be found but this is also the place where the land price is high. This group along with the lower middle class prefers to live inside the city in order to avoid commuting expenses and to avail services like water standpipe, public latrines and playgrounds. These are some of strategies they use to survive and make a living.

In almost all situations urban land is the best form of investment giving a return that often exceeds that from savings and government bonds by two to three times. In the past Governments have used urban land as a way of reward or compensating the civil servants for low wages and for winning the support of the ruling class. Where security of tenure is weak households are reluctant to invest in improving their properties. When land at desired locations is in short supply and the price high, it becomes unaffordable for people to put up their housing. This leads to formation of slums and invasion (squatting). Housing policy also affect the supply of urban land. A policy that relies excessively on ownership and or high development standards, pushes up the cost of housing. A city plan that segregates land uses, adopts high development standards, gives undue priority to 'beautification' or aesthetic elements and does not allow for development suitable for lower income groups; enhances segregation and creates class differentiation.

The distribution of the ownership of land amongst various groups in a city determines whether the city is going to grow as an equitable and safer place to live or not. For instance, reportedly 25 percent of the land inside Yangon belongs to the Ministry of Defense some of which it has begun to develop as commercial properties. Such a situation will stifle Yangon's growth and make the city less inclusive.

All these factors tend to make the urban land market secretive, manipulative, speculative, and selective in terms of the groups (social or economic) it serves. Various restrictions in land transaction add to the woes: outdated and/or inaccurate cadastral maps, poor land records, high land transfer fees, convoluted title transfer processes and unclear title are some of the major causes of an inefficient land market. As urbanization spreads and cities grow, land will become a more and more important factor in addressing poverty.

The expected growth of urban areas that falls in the path of economic development (national projects like highways and industrial centers) have induced large scale buying of land in the peri-urban areas sometime using coercive means and often in collusion with local officials and leaders. These incidents and trends have not been well documented through field research due to the obvious difficulties one would encounter in doing so, but this only points to the urgent for such research. The new economic policy intention of the government is already bearing fruits which can be more easily discerned in many larger urban areas in terms of increase in FDI, commercial activities, volume of land transactions and construction activities.

**Registration of land transfers in the urban areas is high and prohibitive.** The land revenue tax is not significant but the land transaction expenses are very high in Myanmar. The prescribed transaction tax is about 10 to 30 percent depending upon land value and other criteria set in the law. In addition, a Stamp Duty 3 percent and city development duty at 2 percent are payable by the sellers and buyers as per procedures. This is generally high for landholders in Myanmar and therefore several transactions or either not registered or short-routes are preferred by the parties concerned. But buyers and sellers adopt two different ways of offsetting the high cost of transaction. In most cases where the volume of transaction is large the buyers and the sellers enter into private contract (deeds) without going through the official process of registering the deed at the Registration Office. Alternatively, with the consent of the officials responsible for overseeing the transaction the written price in the Deed is shown much less than the actual value, resulting in less transaction and other taxes and duties. In the first case, there is a potential future problem of litigation whereas in the second case the government comes out to be the final loser. To avoid the informal fee is paid to the government officials in the second case, the yearly fixed values by zone, which is approved

by the State/Region government is based for the land transaction tax. Such practices and legal provisions described above have created a high degree of uncertainty amongst lower income people and small land holders.

In nutshell, the land concerns in Myanmar revolves around enhancing the land, housing and property rights of the population so that people can live without fear of eviction, relocation and expulsion. Evidently these affect their livelihood opportunities. At a technical level an attempt is underway in YCDC to computerize land register (cadastre). Cadastral information includes legal, spatial and fiscal details of a specific parcel. Ideally if the inputs are correct this should increase transparency in land related activities (transaction, rezoning, redevelopment, etc.), which would encourage people's participation in the final decision and enhance efficiency in land market. Having accurate information will also reduce fear amongst the land users, as this gives them lead-time to take protective measures (appeal, voluntary relocation and transfer). However, it is essential that such a system is based on reasonably accurate information, as changing any variables (pieces of information that go into the System) will be a long and winding process.

There are a few lukewarm indications to suggest that eventually freehold and community-owned land ownership will gain broader recognition in the country. To the extent that this will eventually happen, it would be important for Myanmar to start preparing for this stage. The themes that address the overall concern stated above are: Principles that accord a desirable degree of security of tenure to all socioeconomic groups; development policy with respect to preservation of land rights, agriculture policy with respect to security of tenure and freedom of choices associated with ownership, instruments (taxation, land use amendments, development controls, etc.) that affect the distribution of land amongst population, financial policies that facilitate an efficient working of land market, urban regulations that allow diversity to flourish, and environmental preservation.



## ANNEX XII

### MYANMAR: CONTRACT FARMING: INCOME OPPORTUNITY OR LAND LOSS?

Since 2005, the government of Myanmar has encouraged entrepreneurs from China, Thailand, Bangladesh, and Kuwait to invest in contract farms in the country. As of 2014, more than a million hectares of farmland in the Irrawaddy delta and other regions are estimated to be under some sort of contract farming. Interestingly, the most visible Chinese farming investment is in watermelon and paddy production.

Chinese investments in paddy, vegetables or cash crops (e.g., asparagus or watermelon) production in Myanmar follow a cycle that illustrates emerging socio-economic power relationships. Contract farming of watermelon by Chinese investors is carried out in two different ways. Foreign investors buy or rent a large parcel of land area (say 20 acres), hire local labourers through middlemen to work on it, and have the produce shipped back to China. Another alternative seems to be a seasonal contract signed with local farmers for the bulk purchase of watermelon produced at source. In both instances, the Chinese investor is an absentee grower.

For most smallholders in the dry zone region in Myanmar, irrespective of economic status, this sort of contract farming is emerging as an important, but not necessarily the chief, income source. However, this new model has contributed to the deteriorating rights of smallholders and landless labourers. Nevertheless, as anecdotal and media reports indicate, its popularity is increasing, with around one-fifth of the country's smallholders engaged in mass production and export of watermelon, mostly through contract farming.

Several farmers and local leaders believe that absentee landholdings are one of the reasons for the declining access to land for farming and landlessness among the poor. Even those with land under watermelon cultivation have struggled against production quotas and quality prescriptions from Chinese investors along with growing shortage of local labour. The risks associated with watermelon farming are well known, but farmers choose to ignore these given the lack of other options. One such risk relates to the excessive use of pesticides to produce minimum numbers (about 700 watermelons per acre is the norm for production) and its impact on soil quality and the health of farm workers. Contract farming of watermelons has fewer benefits for female farm workers as they are paid less wages per work day and often times work as part of family-labor without income to complete the production cycle on time.

A careful study of labour dynamics in watermelon farms shows that contract production has strongly reshaped labour relations in the area. Piece-rate and contract labour arrangements have emerged in response to tightly regimented production and cost schedules. Such arrangements are facilitated by the displacement of poorer households from their villages either on a seasonal or permanent basis.

The increasing amount of land set aside for watermelon cultivation is threatening the food security of the local population. The only advantage seems to be monetary with some small percentage of households likely to have secured additional paid work days or marginal income.

## Chinese Investments in Myanmar farms

While land acquisition by foreigners is barred under the Farmland Law of 2012, a number of Chinese nationals have leased land – through local intermediaries - to produce watermelon. A number of smallholder farmers have been lured into growing watermelon as a seasonal crop, a cycle of about three months each, particularly in the dry zone areas. The produce is mainly exported, through middlemen, to China for which quality standards such as size of the melon and numbers per lot are prescribed in advance.<sup>87</sup>

Chinese investors have managed to secure access to significant swathes of farmland for growing watermelon in the dry zone, including places like Sintgain, TadaOo, and Myithar in Mandalay, and Chaung Oo, and the east side of Monywa township. Chinese businessmen never contact local farmers directly but always operate either through their “technicians” or brokers. The technicians are usually drawn from other parts of Myanmar or may even be Chinese visitors. They are responsible for checking out a farm’s access to water, its soil quality, and the availability of other necessary elements. The brokers (middlemen) identify land in local areas through Village Tract Heads or influential people in the village (known as Village Facilitators). For communication purposes, they generally hire translators from the northern Shan State in Myanmar to deal with local people and to aid in coordination.

Leases are generally for five to six months. The rate of compensation is 250,000 to 300,000 kyats per acre (1 USD = approximately 1,000 kyats); a lower rate may be offered in some areas. Farmers who lease their land to Chinese businessmen must strictly observe contractual terms; for instance, they must not a) grow watermelon in areas other than those leased to the Chinese businessmen; b) sometimes tend to hire a different set of laborers who are the only ones allowed to farm; and c) use the well if one has been dug. Often, local farmers never see the real investors, in spite of expressing an interest in establishing direct contact with investors instead of working through brokers.

Local farmers expressed their disappointment with the farming methods adopted by the Chinese and that the Chinese are secretive about their watermelon production methods as well. Local farmers are not allowed to learn what type of fertilizer the Chinese use; in fact, fertilizer package labels are burned after use. The Chinese adopt intensive farming techniques with heavy and excessive application of fertilizers and agro-chemicals. When farmers regain the use of their plots in the next season, nutrient imbalance resulting from such fertilizer use could offset crop yields. Often, acquired resistance to chemical pesticides also leads to pest outbreaks. Environmental pollution is also likely. The investors also usually specify a per acre minimum of 700 watermelons of acceptable quality. This also puts pressure on the land and on labour. However, the land rentals are quite attractive for the farmers in the dry zone, making it difficult for them to resist an offer to lease their farms for watermelon production in spite of the problems that could arise thereafter.

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<sup>87</sup> According to the Foreign Investment Law 2012, foreigners can lease land for up to 50 years with renewals, but require a joint venture for agricultural investments. The VFV Law allows for foreigners to invest in agricultural projects for up to 30 years with renewals—there is a mismatch in laws. Chinese often lease land informally and not through the Myanmar Investment Commission.. but for this case, they just want a quick lease. In understanding this trend, it is important to acknowledge the difficulties experienced to regulate this new land sales and rental market, and how it causes not only environmental damage to the land for years to come, but also changing the social relations of people to each other via this new damaging land use and farming practices.



## Case study: The Khoe Than Example

In Khoe Than, land rent is usually paid in cash and is set against the value of the crop which is to be shared with the landowner. Generally, rent is estimated at 400,000 kyats per acre for early monsoon crops. In which case, the landowner bears the responsibility for ploughing the land. When the landowner declines this responsibility, rent is decreased to 300,000 kyats.

Back in 2012, Chinese businessmen rented a large tract of land alongside the stream to the north of the village to grow watermelon. They rented the land only for one season after which they moved to other plots in the next season. Although they do not use the same plots successively, Chinese businessmen have used land in Khoe Than to grow watermelons for four years now. They usually pay rent of 150,000 to 200,000 kyats per acre for one season, which is typically four to five months.

The village administrator acts as a facilitator in such land rental arrangements and mobilises the labour to work on such rented farms. He was, therefore, reluctant to discuss the issue. Farm labourers are hired to work on Chinese-owned or leased farms at 2,000 kyats per day. Working hours are set from 6 am to 6 pm and labourers are strictly managed. Girls from Khoe Than choose to work on Chinese farms only as a last resource to supplement their household income. Both *paw-pay* (advance payment) and *let-ngin-pay* (immediate payment) are practiced in Khoe Than.

