



Food and Agriculture  
Organization of the  
United Nations

Ministry of Agriculture,  
Livestock and Irrigation



**GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR**

**Formulation and Operationalization of National Action  
Plan for Poverty Alleviation and Rural Development through  
Agriculture (NAPA)**

**Working Paper - 10**

**LAND TENURE AND ADMINISTRATION**

**Yangon, June 2016**

## TABLE OF CONTENTS

<b>ACRONYMS</b> .....	<b>iii</b>
<b>1. INTRODUCTION</b> .....	<b>1</b>
1.1 Approach and methodology .....	2
<b>2. BACKGROUND</b> .....	<b>3</b>
2.1 Land administration through various political eras .....	4
<b>3. SPECIFIC ASPECTS OF LAND TENURE UNDER REVIEW</b> .....	<b>6</b>
3.1 Customary tenure and community forestry .....	6
3.2 Some of the issues in land administration .....	7
3.3 Land information management .....	7
3.4 Key observations.....	8
3.5 Rural land, landholding and use patterns, and farming communities .....	8
3.6 Smallholders form the backbone of Myanmar’s national and rural economy .....	9
3.7 Growing trend of land concentration and large-scale landholdings .....	9
3.8 Growing trend of landlessness in land-abundant Myanmar .....	10
3.9 Occurrence of land subdivisions and fragmentation .....	10
3.10 Trends in farming and farm labour.....	12
3.11 Contract farming practices .....	12
3.12 Riverbed farming .....	13
3.13 Growing food insecurity in Asia’s ‘rice bowl’?.....	13
3.14 Land tenure – food insecurity linkages.....	14
3.15 State land leases, land acquisition and land confiscation .....	14
3.16 Understanding the land registration system and the issuance of LUCs (for farmland areas) .....	20
3.17 Land governance .....	25
3.18 Management of state land .....	26
3.19 Land disputes and conflict resolution .....	26
3.20 Civil society engagement.....	27
3.21 Public awareness-raising on land issues.....	27
3.22 Strengthening land governance .....	28
<b>4. INSTITUTIONAL ENVIRONMENT</b> .....	<b>30</b>
4.1 Land policy and legal environment.....	30
4.2 Forest land administration, customary tenure and community forestry .....	31
<b>5. KEY FINDINGS, CONCLUSIONS AND RECOMMENDATIONS</b> .....	<b>32</b>
5.1 Reforming the land sector through adoption of land policy and comprehensive land law .....	32
5.2 Addressing historical scars and mechanisms for resolution of land disputes .....	33
5.3 Land acquisition for public purposes .....	34
5.4 Land tenure, small and marginal landholders, and rural livelihoods.....	35
5.5 Granting of state land leases/concessions and their management.....	38
5.6 Need for a national accelerated programme for land registration and certification .....	39
5.7 Moving forward .....	45
5.8 Strengthening tenure-food security-water-livelihoods linkages .....	47
<b>6. RECOMMENDED AREAS FOR INTERVENTION AND INVESTMENT</b> .....	<b>48</b>
6.1 Identified priorities .....	48

MYANMAR: National Action Plan for Agriculture (NAPA)  
Working Paper 10: Land Tenure and Administration

6.2	Support consistent policy dialogue and dissemination of good practices to strengthen smallholder tenure security .....	50
6.3	Adapt legal provisions to protect and recognize customary tenure and the current context and practices .....	51
6.4	Increase people’s access to land.....	51
6.5	Encourage active community use of all land areas.....	53
6.6	Policies and guidelines along with independent oversight mechanisms to moderate land development are required .....	55
6.7	Promoting cooperatives, regulating the private sector and contract farming in agriculture .....	56
6.8	Development of standard and coordinated land information management systems .....	57
6.9	Strengthening land governance.....	58
<b>ANNEX 1: BIBLIOGRAPHY .....</b>		<b>59</b>
<b>ANNEX 2: KEY TABLES AND FIGURES .....</b>		<b>61</b>
<b>ANNEX 3: LIST OF RECOMMENDATIONS .....</b>		<b>69</b>
<b>ANNEX 4: DEFINITION OF KEY TERMS .....</b>		<b>71</b>
<b>ANNEX 5: RECENT LAND-RELATED GOVERNMENT COMMITTEES TO PURSUE LAND GOVERNANCE REFORMS .....</b>		<b>72</b>
<b>ANNEX 6: A NOTE ON THE DRAFT NATIONAL LAND USE POLICY.....</b>		<b>75</b>
<b>ANNEX 8: GIS AND REMOTE SENSING CAPACITY WITHIN MOECAAF AND MOAI.....</b>		<b>82</b>
<b>ANNEX 9: A NOTE ON ONEMAP.....</b>		<b>84</b>
<b>ANNEX 10: LAND CONFISCATED BY THE MILITARY.....</b>		<b>87</b>
<b>ANNEX 11: A NOTE ON THE EMERGING ISSUES IN LAND MANAGEMENT IN MYANMAR.....</b>		<b>88</b>
<b>ANNEX 12: CONTRACT FARMING: INCOME OPPORTUNITY OR LAND LOSS?.....</b>		<b>90</b>

MYANMAR: National Action Plan for Agriculture (NAPA)  
Working Paper 10: Land Tenure and Administration

**ACRONYMS**

ASEAN	Association of Southeast 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
FSWD	Food Security Working Group
FUG	Forest User Group
GAD	General Administration Department
GDP	Gross Domestic Product
IDP	Internally Displaced Person
L-GAS	Land Governance Assessment Studies
LIS	Land Information System
LUC	Land Use Certificate
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
NWFP	Non-wood Forest Product
PRIA	Principles of Responsible Investments in Agriculture
RDS	Rural Development Strategy
SEE	State-owned Economic Enterprises
SEZ	Special Economic Zones
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

MYANMAR: National Action Plan for Agriculture (NAPA)  
Working Paper 10: Land Tenure and Administration

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 Administrator
WB	World Bank

## 1. INTRODUCTION

Myanmar is spread over approximately 670 000 km<sup>2</sup> of land, about half (48 percent) of which is covered by forests. It is biologically diverse and has a coastline of about 2 000 kilometres and about 800 islands. It has a multi-ethnic, multicultural and multireligious population of about 53 million, with an average of 76 persons per square kilometre. Close to 70 percent of its population lives in rural areas and the average farm household size is about six persons. States/regions like Yangon, Ayeyarwaddy and Mandalay have much higher population density than states like China, Kayah and Nay Pyi Taw that have less than 32 persons per square kilometre. Around 30 percent of the population lives in mountainous or forest areas, which constitute about 25 percent of the landmass.

Myanmar is a low-income country with a high poverty rate. The arithmetic of its poverty conveys a clear message. Firstly, with some 35 percent of the population living on less than US\$1.00 a day, Myanmar is one of the poorer nations in the region. Secondly, poverty is predominantly rural: more than two-thirds of the country's population and 70 percent of its poor live in rural areas. Thirdly, the livelihoods of Myanmar's poor, both rural and urban, depend primarily on agriculture, as at least two-thirds of the total labour force is engaged directly or indirectly in agriculture-related enterprises.

Myanmar's agriculture sector has long been suppressed by poor policies, a chronic lack of credit, deficient and degraded infrastructure and absence of tenure security. These woes, which counter Myanmar's bountiful natural endowments and immense agricultural potential, have brought about the dire poverty that characterizes the lives of the country's rural populace. Reforming Myanmar's agriculture sector and rural economy was reportedly on the agenda of the administration under President Thein Sein, at the time of writing this report. 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, provision of better services, improved management of risks 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 governance, commonly known as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT). 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 as part of broader historical, economic, social and cultural dimensions. This generates concerns over political economy, development opportunities, constraints and risks facing the poor, ethnic minorities, local communities, women and disadvantaged sections of society.

This review aims to take stock of the current status and thinking 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 the livelihoods of farmers. Recognizing the importance of a better understanding of the links between land tenure and rural development (direct and indirect), 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 (VFFV) Land Law of 2012 and explore how these laws and reforms aim to enhance food security, rural development and identify major constraints; and
- To make policy and programme 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 tenure security, access to livelihoods, rural development and how land-tenure issues are being integrated into broader development and governance strategies. The report aims to initiate a dialogue by analysing available data and information on land tenure, food security and sustainable development in the context of Myanmar and is intended as a starting point of a collective learning effort.

Through sectoral analysis, this report seeks to provide preliminary reflections on the following questions:

- Broadly speaking, 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 claims to land and protect their rights?
- What measures should be considered to strengthen tenure security in promoting rural development?

Land and natural resource debates encompass many, if not all, the 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.

By the time this review had 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 Certificates (LUCs) for the 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.

### **Approach and methodology**

Discussions for the study were conducted during November and December 2014 with the interministerial forum known as the 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 taken into account 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 the implementation of programmes 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.

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

The review has synthesized critical issues and wider pressures on land. It presents, summarizes and endeavours 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, CSOs and development partners.

As a subsectoral 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.

## **2. BACKGROUND**

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 instead of clarifying it. 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 the system, many data are obsolete, incomplete or inadequate. 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 ills must be fixed and the government at the time of writing 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 a set of measures that would build public confidence in Myanmar's land-administration system.

### **Land administration through various political eras**

Most land-tenure challenges in Myanmar are legacies of the British colonial period and the regimes that followed. In particular, government-led economic-development policies since the 1980s created different land issues. The genesis of Myanmar's land problem is related to a politico-economic structure established through decades, especially by the government seeking to build its power base since 1991. The country's land administration can be broadly classified into five time periods – 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). These periods are summarized below.

**Colonial era (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 landownership and a system of land tax collection. Later, when the Lower and Upper Burma areas 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.

**PostIndependence (1948-1962):** The government followed the earlier 'rice bowl' approach to land administration and emphasized the development of the agriculture sector. The 1948 Constitution established the "State as the ultimate holder and owner" of all land areas in Burma (now Myanmar). The initiatives went a step further by abolishing land concentration and landlords and specific laws were promulgated by the government.

**Socialist era (1963-1989):** Under the socialist government farmers were considered the state's tenants and were compelled to farm specific crops (such as rice) according to state policy. If farmers failed to meet production targets, their land was taken back by the state (through its local representatives). As paddy production was not profitable, farmers decreased investments in land. As later events have shown, the government's efforts towards land nationalization and redistribution of agricultural land were not successfully implemented due to political constraints. The socialist government enacted the 1963 Tenancy Law and the 1965 Amendment of Tenancy Law.

From the 1960s, the government issued each farmer a booklet called the Farmer Agricultural Production Record. The booklet specified the name of the landholder, area held, crop produced and other details. It was used to assess tax and procurement quotas. The booklet prevents land transfers; neither the booklet 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 the Settlements and Land Records Department (SLRD) confirmed the name and land area held (according to the tax register). The booklet was a grassroots-level document for the government's 'paddy production' plans as it kept track of land used and paddy produced. For farmers, it was a land record or evidence of landholding. Some land was sold or bought using this booklet as a reference. However, these were not official transactions. Between 1962 and at least until 2012, land was transferable only for the sake of 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 and the issuance of LUCs replaced this booklet to some extent.

**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 governed till 2010. When the military took over government in 1988, the land sector was already in disarray. Rural poverty, landlessness and a deteriorating economy were challenges for the new government. In addition, neighbouring 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 only the surplus could be retained by cultivators. A slew of government regulations evicted 'squatters' from vacant public land and asserted the government's right over land for public purposes.

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.

The implementation of the Wasteland Instructions of 1991 marked a policy change favouring large-scale agricultural investments. 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 such land effectively. The government granted land leases to private and public companies, chiefly those closely affiliated to the military, including state-owned enterprises, joint ventures and private corporations. In numerous instances, land was forcibly confiscated and 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 today. According to available anecdotal evidence, most of the beneficiaries of land redistribution under the Wasteland Instructions were a few large landholders (holding more than 50 acres). Through this process, they accumulated a large share of resources in the area. It also encouraged absentee landholders, who rented out part of the land just to prevent it being labeled 'fallow'. This allowed a well-entrenched client patronage system to develop in the land sector.

**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. Violent conflicts arose in some areas against monetary incentives and land access to favoured business groups. While the widespread protests did not stop the government from issuing new land leases/concessions, it led to some healing efforts. The new government acknowledged public anger and dissatisfaction with past efforts to resolve forcible land takeovers and lack of compensation for such acquisitions. To assuage growing social anger, the government initiated a set of measures. The establishment of the Land Allocation Utilization Scrutiny Committee (formed in July 2012), an interministerial 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, this body was converted into the interministerial 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 the 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 at the level of summary reports the commission's work started to break down 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 CSOs and communities in general.

Since 2010, the government has taken some steps to remedy this situation. In 2012, two land laws were enacted – the Farmland Law and VFV Law – and in 2014, the National Land Use Policy NLUP was drafted and disseminated for public debate. The government also announced its intention to enact a comprehensive land law that would serve as an umbrella legal instrument. The significance and impact of these policy reforms are discussed next.

### **3. SPECIFIC ASPECTS OF LAND TENURE UNDER REVIEW**

#### **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. 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.

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 field stories indicate that even today customary institutions and practices are important in defending the rights of local communities over their land and natural resources. Legal and policy frameworks will have to be anchored around these institutions to strengthen and revitalize them while implementing community-based programmes. 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: In Myanmar, about 1.5 to 2 million rural dwellers have been directly or indirectly involved in shifting cultivation. Traditional

shifting cultivation systems appeared to be self-sustaining. The most common form of traditional tenure that still holds good and is also recognized by law is *dama-uca*, 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 widespread deforestation. Individual *Taungya* holdings are not formally registered or surveyed. To accommodate the rotating system of shifting cultivation, large areas of land are 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 the fallow land as an indispensable part of 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, small farm holders, including *Taungya* farmers in the uplands, can be encouraged to make a meaningful contribution to national goals of poverty eradication.

### **Some of the issues in land administration**

At present, land administration in Myanmar is characterized by multiple and overlapping institutional mandates, laws and regulatory frameworks, and weak land classification. It is further complicated by indeterminate entitlements to land; lack of a comprehensive land registry and related geospatial information; lack of formal methods to protect and recognize customary rights to land; lack of processes allowing Free, Prior, and Informed Consent (FPIC); excessive application of the state’s power of eminent domain; and a policy for the allocation of land concessions that ignores or overrides the customary rights and interests of other rights holders. Government control over land and unrestrained application of the ‘State land’ concept is also not helpful. The GAD is responsible for administering and managing all non-forest and non-farm land in the country. This includes town, village, religious and common land, riverbanks, ponds, cemeteries, grazing pastures and disposable state land. While GAD holds management responsibility, technical functions rest with the SLRD in most cases. This dual arrangement also deserves attention as the country pursues measures to reform land administration and management.

### **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 analyse 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. In moving forward,

the government will have to acknowledge that introducing modern technology for land administration is a long-term programme and needs adequate upfront investments.

Geographical Information System (GIS) capacity within the SLRD is used only for cartography. The 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 technical assistance from donors to the Ministry of Environment and Conservation of Forestry (MoECaF) should include capacity building to enable the SLRD to access and use products derived from remote sensing imagery and GIS analysis.

### **Key observations**

For good land governance, public administration of land must be separated from use of land 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 asset. 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). Such arbitrary classification results in a mismatch between the law and the reality on the ground. The division of land administration responsibilities across various agencies, again with overlapping authority, is also confusing. It is further complicated by 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 FPIC; excessive application of the state’s power of eminent domain; and a policy for the allocation of 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 useful and accessible. Modernization of these customary practices will ensure that discrimination on the basis of gender is rooted out.

The GAD is responsible for administering and managing all non-forest, non-farm land in the country. This includes town land, village land, religious land, riverbanks, ponds, cemeteries, village common lands, grazing pastures, and disposable state land. While it holds management responsibility, technical functions rest with the SLRD in most cases. Given the administrative practices in Myanmar, this dual arrangement also deserves attention as the country moves forward to pursue a set of measures to reform the land administration and management.

### **Rural land, landholding and use patterns, and farming communities**

Myanmar is largely an agrarian economy. According to available statistics, total land under cultivation in Myanmar has increased by 0.67 percent annually from 21.48 million acres in 1960-1961 (net sown plus current fallow area) to 30.47 million acres (2013-2014). During the same period, population growth averaged 2 percent annually. Government estimates suggest that about half the rural population lives by subsistence.

Myanmar has 163 million acres (65.33 million ha) of land, 26.7 million acres (10.79 million ha) of which are arable; this increased at a relatively moderate 0.86 percent between 2006 and 2011. The 3.6 million acres (1.46 million ha) under permanent crops have increased rapidly at 8.97 percent in the past five years (2006-2011). Forest cover of 77.7 million acres (31.46 million ha)

decreased at 0.96 percent between 2006 and 2011. Land availability is at 0.6 acres (0.23 ha) of arable land per capita, which corresponds to 1.48 acres (0.6 ha) per active population in agriculture. 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 US\$194, which is half that of Viet Nam (US\$367) and Cambodia (US\$434) and 3.5 times lower than that of Thailand (US\$706). Overall, Myanmar is resource-rich yet has low productivity.

### **Smallholders form the backbone of Myanmar's national and rural economy**

According to official national account estimates for 2010, Myanmar's agriculture sector employed 52 percent of its workforce – mostly comprising small and marginal landholders – and generated almost 37 percent of its GDP. Smallholders accounted for around 90 percent of total parcels devoted to annual crops. These occupied 93 percent of the total area of the household crop holding. Paddy was produced on 22.87 million acres in 2010. Over the years, Myanmar's paddy production averaged less than 5 acres per household. By 2010, about 5 million households were engaged in the agricultural sector which employed approximately 20 million people (the total estimated labour force in agriculture was 26 million in 2010) as against a total rural labour force of close to 36 million.

Average farm size is around 7 acres (2.8 ha) for landholding households, with regional variations of 4.16 acres (1.6 ha) to about 8 acres (3.1 ha). 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 the 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). 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.

### **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 total farmers in the country. 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 the 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. 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 land less than 10 acres were more 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 ha (0.9 million acres) of forest land. It is also important to note that by the mid-1990s, sugar-cane and cotton factories were transferred from the Ministry of Industry to the Ministry of Agriculture and Irrigation (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).

### **Growing trend of landlessness in 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 Ayeyarwaddy Delta and Dry Zone (Bago-Bagan-Mandalay region), where one-fifth of the households in some villages visited was landless and engaged in wage labour; an equal number had marginal landholdings of less than 1 acre. Village tract leaders and residents reported that landlessness had been increasing over the past four to five 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.

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 labour opportunities, people's assets are rapidly dwindling, with little or no margin left.

### **Occurrence of land subdivisions 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. Many households have less than 5 acres (or about 2 hectares) of land, which is the bare minimum to support a household (according to the government's poverty estimates). From the early 1960s, access to adequate amounts of agricultural land has become a problem for Myanmar's farming community as governments (especially after the 1990s) laid down crop prescriptions and quotas. Land fragmentation became more frequent as the military-backed government of the mid-1990s launched a programme to reclaim fallow and vacant land. Land supply for farming households became non-existent and subdivisions or informal transactions occurred within the family. The situation was further 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 on land without any formal record. Consequently, investments in land are declining and gaps in food security are widening. However, smallholders still contribute to most of the country's rice production and its agricultural labour force.

### **Box 1: Subsistence farming**

In Myanmar, an average farm holder has about 2.5 ha 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. The increasing decline of farm sizes also leads to a reduction in fallowing, or 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 lower cash income, less access to agricultural inputs and credit, reduced ability to deal with drought, and less profitable technologies given the higher transaction costs of acquisition and application of fertilizer per unit of operated land.

One could thus theoretically compute the amount of land and the land productivity required for a smallholder household in Myanmar to move out of poverty. Experiences in the neighbouring and ASEAN nations suggest this will need a landholding of 3 ha (three crops) and an incremental price structure.

Government policies have accelerated the promotion of agribusiness to attract private capital and increase agricultural 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; however, it is confronted by numerous challenges. All over Myanmar, capital-intensive and family farming-centred models co-exist, although the former have easier access to research, development, credit and extension support. With the agricultural elite holding disproportionately large landholdings, credit for smallholders has become costlier and difficult to access. Anecdotal evidence and recent field studies suggest that the agricultural elite may restrict smallholders' access to finance. They may be able to do so because the government continues to focus on agribusiness ventures and large-scale investments in agriculture. Currently, there is no mechanism to correct this focus and provide a better roadmap for the future.

Several farmers and local officials interviewed during the review reported that households selling lands may receive high amounts of cash initially but in the long-term this may deprive them of a secure livelihood. While the study could not confirm this trend, growing informal land markets in the rural areas (particularly along main road corridors) has seen increases in land prices, probably enticing several small and marginal farmers to sell their landholdings. If one examines data from the Agricultural Census 2010, it is reasonable to deduce that the reverse process, i.e. small and marginal farmers buying new land and adding to their existing holding may not be occurring – as more households were found holding land of less than 3 acres. The review team gathered evidence of an increasing rate of farmers selling portions of their landholdings which should raise the following concerns: (1) such land sales by smallholder farms are likely to result in economic inefficiencies and decreased investments and production; (2) this situation may lead to less intensive cultivation and reduced production, which will compromise Myanmar's capacity to feed itself.

### **Trends in farming and farm labour**

In areas visited by this team, at least half the rural households depended on wage labour 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 labour, either in agriculture or in nearby towns, were scarce. Farmers with larger landholdings reported that they planned to hire less labour 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 indicated that a number of household members dependent on agriculture do not own land (or have very small holdings) and work as labourers 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 sugar cane, oil-palm, poultry, fruit and vegetable crops, and export horticulture, with smallholders opting to sign for seasonal crops. According to field studies and the review team's observation, most contract farms are family-owned and operated. In the case of rubber plantations, the structure of the industry is unequal, with a majority (close to 40 percent) of growers holding less than 20 acres of land and relying on family labour. In such cases, as regional experiences show, contract farming is not a viable subsistence option.

### **Contract farming practices**

In general, contract farming is mostly practised by food-processing firms. As the processing firms have high interest cost, they have an interest in keeping raw material inflows at a level close to their capacity. Contracts generally specify planting dates (and thus indirectly delivery dates) as well as total quantities to be delivered. This reduces much of the uncertainty and the firm does not have to invest in land or labour and at the same time maintain control over production. In actual practice, contract farming is more complex than it appears. In Myanmar, contract farming practices are not only complex but raise serious concerns too.

The agricultural elite needed small and marginal farmers to cultivate their lands to increase income (and prevent land from being classified as fallow). This led to a sort of tenant-farming arrangement with small and marginal farmers. In addition, since 2005, the government has encouraged entrepreneurs from the People's Republic of China, Thailand, Bangladesh and Kuwait to invest in contract farms in Myanmar. As of 2014, more than 1 million ha of farmland in the Irrawaddy 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, but not necessarily the chief, income source. This new model contributes to the deteriorating rights of smallholders and landless labourers, but, as anecdotal and media reports indicate, its popularity is increasing. Around one-fifth of the country's smallholders is engaged in mass production and export of seasonal crops, mostly through contract farming.

A careful study of labour dynamics in such 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.

One should also highlight the fact that since 2008 ASEAN member nations have agreed to establish a single economic community, i.e. the ASEAN Economic Community (AEC) to deepen the degree of economic integration within the hub, while enhancing connectivity. The AEC blueprint is organized along the AEC's four main characteristics, namely: (1) a single market and production base; (2) a highly competitive economic region; (3) a region of equitable economic development; and (4) a region fully integrated into the global economy. This will lead to investment liberalization and facilitation. Food security is one of the key agendas for the ASEAN community. The implementation of the AEC is likely to lure farmers into contract farming without being aware of its consequences and loss of land to foreign investors and infrastructure projects. This is an issue that deserves detailed investigation so that the rights and economic security of the farming community are better protected and supported.

### **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 such farming provided income to cover nearly two months of family requirements. Access to riverbeds is generally allowed by village chiefs. However, riverbeds do not feature in rural development programmes 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.

### **Growing food insecurity in Asia's 'rice bowl'?**

For several decades, Myanmar 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. On the other hand, although more than half the arable land is still used for paddy production, total production has fluctuated around 30 million tonnes in the past five years (2008-2014).

Based on interviews, it is believed 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 the same. 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. As a result, on average, 61 percent of the total expenditure of Myanmar consumers is on food. The expenditure share of rice ranges from 25 percent for wealthier people to 50 percent for the poorest, suggesting that rice, once the staple diet in the country, is becoming increasingly difficult to afford.

Rice production is a source of livelihoods for about 70 percent of the population. Higher and more profitable rice export improves farm incomes and food security of the rural poor. Increasing rice exports will spur momentum for inclusive growth and poverty reduction in Myanmar for the next decade. There are good market prospects to accommodate more

diversified rice and vegetable exports from Myanmar over the next one to 20 years, particularly in the neighbouring nations and Europe, earn higher incomes and diversify risks along different markets. The current obstacles are low productivity, lack of access to credit and farm inputs, and importantly 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 trigger changes at the farm level, helping to raise agricultural productivity and change farm practices, including the choice of crop varieties, required to match the evolving market demands. This also requires conducive agricultural policy to modernize the value chain in the farm sector.

### **Land tenure – food insecurity linkages**

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 programmes to support supply of new land to communities are lacking. Unfavourable government policies deter land investment. Scarcity of water, difficulty in accessing fertilizer and increasing indebtedness result in many smallholdings being converted to non-agricultural uses or being sold in the informal land market. Farmers are being forced to look for wage labour 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 because Myanmar's smallholders are responsible for 90 percent of the country's paddy production.

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 a farming household to subsist and climb out of poverty. In the future, focus must be on strengthening the national capacity to identify and prepare better programmes and projects to support improved tenure security among smallholders and develop land-resource planning information and programmes for land conservation and rehabilitation. These efforts should be undertaken at all levels. This will help to 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 needs to 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 jump-start rural growth, increase food security, capture export markets, generate jobs and reduce poverty.

### **State land leases, land acquisition and land confiscation**

In Myanmar, three terms recur in discussions on large-scale land-development policies, programmes and projects – land confiscation, land acquisition, and land concessions. These terms highlight different features such as (a) land confiscated without due process or payment of compensation and probably using force or political authority; (b) land acquired following a process that is largely faulty; and (c) permits granted for a limited-period use of land for development and production/extraction. All three land-acquisition methods 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. Small and marginal landholders face the maximum instances of illegal occupation of their holdings and coercion by influential

persons. As a result, most discussions on land in Myanmar tend to overlap with these three distinct but related issues. The general understanding of the term ‘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.

### **History of land leases and concessions**

Since the early 1990s, development planners conceived ambitious national projects to achieve economic benefits from natural resources and the government has developed investments in land through land leases/concessions granted for agribusiness/forestry. The specific objective of such a policy is to build up intensive agricultural and agro-industrial activities. It aims to generate revenue and increase rural employment by intensifying and diversifying livelihood opportunities in natural resource management. However, land allocation for this purpose has not been straightforward or yielded expected results. The fertile tracts targeted by investors are usually occupied or used by rural communities. Such land is acquired by ousting its traditional occupants and users, with adequate compensation, often enforcing poorly framed policies and regulations. Such appropriation means that land leases/concessions inhibit household access to land, forests, fisheries and other community-held resources. This, in turn, resulted – and continues to lead to – land conflicts that negatively affect the livelihoods of most households and social and political stability in general.

Between 1991 and 2010, the government appropriated land to facilitate the objective of national economic development. However, there was no formal and agreed definition of ‘land concessions’. In general, the following permits/allocations are considered land concessions: (a) landholdings allocated for agribusiness ventures under the Wasteland Instructions and later the VFV Law, 2012 and (b) land allocated for commercial ventures owned by the military and various ministries such 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 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 areas for ‘public purposes’. The government defined public purpose broadly as the interest of the whole nation and the state and all people. The lack of a clear definition of public purpose 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 favoured 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 are available, CSOs estimate that since the early 1990s, close to 5 million people may have been permanently and involuntarily moved out of their home land (including areas where ethnic groups reside in majority). An equal number has temporarily lost their landholdings due to deforestation or land concession. Existing concessions may now cover 4-5 million ha. In areas where *Taungya* is practised, farmers do not have secure rights to their

land, and many concessions have encroached their farmland, fallow land and other forms of livelihoods (e.g. grazing pastures). This has generated considerable uncertainty for the ceasefire process, as demonstrated by the continued fighting in Kachin.

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

### **State land leases**

The government generally grants leases/permits for: land development (e.g. physical infrastructure, roads), industry (special export zones and industrial parks), extraction (logging, mining and energy), agro-industry and forestry. The granting of large-scale state land leases was commenced by the military government in 1991 and accelerated after the adoption of the Wastelands Instructions that year. The policy assertion was that such large-scale land allocations would trigger national economic development and provide better food security and income opportunities to farming communities. These land leases favoured large-scale investors who were given access to cheap rental land and loans from state-owned banks as an incentive to cultivate land areas granted to them.

Available data with the MoAI/SLRD and other sources compiled by this review team indicate that by end of 2014, a total of about 400 national companies and 19 000 small-scale growers had been allocated about 2 million ha of VFV land (close to 5 million acres) and deep-water land, and 0.40 million ha of forest lands (1 million acres), totaling about 5.4 million ha (12.5 million acres). Of this, the deep-water lands were abandoned but held as a land claim by the respective concessionaire, and forest allocations were mostly for rubber plantations, who were all presumably small-scale planters. MoAI/SLRD reports for 2014 indicate that at least one company controls over 200 000 ha (about 420 000 acres) of land. These concessions are managed by MoAI, MoECaF and the GAD. The important commodities grown under these concessions are rubber, oil-palm and rice; some concessions also grow cotton, sugar cane, or jatropha. Foreign direct investment in Myanmar is concentrated in energy and extractive sectors and often results in militarization and displacement.

For state land leases, a contract (often called a permit or concession agreement) is prepared, allowing the investor to carry on a specific kind of 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 the Build-Operate-Transfer arrangements. The lease of state land also includes small- to medium-scale conditional leases in urban areas. 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 are maintained by the SLRD. However, with regard to state land leases, the SLRD holds data on agribusiness ventures and other permits while forest land and fishery lease data are with MoECaF and the Department of Rural Development (DRD)/GAD respectively. The

government has no unified database on land concessions or land permits allocated for development. There is no organized methodology to coordinate data sharing or its management at the district, provincial and national levels.

### **Lack of due process and compensation**

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

Civil society organizations have expressed concerns that despite awarding a number of concessions since 2001, few jobs on farms, mines/mineral plants and plantations have been given to local residents and only for a limited duration. Such job offers are likely to have been proposed by investors as bargaining chips to get preconcession agreement from local families. Invariably, if local claims are to be believed, jobs are either given to the intermediaries who claim to represent the communities or investors simply import labour from elsewhere including their own home countries. The government recently acknowledged that several state land leases operate outside the active oversight of any government agency and often import labour from outside. Some sources even cited anecdotal evidence of migration of local families, forced out of traditional habitats from concession areas, to urban centres seeking livelihoods and better living conditions; however, this has not been verified.

### **Review of state land leases**

The granting of large-scale concessions to investors was a mechanism established by the General Ne Win government in the 1960s, but was refined by the SLORC regime from 1991. The need for rapid economic growth based on better land use was offered as the principal reason for allocating these concessions.

Along with monetary incentives to favoured business groups and loans from state-owned banks, access to cheap land was provided as an incentive to invest in modern large-scale farming and plantations. Investors paid low rents (about US\$3.00 per acre *per annum* for perennial crops) and these and taxes were exempted for the first two to eight years depending upon the crop. Under this arrangement, the committee was empowered to allocate up to 5 000 acres upon first application and more when the investor performed well. This regulation, as available reports indicate, aided large-scale land allocation between 1991 and 2010.

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 for allocation under proposed permits. Communities and families depending on these land parcels were never given an opportunity to negotiate or receive adequate compensation. In neighbouring countries, to resolve such problems, 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.

Evidence from MoAI's 2014 report (*Myanmar agriculture in brief*) indicated that only close to 20 percent of the 5 million hectares approved for land concessions had in fact been developed. A review of this report indicates that government inventories provide information on reported concessions only with no data on yield. The SLRD is preparing a six-month report on state land leases granted under the Wasteland Instructions and other regulations. A quick reading of available inventories confirmed escalating concerns of a significant underreporting 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 both within and across responsible state institutions. A growing body of evidence also indicates that many concessions awarded since 1991 may not be performing or contributing to national economic development.

In discussions, senior government officials readily conceded that state land leases/concessions have been negotiated and awarded in haphazard and inconsistent ways with negligible quantification and qualification of their impacts. (For instance, details on fee payments required and made, revenue-sharing, labour 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 enactment of the Environmental Conservation Law, which mandated that Environmental and Social Impact Assessments (ESIAs) be performed for every land-based investment, along with the Farmland Law and the VFV Law.

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 posed to the sustainability of the national development process. Reports published by the 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.

### **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 to a significant proportion of food security, especially for the poor. The degradation of CPRs and the still 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 during field visits claimed that their access to grazing lands and lakes/ponds, much required for livestock, is declining largely due to government takeover of land for other purposes and the lack of new sources. The non-recognition and non-enumeration of communal pastures and community waterbodies and the poor's dependence on them are key factors responsible for the increased visibility of growing rural poverty among farming communities in Myanmar. The poor must be offered alternative options to reduce their dependence on common land areas or increase the productivity of CPRs and regulate their use to enhance regeneration and supplies. 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 have attained chronic proportions because most rural household incomes are marginal. Anecdotal evidence shows that because of the large number of land leases awarded to date, significant numbers of households in rural areas are beginning to rapidly lose access and use rights to their traditional landholdings (and communal lands too). 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 areas used by farmers and ethnic groups are those that are most frequently targeted for awarding state land leases. The compensation offered to communities for resettlement, including the possibility of wage labour in the plantations, is insufficient to realistically maintain or improve household/community welfare and livelihoods. CSO studies widely reported an increase in the numbers of families across the country that have had some or all of their land expropriated, mainly due to the lack of transparent governance, weak rule of law and the work culture of local authorities. In peri-urban areas, landholders become victims of land 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 smallholder farmers rely upon. Small-scale farmers lack power in the marketplace and are often undermined by powerful interests. They have limited bargaining power and not enough weight 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 communication and consultation between communities and government entities has marked the implementation of such policies. Consultations, if any, are rendered ineffectual because decisions are taken at the national level, leaving local authorities powerless. The gradual damage caused to rural communities’ economic systems by land concessions will force them into new economic systems often to their detriment. This includes extensive land-use changes; displacement of populations; loss of access to and control of local natural resources by dependent communities, especially indigenous people; and the destruction and loss of the rich biodiversity of primary and naturally regenerating forests. Local populations are unfamiliar with the contract labour methods practised by the concessionaires. In some cases, the possible income provided is insufficient to survive on after access to CPR is removed or destroyed. This situation raises an important question: should rural communities have the right to review and refuse to give up their land when the state demands it for other uses? This is closely linked to another point: the right of refusal is necessary to bargain for a better deal, one that allows for an effective reconstruction of livelihoods in an equal, if not better position. For the government, this would be an opportunity to enhance the commitments and performance of concessionaires.

#### **Key observations on state land leases**

The challenges associated with state land leases have been substantially documented by CSOs and independent researchers. Myanmar’s experiences show that the government’s experiment with land concessions has not yielded positive economic or social results. Evidence on the performance of investments made to date is patchy as 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.

Governance issues such as lack of transparency, multiple laws that favour large-scale investments without a clear understanding of social issues; incorrect interpretation of laws and regulations in awarding contracts; uneven application of laws and regulations; unclear expropriation in terms of the misuse and abuse of public powers to support private developments; inequity; issues related to compensation and communication; and lack of accountability of decision-making agencies and individuals have all 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 the land concessions. This review should commence possibly with an examination of how concessions are currently monitored and who is responsible for such tasks. Secondly, the review should gather recent data on state land leases already awarded and these will have to be reviewed in a systematic and transparent manner, focusing on concessions granted at the national and provincial levels, as well as those granted by different ministries and departments, including agriculture, forestry and tourism, for plantations, contract farms and mineral resources.

The government should be encouraged to 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 issues of smallholders and to address the shortcomings in earlier strategies. The moratorium is intended to allow the government time to review its policies on granting leases and concessions and to address the shortcomings of its land administration strategy. Any lapses in addressing such issues will ruin any intent to dismantle the legacy of past historical scars with regard to land confiscations. This will erode public trust in the government. Efforts to ensure good governance structures will be seriously compromised. Without any significant efforts to deal with tenure issues through land reforms, addressing economic growth or moving forward with programmes like the issuance of LUCs will remain paradoxical.

### **Understanding the land registration system and the issuance of LUCs (for farmland areas)**

The Farmland Law of 2012 is considered indicative of the government intention to reform land laws. It requires LUCs to be issued to all farmlands for which SLRD has *Kwin* maps (basic cadastral maps for farmland areas). This was the first time the government formally prepared and issued LUCs to farmland holders. A set of nationally prescribed procedures and guidelines was made available for this process. On the face of it, this offers farmland holders the security they have so long been denied. LUCs will allow them the legitimacy to use their land as collateral to access credit or to sell or transfer land or conduct other land-related transactions. The process was largely completed within the deadline and more than 7 million LUCs were prepared and

issued (against a total target of 9 million). Following up on completion of the remaining LUCs is ongoing. However, concerns remain. Areas for which the 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 there are no clear procedures for the landholders to appeal against such land takeovers. Minimal information was made available to the public and the work was largely carried out by the farmland administration bodies (FABs) in the respective area and local village chiefs. Oversight and quality monitoring of the LUC process was marginal. The LUCs were manually drafted and land records are still being maintained on paper which could be destroyed by bad weather, erasing all the effort (in terms of money and human resources expended) that was put into this exercise. The benefits of LUCs have 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.

### **Past and existing systems**

Customary laws and local traditions and practices continue to operate alongside statutory laws in many remote ethnic areas of Myanmar and parallel laws and practices are in place. This is also because the British annexed Myanmar over a period of time. Like most land-related issues in Myanmar, land documentation has also been rather disorderly. Three institutions determine who has land rights: socio-cultural structures, the market economy (largely informal), and the state. Most commentators view Myanmar as a nation built on legal pluralism but that often fails to cater to the diverse expectations of people. This is especially true of the land sector. 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 as 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.

Localized 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. In theory, copies of these documents should be forwarded to the local SLRD to amend the name of the property tax payer, but in practice the parties involved often forego SLRD involvement 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 the lack of a land market and dubious transactions, informal land transfers continued to take place till 2012. General mechanisms to obtain land-use rights are inheritance, purchase and allocation or entitlement from the government or individual holder. In the past, village chiefs validated contracts (known as *lu-mu-yei*) based on customary practices. Such land transfers were

accepted by local authorities and the 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. However, no official procedure guided this approach. Such transactions proved to be the cause for land disputes later.

Since the 1960s, the government issued each farmer a booklet called the Farmer Agricultural Production Record. This specified the name of the landholder, area held, crop produced and such other details. It is used to assess tax and procurement quotas. The booklet 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 the SLRD confirmed the name and land area held (according to the 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 the sake of 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 in some way.

### **Preparing and issuing LUCs**

The Farmland Law came into force on 31 August 2012. The law required the MoAI to issue LUCs to all farmland parcels in use, for which the SLRD held *Kwin* maps. The MoAI established a system of land registration for farmers that ostensibly provided LUCs. Once secured, these LUCs would create rights to sell, exchange, access credit, inherit and lease the land to which farmers held rights. At the same time, 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 land, town land 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 claimed they were able to present some form of evidence of continuous use (or productive occupation) of land parcels, primarily through endorsement from the village head or by providing a copy of land tax receipts, to claim LUCs. This was easier in areas where village heads or traditional leaders could give evidence of possession of a land parcel. In some cases, families had no documents but their land was recorded in existing *Kwin* maps. In some cases, disputes over landownership arose when documentation was prepared. Preparing and completing documents required was not a hurdle for many but quite a few grievances were cited against local officials processing the LUCs. Disappointment was voiced in two areas: (a) numerous errors in LUCs that were reported but have not been corrected by the SLRD; and (b) lack of information on resolving land disputes. Such situations caused considerable frustration to landholders. Several beneficiaries also claimed they had not reported errors in certificates because they were either afraid of being asked to pay for corrections or they did not know what to do if errors were found.

In theory, issuing LUCs demanded a great deal of communication between SLRD personnel, FAB members and communities. There was little evidence of more than one formal meeting being convened by village heads to pursue public consultations. Similarly, parcel boundaries

seemed to have been defined by the SLRD without consultation with 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 indirectly from a family member or from printed materials (probably referring to maps and parcel lists).

In interviewing landholders, the review team observed that the beneficiaries seemed to understand that LUCs would not be issued for parcels under dispute (over ownership or location of parcel boundaries). Several disputes were intrahousehold or among neighbours; 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 the village head to farmers who had the capacity to 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.

According to VTC heads and local officials interviewed, if the disputes were serious, the FAB referred them to the judiciary rather than mediating. In discussions, FAB members and local officials acknowledged that the SLRD's field teams were less prepared to assist village leaders and FABs to resolve serious land conflicts. The review team came across several instances where farmers had raised past land acquisition issues when FABs/SLRD teams assembled to prepare LUCs. They protested against the previous instances of lack of transparency, adequate compensation, and systematic regulation and monitoring. Thus the FABs/SLRD received complaints of corruption, irregularities and protests against compensation rates far below prevailing market prices.

**Box 2: LUC issues**

- Are LUCs for farmlands enough to build a land administration and governance system?
- Were LUCs delivered to eligible and legitimate landholders? Validation is essential to build public confidence.
- What is the public perception of the LUCs delivered and their use?
- Will this minimize fears/anxieties over land loss or land grabs?
- Have LUCs protected the rights of women and vulnerable groups in the country?
- How will the new land records be stored and maintained?
- Has a strong land-based economy emerged and/or have socio-economic progress patterns and power relations changed?

The ground realities give rise to the above set of questions and a field validation would benefit building a land administration system in the long run.

### Concerns after LUC issuance

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 and LUCs delivered along with the land administration system is enhanced.

At this point in time, it is not clear whether LUCs will help to address some of the concerns on land matters and develop the governing capacity to deal with the multiple challenges in land governance or generate more 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 administration can adequately protect community rights and promote social equity. This should include community participation in compulsory social assessment of land areas when investments are proposed, before further steps are initiated to design and implement a development plan.

A modernized land-information system needs to be in place for Myanmar to secure full benefits from the LUCs issued so far and for the country's 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 systems and procedures in property valuation and taxation are expected to generate wide-ranging positives.

On land parcels for which LUCs have been issued, already successive land transfers often go unrecorded. The LUC issuance programme 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 *Taungya* or landmined zones in conflict areas would be covered under a land registration programme latterly.

In terms of farmland governance, a key factor is that certification efforts need to be accompanied by capacity building at the village level to improve awareness and understanding of land laws. There is a need to protect the land rights of traditional land users (and customary tenure holders) including those associated with land in long fallows and land used for grazing and forest products. The other issue relates to granting of forest land to small and medium farmers, lack of rights of those who moved to erstwhile forest areas and restrictions on crops to be cultivated on farmland. Drawing from the LUC experience, there are promising options such as issuance of 'collective territorial type' rights to address the land rights of those engaged in shifting cultivation too and these should be considered. This will not be an easy task as modern state notions in Myanmar, as elsewhere in the world, advocate resourcing formal institutions like land agencies to 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 a long-term engagement with all stakeholders building trust and confidence would help to revive customary institutions in a modern context.

Recent policies suggest government intent to pursue reforms in a phased manner. The issuance of LUCs, effected within the prescribed time frame, 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 a 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 3: Attention to gender issues**

Commonly, government programmes tend to use the ‘head of family’ concept, usually 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 to this. The Farmland Law too is gender-neutral, leaving the issue unaddressed. Despite this deficiency, evidence gathered during field visits indicated that although 20 percent of the women were involved in the process of preparing the application or assisting the field surveyors, FAB or SLRD made no special efforts to address their special needs to ensure their understanding of and full participation in registration and titling. In fact, almost all of FAB members were male.

Little information was provided to women on the option of joint titling (registering land parcels collectively under the names of the husband and wife). In areas visited by this team, 15-20 percent of LUCs were issued jointly or in women’s names. According to the 2010 Population Census, on 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 office.

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 being 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 denied 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

**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. These highlight the need for policies to guide land use and define rights to services or benefit streams associated with land. These studies found that Myanmar has poorly managed its agriculture and urban expansion, poverty is evident in rural and urban areas, and land tenure and tenurial rights are unclear, resulting in conflicts over land. It reasoned that these issues justify land administration and policy responses to strengthen tenure security and create an environment for economic development.

### **Management of state land**

The lack of clear definition, reliable inventory and a database on state land and state-held land makes government authority over land an issue. Myanmar does not pursue a system of ‘custodianship’ over land areas but government agencies are seen as ‘owners’. This further limits the MoAI/SLRD’s ability to administer non-forest land. In fact, the SLRD now functions more as a data-holding agency on land. Mechanisms required for the SLRD’s institutional coordination, apart from farmland areas, have yet to be established. Further, 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. CSOs note that the government’s inability to award and oversee land leases transparently prompts concession holders to extract resources from land with little consideration for long-term sustainability and leaves local communities with few opportunities to participate in revenue streams from resources.

Land expropriated by the government for public interest must accord with existing spatial (land-use) plans. 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.

### **Land disputes and conflict resolution**

Since the late 1990s, protests against land grabbing have been increasing. Most of such land-grabbing 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. The government established two bodies in 2012 to deal specifically 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 land disputes. 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 somewhat overlapping mandates and competencies to handle land-related conflicts. However, as several reviews indicate, the functioning of these bodies is limited largely to 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 favours government agencies, they are less effective in settling disputes between the communities and the state. Access to justice is hampered by political instability in some areas, geographical conditions, costs or lack of familiarity with procedures. Several of these bodies, though familiar with local customary practices, tend to rely on broader government templates, often inappropriate to the context, to address disputes. Appeals are costly and time consuming. Public confidence in these bodies is conditional and people tend to look for alternative dispute-resolution mechanisms. Informal and community-based dispute resolution methods have yielded positive results in some areas, particularly 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 contribute to strengthening good land governance if well managed and resourced.

### **Civil society engagement**

Myanmar has an increasingly large presence of NGOs and CSOs working on various issues affecting the poor and the disadvantaged. This number increased after Cyclone Nargis in 2008. Like many other countries, rural and urban land rights have emerged as a source of conflict between the government and the public, especially farming, forest-dwelling and urban poor communities. In the standoff between the government and affected people, CSOs generally ensure that the voice of the people is heard. They have also taken on the responsibility of disseminating pertinent information among the people to increase awareness. Since the mid-2000s, CSOs have taken on an active role to facilitate dialogue on pro-poor and impartial land reforms by highlighting historical land confiscation and poor enforcement of land acquisition principles and compensation (within the understanding of FPIC although it is not directly cited in many instances) in the case of land concessions. Their work has been significantly strengthened through consistent research by organizations such as the 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 favour of wealthy corporations 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 programme issues, positive developments have occurred in the past decade or so. In recent years, the government has been willing to create mechanisms to include CSOs in its work to understand grassroots issues. 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 a road map for recognition of customary tenure). The government, in turn, understands the benefits of popularizing policies and programmes, creating room for a more positive relationship between the government and CSOs.

Despite such positives, there is considerable ambiguity around the present and future role of CSOs in Myanmar. The 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 with regard to 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.

### **Public awareness-raising on land issues**

Past experiences suggest that increased public awareness and community participation in land governance is critical. In monitoring progress and strengthening land governance, public

awareness, community participation and dispute resolution must be emphasized. Effective and comprehensive public awareness and communication are essential for the successful implementation of land administration and management policies and programmes. Unless people and communities are well informed before programmes commence, they will not participate in a systematic and substantive manner. The public must also be well informed of mechanisms to address their grievances and disputes. Government mechanisms are often not well-known 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.

### **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 the arbitrariness of 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. The consequences of this are borne by the people who struggle to establish their rights as a result. With unfavourable 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. Unless these issues are effectively addressed, Myanmar cannot improve its land governance. For good land governance, Myanmar needs 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.

The government should be encouraged and assisted in setting up a national framework and mechanism for monitoring and reporting on priority land governance indicators. A Working Group on Land Governance may be helpful. Once such a mechanism is operational, it should also consider benchmarking and putting in place a set of indicators for medium- to long-term monitoring. This would entail engagement with appropriate government agencies, CSOs and other stakeholders.

A series of advocacy and awareness-raising sessions should be organized to increase government and public support and demand for improving land governance. This should result in an agenda to address the 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.

Educating and strengthening the capacities of policy-makers and local government officials and others on community engagement are also essential. Without extensive capacity-building programmes, the GAD, the MoAI/SLRD, 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.

The government should seriously consider the establishment of 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 the 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.

Land conflicts and the weaknesses of the judicial system will 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.

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 are safely organized and stored and are more accurate, with all geospatial and mapping activities using common reference points.

Land governance needs to be suffused with transparency 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 within conflict zones (and thus affected by land mines), women and disadvantaged groups. In pursuing this, universal templates and frameworks for communication with landholders must be prevented.

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 along with best global practices and experiences on good land governance to gradually improve its regulatory and policy environment. The government is drafting the NLUP and Land Law – here is the ideal opportunity to break new ground for demand-side approaches by working with both state and non-state actors concurrently and constructively linking their work to improving land governance. Such an effort will generate insights of practical relevance for land administration and management in Myanmar.

## 4. INSTITUTIONAL ENVIRONMENT

### Land policy and legal environment

The complex legal and institutional environment in Myanmar is obvious when one looks at 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. The persisting historical scars arising out of land confiscations and forced acquisitions since the 1990s have yet to be addressed, and the enactment of the new laws in 2012 (Farmland Law and VFV Law) has added a new layer of administrative mechanisms. The impact of this new land is not yet clear. In turn, tenure uncertainty is affecting farmer views on these new laws. There is concern that the less clear provisions in the VFV law that could result in declaring a land parcel as fallow without due process and thus provide a space for land ‘confiscation’ from farming communities for ‘public purposes’. In all, the overlapping legal instruments do create opportunities and a space to acquire land without due process.

In Myanmar, roles and responsibilities for most government functions are dispersed. Land administration is no exception. At all levels, 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 maintained as ‘invisible’ rights and 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.

Despite changes in governments and in the legal environment, the land administrative structure has remained intact. Responsibilities are distributed among 10 different government entities (refer to Table 1 in Annex 2). In general, the Ministry of Home Affairs (through GAD) and the SLRD (through the MoAI) continue to play a major role in all levels of non-forest land administration. MoECaF assumes primary responsibility in areas designated as forests. Others like the Ministry of Mines hold sectoral responsibilities on land, but land maps and data responsibilities rest with the SLRD.

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

Administering land and its uses mainly falls under the purview of three ministries, i.e. GAD, the MoAI/SLRD and MoECaF. 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 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 administrative unit

responsible for processing such applications is the GAD branch at the township level. Thus, the process of land rights' transfer or change of land use is lengthy, 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.

The role of the military in land administration and management is, in theory, limited to protecting national boundaries. However, post1991, the military has acquired large tracts of land for its encampments and also retained control over 'conflict zones' in Kachin and Karen states. The SLRD has not mapped several of these conflict zones or maintained any data on these areas. 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 as well.

Overall, 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, over time, become essentially dependent on government discretion, giving rise to conflicts between the state and people. Land-tenure arrangements involve social relations and social institutions, have complex histories, and are multidimensional. Thus, to understand Myanmar's land-related problems and appreciate the challenges in land sector reforms in the country, it is necessary to understand the history of both land's role in Myanmar's political economy and land legislation and ownership. A closer study must thus be made of the precolonial, colonial and postIndependence eras under different political regimes to study the government approach 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). This should be advocated as a priority as the government moves forward with its land reforms agenda in the coming years.

### **Forest land administration, customary tenure and community forestry**

In Myanmar, forests underpin the development of different socio-economic sectors and local livelihoods. Discussions on forest land administration are dominated by recognition and protection of customary tenure arrangements and enhanced support for community forestry.

Across regimes, revenue mobilization and institutional arrangements were split between the 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, which was freely sold or allocated for logging or plantations or extractive purposes to mobilize revenue. It was frequently alleged that the 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 programme (mid-1970s to late 1980s) for revenue mobilization was launched. This led to granting of forest land to investors, although this was on a modest scale. As the economy started deteriorating, the government enacted a new law, 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 let his/her family inherit the land or confiscate it.

## **5. KEY FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

As Myanmar undergoes massive demographic, political and social transformation, its economic potential is threatened by widespread, persisting and systemic challenges related to the management of its land and natural resources. A well-functioning, 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, and establishing legal certainty on which economic growth is dependent and for promoting and protecting the socio-economic-cultural rights of the population. And yet, the government is confronting numerous challenges in its efforts to deliver these critical inputs, particularly for the farming, ethnic and upland communities and the poor, who altogether form a large majority of the population. Land confiscations and disputes were consistently reported throughout this review, including disputes that were difficult to resolve and likely to trigger social instability. It is a situation that is not sustainable in the long run without addressing the historical scars created by the land confiscations and acquisitions. At stake though, are not just the overall economy and infrastructure, but also the country's social and political stability and the future well-being of the country's population.

Despite criticism, there is evidence that the government is pursuing a set of early reforms and willing to learn from experiences since 2010 (e.g. public consultations on the draft NLUP). This would not have been possible without the support of the government or respective line agencies. With growing local voices, government apprehensions on land-tenure rights are beginning to change and can be helpful for longer-term policy reforms. As discussions with several government officials, policy-makers, village leaders, farmers, community members and CSOs during the course of this review demonstrate there are constituencies for change and reforms, and they should be supported.

Arising out of this review, the following key conclusions and recommendations aimed at strengthening tenure security of farmers, upland communities and landholders in general are provided. A set of measures for strengthening governance of the land and land-based sectors is also suggested. They include measures required to enhance policy, legal and regulatory environments to protect and recognize land rights; field-level measures; policies required to support development of land information systems; and steps needed to develop capacity and facilitate changes at the national and local levels.

### **Reforming the land sector through adoption of land policy and comprehensive land law**

The reform process should start with the government elaborating a broader vision and a statement of the principles underlying land and land-based sector reforms and as to how it intends to strengthen the tenure security of its population. The strategic thrust of the land sector

reform should draw lessons from past misguided policies and experiences, and an explicit assertion that the government would be willing invest in institutions to support the proposed initiatives. In preparing the new land policy and law, the following principles and priorities should be considered:

- The new instruments should reduce existing multiple and overlapping land-tenure laws, regulations and guidelines into manageable numbers with clear and concise criteria for their administration and management;
- A small number of land classifications and tenure regimes are critical for better land governance while respecting and incorporating the diverse traditional and customary practices in land-tenure arrangements;
- State-held land areas should be clearly defined and criteria provided for their verification and confirmation. The definition should also be comprehensive enough that the government cannot reinterpret its jurisdiction;
- Propose a set of measures to protect and recognize customary tenure arrangements in land; and
- Develop a custodianship model for land administration.

The proposed land law and other policy instruments should aim to promote a regulated and formal land market thus reducing the informality that is currently prevalent. This should include more realistic and simplified land assessment procedures and regulations should encourage landholders to pursue formal transactions and to formalize past informal transactions. Considering the relentless issues in the land sector which the government's past efforts have yet to wholly address, the new land policy and law must be straightforward in all aspects and levels.

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

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

The fact that modern-day land administration and management will impact on a wide array of institutions and stakeholders, the preparation of the NLUP and the new land law is an opportunity for the government to eliminate overlaps and streamline institutional arrangements, enhanced social inclusion and good governance. The pace of preparing the new land law should be moderated to allow detailed consultation with the public, and integrate those findings and suggestions from the ongoing dialogue on the draft NLUP.

#### **Addressing historical scars and mechanisms for resolution of land disputes**

The issue of returning confiscated land to original owners persists while the recommendations of the Parliament's Land Investigation Committee are yet to be implemented. Such historical scars related to past land confiscations and involuntary acquisitions must be addressed in a transparent and socially understandable process.

The government should demonstrate its political will by adopting a 'land restitution policy', which can be an effective remedy through the CCNLRM. Previous 'healing efforts' have been proven inadequate; hence it is imperative that the government amplifies its strategies beginning with a robust policy that will give disgruntled owners their dues.

**Recommendation 3:** 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 and reconciliation of past land confiscation should be a government programme 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. This restitution policy should prohibit forced evictions, consistent with international human rights standards on the issue, and generally be seen as good practice in the region (e.g. the Philippines, Thailand, wherein involuntary evictions are prohibited).

An independent administrative body for this purpose should be established and engage with CSOs in its work. In all such efforts, it is important for the government to be seen as taking measures to heal past scars and anxieties.

### **Land acquisition for public purposes**

Discussions on state land management generally lead to a debate on the antiquated land acquisition laws of the British era that continue to dominate along with broad discretionary powers that were granted to state administrators to define state land areas and/or public purpose. There are numerous accounts as to how contradictory regulations and instructions were used to take over land from households. Needless to say, powerful administration merely increased the suffering and anguish of the people. These factors, coupled with the urgent need to accelerate agricultural growth and industrialize, put land acquisition at the heart of the land law reform debates in Myanmar after 2010.

As the government will continue to have the economic and political upper hand over small and marginal landholders and more particularly those holding customary rights or without formal land records/certificates and those holding claims in the conflict zones and landmined areas, there is a need to put in place transparent and fair procedures and guidelines for land acquisition for ‘public purposes’ as part of the Land Law. It is also equally important that the government consider and adopt no-eviction policy to assure landholders that a fair and transparent process will lead the land acquisition process.

**Recommendation 4:** The government should consider lessons from past experiences under the existing land acquisition procedures and practices, and incorporate lessons learned in drafting the new Land Law.

Further, the government should develop standard market value reference points to facilitate a fair process so that investors can give a just and reasonable package to existing landholders and compensate them. These details, as a land price table, should be made available to the public for reference and use. Public consultations and landholder consent based on internationally recognized good practices and principles should be adopted for implementation (e.g. FPIC principles).

In moving forward, the government should revise the procedures and guidelines for acquiring land for public purposes within a principled framework. The framework should explicitly commit the government to adopting and recognizing human rights and land rights approaches to

dealing with land acquisition and that the principles of FPIC would be incorporated in case of forest land and upland areas wherein ethnic groups live.

#### **Box 4: Land policy and tenure claims**

**The land policy should address tenure claims of populations forcibly displaced by conflict including those displaced inside the country and those displaced outside the country and who may wish to return. There are a significant number of such persons including a large number located along Myanmar's borders as a consequence of long-running conflicts. Moreover, as there may be future land claims by these populations, specific provisions should be included in the policy to allow these claims to be made to the dispute resolution mechanism. Regulations/guidelines should also put in place various ways and means for registering land claims by displaced communities such as individual application, as well as being included in the government's standard land administration processes such as land-use planning, land adjudication for titles, land investigation for forest land tenure, etc.**

It is recommended that the new policies/regulations should not only provide procedures relating to land acquisition and compensation, but include some of the best practices which comply with international standards. For instance, the purpose of acquisition should be noted clearly and passed on to the public well in advance. In case of transfer of private or community tenure rights, the government should follow due process as laid down under the provisions of compulsory government acquisition and in the absence of formal land records or certificates, shall respect the fact that the person/s in long possession of the said land parcel should be deemed as evidence of a possessory claim and recognized. Good practices in land acquisition for public purposes in the ASEAN region shows that due compensation should be made by the government acknowledging all factors such as market prices for equivalent property as well as all dislocation costs, lost revenue etc. The government may offer alternate sites but there should be no obligation for the owner to accept. Wider and transparent public consultations – however tedious – should be sacrificed for swift implementation of projects and programmes.

It is further recommended that the government develop a clear policy on recovery of landmined areas and procedures for restituting claims of local communities (over land currently held by the military forces to manage conflict) to build social and political stability. Work on this should be seen as a precondition for strengthening social and political stability in the respective areas.

#### **Land tenure, small and marginal landholders, and rural livelihoods**

The government's Rural Development Strategy (2014) underscores improving agriculture and rural economies. These policies give a significant role to small and marginal holders. In realizing

the goals proposed by the strategy, the current economic situation of smallholders will have to be examined beyond ‘mechanical’ links and the ground realities are more complex than they appear. Firstly, access to farm credit continues to be inadequate and there is evidence of increasing cost of inputs and risks of potential debt cycles. Secondly, there have been crop failures in the past few years either due to uncertain monsoons, costly irrigation facilities and lack of inputs. According to available reports, in the past some farmers reportedly lost land to village committees for not producing paddy according to the quota. A few farmers purchased paddy from local markets and gave it to the government to avoid land confiscation. Farmers are selling portions of their landholdings to meet their subsistence needs. This in turn creates a debt cycle for which they give up their landholding in return. Measures are required to prevent gradual conversion of land from rural to urban uses so that land available for cultivation is maintained.

Opportunities for strengthening smallholders and their land tenure should be created and nurtured. The government indicated its commitment to work through the draft NLUP (2014) and also agricultural policies that provide a set of measures to preserve farmers’ rights in the form of more 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 has the capacity to contribute effectively and significantly to food security as well as to economic growth, employment generation and the reduction of poverty and inequality.

**Recommendation 5:** 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 neighbourhood) so that such land parcels can be moved into more productive uses. A set of possible measures is described below.

***Increasing land access: preventing the growing trend of landlessness (or near landlessness)***

Myanmar is experiencing inequality of land distribution patterns and landlessness due to the historical legacy of land confiscations and lack of a policy and system to increase people’s access to more land areas for livelihoods. As indicated earlier, Myanmar’s agrarian structure is increasingly characterized by a two-tier and skewed land distribution. The current landholding of about 5 acres per household is insufficient to help them move out of poverty. Without adequate support or public services and infrastructure, small farmers often resort to selling their most precious asset and eventually abandon agriculture to subsist. Land losses have also occurred among farmers because of declining land quality and productivity. Hence, there is a priority need to increase people’s access to land and protect and recognize existing rights. Clarifying tenure and access rules – along with minimizing land fragmentation – would prevent confusion, provide an incentive for increased investment in those land areas and further minimize land conflicts.

Much has been written on farmer indebtedness in Myanmar. Nevertheless, it is worthwhile to consider this from the perspective of land-tenure issues (particularly for smallholders). Since 1991, high rural indebtedness has resulted from economic measures such as the granting of large-scale land concessions, land confiscation, crop and output prescriptions, the lack of reliable formal credit in rural areas and highly fluctuating world prices for agricultural produce.

A medium landholder (with 10 acres of paddy land and cultivating at least two 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 intensive and widespread in both the Delta and CDZ. Field investigations revealed the existence of contract farming, which is often used as a mode of debt repayment in the credit market. A more persistent argument is that agricultural development has been hampered and rural poverty perpetuated by a defective land tenure system.

For Myanmar, a well-prepared ‘Social Land Concessions’ programme – with several windows for land distribution – for landless people (land distribution along with a package of support for livelihoods including increased access to credit and farm inputs) should be considered. This will also be a way to counter land concentration, and increase food security and increase households’ access to new land areas for subsistence. Social land concessions will not only promote redistributive reforms of land tenure but also the establishment of collective or communal forms of farming and land-tenure reforms in a broader sense, i.e. changes in the contractual arrangements between the landholder and those who cultivate the land.

#### *Suggested Measure 1*

**Recommendation 6:** 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, design for a land distribution programme prepared and implemented.

In support of implementing the social land concessions programme, the government needs resources and technical advice: (a) to identify and develop a land distribution programme with appropriate support for services and sustainable livelihoods; and (b) to assist the government to identify available land, beneficiaries, allocation procedures and services support. There is a need to study the provisions of the NLUP and other policy statements and see as to how they could be effectively used for the benefit of smallholders, prevent speculative land banking and in promoting social land concessions programme. Building a bridge between the MoAI, MoECaF, GAD and DRD is critical for the effective and efficient implementation of social land concessions programme.

#### *Suggested Measure 2*

**Recommendation 7:** Promote projects to rehabilitate degraded land areas. The physical degradation of the 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 should apply to all badly degraded areas of land which the local people lack the means to rehabilitate. To achieve this, substantial resources will be required. At the same time, the conditions of land rehabilitation will need to be clearly defined and formalized with those who formerly farmed the areas concerned. Once the improvements have been made, the land should be redistributed to various poorer community members by the local committees according to 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 complied with by the new users.

Riverbed farming practices are common in Myanmar. Access to riverbed land areas is generally allowed by village heads. However, these are not seen as part of a rural development programme

with long-term strategy to increase landless households' access to land. Given Myanmar's socio-cultural practices in managing land, the government should consider promoting riverbed farming as a programme for improving livelihoods and income-earning opportunities among landless and land-poor households with the possibility to earn an income from on-farm activities close to home. Therefore, land distribution and allocation for riverbed farming should be considered. The approach will allow farmers to make the most of the large areas of fallow land near riverbeds which are normally unclaimed and not cultivated. As the lands near riverbeds have alluvial soils and sufficient moisture, they are suitable for seasonal vegetable cultivation particularly during the dry season. In order for these landless and land-poor households to be able to farm these riverbed areas, they should have to access to suitable plots and the necessary agricultural inputs and training.

### **Granting of state land leases/concessions and their management**

There is lack of any evidence of transparent allocation of land leases or concessions so far, i.e. the right type of land areas allocated at the right costs, for the right purposes and providing benefits to the right people. In most cases, state land leases or concessions were awarded on a specific condition that investments will be made. However, the overall investments actually made and recorded were found to be patchy (reportedly less than 25 percent). Consequently, few concessions have generated the anticipated social benefits and revenue streams for the government. While the MoAI's database provides broad details on the number of concession permits issued, there is no consolidated database on their performance. In sum, the existing reality is that land concessions have been negotiated and awarded in haphazard and inconsistent ways with negligible quantification and qualification of their impacts (e.g. the details on fee payments required and made; revenue-sharing; labour requirements and actual inputs; and social, economic and environmental impact considerations). The prevailing system and processes for assessing and issuing concessions are opaque with little oversight.

**Recommendation 8:** The government should consider a moratorium on issuance of new state land leases/concessions for a period of time. This period should allow the government to compile and maintain an up-to-date, comprehensive and transparent inventory of all existing concessions in terms of size, location, boundaries, name(s) of the concession holder, issuing authorities, villages covered, duration of concession, concession purposes 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, identify areas where leases/concessions overlap or intrude on land of farmers or local communities. Where conflicts exist or are likely to occur, review the issuance of the lease/concession and causes of the conflict and support a multistakeholder conflict resolution process to reduce and mitigate the impacts on local communities and smallholders. There should be measures to build up the capacities and competencies of government agencies responsible for issuing and managing leases/concessions and other stakeholders:

- To be better able to better assess applications for leases/concessions, monitor and manage those granted in their areas and able to engage and involve all impacted stakeholders in concession management activities and benefit sharing; and
- To improve the overall governance (transparency accountability and participation in) of concession allocation, corporate social responsibilities monitoring and management.

### **Need for a national accelerated programme for land registration and certification**

As Myanmar opens up its political environment and moves towards a market economy, the demand for formal LUCs both in rural and urban areas is rapidly growing. Experiences learned from the issuance of LUCs for farmland areas in 2013-2014 showed that the demand for enhanced tenure security through formal land certificates is gradually growing both in the rural and urban areas. In recent years, increasing land sales (and seizure) have become a part of rural life and changed the perception of land records on formal documentation. The advent of increased land sales, as well as government-driven land-use planning brought significant changes in traditional tenurial arrangements and practices. 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, and for the benefit of smallholders, realistic land taxes are required, with higher rates on unused land and exemptions for small and poor landowners. Land conversion tax and capital gains tax could also be used to pay for improved land delivery services.

An accelerated land registration and certification programme will require not only regulations and guidelines, but also measures to build up capacities of SLRD/GAD staff and their offices at district/township levels. Institutional development for managing land administration work is immediately needed. It 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. The local land registration and certification teams, especially in more remote areas, may require intensive skill building in order to be ready for the accelerated programme. Such efforts should also consider certifying upland areas (community titling as an option) and providing public access to the land-use management process.

Low-cost methods and people-friendly land administration systems are essential for recognizing tenure rights.

Programmes to recognize land tenure often involve demand-intensive work and pose formidable challenges to landholders and local authorities, including political opposition and fading political support. The costs of recognizing land tenure rights are likely to be higher in mountainous and densely forested areas, in areas that are highly contested and with large number of land conflicts and in areas where significant amounts of technical expertise are needed to initiate community mapping work and orient local government personnel to bring them on board. At a more direct level, the costs of identifying and demarcating the boundaries of community lands will increase when a higher degree of geographical precision is needed (i.e. involving 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). The costs will vary based on the differences in economic status of the local government and willingness of communities to participate in

different areas, and the availability of in-province expertise to do the surveying and mapping (a lot depends on the capacities at local land offices too). On the other hand, it is impossible to calculate the cost of social mobilization but that should not prevent the government from promoting community participation.

**Recommendation 9:** FAB/SLRD work and experiences gained so far through the farmland LUCs (2013-2014) merit systematic field validation and evaluation to determine the ‘building blocks’ from the policy components that can be helpful for strategic development.

Processes used in the preparation and issuance of LUCs should support the formulation of a clear plan for institutional strengthening, through which measures should be taken to yield useful material for the enrichment of ‘good practices’ in land administration systems. To be successful, efforts to enhance the quality of service delivery have to be comprehensive, participatory (involving multiple stakeholders) and considerate of the needs of vulnerable sections in society, i.e. women, upland communities, ethnic minorities, conflict zones, etc.

As part of the accelerated registration programme, the government should build up the land information management system to help coordinate and ensure that databases are aligned, standardized, compatible and comparable. Further, the government should also consider putting in place a strategy that would be demand-responsive and a comprehensive business plan for the SLRD (national and local) as a service and standard-setting unit and relevant services standards developed.

**Recommendation 10:** Building capacities of land offices at all levels is critical. Without extensive capacity-building programmes for the national, district and township levels, the SLRD offices (and in turn GAD which currently manages village land and residential areas) and 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 fact that its users and stakeholders have strong confidence in the system. This confidence is built on a range of factors, including the quality of information in the system, efficiency, accessibility, transparency, affordability and sustainability. Weak disregard of these factors induced several land registration and titling programmes to fail.

### ***Land information management***

Despite advances in modern geospatial technology, Myanmar lacks a complete inventory of georeferenced land parcels for both forest and non-forest lands, and this land information remains scattered. While cadastral databases maintained by the SLRD serve as the basic

reference points, these records are not updated with regular ground truthing. This situation, along with the large backlog of land areas that remain to be formally delineated and recorded in the land database, present numerous challenges to good governance in the land sector.

This review recommends that the government consider adopting a National Strategy for Land Information System Development (NLIS). The NLIS strategy should be prepared in line with this review, including detailed guidelines for the management of land information (both textual and spatial) throughout land offices in Myanmar. It should consider replacing existing regulations which greatly limit public access to government-held land information. A minimum standard of information access and land- and property-based services for the public must be incorporated to the draft NLUP (2014) and forthcoming land law. Further, the government should also put in place detailed National LIS guidelines. The development of these guidelines is essential to set the technical basis upon which SLRD land offices and MoECAAF manage their respective land information. Responsibility for their drafting should rest with the SLRD and MoECAAF with advice from the Central Committee on National Resource Management. It is anticipated that drafting would be conducted in consultation with ministries and CSOs, and feedback sought from the broader land-related sector of LIS managers and GIS users through a National LIS Workshop. National LIS guidelines support the interdependent vision for the National Spatial Data Infrastructure (NSDI) Vision and Strategy for land information use, production, acquisition and management and should be subject to cyclic review and update (approximately every three years).

Provision of geospatial information is a fundamental of modern land administration, which can aim at various objectives such as:

- Avoiding the neighbouring of conflicting uses (such as residential and industrial);
- Identifying land development objectives for short, middle and long terms;
- Imposing legal restrictions on land uses;
- Maintaining land value in an homogeneous zone, by prohibiting conflicting uses; and
- Reducing disaster impacts via risk assessment and risk mapping.

The OneMap policy (2014) requires clear and approved standards and procedures for implementation at the ground level. In due course the government should be preparing the procedures and disseminate them for enforcement. Presently, there is an apparent lack of technical understanding of the benefits of the OneMap approach and their usefulness for land administration. The government will have to address such technical issues as it moves forward with the work on NSDI, and consequently develop a framework covering a system of infrastructure, responsible agencies and policies to promote the following: 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 11:** Development of (a) NLIS guidelines and (b) an NSDI framework are critical for land information management. These should be consistent with the geospatial needs of Myanmar and details incorporated in the new land law (forthcoming) and other reform measures should be prepared and adopted. The NSDI framework will guide the development of physical and human resources along with capacities required for the administration and management of the land sector.

Although Myanmar presently has access to significant donor funding to support OneMap and the Geoportal, there is an urgent need to fully define its fundamental data sets and prioritize funding 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 the NSDI. Work on NLIS and NSDI should be seen as part of efforts to strengthen good land governance. 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.

### ***Strengthening land governance***

In spite of the government’s efforts to address land confiscations and land grabs through the establishment of powerful and committed entities (e.g. the Commission to Investigate Land Confiscations), it has inadvertently generated more concerns than resolutions. Land areas affected by armed conflicts and communal tensions add another layer of complexity in land governance. Further, many currently mined areas are not included in the national cadaster, or are considered ‘fallow’ (or VFV) land by default. Some ethnic armed group administrations have their own systems of land registration, including recognition of communal rights, customary rights and shifting cultivation. Weaknesses in these systems, corruption and lack of transparency mean that local populations are not always consulted on decisions, including the granting of logging and mining concessions and plantation agriculture, and if there were indeed any, communities may not be made aware of them. Further, internal displacements for decades have resulted in weak land tenure. In conflict zones, the mine action process will unfold in an extremely complex and highly sensitive legal and social environment with regard to land rights. Inevitable conflicts over such land may follow. Indeed, the higher the perceived value on currently mined land, the greater the risk of land disputes between claimants and exploiters, wherein the military and powerful local elites will likely have a significant role too.

It is clear from the above that pragmatic solutions to the various problems of land tenure are a precondition of the achievement of good land governance. The government has indicated its interest and willingness to build adequate human, financial and technical capacities in support of land policy development and implementation. In addition, the national government is committed to delegating land governance responsibilities to local governments in an effort to increase the accessibility of services while promoting accountability and transparency. As a start, the government should learn from available good practices. Regional experiences and good practices in the ASEAN region show that it is important to fill the informational vacuum on land tenure to

help move forward in good land governance. Therefore, timely dissemination of information to stakeholders is critical. This will have to be addressed as a priority.

In moving forward, the government does require a ‘reference point’ to guide its policy development work. On this, the government could consider reviewing the draft land policy, NLUP and the draft land law for compliance with the VGGT by the United Nations – Committee on World Food Security (UN-CFS). The guidelines include many best practices endorsed over several 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 promoting transparent, equitable and secure access to land, fisheries and forests and by protecting the legitimate tenure rights, whether formal or informal, of millions of people, many of whom are poor and food-insecure.

**Recommendation 12:** As Myanmar moves forward reforming the land sector, a structured review of land governance is essential to assess and take measures to strengthen the system. For this purpose, this review recommends conducting a series of thematic Land Governance Assessment Studies (L-GAS) immediately covering: (a) a policy dialogue for land and forestry sector reforms; and (b) assisting the government and other stakeholders to identify immediate, medium- and long-term priorities in strengthening land governance.

**Recommendation 13:** Disseminate VGGT Principles on Land Tenure widely within the government and among CSOs so that policy discussions and public consultations are anchored around a standardized reference point.

**Recommendation 14:** The ongoing dialogue, at national and local levels, on strengthening good land governance – through forums like the NLUP or draft land law – should be continued and supported. The dialogue should also be anchored around thematic areas such as urban land issues, development of smallholders, protection and recognition of the rights of customary tenure, rights of ethnic groups and local communities.

In closing, the review presents underlying political-institutional dynamics that hamper the implementation of good land governance in Myanmar. Despite changing political regimes and narratives, local communities and CSOs are showing signs of resistance to unsustainable practices in land and resource management. They have been seeking better ways to protect and recognize customary tenurial rights and land claims of upland communities and those living in heavily mined areas (that would be available postpeace agreement). The discussions also demonstrate the positive opportunities that would come if measures are taken to strengthen good land governance in the country.

***Social inclusion, information dissemination and public education on land***

The government should have mechanisms to promote open dialogues with and between communities and investors alike involved with managing the resources. Such dialogues should

be based on thorough and verifiable information in the hands of the government, which should also be shared with the communities and potential investors beforehand to build a cooperative programme of land development that is not only productive, but also fair and equitable. An open approach will prevent land disputes or their escalation.

**Recommendation 15:** Efforts to educate and disseminate information should be made starting from protecting and recognizing existing tenurial claims and rights and covering ongoing or potential land development operations. 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 with regard to social equity and transparency in land administration and management.

*Political will and its place in reforming tenure security:* The effects of conflicting legislation, and the lack of political will to adequately address land issues affecting small and marginal holders and the land-poor, and the bias towards large-scale investments in land, are the major barriers in addressing the land rights of rural communities dependent on cultivable land for subsistence. In this regard, there is a need to increase the focus on disseminating the benefits of tenure security and build capacities of local leaders so that they are better able to understand and facilitate the change-process within the larger society, particularly with regard to tenure security of the rural communities. It is important that political will at the national level is galvanized to ensure that requisite legislation within and across sectors is coherent with regard to tenure. If the letter of the law is to be implemented in spirit, strong political will is a critical component as entrenched pro-urban and pro-capital norms need to be uprooted.

*Need to encourage agents of change:* Available information and case stories emerging from hundreds of local leaders and community members, parliamentarians and other stakeholders during the course of this study and earlier work, suggest there are constituencies for change at the local level and decentralization, with checks and balances, could be one of the tools in the hands of these change agents. The recent pro-reform measures and progressive members within the government and bureaucracy support these change-seeking groups. They should be encouraged to advocate for comprehensive land-related policies and regulations, and for more inclusive and accountable multilevel governance of land and natural resources.

*Identify and nurture alternative strategies:* To secure tenure security and manage the near-inevitable conflicts over land and natural resources, it is important to use a combination of community-based strategies such as ‘collective land-use certificates’ that adapts to changing ecological and social conditions and facilitates greater transparency and community participation. This could also offer a useful tool for balancing power relations and improving public confidence in the land administration system. In addition, while standardization of land-use certification (and titling) procedures is important, excessive template focus to surveying and mapping should be avoided.

*Need for educating policy-makers on tenure security:* In moving forward, more work is needed to understand and transmit to policy-makers the full costs of interventions to recognize tenure rights and operational best practices from the region and globally. Unless such an effort is taken, there is a danger that the attention being paid to improving tenure security and tenure rights could be short-sighted fixes. CSOs can provide policy advice and methodologies to ensure that these processes and public inputs are able to reach the necessary scale to impart real mitigation

benefits while respecting local tenure systems and rights and providing fuller tenure security and lessons learned from pilot work shared. Finally, continued research on the role of tenure agriculture development and tenure in resolving inconsistencies in land administration and strengthening land administration systems will be essential to future endeavours.

*Social inclusion and mainstreaming gender concerns in land administration:* Land rights are crucial for the protection and security of rural women and their children. Change in ownership from collective to state-codified, individual forms of land allocation and resettlement have frequently resulted in the loss of women's land rights. These dimensions need to be explored within a broader agrarian political economy framework. 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. Research has shown that current social traditions and customary practices are insufficient to meet gender parity in property rights. Therefore, women leaders must be empowered to better understand and facilitate change, particularly to remove barriers to women's participation. Political will at the national level must be galvanized to ensure that legislation within and across sectors is coherent on gender equity. Women's ownership of land and property is an indicator that must be monitored to properly address gender equity issues in the long run. It should be considered and included as part of the land law and regulatory framework too.

In moving forward, everyone concerned, especially CSOs, must advocate the recognition of gender-balanced customary practices that support women's property rights. 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.

### **Moving forward**

This quick review on land governance makes concrete suggestions about the main legal and institutional reforms necessary in the land sector to give positive effect by:

- Balancing the state's authority to control land areas with greater respect for customary and community rights, so that public interests are secured in national development initiatives and that the existing tenurial claims are protected and recognized;
- Removing the impediments to the recognition of customary rights in every legal instrument. This is important; and
- Adopting procedures requiring FPIC of customary communities as a condition for permitting land conversions or land concessions (or large-scale land leases).

In practical terms, the government should consider the following as possible steps to move forward:

Orientation to key staff and CSOs on land governance: A series of advocacy and awareness-raising sessions should be organized to increase the level of government and public support and demand for improved land governance. This work should result in developing an agenda to address the bottlenecks identified including land information management. Reports from such events should be submitted to the President/government for information and should also serve as the tool for monitoring implementation of the proposed agenda in the days to come. The agenda

should include establishment of a multistakeholder mechanism for monitoring land governance (see next proposed next step).

**Box 5: A potential reference point for land governance**

The voluntary guidelines (VG) seeks to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all. Integrating the Land Governance Assessment Framework and the VG will strengthen the focus on land governance in countries like Indonesia where legal complexities, institutional weaknesses and national-province debates are intense. In addition to guiding principles for responsible tenure governance and principles of implementation, Sections 4 and 5 of the VGs in particular are relevant in the context of Myanmar. VG's Section 4 on the rights and responsibilities related to tenure discuss responsible governance and the need for policies and laws that ensure that tenure rights are non-discriminatory and gender sensitive, and impartial and competent judicial and administrative bodies are established to provide timely, affordable and effective resolution of disputes. Section 5 on policy, legal and organizational frameworks related to tenure notes that such frameworks should align with national law and respect legitimate tenure rights including customary tenure rights that are not currently protected by law. Delivery of services, safeguards and markets is also discussed.

Establish a mechanism for monitoring land governance indicators: The government should be encouraged and assisted to set a national-level framework and mechanism for monitoring and reporting on priority land governance indicators. This would entail engagement with appropriate government agencies, CSOs and other stakeholders, under the leadership of the Vice President's Office (as part of the National Land Resources Management Committee). This process will also involve development of land governance monitoring indices across land administration agencies (e.g. MoECaF, SLRD, GAD), and in pilot districts/states/regions, highly urbanized and secondary cities, which can be used for measuring and keeping track of performance.

Identification of priority land governance indicators for monitoring: A quick land governance assessment must be undertaken (based on selected themes) to assess and prioritize the indicators for national-level monitoring. Key considerations include: (a) those which are crucial for tracking progress in the implementation of the land governance agenda; (b) achievement of the country's priority development goals specified in Myanmar's development plans and priorities; (c) cost effectiveness; and (d) data quality and availability. The selection will be undertaken through a consensus-building process, with due consideration to various options and needs and priorities afforded by various stakeholders; and users of information at various levels.

A strategy will have to be developed to select simple, representative indicators to demonstrate the feasibility of the monitoring system, with provisions for a progressive build-up of additional dimensions as more reliable data become available. A timetable and action plan for this phased approach will be developed and appropriately resourced for consideration by the government and participating agencies. A working group, with the assistance of several experts (including CSO representatives) should be constituted to develop the land governance index for agencies, provinces, highly urbanized and secondary cities. These indices should be linked with the selected national-level governance indicators, such that the indices would serve to demonstrate the disaggregation and measurement of the performance of various components and levels of governance. The composition and rating for such indices will be determined based on the priorities and requirements of the users at the agency, provincial and city levels. An illustrative

list of land governance indices should be prepared for monitoring over a period of time. Periodic dissemination of the monitoring reports is critical for building capacities and a constituency for good land governance in Myanmar at all levels.

### **Strengthening tenure-food security-water-livelihoods linkages**

The purpose of this review is to demonstrate the importance of the land tenure issue in the rural development policy in Myanmar, where most of the population depends on working the land for food and their other needs. Since the 1980s – and more so since the 1990s – there has been a steady increase in the vulnerability of the rural population, as low yields and prices have kept the majority of rural people in poverty. Every analysis of the problem confirms that availability of land is not the real issue, nor is available land saturated, despite the growth in population. Rather, poor management of land and natural resources, combined with an unfavourable 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 the implications for living conditions in the years ahead. Experience shows that there are no miraculous solutions. The secret of success is, first, a frank acceptance of the problem, then a pragmatic approach as to the measures to be taken. This review has shown that land rights and tenure security are increasingly important and are embedded within the spectrum of food and energy security. Livelihoods are the way in which households and communities derive food, shelter and clothing to sustain their living.

In this respect, the government's rural development policy is a promising option for the sustainable management of land and natural resources. Based on the lessons drawn from the tenure security approach to local development, it seeks to mobilize all possible resources in seeking grassroots solutions to the socio-economic challenges confronted by the rural population. However, it also needs to be acknowledged that results will depend on political will on the part of the state.

In particular, the success of the rural development strategy and programme 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 the legal provisions on land and natural resources to take practical realities into account; (c) allocating land for the landless and near-landless within the community as a priority for promoting rural development; and (d) strengthening good land governance at all levels, clarifying responsibilities of each of the parties concerned in the development process. In addition, arrangements must be made for monitoring and periodic evaluation of the impact of development interventions and the changing pattern of land tenure. In all, land-tenure issues are critical for rural development. The government's rural development strategy will have to be carefully anchored around tenure security to ensure that landholders are prepared to invest their time and resources. In turn, good governance of land and resources is the foundation on which rural development lies.

#### **It is recommended that further research should be conducted to analyse:**

- Exploring opportunities for developing potential platforms and mechanisms for continued dialogue that is needed to secure tenure security for the smallholders and land-poor communities; and
- How formalizing customary tenure arrangements is an essential foundation for rural poor communities to ensure continued access to land and resources.

## 6. RECOMMENDED AREAS FOR INTERVENTION AND INVESTMENT

The review has shown that pragmatic solutions to the various problems of land tenure are a precondition for the achievement of sustainable development. In the present circumstances in Myanmar, such solutions must take into account technical, organizational, legal and socio-cultural factors if they are to ensure, on the one hand, the sustainable development of natural resources and, on the other, a degree of security sufficient to encourage and increase investment in the agriculture and livestock sectors. Drawing from the analysis provided by the review the recommendations address a range of priority issues, including the need for better targeting of investments in promoting agriculture, land governance systems and high quality and technical assistance to both government and communities in various areas. To achieve this, the following issues need to be addressed. The set of recommended engagements proposed here are directed at the government, the NAPA and its development partners for consideration and action. To be really effective though, the government may have to initiate a consortium of other stakeholders to participate in the implementation of these recommendations.

### Identified priorities

As the government plans for accelerated development of the policy and regulatory environment for rural development, a set of priorities has emerged with regard to land tenure and these are recommended for investment consideration. The areas included: (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 what is being proposed are equally critical. It needs government-community-stakeholder consultations and consensus on how to administer land and resources in the country. This is more so in case of farming communities who subsist on their landholdings and are concerned about tenure security despite issuance of LUCs to a proportion of farmers. While protection and recognition of existing land rights is a first step, the ground realities are still poorly understood. Broader debate anchored by wider consultations and public information on the proposed policies, legal instruments and guidelines and their implications should be a prerequisite. This public engagement will have to be balanced against the risk of creating even more delays. A medium-term goal should be to develop a comprehensive land policy which focuses on tenure security – and more importantly, incorporates community priorities.

*Dispute resolution:* A strengthened mechanism and procedures for informal mediation processes alongside the formal resolution (administrative or judiciary) are required. This will have to be accompanied by capacity building of the land agencies both at national, district and community levels, as well as linking in improved documentation to support the processes and decisions reached.

*Addressing the needs of informal land users and vulnerable and disadvantaged groups:* There is a growing risk that, given the current problems they face in protecting their landholdings, both farming communities and upland shifting cultivators will require information on changing policies and also future investments. Those holding land in the conflict zones are equally

vulnerable. The government should explicitly commit a ‘no eviction’ policy to strengthen tenure security among these landholders. Specific measures will therefore be required to ensure that informal land users are not disadvantaged by the land policies and regulatory framework from the very start by preparing a public awareness-raising strategy and the government will allocate resources for those activities to be undertaken in a structured manner.

*Adequacy of institutional arrangements and capacities:* The SLRD does not develop (as yet) sufficient land databases to quantify the issues it is confronting. To carry out its activities and confront these complex challenges a reliable land database to inform planning and decision-making is warranted.

*Adequacy of the 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 delivered on time to meet landholder requirements. It is also important note that overreliance on input credit has resulted in farmers gradually falling into a debt trap. This is a serious risk, for example, in the event that a disease outbreak threatens the crop. Overreliant farmers may seek informal money lenders to meet their contract obligations (in the case of contract farmers) or to meet household needs.

Taken together, the data, analysis and examples presented in the review suggest that forging the middle ground in strengthening land tenure requires a mix of policy, regulatory action and support for promoting rural development. It should empower the farming and farm-dependent communities – particularly small and marginal holder farms – to enhance the quality of lives of millions of unsecured landholders, through reforms and gain public confidence in the government-led and supported land administration system. It is important that existing issues and challenges will have to be properly understood from the grassroots level upwards; only then can acceptable, socio-culturally appropriate, technically sound and legally enforceable solutions be developed. The following transparent and participatory development of policies, laws, rules and regulations targeting four key priorities levels is suggested:

The first priority is to look more broadly at the land sector to enhance overall governance in order to open up options and extend the reach of the rule of law and accountability. This includes efforts to ensure that land is used for the purpose of equitable development and not allowed to be captured in the hands of a small number of influential persons.

The second priority is to work at the intermediate level to develop the capacities and skills of those engaged in land administration and management (e.g. the SLRD, MoECaF and GAD). This includes working with non-state actors like the Land Core Working Group.

The third priority is to 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 as well as political will.

At the grassroots level to support community-based land uses (e.g. riverbed farming practices, use of community waterbodies for increasing income opportunities), livelihoods programmes linked to tenure are essential to empower the marginalized groups. This is the most important priority as it tackles the main identified weaknesses head on.

### **Support consistent policy dialogue and dissemination of good practices to strengthen smallholder tenure security**

The policy-making and drafting of regulations is a powerful way to contribute to stronger tenure security. Recent experiences gained in land policy debates in Myanmar and regionally have provided a few critical principles that should underpin future initiatives as part of the National Action Plan for Agriculture (NAPA) programme and the government's rural development strategies. This, in turn, will encourage the government to reiterate its commitment to implementing a domestic comprehensive legal and policy framework that protects tenure security and promotes equal access to all, particularly the poor and disadvantaged sections of society. 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 also emphasize on strengthening good land governance from the perspective of agricultural and rural development. This support should be anchored around the government's ongoing work on the NLUP, drafting of the land law and other policy and regulatory instruments.

**Recommended Engagement 2:** Disseminating good practices on strengthening tenure security. As part of this work, the 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 above two engagements, donors and development partners should consider supporting government/DRD/NAPA to disseminate VGGT principles on land tenure through a series of stakeholder workshops and forums. This should be pursued widely within the government and among CSOs in a structured manner and tailored specifically to the Myanmar context so that policy discussions and public consultations are anchored around a standardized reference point. The dialogue should also be organized around thematic areas such as development of smallholders, social inclusion, protection and recognition of the rights of customary tenure, rights of ethnic groups and local communities.

**Recommended Engagement 3:** Supporting L-GAS should be undertaken to backstop land-tenure issues in the context of agriculture and rural development. As Myanmar moves forward reforming the land sector, good land governance assumes a critical role in the process. Therefore, a structured diagnostic review of the land sector without imposing value judgements is warranted. For this purpose, the review recommends immediately conducting a series of theme-specific L-GAS that should contribute to building knowledge and supporting policy-making and programme implementation. The duration of such studies should be limited to six months, maximum, and structured as a learning and capacity-building process with a focus on agricultural and rural development and is essential to promoting policies and programmes for increasing people's access to land.

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 the farming communities, it should also encourage discussion on tenure linkages in water (e.g. fisheries, access to irrigation facilities and collective community waterbodies) and forests.

### **Adapt legal provisions to protect and recognize customary tenure and the current context and practices**

Any consideration of the future application of the legislation governing land tenure must take into account the persistence of customary rights. In this context, generally the government is inclined to enforcing a regulation or legal provision on a ‘as is where is’ basis without reflecting on the current local context and taking into account local aspirations. In fact, many land conflicts could be prevented by understanding the context and interpreting regulations to meet the current requirements. This requires capacity building and independence of the civil service and political support which is gradually beginning to occur. Similarly, preparation of new laws and regulations on land should consider customary tenure and existing socio-economic realities. Indeed, as there is an extant law to protect individuals and their goods, it should be possible to incorporate some aspects of customary land-tenure systems into modern legislation.

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

It is difficult to devise effective land administration and management methods by theoretical reflection on the legal texts. What is needed is practical experimentation which involves the rural and farming communities in the search for appropriate solutions. Such experimentation 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 give government recognition to the various customary rights and usages, and existing land-tenure transactions and agreements; the second is to gradually formalize these rights, usages, transactions and agreements, in response to requests from the people concerned. These operations need to be supported by a process of dialogue among 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 the continued existence of shifting cultivation and customary traditions should be adopted and implemented. Additionally, the law should also clarify certain aspects of the scope of the rights of customary tenure based on local traditions and practices. The law should also include a clause on resolution of disputes and underscore the importance of indigenous courts. Disputes over customary land rights between local communities and outside parties should be settled through a customary institution only. The decision of the customary institution may be appealed to the judiciary. This provision will help to minimize time taken for the resolution of land issues involving upland communities and ethnic groups that practise customary tenure arrangements.

**Recommended Engagement 5:** Encourage local resolution of land disputes. Legal, financial and institutional support for local resolution of land disputes should be provided. 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.

### **Increase people’s access to land**

In areas, where agriculture is the main economic activity, access to land is a fundamental means whereby the poor can ensure household food supplies and generate income. The government’s Rural Development Strategy (2014) has acknowledged this need and expressed its commitment

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. As a first step, support should be provided for preparing community land-use plans through a participatory process to identify such degraded land areas and to map out current use and landholders. Thereafter, a local land development plan should be prepared, and financial support and technical advice for designing and implementing area-specific programmes to ‘distribute degraded land’ to various poorer community members according to established procedures in a transparent and fair manner should be provided. The project should include resources for identifying and recovering those degraded areas through local labour too thereby create non-farm employment in the process. It is critical that such rehabilitation efforts are accompanied by formal government assurance of postrecovery tenure security for the local landless or near-landless families (to prevent expropriation by influential local leaders).

**Recommended Engagement 7:** Support programmes and projects that would increase soil quality and provide wage labour. This programme should start with identifying eligible sets of landholders who are poor and whose land requires improvement. At the same time, the conditions of land rehabilitation will need to be clearly defined and formalized with those who formerly farmed the areas concerned.

The physical degradation of the land and its consequent loss of fertility are exacerbating shortage of land for subsistence and often 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 should apply to all badly degraded areas or poor quality soil zones of land which the local people lack the means to rehabilitate. To achieve this, substantial resources will be required.

Once the improvements have been made, the responsibility for such land rehabilitation programmes should be assigned to local committees and only local residents/community members for a specified duration of time 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 challenges. Conditions of use should be formally laid down and steps taken to ensure that they are strictly complied with by the new users.

**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 the land distribution programme prepared and implemented. This requires substantial training and hands-on training and capacity building for the village and township officials and local representatives. As part of this process, support should be provided: (a) to develop a clear policy for land distribution (in the context of the National Land Use Policy and other instruments); (b) to develop a land database (starting with a local land-use planning); (c) develop a clear set of criteria for land distribution and disseminate it widely; and (d) ensure provision of support services to land recipients (beneficiaries).

Under this engagement FAO should consider providing technical assistance (a) to identify and develop a land distribution programme with appropriate support for services and sustainable

livelihoods, and (b) to assist the government to 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 be encouraged to prioritize the land distribution programme suggested above to alleviate poverty and generate a major, positive impact on the livelihoods of the landless, near-landless and marginal and small landholders.

### **Encourage active community use of all land areas**

**Recommended Engagement 9:** Establish a ‘Green Village’ programme and National Support Facility for its implementation. This will be a village/community development programme based on sustainable use of land and natural resources. Such small-scale investments in land would benefit the community in the short term while securing land for community or individual uses. This programme will require significant technical capacities and developing a specific delivery approach so that any standardized methods are prevented.

Integrating tenure security into government’s Rural Development Strategy requires a holistic approach that covers policy intervention, technical assistance and tangible investments or activities. More importantly, it requires active use of land by the communities themselves. In this context, the approach will have to be process-focused allowing the landholders to experience enhanced tenure security. Within this context, the NAPA along with its development partners should consider supporting the establishment of a National Support Facility to enhance the tenure security of small and marginal landholders through incentives for land-based activities either at household or community levels. 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 starter small-scale starter pilot should aim for a limited geographical reach and test the application of performance-based grant mechanism procedures. Working on this basis means that the facility should provide support with a higher degree of awareness and understanding on land tenure issues and work willing to collectively address them. This facility should consider an ‘open menu’ approach to provide flexibility required for communities and respond to different tenorial needs. The priorities could relate to land conservation, recovery of degraded land areas and land investments for productive activities. The facility should be supported as part of NAPA’s focus on poverty alleviation and improved service delivery for communities. Lessons learned from other countries in the region show that an open menu approach is most effective for enhancing tenure security if illustrative types of land-focused activities are introduced as a guiding tool during the facilitation process. Table 1 provides some examples of menus experienced by other countries in the region and globally.

**Table 1: Examples of an open menu for a Green Village programme**

<b>Category</b>	<b>Subcategory</b>	<b>Illustrative subproject activities</b>
Land management	Preventing land degradation (family-held farmland area)	Improving soil fertility, application of organic farming methods
	Preventing lack of land use	Home gardens, household fish ponds

MYANMAR: National Action Plan for Agriculture (NAPA)  
Working Paper 10: Land Tenure and Administration

		Riverbed 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 when in 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 microcredit for better land use	Land certificates as collateral for higher credit levels
Natural resource management	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 water area or community water body (e.g., lake or large-scale pond)
	Management of biological resources (flora, fauna)	Fish cultivation, seaweed cultivation
	Management of ecosystem services	Small-scale ecotourism (particularly for trekking areas and cave temples), management of local marine conservation areas
	Waste management	Waste management, composting
Environmental conservation	Management and utilization of water resources	Planting trees in catchment areas, mangrove planting, planting areas along the riverbank, land rehabilitation
	Erosion control	Retaining walls, springwater collection basins
Small-scale fisheries (household or small-scale aquaculture)	On-farm fisheries	Promote fish ponds within small-scale farms. Educate farmers on the benefits of on-farm fisheries (along with fruit crops or seasonal vegetables)
Renewable energy	Electrical energy	Microcommunity (or intercommunity) hydropower, photovoltaic power (solar cell installation)
	Other energy	Biogas, fuel from cacao waste
Capacity building and training	Community training	Training on land-tenure issues and land-use mapping  Training on biogas, waste management, composting

In addition to the menu, villages also should be encouraged to opt for other land-tenure-focused activities based on their specific requirements. These may include activities such as services to improve land use and access rights, engaging in small-scale community forestry in their

neighbourhoods and establishing community patrols/rangers for conservation areas (rather than excessive oversight by civil servants).

Through a facilitation process, grants under the ‘open menu’ should be disbursed to incentivize sustainable land use and improved local livelihoods. All households within a community should be seen as eligible applicants for a grant or participate in the activities and benefit from them.

**Recommended Engagement 10:** Provide project support for the rehabilitation and maintenance of community waterbodies. Rural communities are often situated around natural waterbodies. In addition to being a source of water, they also typically act as drainage basins for livestock manure and other wastes, and are often highly productive as a result. These should be part of efforts to promote rural development through programmes such as village fish ponds. Experiences in Thailand and Viet Nam have shown a relatively high retention of livestock when community bodies are part of a rural development programme. High-value vegetable and fruit crops around perennial ponds, and as successive plantings in the exposed sedimentation of seasonal ponds, have also shown to have greater impact on household food security and income.

Fish ponds should be promoted 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 farm. Therefore, farmers should 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 a territorial approach to land development programmes. Often, land-tenure issues relate to community boundaries rather than administrative demarcations. This is more so in case of common pastureland areas and waterbodies and in areas where customary tenure arrangements dominate. Rural communities generally understand their territory and not modern administration boundaries created by governments. In the case of ethnic minorities and upland communities this condition is always true. With this in mind, the government should develop criteria for creating village administrative boundaries based on community perceptions of boundaries rather than statistical standards. It is therefore vital that land-tenure issues are moderated at the level recognized by local people as constituting their ‘community’ and that planned activities are negotiated in relation to the geographical distribution of the population in the area concerned. Such a programme will also help to informally help to enhance tenure security at the community level.

**Policies and guidelines along with independent oversight mechanisms to moderate land development are required**

**Recommended Engagement 12:** 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 the area for policy-making and investment decisions. The current wave of investment in farmland by entrepreneurs (and urban dwellers), though to be encouraged, must be better regulated and monitored. The fact that large areas of land are being ‘leased’ to these newcomers, without regard for land availability and local demand raises serious social-political tensions in the area concerned.

There should be measures to protect areas against degradation and they should be submitted to the government – and known to local communities – and the implementation of these plans should be monitored to ensure strict, rigorous application. There will also need to be periodic assessments (by independent groups) on land use and availability. This should make it possible to 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 development guidelines at the district/township level, for carrying out tasks relating to the implementation of decentralized rural development policy.

**Recommended Engagement 13:** Support preparation and enforcement of guidelines for the private sector in a way that includes and respects small and marginal farmers. Apart from acquiring large-scale land concessions, private sector participation and contract farming practices are now growing in farming in Myanmar, investing capital and accumulating formal or informal coverage of land. The private sector and those investing through contract farming should engage with small and marginal farmers in a way that minimizes the risk to the farmer and maximizes benefit. Sustainable land use and farming practices should be disseminated among farmers and landholders more widely and intensively. Contract farming is still in its infancy in Myanmar and much can be done to promote more transparent and equitable contracts. The risks associated with contract farming are well known, but farmers choose to ignore them given the 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 sugar cane, a negotiated price formula on a given percent of the price in a major commodity exchange can be used to increase transparency. The FAO/NAPA programme should develop, document and disseminate best practices in contract farming and private sector investment which maximize benefit for both farmers and the economy in general, and explore other mechanisms which allow conditions under which private sector investments and contract farming are beneficial, and how the government and the private sector can work together to establish these conditions. Dissemination of good practices and the principles of responsible investments in agriculture should be supported.

#### **Promoting cooperatives, regulating the private sector and contract farming in agriculture**

**Recommended Engagement 14:** The bargaining power of the farmers should be strengthened by forming economically stronger and viable local entities. Such support should target small and marginal landholders so that group formation is site-specific and builds scale and economic efficiencies. In parallel, support should be provided for the preparation and enforcement of a monitoring regulation for contract farming and private sector participation in agriculture. This will be an intermediary step as the government develops regulations and guidelines for enforcement and monitoring. Such a step will safeguard the farmers from exploitation by outside investors or intermediaries.

At present, the private sector and contract farming are not strictly regulated leaving oversight to quality and commitment by entrepreneurs, local leaders and intermediaries. There are no penal actions against those breaching the obligations or imposing wrong and unsustainable land use or farming practices. Mechanisms could be introduced to bring the private sector and those investing in contract farming into line with comprehensive land-use planning, encourage

accountability, equity and transparency. Clear regulations for such investments in land allocation and use might benefit both farmers and the 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 FAO/NAPA on mutually beneficial means of engagement between the farmer and the investor, and the country at large. The private sector should also take the initiative for self-regulation to move to international standards of accountability (e.g. principles for responsible investments in agriculture) and equitability, adding value to products on the local market as a priority.

**Recommended Engagement 15:** Support an education programme for smallholder farms on the 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 therefore more common for short season crops such as fresh vegetables for wholesalers or supermarkets. The crops generally require a minimal amount of processing. These contracts do not usually involve directed farming and financial investment is minimal because individual promoters do not have large financial resources. Smallholder farms 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 support or production support to the cultivators.

The education programme should include elements of contract negotiation, cultivation practices and management. It should include modules on access to inputs (e.g. irrigation facilities, fertilizers and organize inputs), preventing postharvest losses, increasing access to farming implements and infrastructure, better land preparation and improving electricity supply so that overall yield levels increase. Conservation farming empowers smallholder farms by enabling them to plant on time.

Although contract farming has the potential to improve income among smallholders, it is not a sufficient condition. Public policy is critical in the establishment and maintenance of contract farming, particularly when it involves small and marginal landholders. This support should take the form of establishing a clear legal framework for the contracts and allowing 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. Further, the principles of responsible investment in agriculture should be incorporated in drafting regulations to guide and monitor contract farming practices in the country. Also, farmers should be educated on contract farming. CSOs have important roles in facilitating contract farming in ways that maximize benefits to farmers. CSOs can be an important in helping build the capacity of farmer organizations to be effective agents of change and advocate their interests with the government and private sector.

#### **Development of standard and coordinated land information management systems**

**Recommended Engagement 16:** Support an operation for the establishment of a National Land Parcel Inventory (forest and non-forest land) that would be maintained. This operation would fund a nationally complete, georeferenced land parcel inventory database and procedures for sustainability and information access.

This operation should be preceded by quick government measures to rein in or at least decelerate land grabbing and compulsory evictions. In parallel and in support of such government

measures, communities should be empowered to protect land and natural resources within their villages and neighbourhoods. This step should be encouraged as a forerunner for the implementation of the National Land Parcel Inventory.

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

### **Strengthening land governance**

**Recommended Engagement 17:** Support the government to benchmark priority land governance indicators for monitoring.

As Myanmar moves forward reforming the land sector, a structured support for strengthening land governance is essential to strengthen the system without imposing value judgements. A quick land governance assessment must be undertaken (based on select themes) to assess and prioritize the indicators for national-level monitoring. Key considerations include: (a) those which are crucial for tracking progress in the implementation of the land governance agenda, (b) achievement of the country's priority development goals specified in Myanmar's development plans and priorities; (c) cost effectiveness; and (d) data quality and availability. The selection will be undertaken through a consensus-building process, with due consideration to various options, needs and priorities afforded by 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 the rights of customary tenure, rights of ethnic groups and local communities.

Efforts to benchmark governance 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 land governance assessment studies immediately covering: (a) a policy dialogue for land and forestry sector reforms; and (b) assisting the government and other stakeholders to identify immediate, medium- and long-term priorities. Disseminate VGGT principles on land tenure widely within the government and among CSOs so that policy discussions and public consultations are anchored around a standardized reference point.

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**ANNEX 2: KEY TABLES AND FIGURES**

**Table 1: Effective commissions/committees for land management and administration (as of December 2014)**

Name of committee and date of establishment	Purpose	Chair person	Secretary
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
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
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
Region/State Farm Land Administrative Body (October 2012)		Chief Minister of Region/State	SLRD-Region/State
District-wise FAB (October 2012)		District Officer –GAD	District Officer-SLRD
Township-wise FAB (October 2012)		Township Officer – GAD	Township Officer- SLRD
Village Tract/Ward FAB (October 2012)		Staff of GAD	Surveyor-SLRD
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
Land Confiscation Inquiry Commission (August 2012)	The commission has responsibility to investigate in accurate and concise manner of complaints of farmers and to submit the findings with the comments and suggestions to Union Parliament.	U Tin Htut, MP	U Thein Tun, MP- Secretary U Tin Mya, MP- Asst. secretary

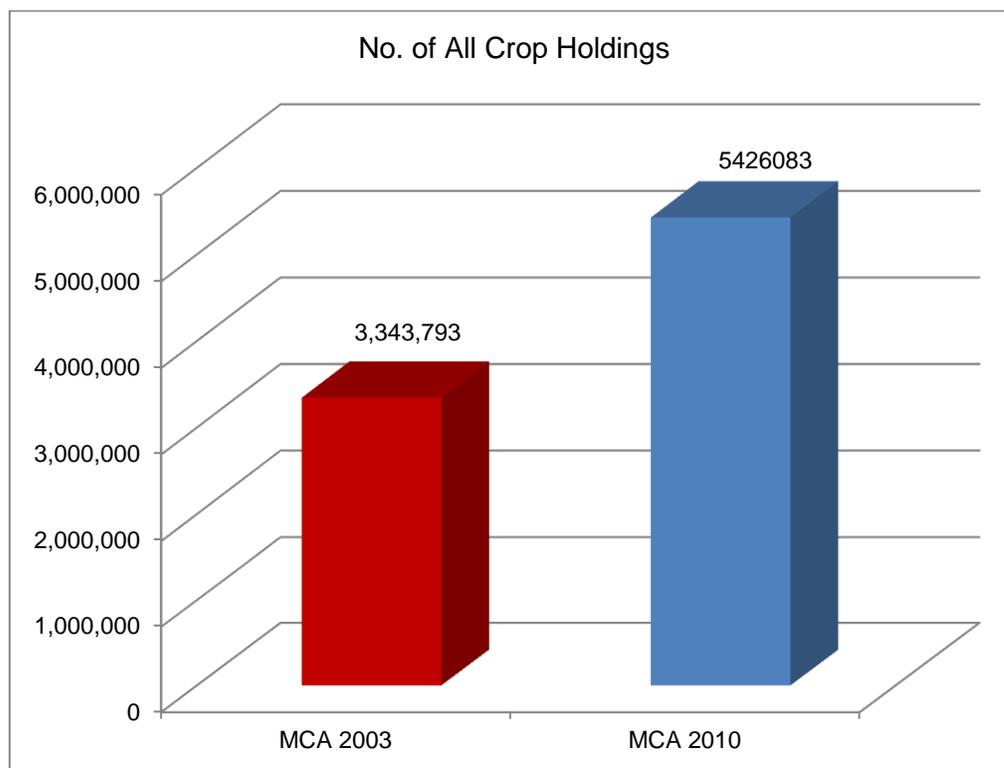
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Working Paper 10: Land Tenure and Administration

Name of committee and date of establishment	Purpose	Chair person	Secretary
	Report submitted in disaggregated parts titled as Part 1 to 7 - and follow-up actions on recommendations awaited.		
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 2: An overview of the distribution of responsibilities on land-related functions within the government**

Ministry/institution	Responsible for
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.
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.
Ministry of Environment Conservation and Forest	Reserved Forest, Protected Public Forest Areas, Protected Wildlife Areas, and Botanical Gardens.
Ministry of Mines	Protected Mine Land and Gem Stone Land.
Ministry of Construction	Residential Urban Land under Housing Department Primary roads as per Main Road Law.
Ministry of Rail Transport	Rail Road areas.
Ministry of Culture	Cultural Heritage Zones and Protected Heritage Zones.
Ministry of Transport	Riverine area, bank area, and strand area.
Ministry of Energy	Oil field areas.
Ministry of Livestock, Fishery and Rural Development	Fishery, fishery water, aquaculture area, fresh water fishery areas.
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.

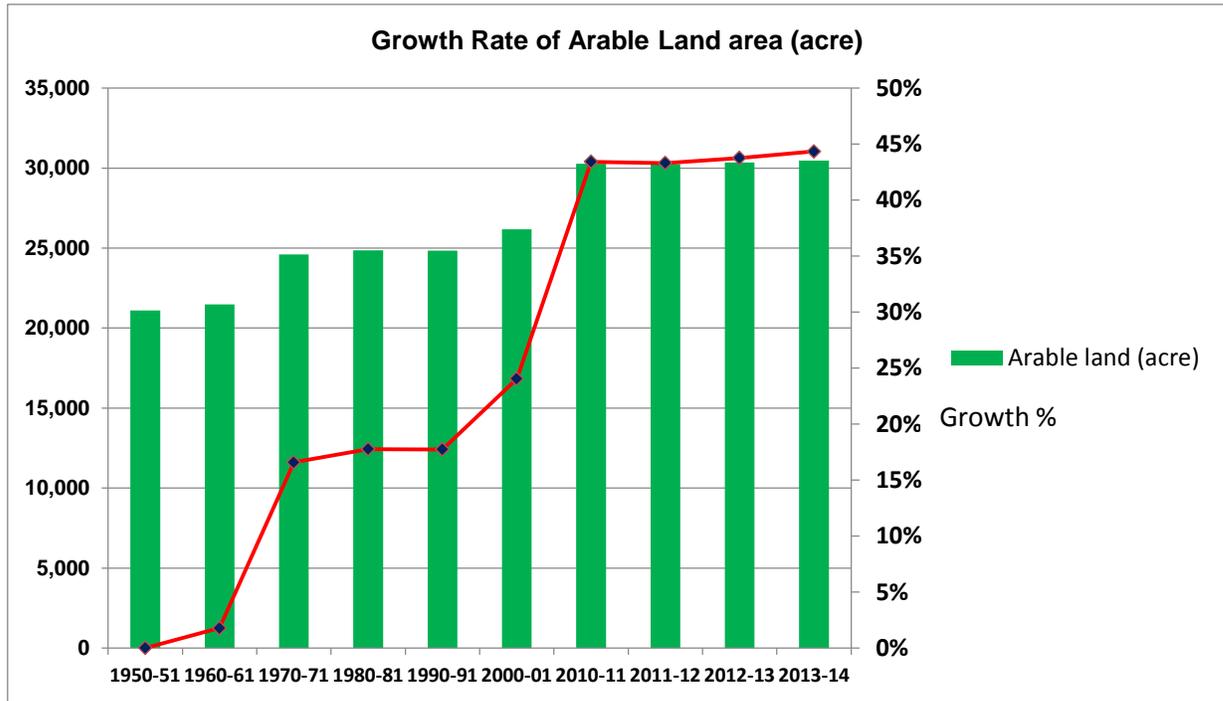
**Figure 1: Distribution of all crop holdings (2003 and 2010)**



**Table 3: Number of household crop holdings, by size of crop holdings (RoUM: 2003 and 2010)**

Landholding	Number of holdings		Growth (%)
	2003	2010	
Less than 1 acre	472172	247584	-47.56%
1 - 2.99 acres	767252	1345024	75.30%
3 - 4.99 acres	636122	1102363	73.30%
5 - 9.99 acres	797008	1336222	67.70%
10 -19.99 acres	505130	727458	44.00%
20 - 49.99 acres	158740	212231	33.70%
50 acres-over	7369	15789	114.30%
Total	3,343,793	4,986,671	49.13%

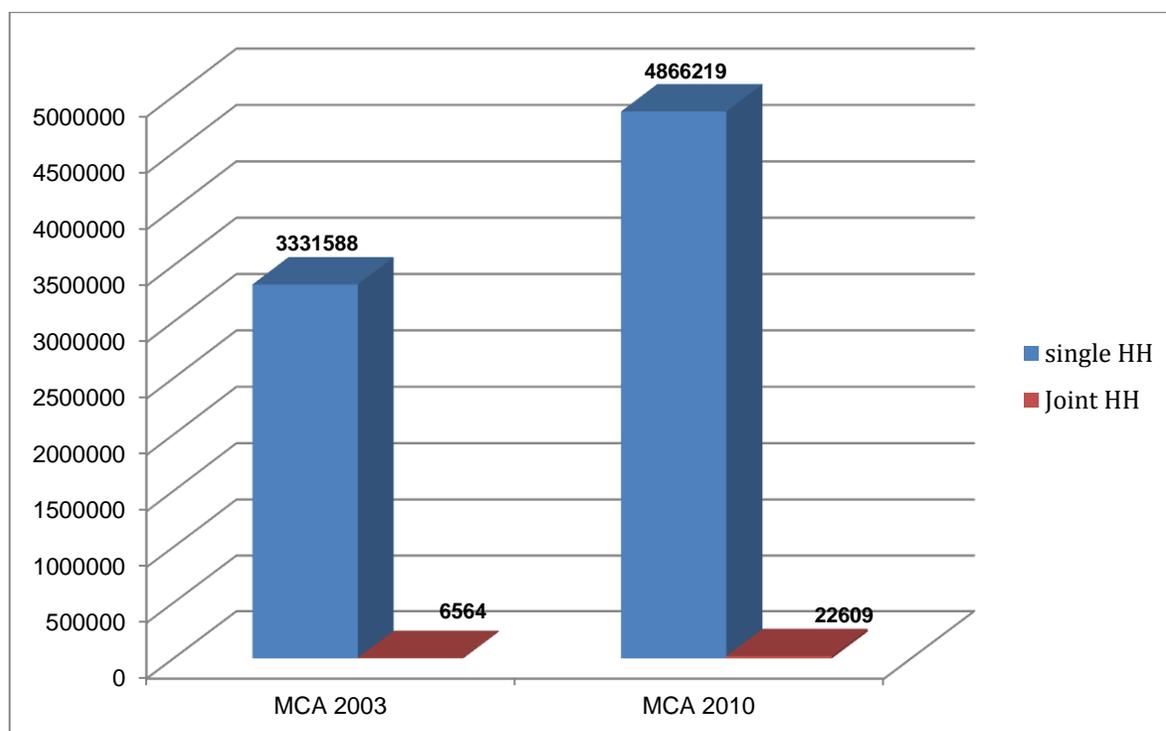
**Figure 2: Percent growth rate of arable land**



**Table 4: Distribution of the number of parcels, by size of household crop holdings (2003-2010)**

Size of household crop holdings	.1.1.1 Number of parcels		.1.1.2 Growth (%)	.1.1.3 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 %
Total	7,055,745	7,561,587	7.2 %	100

**Figure 3: Distribution of the number of HH crop holdings by legal status**



**Table 5: Distribution of land area of parcels held by households per crop holding, by land type (in acres)**

Type of land	Area of parcels in crop holdings		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

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Working Paper 10: Land Tenure and Administration

**Table 6: Fragmentation of parcels in the HH crop holdings**

Number of parcels	2003	Percent to total in 2003	2010	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 7: 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 the 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
Nay Pyi Taw	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
Ayeyarwaddy	59	89,019	61,423	69.0	37,514	42.1
Union Total	377	939944	224814	23.9	170855	18.2

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

**Table 8: 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 (ha)					
	VFV land & deep water lands	No. of companies and growers granted	Forest land area	No. of companies and growers granted	Total land granted	Percent of land concessions by state/region
Nay Pyi Taw	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
Ayeyarwaddy	135,707	516	11,230	34	146,937	7.74
Union Total	1,539,172	4,881	359,170	13,441	1,898,342	100

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

### ANNEX 3: LIST OF RECOMMENDATIONS

Area	Recommended Engagements
Support consistent policy dialogue and dissemination of good practices to strengthen smallholder tenure security	<b>Recommended Engagement 1:</b> Support on-going policy dialogue at national and local levels. This support should also emphasize on strengthening good land governance from the perspective of agriculture and rural development. This support should be anchored around government’s ongoing work on NLUP, drafting of the land law and other policy and regulatory instruments.
	<b>Recommended Engagement 2:</b> Disseminating Good Practices on Strengthening Tenure Security. As part of this work, NAPA should consider to establish itself as a platform for disseminating good practices in smallholder tenure security in the region and globally.
	<b>Recommended Engagement 3:</b> Support Theme-based Land Governance Assessment Studies (L-GAS) should be undertaken to support land tenure issues in the context of agriculture and rural development
Adapt Legal Provisions to protect and recognize customary tenure and the Current Context and practices	<b>Recommended Engagement 4:</b> Support protection and recognition of (a) customary tenure, and (b) shifting cultivation areas (taungya) eligible for landholder registration and certification.
	<b>Recommended Engagement 5:</b> Encourage local resolution of land disputes.
Increase People’s Access to Land	<b>Recommended Engagement 6:</b> Encourage local resolution of land disputes.
	<b>Recommended Engagement 7:</b> Support programs and projects that would increase soil quality and provide wage-labor.
	<b>Recommended Engagement 8:</b> Promote Social Land Concessions.
Encourage Active Community Use of All Land Areas	<b>Recommended Engagement 9:</b> Establish a “Green Village” Program and Support National Support Facility for its implementation.
	<b>Recommended Engagement 10:</b> Provide project support for the rehabilitation and maintenance of community water bodies.
	<b>Recommended Engagement 11:</b> Adopt Territorial Approach to Land Development Programs
Policies and Guidelines along with Independent Oversight Mechanisms to Moderate Land Development Are Required	<b>Recommended Engagement 12:</b> The current wave of investment in farmland by businessmen (and urban dwellers) though to be encouraged, must be better regulated and monitored.
	<b>Recommended Engagement 13:</b> Support preparation and enforcement of guidelines for private sector in a way that includes and respects small and marginal holder farmers
Promoting cooperatives, regulating the private sector and contract farming in agriculture	<b>Recommended Engagement 14:</b> Strengthen the bargaining power of the farmers by forming economically stronger and viable local entities.
	<b>Recommended Engagement 15:</b> Support an

MYANMAR: National Action Plan for Agriculture (NAPA)  
 Working Paper 10: Land Tenure and Administration

	education program for smallholder farms on merits and demerits of contract farming.
Development of Standard and Coordinated Land Information Management Systems	<b>Recommended Engagement 16:</b> Support an operation for the establishment of a National Land Parcel Inventory (forest and non-forest land) that would be maintained
Strengthening land governance	<b>Recommended Engagement 17:</b> Support the government to benchmark priority land governance indicators for monitoring.

## ANNEX 4: 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 5: RECENT LAND-RELATED GOVERNMENT COMMITTEES TO PURSUE LAND GOVERNANCE REFORMS**

### **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.

#### **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.

#### **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:

1	Vice President – 2	Chair
2	Minister of Home Affairs	Vice Chair – 1
3	Minister of MoECaF	Vice Chair – 2
4	Minister of Presidential Ministry – 5	Member
5	Minister of MOAI	Member
6	Minister of Transport	Member
7	Minister of Energy	Member
8	Minister of Mines	Member
9	Minister of Finance	Member
10	Minister of Planning & Economic Development	Member
11	Minister of Construction	Member
12	Chairmen, Myanmar Investment Commission	Member

MYANMAR: National Action Plan for Agriculture (NAPA)  
Working Paper 10: Land Tenure and Administration

13	Chief Ministers of State/Region Government	Member
14	Vice Attorney General	Member
15	Chairman, City Development Council (NayPyiTaw)	Member
16	Chairman, City Development Council (Yangon)	Member
17	Chairman, City Development Council (Mandalay)	Member
18	U Zaw Oo – Advisor of President	Member
19	U Soe Naing – Chairman of Agri, Livestock and Fisheries Development committee	Member
20	Deputy Minister, Presidential Ministry –1	Secretary
21	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.

## 8. ANNEX 6: 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 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: A better and stronger articulation of vision, objectives, strategies, and implementation priorities 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, and are not decentralized. 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. 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 7: 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>1</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 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>2</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 by 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

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<sup>1</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.

<sup>2</sup> UN-FAO (2009)

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>3</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.)

### **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'.

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<sup>3</sup> Refer to The Lower Burma Town and Village Lands Act, 1899, Section 22©.

## **ANNEX 8: 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 9: 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 Maintenance 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>4</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

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<sup>4</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.

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.

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:

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.

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.

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.

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>5</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>6</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 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.

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<sup>5</sup> World Bank (2014): Towards Indonesian Land Reforms: Challenges and Opportunities, A review of the land sector in Indonesia.

<sup>6</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*.

## ANNEX 10: LAND CONFISCATED BY THE MILITARY

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

Note: According to a media report (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 11: 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 12: 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>7</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

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<sup>7</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.

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.

### **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 mobilizes 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.