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Land Governance

COMMUNITY VOICES



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Acronyms / Abbreviations

10HHL	Ten Household Leader
100HHL	One Hundred Household Leader
AAM	Action Aid Myanmar
CBO	Community Based Organisation
CCNLRM	Central Committee for National Land Resources Management
CSOs	Civil Society Organisations
FABs	Farmland Administration Bodies
FPIC	Free, Prior, Informed Consent
GAD	General Administration Department
GDP	Gross Domestic Product
IDPs	Internally Displaced Persons
Lakh	numeracy unit the equivalent to 100,000
LMC	Land Management Committee
LNA	Land Nationalisation Act 1953
LUCs	Land Use Certificates
MoECAF	Ministry of Environmental Conservation and Forestry
MoAI	Ministry of Agriculture and Irrigation
NGO	Non-Government Organisation
NLUP	National Land Use Policy
NRC	National Registration Card
PNA	PaO National Army
SC	Shifting Cultivation
SLRD	Settlements and Land Records Department
SLORC	State Law and Order Restoration Council
UNFAO	United Nations Food and Agricultural Organisation
VGGTs	UNFAO Volunteer Guidelines on Governance on Tenure of Land, Fisheries and Forests
VFV	Vacant Fallow and Virgin Lands Law
VTA	Village Tract Administrator
VTC	Village Tract Committee

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Executive Summary

Land is the most vital natural resource in Myanmar it is essential to livelihoods, particularly for the most vulnerable. Seventy percent (70%) of Myanmar's population rely on land and agriculture for their livelihoods. A long history of various governing structures in Myanmar has enabled the capture and control of land by colonial, government or elite powers to the detriment and neglect of smallholder and subsistence farmers. This has impacted negatively on vulnerable populations, significantly contributing to, and shaping the current occurrence of poverty. Myanmar is currently at a juncture, where poor-centred approaches to development can be fundamental in shaping a future of inclusive prosperity as the government has opened to foreign investment and commenced significant reform change. One of the most important reform changes required to reach this goal is Land Reform. A National Land Use Policy (NLUP) is currently in final stages of drafting, for this policy to facilitate people-centred goals it is imperative that the reform consider the voices of vulnerable communities.

Action Aid Myanmar (AAM) support youth to mobilise their communities to have their voices heard, and promote policy change that reflects and responds to the needs of the most vulnerable. AAM currently operates in over 700 communities in 26 townships in 13 states & regions and AAM supports around 180,000 people in partnership with 17 local organisations.¹ AAM work with youth to empower and mobilise communities to eradicate poverty, particularly focussing on the most vulnerable populations. The aim of this research is to seek a greater understanding of land governance issues from community voices to inform AAM's #Landfor Campaign Strategy for community led-change. The research team examined how vulnerable communities in Myanmar access land rights and what the existing land governance issues are from voices of the community. A participatory approach to developing research methodology and thematic topics was conducted, grounded on the in-depth knowledge of local staff members operating in the field. To capture the rich and diverse voices of the most vulnerable in various project areas of Myanmar focusing on the following topics: Land Administration; Land Conflict and Resolution; Customary Land Tenure; and Eviction and Relocation. The research contributes to current knowledge on land governance in Myanmar.

There is a growing trend of land concentration and large scale land holdings into the hands of a few, alongside increased landlessness particularly in the Ayeyarwady Delta and Dry Zone regions. Land administration in Myanmar is weak, characterised by a legal and institutional environment that is highly complex and ambiguous. The land sector is governed by 70 laws and regulations. Barriers to registration include: complex and lengthy processes; restrictive land classifications that limit production rights; lack of recognition of customary land use rights; protection of registered land use rights are weak; poor land administration and the continuation of promoting large scale land acquisitions without adequate safeguards. The government lacks a cohesive approach to land conflicts and resolution, without adequate processes for access to justice, particularly for vulnerable groups. Village Tract Administrators hold considerable power over decision making and information channels. Informal processes remain favourable in the communities between villagers, however in regards to eviction and relocations as a result of large scale land acquisitions, vulnerable groups have been negatively impacted by forced evictions, and continue to hold limited land rights or powers to seek redress. Customary land practices historically have been undermined, despite the benefits of these practices. Large tracts of common property resources utilised by ethnic groups are not legally recognised, and thereby vulnerable to

¹ AAM 2012 "Empowering People for Change: ActionAid Myanmar's Strategy 2012-2017", Action Aid Myanmar.

displacement. Women's rights to access and control over land is currently poor, both legally and informally, which leaves them increasingly vulnerable in the current Myanmar context.

The findings highlight from the perspective of community members that displacement impacts continue to be felt in Meiktila Township, Tanintharyi Region, and Kayah State from past and recent large scale land acquisitions for military practice bases, ethnic development projects, government services, and agri-business. Several parallels could be drawn between the cases including reduced access to livelihoods; in particular to farmland, and common property resources (impacting women significantly). In some cases religious sites were destroyed, villagers physically harmed and threatened. There was failure to adequately consult and compensate impacted populations. Most villagers felt a sense of injustice, and distrust with authorities and related governance systems as a result. The continuation of customary land practice in Chin is being threatened by numerous factors including the failure of government to recognise and protect these practices; community based factors such as migration, population changes, and increased private property ownership. Land conflict is minimal in Chin due in large part to equal distribution of access to land and related resources. In Pyapon Township villagers are concerned over inaccessibility to land administration to resolve several issues such as acquiring land for the landless, inadequate boundary delineation, and decision making powers held in the hands of a few namely large holder farmers and elites.

Recommendations are included in this report focusing on improving land governance, promotion and protection of land rights, and human rights more generally, as required in the Myanmar context to reflect the needs of the most vulnerable. Governments, civil society and private sector all are responsible actors in this process as adequate addressing of land governance issues in Myanmar is imperative to ensure people-centred, and sustainable development.

1. Introduction

Land is arguably the most vital natural resource in Myanmar, as it is essential to the livelihoods of 70% of Myanmar's population that rely on land and agriculture. Agriculture accounts for 43 percent of the GDP. However, some 29 percent of rural households live below the poverty line.² A long history of land related laws and policy have neglected, and limited smallholders, whilst promoting colonial, government or private sector control over land and livelihoods. This has impacted negatively on vulnerable populations. Myanmar is currently at a juncture politically and economically. Providing the space for poor-centred approaches to influence development, with the potential to play a fundamental role in shaping a future of inclusive prosperity. One of the most important reform changes required to reach this, is land reform. For land reform to be people-centred, it must be informed by those most affected by land policy change; especially the poor, vulnerable and marginalised who are dependent on land. The voices of local communities must be heard in order for policy to reflect the complexities of the realities on the ground, in doing so respecting and protecting the already existing customary land tenure systems.

Myanmar is a country rich in land and natural resources, including gas, oil, timber, and minerals. It is equally diverse in geography and ethnicities. Rural and remote populations across the country have encountered a significant history of expropriation of lands by colonial, governments, and military powers. Through these governing prisms, land is viewed primarily as an economic asset, with little social or cultural worth. Expropriation of land most recently has been for large scale agribusiness, development projects, and extractive mining (eg. economic zones, infrastructure projects, dams, jade mining, bio-fuels, rubber plantations, forestry). Often involving forced displacement with little or no compensation, human rights violations, and significant impacts



on livelihoods and environmental damage. Many key actors have been distinguished including military backed governments, national/foreign and multinational companies.

Whilst land governance structures have served to facilitate large scale land acquisitions, enabling considerable wealth to be accumulated by elites, military, government, and private sector, it has significantly failed to protect the land rights of the majority of the population. Poor administration in land and production rights protections and inadequate procedures to obtain secure tenure, access vacant lands or resolve conflict, has failed to support the livelihood pursuits of the most vulnerable. In restricting the majority of the rural populations control over key livelihood assets contributes negatively on poverty. Women in particular face disadvantage as a result of laws and socially prescribed roles, leading to insecure land rights. Customary land tenure systems and practices are not yet legally recognised in law, that is, 25% of the total land in Myanmar is vulnerable to land acquisitions. Fallow land is defined by law as government land, however it is utilised by ethnic groups practicing shifting cultivation. Land conflicts are widespread throughout the country because of poor implementation and access to adequate resolutions. The most important land governance considerations are how will land will be distributed and accessed, for whose benefit and why?

² WB 2015 'Country Myanmar', World Bank Group. <http://www.worldbank.org/en/country/myanmar>. Date accessed 20th July 2015.

The current Land Use Policy has the power to address these questions. The Government of Myanmar released the draft on October for public feedback. Once approved, the new policy will become an all-encompassing framework for the governance of tenure, management and use of land and natural resources, including the collaboration of all land related laws into a National Land Law. The new land policy has unveiled specific intentions to recognise land use management and tenure systems of ethnic minorities, and improve the land administration system. The draft includes best practice approaches such as participatory land mapping to record and document land use, boundaries and tenure systems, but does not include the best practice safeguard of Free Prior Informed Consent (FPIC).

The Land Governance research was initiated through a project funded by Action Aid Denmark (AADK) titled “Support the government to institutionalise bottom-up participatory planning in order to ensure people-centred and inclusive development in Myanmar”. ActionAid Myanmar has an opportunity to work together with the community to support vulnerable groups using VGGT’s as best practice, to link communities and key stakeholders with the UNFAO’s forums, and information tools whilst supporting and aligning with the governments bottom-up participatory land use planning approach.

Research and analysis is the first step to understand in detail the issues facing Myanmar in relation to land governance. It can assist civil society to produce strategies to promote improved land governance in relation to eviction and relocation; and ultimately to increase access to land and resource rights to local communities. This research and training program has been developed in order to ensure research from a participatory approach – gaining insight from local Action Aid and partner staff / Fellows who are experienced and knowledgeable on land issues in the field.

The overall research aim was to seek a greater understanding of land governance issues from community voices to inform AAM #Landfor



Campaign Strategy for community led-change. The research team focused on the following research question “How do vulnerable communities in Myanmar access land rights and what are the existing land governance issues”. The research methodology - to account for both local community voices and to be specific to local contexts - involved a participatory and qualitative research approach. Staff members (local, national, and partner) self-nominated to attend AAM research and land governance training. The land governance issues according to their perspectives and local knowledge shaped the research methodology. The following land governance issues were explored during this research: Land Evictions & Relocation; Land Conflict & Resolution; Land Administration; Customary Land Tenure; and Women’s Rights. The researchers developed their qualitative thematic questionnaire guidelines and undertook research in the following locations (with the support and guidance of the Yangon research team): Meiktila Township (Dry Zone), Pyapon Township (Ayeyarwaddy Region), Hakha Township (Chin State), Loikaw Township (Kayah State) and Taninthryi Township (Taninthryi Region).

The research report includes the findings based on each region, utilising case studies and key quotes to best represent community voices in relation to land. The discussion highlights emerging trends based on the research findings, followed by conclusions and recommendations. First however, the report provides an in depth literature review of current legal, academic and NGO report documents on the Land Governance context in Myanmar.



Research Locations

1. Meiktila Township Dry Zone;
2. Pyapon Township, Ayeyarwady Region;
3. Hakha Township, Chin State;
4. Loikaw Township, Kayah State;
5. Taninthayi Township, Taninthryi Region.

2. Background: *Land Governance Myanmar*

A FUNDAMENTAL LACK OF DEMOCRATIC ACCESS TO AND CONTROL OVER LAND

2.1 History and Political Economy

In order to place community voices on Land Governance into perspective, Myanmar's complex political and economic history in relation to land rights is imperative to understand. Throughout the various governing periods land has been considered by governing bodies predominately for economic purposes, often sidelining the importance aspects of customary systems of land tenure.³ During the kingdom/dynasty era (before 1700s) the region was vast with diverse ethnic groups holding significant autonomy over land particularly in the highlands. Populations held distinctive political and social histories, with self governing units of kin, who have demonstrated mobility to disperse in the face of possible state capture. For ethnic groups, land governance systems are based strongly on local traditions and religious beliefs, including communal management and use practices; which served to fit well in isolated and remote regions.⁴ Through wars and changes of rulers, peasants remained the backbone of the region. Small parcels of land in the lowlands were worked predominantly by family households who were taxed for access to land, which was the only real authority the king had over administration and land resources.⁵ Peasants had the freedom to buy, sell, transfer or mortgage land which they did so through informal systems, dictated by customary law and traditional governance of land.

During British occupation from the late 1700s until 1948, a more formal land tenure system was put in place to allow systematic State control over land and resources. The rulers established a private system of land ownership, where farmers could obtain permanent titles to land after 12 years of continuous cultivation/holding of the land - upon payment of land taxes. The occupiers not only set the stage for future policy, and introduced concepts of private ownership - also they exploited land and resources where possible, particularly for teak production. Lower and Upper Burma were eventually annexed, and separate laws were enacted. For Upper Burma the populations faced the consequences of a shift toward the expansion of colonial power, and later of the modern state, which involved attempts to round up non-state subjects into enclaves of control in order to gain access to resources, important trade goods, and forest products. The process involved religious integration and monetisation strategies, however often conducted under the guise of "development" or "economic progress".⁶ However this strategy faced heavy resistance, and many ethnic upland regions remain in conflict. For the lowlands the setting was permissible to directly implement law and administration processes. The first major land law was 'The Land and Revenue Act of 1879'. Land rights of individual persons and procedures for assessing and collecting taxes were governed according to this law.⁷

³ Nyunt, D M; Hudson-Rood, N.; Tun, S. T.; Htay, S. (year unknown) "The Impact of confiscation of Land, Labor, Capital Assets and forced relocation in Burma by the military regime", Edith Cowan University, Western Australia.

⁴ Scott, J. 2009 *The Art of not being Governed: An Anarchist History of Upland Southeast Asia*, Yale University Press: New Haven & London.

⁵ Than Tun 1959 'History of Burma: A.D 1300-1400', JBRS

⁶ Scott, J. 2009 *The Art of not being Governed: An Anarchist History of Upland Southeast Asia*, Yale University Press: New Haven & London.

⁷ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

In 1948 after Independence the government of the time continued the “rice bowl” approach to land administration, taxing based on agricultural based production and use, for the development of the agricultural sector. The objective of the Land Nationalisation Act (LNA) of 1953 was to demise private land holding and landlordism, and shift to state-controlled collective farming. Cultivators were restricted from trading their produce freely.⁸ Access to credit was insufficient, fertiliser expensive, and irrigation was limited, small holders had little incentive to invest.⁹ During the socialist era between 1963 – 1989, farmers were considered State tenants and were required to farm specific crops as per State policy. A procurement system was introduced where each farmer, according to the size of holding for paddy, had to sell a quota of paddy sold at a fixed price to the government.¹⁰ “Farmers Booklets” were distributed from the 1980s as evidence of production, and use of land. This document was a record for the government, tracking land use for paddy production.¹¹ In the constitution of 1974 the State was assigned “ultimate holder and owner” of all land in Burma (later Myanmar).¹² The State had the sole right to develop, extract, exploit and utilise natural resources.

After 1988 the State Law and Order Restoration Council (SLORC) took power, and reigned until 2010, during this period the SLORC changed name to the State Peace and Development Council (SPDC). The LNA 1953 and Tenancy Law of 1963 remained in place during this time, continuing the focus on paddy production and the limitation of crop production to suit State agendas. The SLORC issued directives to control land by forcing farmers to grow paddy as the predominant crop, restricting fruits, vegetables and a variety of food available for household consumption, which increased vulnerability to malnutrition.¹³ Several regulations allowed for the eviction of “squatters” from vacant lands. In addition the military undertook a process of occupying large tracts of land for military purposes, and the capture of key resources, particularly in ethnic regions resulting in the displacement of many rural communities, who continue to deal with the impacts today. Border trade opened to China, enabled by new foreign investment regulations; which encouraged investment, essentially abandoning socialist policies.¹⁴

Although, concessions for foreign owned companies were allowed, the State restricted access and maintained a monopoly over key exports through restrictions, and the establishment of state owned enterprises.¹⁵ The government created joint ventures with foreign firms to explore oil resources in central Burma. Thai and Chinese companies received a range of concessions for hardwood

⁸ Nyunt, D M; Hudson-Rood, N.; Tun, S. T.; Htay, S. “The Impact of confiscation of Land, Labor, Capital Assets and forced relocation in Burma by the military regime”, Edith Cowan University, Western Australia.

⁹ UNFAO 2015 “Myanmar Land Tenure and Rural Development” Draft Version, United Nations Food and Agriculture Organisation.

¹⁰ Ibid.

¹¹ Steinberg, David, I 2008 “Burma/Myanmar: what everyone needs to know”, Oxford University Press, New York.

¹² Nyunt, D M; Hudson-Rood, N.; Tun, S. T.; Htay, S. “The Impact of confiscation of Land, Labor, Capital Assets and forced relocation in Burma by the military regime”, Edith Cowan University, Western Australia

¹³ Ibid.

¹⁴ Ibid.

¹⁵ IDE paper no 116 2007 “Trade, Foreign Investment and Myanmar’s Economic Development during the Transition to an Open Economy”

extraction, and maritime fisheries.¹⁶ Foreign investment increased from Asian countries eager to invest in a low wage and controlled labour market. Small holders were not granted any leases to access wasteland, on the premise that they lacked capital to invest. During this time it was common for land to be forcibly removed from local communities. Only a few companies / individuals had control over considerable amounts of land and resources.¹⁷ Those with large land holdings became powerful, and small farmers became entrenched within a client-patronage system. The negative impacts of this redistribution of land from small holders to large scale land holders continues today.¹⁸ In 1991 the shift to prioritising large scale land investments occurred through the legal reclassification of land based on the land category “wasteland”.¹⁹ The Central Committee for the management of Cultivable Land, Fallow Land and Waste Land (1991) was allocated authority to assess applications, and provide concessions to investors, based on this concept. The applicants could receive up to 5,000 acres initially for industrial crops, which could be expanded to 50,000 acres for 30 year leases. As a result many small holders were neglected and negatively impacted by displacement, dismissing existing customary land tenure arrangements, and diverse land use practices.²⁰ Government, military and elite control over land, livelihoods and resources was at its peak during this time.

2.2 Current legal framework

In 2008 a new constitution was adopted followed by elections, marking a change in the style of governing in Myanmar. The constitution, as the supreme law, required that all other laws, regulations and policies align with it. The constitution has various provisions relating to land tenure of key importance. Though it recognises the protection of private land rights (*Articles 35, 37, 356, 372*), and guarantees citizens a right to appeal decisions in regards to land rights through an independent judiciary (*Articles 11 and 19*), the Constitution in Article 37 declares the State the ultimate owner of all land and natural resources in the country, which undermines land tenure security of citizens. The highest form of tenure security is therefore land use rights. In addition the government reserves the power to remove these rights, if it deems its actions serve a “public purpose”.²¹ Ultimately the constitution provided little to improve the context of skewed land distribution, poverty, and reduced access to land and related resources for the rural and remote populations.



Since 2011, the government has established a number of reforms, faced with considerable challenges to rebuilding the economy and increasing pressure to reconcile past land injustices such

¹⁶ Steinberg, David, I 2008 “Burma/Myanmar: what everyone needs to know”, Oxford University Press, New York.

¹⁷ Nyunt, D M; Hudson-Rood, N.; Tun, S. T.; Htay, S. “The Impact of confiscation of Land, Labor, Capital Assets and forced relocation in Burma by the military regime”, Edith Cowan University, Western Australia

¹⁸ UNFAO 2015 “Myanmar Land Tenure and Rural Development” Draft Version, United Nations Food and Agriculture Organisation.

¹⁹ FSWG 2012 “Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law”, Food Security Working Group’s Land Core Group.

²⁰ Ibid.

²¹ Ibid.

as forced evictions. Protests and crackdowns arose in relation to land, due to economic incentives continuing to favour big business. A set of measures to reform the land sector took place in 2012 in response.²² A Land Allocation Utilisation Scrutiny Committee was formed under the Ministry of Environmental Conservation and Forestry (MoECaF). The responsibilities included to prepare a national land use policy, improved land-use planning, and allocate land for investment including agricultural projects. In October 2014 this committee was converted into the inter-ministerial Central Committee for National Land Resources Management (CCNLRM) for development of the land use policy, followed by the harmonisation of laws into a harmonised land law.²³ A Parliamentary Land Confiscation Commission in 2012 was mandated to address allocation abuse and recover land from unauthorised holders. The Committee has since examined 6445 cases.²⁴ Following the commissions recommendations, the General Administration Department (GAD) was assigned to resolve land disputes. Numerous reports have been completed highlighting historical land acquisition cases requiring serious restitution immediately. However, the committee has been critiqued for not considering in detail the complexity of each case, and delays in the settlement of disputes.²⁵²⁶

The current situation is dire. Tenure uncertainty continues, as does the governments significant power over land and livelihoods, which impacts on small holder farmers livelihoods, food security, and their dignity.

The current situation is dire. Tenure uncertainty continues, as does the governments significant power over land and livelihoods, which impacts on small holder farmers livelihoods, food security, and their dignity. Myanmar's legal and institutional environment in relation to land is highly complex and ambiguous. The land sector as of 2013 is governed by 70 laws and regulations.²⁷ Past land records have been utilised to generate revenue rather than record land rights. Those legal provisions referring to recognition or protection of land rights are embedded in various aspects of the Constitution, sectorial acts, and implementing regulations. The two land laws of 2012 - The Farmland Law and the Vacant Fallow and Virgin Lands Law (VFV) - were a step toward addressing this anomaly, however research suggests the laws have just added confusion and additional administrative mechanisms. For example, in some ways the issuing of land use certificates as a part of the Farmland Law was merely a reinvention of the booklet system of the 1980s.

Up until 2012 land sales by farmers were prohibited although they often occurred informally, to a greater degree with indebted households. With the new laws, farmers are able to sell and transfer land with permission from local based authorities. However, several aspects have remained the same, problematically. Currently the government remains the only actor that can reallocate and

²² UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

²³ FSWG 2012 "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law", Food Security Working Group's Land Core Group.

²⁴ MOI 2015 "<http://www.moi.gov.mm/moi:eng/?q=news/15/03/2015/id-1997>, The Republic of The Union of Myanmar. Ministry of Information.

²⁵ Ibid.

²⁶ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

²⁷ Ibid.

expropriate “wasteland” by defining it as “fallow” or “marginal” lands, based on a narrow concept of productive land use. Then, without clear safeguards and mechanisms for consulting and providing restitution to impacted communities, the government can confiscate land for “public purpose”. This continues to place significant power in the hands of the State over land distribution and allocation.²⁸ Particularly article 55 of the VFV Law grants the power of the state to allocate land to implement “basic infrastructure projects or special projects required in the interests of the state”, with no procedures for objection.²⁹ In addition, any land that is classified as VFV Land cannot be sold, transferred, mortgaged, given or divided without prior approval from the government at the Cabinet of the Union level.³⁰

In 2014 a draft National Land Use Policy (NLUP) was released for comment and feedback during public consultations.³¹ The policy aims to be an overarching legal instrument for land related issues, to consolidate the myriad of regulations and laws into a more cohesive whole. Many ambitious reform activities have been proposed, which are generally seen as a step in the right direction by some. However many local grassroots organisations in ethnic regions hold a cautious perspective as represented in a statement response by the Ethnic Community Development Forum (Burma).³² The following list their concerns and recommendations:

- increased protection and prioritisation of smallholders, and ethnic groups;
- measures for redress in regards to previous military land acquisitions;
- clear and explicit measures providing minority ethnic groups decision making power and control over land ownership, use and management;
- consultation not sufficient to reach the most vulnerable;
- protection of customary land practices is not strong enough, and continues to promote transitions from shifting cultivation to permanent agriculture;
- the land classification of VFV is not applicable to ethnic regions;
- there are no provisions concerning the rights of refugees and IDPs in relation to land distribution, and restitution
- the need for postponing of land investments in conflict regions;
- the principle of Free Prior Informed Consent (FPIC) should be mandatory in regards to land acquisitions.³³

The capacity to implement the ambitious policy, and meet the needs of the most vulnerable, will be the governments biggest challenge. As has been the case for several developing countries attempting to undertake such ambitious legal reform throughout the world.

²⁸ Henley, G 2014 “Case Study on Land in Burma”, Evidence on Demand, Oversea Development Institute (ODI).

²⁹ MCRB 2015 “Briefing Paper: Land”, Myanmar Centre for Responsible Business.

³⁰ USAID 2013 “Property Rights and Resource Governance - Burma”, United States AID.

³¹ Ibid.

³² ECDF 2015, ‘Concerning Myanmar’s National Land Use Policy’, Ethnic Community Development Forum (Burma), http://ecdfburma.org/index.php?option=com_content&view=article&id=248:concerning-myanmars-national-land-use-policy-draft. Date accessed 3rd August 2015.

³³ Ibid.

2.3 Land Administration

Land administration agencies responsibilities are characterised by fragmentation, and overlap in Myanmar.³⁴ There is a lack of clarity over judicial authority, the management and administration is through various sectors, and therefore policy is often applied inconsistently and discretionally. Land administration occurs through a system of hierarchy in Myanmar. Responsibilities are held across 10 different government entities. The Ministry of Home Affairs through GAD has branches at township, and state / regional levels, to represent the central government.³⁵ Whereas the Settlements and Land Records Department (SLRD) within the Ministry of Agriculture and Irrigation (MoAI) holds the role of maintenance of land records, and cadastral maps, with branches at the state, district and township level. Both of these departments play key roles in non-forest land administration at all levels. MoECAF is responsible for forest designated areas. Any transfer of land user rights must be initiated at the village tract level and follow the hierarchical structure, from village leader to Village Tract Administrator (VTA), then after factual verification of the SLRD branch at the township level, and final approval at the state level. The GAD at the township level is responsible for processing applications.³⁶ It is therefore a lengthy and complicated process involving several visits to various offices and administrators.

State intervention into land tenure and resource control are a key feature of Myanmar's land administration and management. Government discretion (at various levels) is the ultimate form of decision making in regards to community and individual rights of access and control over land. This has led to conflicts between local people and the State. The relationship between land and local communities, and individuals are often shaped by particular social arrangements governed by customary regulations and practices. However these land tenure management and practices are not adequately considered in the current laws.³⁷ For example grazing land for livestock is considered virgin land according to the VFV Lands Management Law.³⁸ The complex legal and regulatory environment has enabled both agricultural and forest land to be treated as State property, to sell or concede lands to large-scale business for logging, plantations or extractive purposes to mobilise revenue.³⁹ Research indicates that as a result communities have been impacted by displacement, and alternative approaches to development in the form of customary practices have been undermined. Land use certificates are only issued to farmers utilising land in a particular way.

2.4 Land Registration & Land Use Certificates (LUCs)

After the 2012 land laws, all 'legitimate' land users are required to register their land, and receive a land user certificate. Crop production must adhere to the allowed crops based on restrictive land classification types assigned in the 2012 laws, restricting farmers to paddy production predominately - a continuation of previous laws.⁴⁰ Utilisation of land considered as wasteland or VFV is recognised, however use must adhere to the restrictive land type, and land rights are based on successful

³⁴MCRB 2015, 'Project Impacts: Land', Myanmar Centre for Responsible Business.

³⁵ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

³⁶ Ibid.

³⁷ Henley, G 2014 "Case Study on Land in Burma", Evidence on Demand, Oversea Development Institute (ODI).

³⁸ MCRB 2015 "Briefing Paper: Land", Myanmar Centre for Responsible Business.

³⁹ Henley, G 2014 "Case Study on Land in Burma", Evidence on Demand, Oversea Development Institute (ODI).

⁴⁰ Ibid.

application of a land use certificate. Land managed under *taungya* (shifting cultivation) is vulnerable to expropriation. The cadastral land mapping system is poorly administrated, and fails to represent the reality on the ground.⁴¹ However, local land documentation systems continue in Myanmar, including letters or written notes recognising control and customary ownership over land as a result of transactions, land division or inheritance. Most common practice involves informal contracts (*lu-mu-yei*) drawn up, with approval by local authorities, and in some cases requests made to SLRD officials to record the transfer. Though many local land documents are often not included in formal records at land related departments. The “farmer booklets” of 1980s were introduced by the local authorities with the main aim to record production, and for tax. It recorded name, area, and crop produced. However, it was not allowed to be used as proof of user rights, the same for tax receipts. Only state-land leases and agribusiness concessions were deemed formal and legal.⁴² However formal systems are starting to penetrate the more central regions of Myanmar. Generally the Village Tract Committee (VTC), and more recently a Land Management Committee (LMC), oversee these processes. However, this combination of customary practices and formal mechanisms continue without official procedure, resulting in land disputes later.⁴³

The Farmland Law of 2012 required that LUCs be issued to farmlands that have already been mapped by the SLRD Kwin map systems. Procedures and guidelines were developed for the issuing of LUCs, which offer farmland holders some level of security, to conduct land related transactions, and access credit. Over 7 million LUCs were issued as a result of this initiative. However some issues remain. The areas that the SLRD do not have records remain insecure.⁴⁴ Land areas that fall out of the restrictive category of farmland continue to be insecure, as do areas facing conflict.

Limited information has reached villagers in relation to the process of obtaining LUCs, which is the responsibility of Farmland Administration Bodies (FABs) and village tract leaders. Quality monitoring and oversight has been minimal, LUCs have been manually drafted and recorded on paper. Overall, farmers are not yet clear on the benefits of LUCs. Updates on transfers and other related land transactions have been insufficiently recorded, continuing the need to establish a formal land market.⁴⁵ Rights to sell, exchange, access credit, inherit and lease the land were enabled with the issuance of a LUC, however the state holds ultimate ownership over land, including farmland. The most secure form of tenure in

Barriers to registration

1. complex and lengthy registration process;
2. restrictive land classifications;
3. lack of recognition of customary land use rights;
4. weak protection of registered land use rights;
5. poor land administration;
6. promotion of large scale land acquisitions without adequate safe guards.

⁴¹ MCRB 2015, 'Project Impacts: Land', Myanmar Centre for Responsible Business.

⁴² UNFAO 2015 'Myanmar Land Tenure and Rural Development', Draft Version, United Nations Food and Agriculture Organisation.

⁴³ Ibid.

⁴⁴ OECD, 2014 'Investment Policy Reviews: Myanmar', Organisation for Economic Co-Operation and Development.

⁴⁵ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

Myanmar is therefore “leasehold”, as opposed to the most secure form available “freehold”. LUCs only apply to farmland, any other land classification are ineligible.⁴⁶ Landholders claim an LUC by presenting evidence of continuous production use of specified land plots. Verification power sits with the village leader, or VTA. Copies of land tax receipts also supplement the application. Some disputes have resulted over ownership and complaints against local officials in relation to errors in the LUCs, that were reported yet not amended.⁴⁷ Boundary delineation was conducted by SLRD with limited consultation with land holders. Information to communities in regards to LUCs was limited to forms passed during mass meetings. Village leaders were often unclear on the Farmland Law and process of issuing LUCs themselves. Past land disputes were reunited, and farmers begun raising the issue of greater production rights. Poor information and inadequate processes to resolve land disputes continues. It is not clear whether LUCs will in the future assist resolve land issues, or create new burdens.⁴⁸

2.5 Current Land Use & Distribution

Myanmar holds a population of 51.4 million, of whom 70% live in rural areas. The land size is approx. 670,000 square kilometres - 48 percent is forest area. It is rich in biodiversity and resources. There are over 800 islands, and coastal areas stretching to around 2,000 kilometres. In addition it is culturally, ethnically and religiously diverse. The average farm household size is six people.⁴⁹ Ayeyarwady and Mandalay regions are more populous than Chin, and Kayah states. 30 percent of the population live in mountainous or forest areas, which account for 25 percent of the total land area.⁵⁰ The majority of Myanmar’s population depend on agriculture for their livelihoods. Around 70% of the labour force are involved either directly or indirectly in agriculture-related activities. Government estimate that around 50% of the population are subsistence farmers. 26.7 million acres of land is arable in Myanmar, permanent crop cultivation has increased by 8.97 percent from 2006 to 2011. Land availability has been assessed at 1.48 acres per active population in agriculture.⁵¹ Most farm plots average around 7 acres with regional variation of 4.16 acres, to 8 acres. Small farm households (3 acres or below) have decreased by 9.84% whilst large holdings (50 acres or more) have increased by 107.3%. Increases in numbers of agricultural households between 2003-2010 have occurred in the dry zone and delta area. In most cases large-scale holders utilise land for perennial crops - which do not address inadequate food supplies in the country.⁵²

There is a growing trend of a shift to land concentration into the hands of a few. Almost 70% of total farmland is controlled by just 20% of rural households. The promotion of large scale land investments in the early 1990s has led to an expansion of large scale agribusinesses in Myanmar.⁵³ Of

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ CSO 2014 ‘Population Census, Ministry of National Planning and Economic Development, and National Population’, Central Statistical Organisation.

⁵⁰ Ibid.

⁵¹ World Bank 2014 ‘Myanmar: Ending poverty and boosting shared prosperity in a time of transition’, World Bank Group.

⁵² UNFAO 2015 “Myanmar Land Tenure and Rural Development” Draft Version, United Nations Food and Agriculture Organisation.

⁵³ Steinberg, David, I 2008 “Burma/Myanmar: what everyone needs to know”, Oxford University Press, New York.

the total agriculture production as of 2010 30% was attributed to large scale plantations predominately for export. Research suggests that 600,000 acres are cleared per year for agribusiness leases or non-farm purposes. In addition, medium sized farmers are increasingly engaged in rubber plantation and perennial cash crops. Companies are the main entities registering for agricultural production, with a total of 13,441 firms growing tree crops on almost 1 million acres.⁵⁴ Sugarcane and cotton production facilities were transferred to MoAI to reflect the strategy for agribusiness development. Wasteland Instructions of 1991 included the provisions which have enabled more easily foreign and domestic investment into this increase in large scale land concessions.⁵⁵

Landlessness is rising in the rural areas as vulnerable rural and remote populations continue to be placed at risk of land confiscation as land concessions increase.⁵⁶ Paddy prices dropped in 2007-08. Average farm size has decreased from 6.23 acres in 1993 to 4.5 acres in 2010. Research suggests that the increase has been significantly worse over the past 4-5 years. Forced sale of land is occurring due to indebtedness - the main cause of land alienation. Landlessness in Myanmar ranges from 25 to 40 percent (rates are lower in upper regions).⁵⁷ An average farm holder has 2.5 hectares of land which is able to produce only half the income needed for an average household of six people, when current levels of productivity and prices remain stable.⁵⁸ Shrinking of farm sizes in the uplands has reduced fallow cycles and rotation in shifting cultivation communities. The soil quality is therefore declining. Smaller household farm areas result in lower cash incomes, poorer access to agricultural input and credit, and limited coping mechanisms in relation to drought. Rice paddy farming is one of the livelihood practices undertaken on land in Myanmar. However since the 1960s production has declined over time. 20% of the demand for arable land for paddy production was not met. Land fragmentation in rural areas is increasing, which will impact negatively on paddy production if conditions remain the same. Additionally ethnic minority civilians have been displaced (up to hundreds of thousands) in eastern and northern Myanmar due to armed conflict. Rakhine State inter-communal violence has also led 143,000 people fleeing their homes.⁵⁹

Landlessness is rising in the rural areas as vulnerable rural and remote populations continue to be placed at risk of land confiscation as land concessions increase.

2.6 Land Concessions & State Land Leases

According to reports published by MoAI/SLRD and MoECAf around 20% of the total land area has been allocated to foreign or joint ventures for up to 70 years.⁶⁰ This figure accelerated by the influx of land expropriations and forced acquisitions after polices in the early 1990s, which favoured economic

⁵⁴ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

⁵⁵ Ibid.

⁵⁶ MCRB 2015, 'Project Impacts: Land', Myanmar Centre for Responsible Business.

⁵⁷ Ibid.

⁵⁸ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

⁵⁹ MCRB 2015, 'Project Impacts: Land', Myanmar Centre for Responsible Business.

⁶⁰ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

development through large scale business and allowed foreign investment. Maximising revenue from natural resources through large national projects was envisaged as the key to economic development in the early 1990s.⁶¹ The Myanmar government carefully selected and issued land leases/concessions for agri-business, and large scale forestry projects, whilst maintaining relative control over export commodities.⁶² Although concessions for investors were initiated by the government of General Ne Win in the 1960s they were refined and propelled in the 1990s.⁶³ Investors received economic incentives, loans from state owned banks, and access to cheap land with low rents, and tax exemptions for the first 2-8 years. By 2014 almost 5 million acres have been allocated to 400 national companies and 19,000 growers from what was determined to be vacant, fallow land, and deep water land. In additional 1 million acres of forest land (totalling 5 million acres).⁶⁴ Only 20 percent of approved land concessions have been developed, as of 2014 reports. Forest allocations were predominately for rubber plantations. According to MoAI/SLRD reports, one company controls over 420,000 acres of this land. Additional commodities granted for these concessions include rubber, palm oil, cotton, sugarcane, Jatropha and rice.

Most foreign investment is channeled into the extractive and energy industries.⁶⁵ Myanmar's economic growth depends on natural resources such as gas, gems, wood and agriculture (legumes, cereals, rice and fisheries). Additional agro-based industries include biofuels (cassava, sugarcane and jatropha). Agriculture accounts for 36% of Gross Domestic Product (GDP), and 70% of Myanmar's labour force is concentrated in agriculture.⁶⁶ A 30 year plan has been formulated by the MoAI, to generate growth by converting 10 million acres of 'wasteland' into private agribusiness projects, focusing on the growth of rubber, oil palm, paddy, pulses and sugarcane for export.⁶⁷ A crop campaign is currently underway for promotion of oil palm in Tanintharyi Region. Rubber production is aimed for export to the Chinese market. Tanintharyi Region and Kachin State are key areas where concessions have been issued. It is difficult to estimate accurately land concessions as many are not recorded in conflict areas.⁶⁸

The key concerns raised with Myanmar's past and current economic development policies involve the following:

- i) confiscation of land without adequate safeguard procedures, or compensation, often utilising force or political power;
- ii) permits granting land for development and production/extraction, with greater access rights than available to individual small holders.

⁶¹ Steinberg, David, I 2008 "Burma/Myanmar: what everyone needs to know", Oxford University Press, New York.

⁶² Ibid.

⁶³ Nyunt, D M; Hudson-Rood, N.; Tun, S. T.; Htay, S. (year unknown)"The Impact of confiscation of Land, Labor, Capital Assets and forced relocation in Burma by the military regime", Edith Cowan University, Western Australia

⁶⁴ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

⁶⁵ Ibid.

⁶⁶ Chao, S 2014 'National updates on Agribusiness Large Scale Land Acquisitions in Southeast Asia', Brief #8 of 8: Union of Burma.

⁶⁷ Ibid.

⁶⁸ Ibid.

Concessions by direct seizure by army units and government departments are common, army owned domestic companies, joint ventures and other politically powerful actors are often the beneficiaries of such concessions.⁶⁹ The military has expanded its economic footprint in Myanmar due to decades of control, and the pursuit of issuing access to resources for their own business interests, culminating in a supreme military-economic complex.⁷⁰ These methods of land acquisitions have impacted upon local communities in negative ways such as displacement and reduced access to imperative livelihood resources.⁷¹ Smallholders are often the worst affected by the above processes. Particularly as they face uncertain futures, increasing debt, and limited access to capital / resources to recover their situation. As in many countries across the global south, land allocations for this purpose failed to meet expectations, moreover detrimental impacts occurred, such as displacement without adequate compensation, and several cases of forced labour. Access to land and common property resources, have been reduced – leading to continued conflicts and negative impacts on livelihoods.
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The concept of “fallow or vacant” land has been fundamental to legally justifying allocation of large tracts of land for commercial enterprises both state or privately owned. Found in both the wasteland instructions and VFV Law. However the definition of “fallow or vacant” has come under scrutiny as often lands were actually being utilised by local communities.⁷⁴ An additional concept of “public purposes” was also fundamental, since this allowed state capture of land for “public purposes”. State administrators also have received wide discretionary powers in apply the concept.⁷⁵ Research demonstrates that contradictory regulations, manipulation, coercion and confusion have surrounded the process of removing land from households, and redistributing to more wealthy/powerful individuals or groups for land concession. The process of seizing land was often facilitated by the armed forces or police. Small farmers, and vulnerable populations are those impacted the most, losing their lands to local elite, domestic or foreign investors, they lack the power to defend their interests successfully, particularly as the laws do not allow for adequate avenues for redress, or for secure land rights to the majority of the population.⁷⁶⁷⁷

According to current laws, government can also seize land from communities with the assurance of:

- a) employment opportunities for a specific number of days;
- b) relocation to other land areas;
- c) compensation in the form of cash for displaced households

⁶⁹ Ibid.

⁷⁰ ICG 2012 ‘Myanmar: The Politics of Economic Reform’, Asia Report No231. International Crisis Group.

⁷¹ Henley, G 2014 “Case Study on Land in Burma”, Evidence on Demand, Oversea Development Institute (ODI).

⁷² Nyunt, D M; Hudson-Rood, N.; Tun, S. T.; Htay, S. (year unknown) “The Impact of confiscation of Land, Labor, Capital Assets and forced relocation in Burma by the military regime”, Edith Cowan University, Western Australia.

⁷³ GW 2015 ‘Guns, Cronies and Crops’, Global Witness.

⁷⁴ ALTSEAN 2015 ‘Land Confiscation in Burma’, Alternative ASEAN Network on Burma.

⁷⁵ TNI 2013 “Access denied: Land rights and Ethnic Conflict in Burma”, Transnational Institute.

⁷⁶ Ibid.

⁷⁷ GW 2015 ‘Guns, Cronies and Crops’, Global Witness.

Private investors are requested to provide compensation in kind in the form of improved infrastructure, and cash for the displaced. However evidence of providing such supports is often unrecorded.⁷⁸ Concerns have been raised by academics and civil society of the impacts on local communities, since minimal long term employment opportunities have emerged. Common property resources contribute directly to maintaining food security particularly of vulnerable and marginalised peoples. However, state land leases have led to the decreased access to key livelihood resources, contributing to increased poverty.⁷⁹ The current Foreign Investment Law introduced in 2012 has created new tax incentives, and allowed foreigners to lease land for business purposes, and protections against nationalisation.⁸⁰ In 2015 amendments are being drafted for the Investment Laws to 'level the playing field' even further, in consultation with the IFC and Private Sector (later a small number of civil society representatives), which will further entice and facilitate for foreign investment.

2.7 Customary Land Tenure

Customary land tenure systems are common in Myanmar. Particularly in upland regions where a common property practice of shifting cultivation also known as *taungya* occurs. The practices, rules, and systems related to land of culturally diverse communities are not recognised legally. The hierarchical land governance system that has been institutionalised in Myanmar has undermined customary practices of communal land distribution.⁸¹ By nationalising land and resources and placing village chiefs within the governments hierarchical system - land and resource autonomy has been taken away. Social structures shape and in turn are shaped by the distribution and use of land in the upland regions.⁸² Sustainable land and resource management systems arguably depend on these structures to remain intact. Guardianship and protection over resources by communities currently face weakening due to increased pressure on land and failure to legally recognise customary land tenure systems. The number of shifting cultivators in Myanmar is estimated to be between 2 – 20 million, occupying around 23-25% of the total land area in Myanmar – at least half of Myanmar's upland population are engaged in this practice.⁸³ Shifting cultivation continues to play an important role throughout Asia, according to research it provides livelihood and food security for many communities.⁸⁴ The practice is intimately woven with cultural identities. Research demonstrates that most shifting cultivation practices do not



⁷⁸ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

⁷⁹ TI 2013, 'Access denied: land rights and ethnic conflict in Burma', Transnational Institute.

⁸⁰ ICG 2012 'Myanmar: The Politics of Economic Reform', Asia Report No231. International Crisis Group.

⁸¹ TI 2013, 'Access denied: land rights and ethnic conflict in Burma', Transnational Institute.

⁸² Ibid.

⁸³ UNFAO 2015 "Myanmar Land Tenure and Rural Development" Draft Version, United Nations Food and Agriculture Organisation.

⁸⁴ AIPP & IWGIA 2014 'Shifting cultivation, livelihood and food security: New and old challenges for Indigenous peoples in Asia', Asia Indigenous Peoples Pact & International Work Group for Indigenous Affairs. Chiang Mai.

lead to deforestation, when the minimum cycle of 7-10 years is maintained, and for this reason it is considered a sustainable form of land use - unless land scarcity, or increased demand requires farmers to clear new forest areas.⁸⁵

Despite the constitution of 2008 recognising shifting cultivation (SC) as a land use practice, formal support, and lack of assigned type of land use that reflects this as a land use classification in land laws, has led to increased marginalisation of populations undertaking SC. *Taungya* holdings are not formally registered or surveyed. The practice of SC involves rotating year by year from one plot to another, without returning until a plot of land is rejuvenated with grown trees as the evidence, usually after 10-15 years. This requires leaving large plots of land “fallow” for this time, however these plots of land have no appropriate classification, and are often recorded as “wastelands” under the Wasteland Act 1991, and therefore formally available for acquisition by entrepreneurs or companies. Even rule 116 of the Farmland rules of the Farmland Law 2012 aims to cease shifting cultivation, and reflects a view that fails to recognise shifting cultivation practices as indispensable to an agricultural system.⁸⁶⁸⁷

2.8 Land & Women’s Rights

LUCs, as issued according to the Farmland Law 2012 are generally issued to the household head. This current laws have made no special effort to ensure women’s access to land, women have the option for joint titling however there is little information provided to women about this option. During the issuance of LUCs women were less likely to have received information from the authorities or village leaders, rather they heard through a family member or from documents (maps, parcel lists). Research suggests that only 20% of women participated in applications for LUCs.⁸⁸ In addition almost all FAB officers involved in the issuing of LUCs were male. 15-20 percent of LUCs were issued under joint titling or solely in a women’s name. Women headed households also only account for 10 percent of the families in Myanmar according to the 2010 Population Census. Land concessions in Myanmar are seen as an avenue for economic development, however in this form right holders in particular women-headed households lose out. Women have been neglected in decision making and policies/procedures in relation to land.⁸⁹

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ UNFAO 2015 “Myanmar Land Tenure and Rural Development” Draft Version, United Nations Food and Agriculture Organisation.

⁸⁸ Ibid.

⁸⁹ Ibid.

3. Research Methodology

Research Aim

Seeking a greater understanding of land governance issues from community voices, to inform #Landfor Campaign Strategy for Community-Led Change

Research Question

“How do vulnerable communities in Myanmar access land rights, and what are the existing land governance issues?”



Participatory Research Approach

This research and training program was developed in order to ensure research that is grass-roots led, through a participatory approach, enabling insight from local Action Aid and partner staff / Fellows who are experienced and knowledgeable on land issues, to shape the research. Research participants, gathered evidence from in regards to land issues, and learnt how to plan and conduct research in the field. The research aimed to inform both their future work with land governance, and to produce a research document as a tool for use during advocacy related activities.

During the Youth Participation Land Governance training, participants received detailed training on Good Land Governance, Land laws and policy, and Research Methodology & Skills. Participants received support from the Governance Program team and research advisor in the field at various stages of the research process, in order to improve their skills, support their learning and ensure quality data gathering practices. Participants collected the data, and presented a report during the second round of training: to reflect on the learning process, share findings, and receive feedback from facilitators and peers.

Research & Land Governance Training

30 participants interested in Land Governance & Research attended the training, including (AAM staff, Fellows, Partner Organisations, AACambodia)

1. 1st round (2 weeks)
2. Research placement (4 weeks)
3. 2nd round (2 weeks).

Topics: Land Governance; International Best Practice (UNFAO Tenure Guidelines & FPIC); Land Issues & Analysis; Legal Frameworks; Qualitative Research Skills; Risk Assessment; Accountability; Advocacy

Research Participant Tasks

Participants identified key issues, then the trainer developed placement tasks based on the following themes.

- Land Conflict & Resolution;
- Land Administration;
- Customary Land Tenure;
- Women's Rights.

Including the following methods:

1. Desk based study
2. Qualitative Research
3. Quantitative: Surveys

Research Regions	Respondents	Female	Male	Age	Village Names
Meiktila Township / Dry Zone	20	5	15	20-57	Shama Ngal Village; Kyauk Oe Village; Yae Ngan West Village
Pyapon Township / Ayeyarwaddy	15	4	11	28-74	Yae Sai Village; Sabai Village; Kyan Kan Village
Hakha Township / Chin State	20	3	17	33-77	Hmum Thar Village; Khuojo Vilage; Acern Village; Van Zange Village; So Pum Village
Kayah State	15	3	12	24-56	Daw Law Khu; Lwai Lin Lay; Htay Htu Phya
Taninthryi Region	23	11	12	33-94	Ban Lin; Ton Kar; Dwe Tan Kone; Ban Kuate & 6 Mile
Totals	93	26	67	20-94	19 villages

Research training participants received detailed **Placement Guidelines & Package** to support their learning from the training including:

- Relevant legal documents
- Step-by-step research guidelines
- Research Questionnaire
- Consent Forms
- Power analysis and Stakeholder analysis hand outs

Researchers developed **Action Plans** for conducting the research in groups based on location and context specific challenges.

Time schedule & Logistics

For supporting research placements covering the following areas: Meikthila, Chin State, Pyapon, Taninthryi, and Kayah State (with participants and line managers)

Task	Location	Allocated Staff	Duration/Date
Literature Review	AAM Yangon	Claire	April 20 - 26
Training research staff	Global Platform, Yangon	May Thi Ri, Naing Aye San, Claire	April 27 - May 8
Data Collection 1	Meikthila, Dry Zone	May Thi Ri, Naing Aye San, Claire	May 12 - 15
Data Collection 2	Pyapon Township, Ayeyarwaddy Region	May Thi Ri, Naing Aye San, Claire	May 19 - 22
Data Collection 3	Hakha Township, Chin State	May Thi Ri, Naing Aye San, Claire	May 25 - 28
Data Collection 4	Loikaw Township, Kayah State	Naing Aye San, Claire	May 29 - 1st June
Data Collection 5	Taninthryi Region	Naing Aye San, Claire	2nd - 6th June
Data Analysis & Translation	Yangon	May Thi Ri, Naing Aye San, Claire	8th June - 20th June
Report Writing	Yangon	Claire	July - August.

Research Limitations

The key research limitations were in regards to staff time, location/access constraints and qualitative methods.

- Research training participants were allocated time by their line managers to conduct research in the field. However, several mentioned that they were placed under time constraints due to additional work responsibilities, therefore in some areas they were unable to dedicate as much time as they had planned.
- The research was conducted in June and July which is the beginning of rainy season in Myanmar. Some participants faced location/access constraints which resulted in rescheduling original plans.
- Many were new to interviewing techniques, and writing up reports, and required additional support in this area. During evaluation of the training program, several respondents highlighted their interest in additional training in research methods.
- Utilising qualitative research approach meant that data can not be extrapolated or generalised to the wider populations, which is limiting for capturing overall trends.
- Research plans for Salingyi Township in Sagaing Region, were cancelled due to the sensitive and unstable environment with relation to land issues in this area, therefore qualitative data from this area was not received.
- Women's rights issues were included throughout the discussion and conclusion women's rights issues are referred to, however there were challenges in engaging women's participation during the research gathering. The research team found it difficult to create a unique sharing space applicable to women - often men were referred to by community members as the most knowledgeable in regard to land.

4. Findings

4.1 Meikhtila Township, Mandalay Division (DRY ZONE)

Meikhtila is a township of Mandalay Division, in central Myanmar, also known as the Dry Zone. As the name suggests the region is hot, and dry. Overall incidence of poverty is relatively low compared with other regions at 23 percent, however it is higher than the national average in rural areas at 32 percent.⁹⁰ The region depends on agriculture as the primary livelihood source. Livestock and fresh water fish are also important. Most issues raised for resolution to the VTA in this region have been related to recent or old cases of land conflict.⁹¹

War Yon Su Village, Shan Ma Ngai Village Tract

Land Administration

There are 70 households and a total of 475 people in the village, 30 households are smallholder farmers. Some villagers have land use certificates however several respondents stated that it is common for the land registration officers to measure and allocate land inaccurately. Respondents agreed that despite insecurity, and limited registration, they are able to sell, and mortgage their lands, yet this process is mostly done informally. One villager recently received training about land registration. However, overall villagers feel unsupported not just in relation to land, but in the development of their community. They constructed the roads, and sourced their own water. Due to the military actions of the past most villagers do not trust the government, and therefore do not consider registration as a priority, neither as a vehicle to secure access to land. In this village, land is passed on through customary practice of inheritance, the community understand it to be family land. For common property areas, access has reduced. To access land for grazing or training animals, most villagers are now required to pay others for access to lands. The main cause of land scarcity is due to past and recent land acquisitions.



INTERVIEW SNAPSHOT

Small holder farmer, 10 household leader

A small holder farmer holds 5 acres of registered land, yet he believes the land is not secure, as land acquisitions have not provided compensation in the past. Together with other concerned farmers, he sent a letter (twice) to the government requesting that the laws be changed to ensure compensation in the future. There was no response. He has received training on land rights, and is aware of the new land use policy. He wants clear laws around land acquisition and compensation. He shared this knowledge in a meeting with his village however he says they were not responsive, as they do not trust government

*“for the policy to be good,
the government workers
implementing the policy,
must also be good” - medium
scale farmer, 12 acres, male*

⁹⁰ UNDP 2014 “Local Governance Mapping: The state of local governance trends in Mandalay”, United Nations Development Programme.

⁹¹ Ibid.

Women's Rights: Customary practice, Inheritance & Migration

Generally land in Myanmar is registered under the name of a male (household head), and women have less access to land. However the views shared were more complex than this. One respondent stated that during divorce couples would attend court to decide how to divide the land. He believes his wife has rights to land and property. He stated that through customary practice generally land is divided into two parcels. Sometimes the community will assist in decision making around a divorce. Most respondents (including women) stated that women access land through customary practice. However, female respondents are not fully aware of their rights according to national or international law. **One female household head**, spoke about her worry for her father who was unwell. "We once utilised 6 acres, now only 1.5 acres" – which is registered in her father's name. She does not hope too much about inheriting this land, however she thinks he will pass it to her. She believes men and women have equal access to land, and wants to work for her access. All of the women state they are dependent on the land for their livelihoods. Grazing lands are utilised by women predominately, one women stated that there is no longer common land available for this, so she practices around the edge of their farmland.

"inheritance is based on good faith and good luck" - household head, female

"men and women have equal access to land, however I want to work for my access to land" - household head, female

Military Practice Base & Displacement

Two farmers interviewed had cases of land seized by the military for a practice base in 2000. One respondent (63 male, member of USDP) stated that in the past he had 30 acres, until the military seized land for a practice base nearby, and his land was reduced to 17 acres. He now has registered 15 acres. The entire Ein Bein Wa village was evicted during the time, which led to 2 acres of the respondents land being allocated by the VTA to Ein Bein Wa as common land for grazing however the land is being cultivated instead. The military practice base is close to the two villages. The majority of the military land has since been vacated, and the two farmers impacted from **Kyauk Oe village**, are now trying to reclaim land. One respondent had 14 acres removed, and remains with 5 acres which was also distributed to nearby villagers due to the military base. He lost many mango and long life trees. The land was passed to him by his grandparents. Since 1962 he felt he had secure rights to the land, until the military came.

Compensation??.When the military initiated the base, the government offered compensation to those with registration. However, one farmer only received partial amounts, for example 1 acre for 2 lakhs, (half of the market rate) he says. The monastery held 11 acres of land considered common or with shared access to all villagers, although the land was held in the name of the monk. However the military seized this land also. This land had been purchased with villagers donations.

"farming the land is more difficult now with less land, especially when faced with drought and lack of access to water for farming sesame seeds" - smallholder farmer, 7 acres

Villagers have difficulty accessing grazing land for cows, buffalo and goats. Animals graze on sporadic land patches surrounding the village, in the past they had access to common land. **Due to military limitation of the land**, other villagers are cultivating this land, they have provided cash for access, however it is unclear who receives this cash. Some villagers have raised issues with the VTA and land registration officials during a monthly meeting, however no action has been taken.

Land Conflict & Resolution: Shama Ngal Dam Project

What? 28 acres removed for a Dam Project

Who? The Ministry of Agriculture and Irrigation project. 5-10 households impacted

How? There was no consultation about the Project, or which areas would be impacted

When? in 2006.

Where? Shama Ngal Village, Meiktila

Why? The aim of the project was water supply to supplement Meikhtila Dam and Min Hla Dam

Village Impacts

- At the time of construction, beans had been planted by some farmers, ready for harvest, yet the construction workers bulldozed over the beans.
- A respondent had their land taken he says he “purchased for 10 lakh, however received no compensation”
- Some villagers have migrated to Thailand and Shan State, and their children have had to leave school.
- The Dam site is very large, and the 10HHL estimated the project impacted on 7 villages in total.
- Villagers use the Shama Ngal Dam for domestic use such as cleaning, and for livestock, but not for drinking, unless they boil the water.

Restitution & Community Response

- In this region farmland parcels are generally worth 1 lakh, however if the land is not suitable for paddy, just 20,000 kyats. Only a few farmers received compensation “at half the market rate”
- A school and a monastery was also removed to make way for the Dam. The Ministry of Agriculture and Irrigation gave compensation around 3 lack, and built a pond, and planted trees.
- The monk did not want compensation money, however the government officials stated that the village would not receive compensation any other way, so he accepted.
- Villagers have tried to access water underground by digging 200 feet down, however the water is salty. The Dam site is 300 or 400 metres away from most households.
- Some villagers requested to the government to access water from the dam via a pipe, they did not receive a response.

WOMEN'S RIGHTS

DISPLACEMENT CASE

A young female respondent reported of migrating to Khon Kaen Lake near Bangkok, due to the Dam displacement. She was working as a maid, however she was unhappy in her situation as she became depressed hearing about human trafficking and sex-work stories from other Myanmar women living there. She also felt defeated by the house owner, and returned back to the village.

Kyauk Oe Village, Yae Wai Village Tract

Land Administration

Most respondents had not heard of the land laws of 2012, or the processes for registration, they want to know more, and be involved in decision making. Those who had some knowledge were medium-sized farmers, who were aware of the land use policy. They hope the government will use participatory methods in the policy and implementation. They believe processes have improved for solving land disputes as a result of increased registration. “If the land is not registered the government can ultimately decide who receives the land, or it can allocate the land to a private company”. A youth respondent was aware that the family had land registered, however was unsure of the benefits. One farmer had received land law

"In this village, no farmer has registration. There is no difference between registered and non registered land, neither is secure" - male, smallholder

land". Generally, loans can not be claimed without land registration. The farmers are of the opinion that it is better to mortgage land through a government loan, rather than to a private company / individual, as the interest rates are generally higher through informal lending.

"No change, still no visits from departments in relation to land administration" - farmers group

Women's Rights: Inheritance

One key way to access land is through the customary practice of family inheritance. Sons are the primary receivers of land through inheritance. Women generally do not receive land in divorce cases which do not involve children. Despite not having direct access to land via inheritance, two respondents stated that they had access to land, which is registered under their grandmothers name. Women often take care of breeding animals, and therefore rely on common lands available in the western part of the village. In contrast, the male respondents said there was no common land. The female livestock breeders were of the belief that women have equal access to land with men. They stressed that land registration was important, and knowledge of the land laws.

One female respondent holds a land booklet (a previous government issued document), and participates in meetings. Overall they felt secure with their land access because of registration. *it was noticed* by the researchers that the women respondents felt uncomfortable to speak about land in front of their husbands, and the husbands seemed reluctant to leave them alone with the researchers. So the research advisor requested that the male respondents show her the land to take pictures, whilst the women were interviewed by the female interviewers.

"The eldest son is entitled to household land first, then the middle, and younger sons, it is customary practice, in the past parents passed the land to their sons, we continue this practice." two male medium sized farmers



Yae Ngan West Village: Myogeley Village Tract

Land Administration

Some respondents of this village held land tax slips from 1988. However, since the land was declared military controlled, the villagers have not paid land tax, crop or paddy tax. Villagers have limited understanding of the current land laws and drafted policy. They believe they are not entitled to a form no. 7, due to information from a COBRA leader of the military, provide back in the year 2000. However in the last five months the 10HHLs have been collecting information to assist the community for land registration. The farmers stated that they prefer the government now than in the past, however they still receive no visits from land administration officials. Without basic recognition of land tenure, the farmers group view it as pointless to request adequate water supplies. Although recently the government supported with road construction, built a school and a water well (not sufficient to supply all villagers). They have water for washing and cleaning only. There has been issues with diarrhoea and associated sickness with lack of access to drinking water. Generally, land disputes between farmers, are raised with the VTA, and a fair and just result is received.

“we signed an agreement to relinquish the land, but were not fully aware of what we were signing” - farmers group

“If the land is not registered the government can ultimately decide who receives the land, or it can allocate the land to a private company” - medium scale farmer, male

Military Practice Base Continued.....



Ya Ngan West was also impacted by a military practice base. Land was removed in this village for a practice base in 2000, it is unclear how many acres. Impact in this village relates more to insecurity of land tenure security, and the constant threat of having land removed. Previously the land was utilised for farming. Some villagers were displaced, with no compensation. The VTA announced the new boundary areas, and marked them with an iron stick and concrete block. Since then they have not been able to apply for registration. Currently the land is rarely

The total area claimed by the military was approximately 8800 acres

used by the military. However the villagers are afraid to ask about registration again. Until recently the government have not attended the village (since 1994) in regards to land. During this time the villagers had been living with the fear that military could come at any time and use the land. Despite this, they continued to sell land with the permission of the village leader. The farmers stated this is the same situation for all 38 villages in western and southern parts of Meiktila. The most affected village was Dha Yad Chan, the whole village was displaced, around 50 households. The village received no relocation support.

4.2 Pyapon Township, Ayeyarwaddy Region

Pyapon Township is located within the Ayeyarwaddy region of Myanmar also named the Irrawaddy Delta. The area consists of fertile lowlands, with a dense population (6.1 million).⁹² The region has been infamously referred to as the “Rice Bowl” region of Myanmar. Rice and fishing dominate as the main source of livelihoods, despite holding just 5 percent of the overall land mass in Myanmar. However, the Delta has faced many challenges due to a recent history of poor agricultural policies, limited infrastructure, low productivity, and natural disasters. Impacted regularly by climatic vulnerability - 11.4 percent of harvests are lost to storms, floods and pests annually. 32 percent of the population live below the poverty line.⁹³ Access to land and related resources are integral to food security and livelihoods in the region. According to the SLRD there is no land available in the Ayeyarwaddy, for agricultural development. Land disputes and “land grabbing” is common, relating often to access to fertile soil or land related resources such as waterways. Land disputes are common, many cases continue to require township or above resolution interventions.⁹⁴

Yae Sai Village, Myone Kone Village Tract

DEMOGRAPHICS: Land

- ▶ In the small delta village of Yae Sai, there are a total of 48 households
- ▶ total population of 207 people.
- ▶ There is 300 acres of land utilised for farming, distributed between 13 farmers,
- ▶ 10 are registered, 3 not registered

Land Administration

In Yae Sai only three farmers are not registered. One farmer does not want to register. The other two farmers do not have a National Registration Identity Card (NRC) – a prerequisite to registering land. They are of Islamic faith and have been declined an identity card.⁹⁵ However they received an agricultural loan through paying a bribe of 10,000 kyats (\$9

USD). They feel insecure about their future access to land, particularly in the face of growing demand for land. There is a land management committee at the village tract level which manages land use, and provides administration services at the village level. Any application or request in relation to land must be approved by the committee. The committees are a new initiative of the Farmland Law 2012. Though land decisions are shared amongst more people, in this village, the members are leaders and elites. The Chairmen is also the VTA, other members include the VTA clerk, Daw Nyein Village Tract Police Station chief, and the . remainder are large holder farmers. Most respondents have not heard of the committee, those that did included a medium holder farmer (36 acres of land), only in small detail, not how it was formed or the member selection. Most respondents had heard of the 2012 land laws, also not in detail.

“Villagers should know the land laws, particularly the committee members who should share with the community” male, smallholder, CBO member

⁹²UNDP 2014 “Local Governance Mapping, The state of local governance: Ayeyarwady”, United Nations Development Programme.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Research team notes: most likely due to discrimination at the township level, during application.

Land Conflict & Resolution

In this village land related conflicts are mostly between farmers, and villagers. However according to a female farmer there is no land conflict in her village. She says that the resolution process to solve conflicts, is to seek advice about the law from the person most knowledgeable on this in the village. A smallholder farmer (male, 64) raised an issue of a land dispute with a neighbour. He lived by the retainer wall (built for the purpose of keeping out salty water from farmlands). He was forced to live near the river, due to a neighbour's request as there has been erosion on the banks - a common issue in the Ayeyarwaddy. The ground area of the retaining wall is corroding, although the household near the wall, has not registered their land, and therefore does not have the legitimacy to request the other farmer to move. However, he does not want a dispute, so he moved. In the past this area was mangrove land, however after the restoration wall, land use has been limited.



"I would fight as much as I can to keep our land"
- female farmer 44 years

Despite being denied an NRC card, a farmer of Islamic faith believes in the land governance system, he stated that ***"following procedures according to the law will avoid conflict."*** He gave the example for the benefit of following procedures, in regards to obtaining an agricultural loan from the government. He says ***"through cooperating with the VTA, and township authorities, I have received a loan"***. He does not suffer land conflicts, he believes the legal ways for solving problems are the most effective, and would like to learn more to share with others in the farmers group. Similarly a

"Landlessness and land conflict can impact on villagers education, and health. Also their mental health" - male, smallholder, CBO member

youth farmer believes the best process to resolve land conflict is to contact the village leader, explain the issue, and call for a village mass meeting to discuss the issue. He stressed the importance of recording the history of land use, understanding relevant laws, and explaining the situation to all stakeholders.

Sabai Village, Lap Pat Village Tract

Land Administration

There is farmland of 400 acres in Sabai Village, with a total of 16 farmers. There is approximately 200 people in the village, and 46 households. Farmland is registered under the household head, or family member of the previous generation. One respondent stated he had 16 acres of land, passed on to him through his father, and has been held in his family for generations. This is the case for most respondents, who also feel confident that with land registration their tenure is secure, two respondent suggested that if their land was allocated for other use, they would receive compensation. Some respondents had heard of the land management committee, however similarly with other villages, they are unaware of the members, or how it was organised. Most have heard about the land laws of 2012, but the knowledge level is low, particularly for females. One youth female respondent had not heard about the laws.

"I have not heard of a land management committee, I'm not clear on if all the farm land is registered" - 41, female leader

Land Conflict & Resolution

Generally there is no land conflict in this village, although they have heard of land-related protests in other villages in the area. A youth female respondent stated she heard of cases where land holders have taken advantage of villagers who are unaware of laws and regulations, by selling land to others, whilst continuing to receive loans from the agricultural bank. There is also a disincentive to transfer names on land use certificates, as it is expensive she says. Some argued that through consulting a land expert and consensus building, land conflicts can be solved. All respondents expressed eagerness to learn the land laws.



“To prevent land conflict, all farmers should know the law” – male, 49, farmer.

Women’s Rights

Although women can register land through joint-titling or as a household head, *no women in this village have land registered in their name.* According to customary practice, access to land is predominately through informal processes shaped by inheritance practice of passing land from father to son. Women tend to be less likely to be involved in decision making, and have limited knowledge of related land laws. Although, there was a female respondent who demonstrated her knowledge of the land laws/regulations. She has access to 20 acres of registered farmland, held under her fathers name. She has been leading this farm for 2 years and perceives herself as *“similar to a household head”*. She wishes to register under her name and requested the land registration department. She was informed that proof of her land management was required in order to receive a Form 7. She knows that in order to apply for a agricultural loan the land is required to be in her name. Her father is too unwell to travel to apply for the loan. *Overall, she feels secure in her access to land.*

Kyan Kan Village, Lat Pan Village Tract

Land Administration

Kyan Kan village is a large village with 242 households and a total of 1247 people, it is predominately a fishing village most villagers depend on water resources for their livelihoods. However, many households are increasingly depending on casual labour. Out of the total 242 households there are only 4 farmer households in the village, all are registered. The farmer respondents had heard about the land laws of 2012, but not in detail. ***There is a significant imbalance in land distribution...*** the largest land holder has land user rights to 170 acres. The remaining 3 farmers hold 4, 5 and 10 acres respectively. Through his knowledge of the current land laws, the largest land holder (religious leader) took advantage of acquiring vacant land and then passed on approximately half of his total 170 acres to his family. In the last 2-3 years he gained significant amount of land, through progressively cutting down forest areas, and extending the land. Once productively cultivated, he then requested the permission from village tract and township



LAND MANAGEMENT COMMITTEE....

- ▶ village tract level and holds 5 members
- ▶ members: the VTA, 3 large holder farmers, and the land registration clerk.
- ▶ Similarly with other villages, the members are key elites and influential people from the area.
- ▶ All aspects of land management is considered to be the role of the committee.

authorities for registration. Interestingly he did not follow customary practice, for both acquiring land or transferring land. He gave 50 acres to his daughter, a single mother with 3 children. The other siblings (3 sons, 1 daughter) all received 15 acres each. In the past he had a large fishing business. However, due to his older age, he cultivates paddy **“most people in the area are not interested in accessing land for farming, they are primarily fisher folk”** ...he stated whilst sitting beside the 100HHL as a guest in his home.

SNAPSHOT: LAND CONFLICT & ELITE CAPTURE OF LAND

A more recent conflict has arisen between one large land holder and a group of villagers. The ocean tide has shifted and exposed additional land, which the group would like to access. However the large holder farmer owns nearby land, and has been both accessing part of the vacant land for cultivation, and to set up a restoration wall, and is applying to the authorities to allow the remaining land to be undisturbed as mangrove, to ensure salt water does not seep into his farm. Since 2012, a group of villagers have attempted to register the land numerous times (following procedure), as a common property resource, to increase access to fisheries and land for livelihoods. However, the land management committee, simply have not responded.

Land is power, power is land.

Land conflict in this village has occurred between those with power over land, and those without. In 2012 a household had their land removed by government authorities. The previous VTA (leader) took 36 acres of land and gave it another farmer. The VTA at the time justified the removal of land, through the assertion that the land was not cultivated productively enough and renounced the farmers land use rights. This issue is being resolved currently in the courts.

Eventually some villagers took it upon themselves to access the vacant land in order to fish from the restoration wall. However the large land holder, took measures to stop them. He has been accused of removing their equipment, and asking for payment from the fisher-folk. He also voiced his frustrations to the interviewee stating:

“How can I stop them from accessing this area?” - large holder farmer, male

This conflict is particularly significant as the fisher folk in the village, have limited access to water resources, in large part due to the government's policy of releasing annual private use tenders for the water areas (canals). There is a canal within this area of emerged land, however the villagers do not have enough money to bid for this tender. According to current regulation, villagers must pay annual access fees, which have been increasing. Some villagers, have fished without permission, and are facing prosecution in court.

“Although the large land owner has not received registration, he is a wealthy person and has made a restoration wall on the emerged land, and is now farming part of that land” - male, fisherfolk 46 years.

Villagers have raised this issue at the township level however there has been no response or investigation. The process for addressing land conflict at the village level is to meet with the land management committee to devise a solution or plan, then take this application or appeal to the land management department. If this does not work the respondent said that the villagers must go higher to the SLRD (Ministry level). The issue is that the large holder farmers are often members of the land management committee, and it is in their interest to block these kinds of applications.

Every household has access to land through the main livelihood customary practice of Shifting Cultivation

4.3 Hakha Township, Chin State

Chin State is located in the north-west of Myanmar. The estimated population is 465,000. The regions key features include low population density, widespread poverty, challenging rugged terrain, and lack of infrastructure.⁹⁶ Lack of access to sufficient clean water, and electricity are major concerns for citizens. Ethnic groups are predominately Chin, including six main sub-groups - Asho, Cho, Khum, Laimi, Mizo and Zomi. In terms of land, the ethnic groups commonly practice Swidden or shifting cultivation (SC). Unique to Chin, in comparison to the rest of Myanmar, land disputes are minimal and generally solved through informal customary practices of equal distribution of land through shifting cultivation. Research by UNDP suggests that the Township Farmland Management Committees (TFMC) assigned to deal with many land administrative tasks, are rarely utilised, and remain mostly inactive.⁹⁷



Village: Hmum Thar, Village Tract Lunh Zarh

This village is 3,900 metres above sea level. There are 107 households in the village; 130 families in total. The villagers are facing challenges with their current shifting cultivation practice, particularly with rising population, rising land value, modernisation and youth migration. The village in the future may become a town, and is faced with adapting to change. Some youth have migrated to India for work.

Land Administration and Registration

Only terrace land has been formally recognised by the government. According to respondents terrace land was able to be registered (land use rights) since 1973, nearly all respondents had not heard of the land laws. Common property areas have never been recognised legally by the government. Boundaries have not been formally recorded or documented. However through customary tenure common lands are recognised, and in practice have been secure for access to community members for many centuries. The combined common property resource areas include the land utilised for shifting cultivation, various types of forest lands, grazing land, and creeks / river beds. Village chiefs have been co-opted into the government's hierarchical land governance system and play a key role in land administration. VTAs therefore often face the conundrum of managing both formal and informal land tenure systems. Villagers obey and respect the authority of the VTA.

"we would like the practice of shifting cultivation to be legally recognised" - village chief

⁹⁶ UNDP 2014 "Local Governance Mapping: Chin State", United Nations Development Programme

⁹⁷ Ibid.

Shifting Cultivation

The villagers rotate plots of land every 8-15 years, depending on the growth of the trees, and the production yields/demands. All 36 households participate in this practice. The parcels of land are distributed for use according to local customary practice, during an annual mass village meeting, which involves the participation of all community members. A lottery system is used, indicating which household can utilise which parcel of land for cultivation each year. The main crops planted are corn and sunflower, which supply the whole village. Private land use occurs in the form of terrace farming predominately for rice or vegetables, 6-7 households participate. This land is acquired through customary practice of inheritance, or upon request to the village chief and VTA. Each



“the system is great when the land received is fertile” - female SC farmer, 38 years

household has on average between 1-2 acres of paddy. Although more influential / wealthy villagers tend to hold more private land. For example the religious leader has 6 acres passed on by his father, and at the time of research was preparing to plant. One respondent was

growing vegetables on 2 acres of privately registered land for 2 years. It was registered in 2014 by his father, he was planting elephant yam, and tomatoes. In the past he had conducted shifting cultivation, however he stopped due to early heavy rain and hard work.

Some villagers want to change from shifting cultivation to permanent farming.

Land Conflict & Resolution..

The respondents could only recall one incident of land conflict in relation to boundaries and access to forest land. The nearby Lung Zar Village holds forest area close to the boundary of Hmum Thar Village. Some villagers from Lung Zar crossed the boundary and removed some trees. The religious leader of Hmum Thar attempted to solve this conflict by raising the issue with formal authorities at the township level in March 2015. According to respondents it was an official from the Ministry of Home Affairs that attended the village and stated that the village boundaries were recognised, however left without resolution. No formal mapping and documentation occurred in order to avoid future disputes. The most knowledgeable person on boundary areas, and often utilised for access permission, is the VTA (and also a chief). According to the respondents the VTA allowed the nearby villagers permission to chop down the trees. However, the VTA did not consult with the Hmum Thar village members, which is against customary practice. This is an example of the challenges faced by communities and leaders operating within both informal and formal systems. Boundaries although they are known by all villages, the accuracy of this knowledge has not been mapped out and is therefore open to interpretation and sometimes subject to disputes.

“government only set rules and regulations, they don’t solve problems” - 74, male, small holder

Village Khua Jo: Village Tract Lung Zerh

Land Administration

Land is administered during village mass meetings, villagers are aware of the boundaries, due to long term knowledge of local customs and rules. In 1973, 4 village leaders come together and decided the boundaries after consulting with the villagers. Several villages moved closer to Htan Talan for more access to services: health, education, infrastructure. They operate as a cluster, and supported each other by setting the boundaries and common land use practices, and land distribution for large tracts of land in the area. The villages often exchange goods between one another. The government has played a limited role in land administration in the area, for example the boundaries have not been formally documented or delineated. Several respondents are not sure how to register land purchased from a previous owner (not through inheritance), the process of changing the name is unclear to them. Most villagers have not heard of the 2012 land law. They rarely receive visits from township departments in relation to land.

Customary Land Practice

There are 56 households in this village, most practice SC as the key livelihood source. Land is allocated through community mass meeting annually convened by the village leader. Land is allocated based on number of members in a household. However older generations are increasingly opting out of SC and engaging in private land cultivation. For example one grandfather, 72 has recently acquired 7 acres of land for garden plants for planting banana. His reason for ceasing SC was that "it is hard work". 6 households in total have private land registered. Other plants include corn, paddy, mango, sugarcane, and grape. The village aims to distribute land equally through shifting cultivation, however for those unable to conduct SC, there is little support for access to alternative land or livelihoods.

Women's Rights & Land

Terrace land is most commonly held in the name of a male in this village. Males generally make decisions over the property and land. Females are often responsible for animal breeding practice, and sometimes they are involved in crop selection. Generally however, the husband is responsible for cultivation, hunting and gathering. During pregnancy the wife is not required to assist in land related tasks. Females are allowed to participate in decision making. Some marriages are arranged, and some consensual. In a divorce, land is divided based on the couples decision, however generally the man has greater control over this process. In the case where the female party of the divorce disagrees with the result, there are no avenues for redress or negotiation. Sometimes, couples will seek advice from elders or relations. According to customary practice, after a divorce, around two thirds of the land can be allocated to the female, as children are generally left in their care. According to customary practice only sons can inherit the land from their fathers. The system works so that women are supported in marriage by their husband, and his family. For "spinster" women other relations support her. There is some division of labour based on gender, for example females generally tidy the grass of the common areas, and assist planting the crops, males will cut large trees.

Customary Inheritance: "in reality its more complex than this, and often based on each households situation and decision". *Elder, 76,*



Village Arcern; Village Tract Lung Zerh

Land Administration

There are 30 households in this village, it is relatively small, with approximately 7 people per house. Customary land tenure is the main land governance system. This village has little land for terrace cultivation. However there is privately owned land utilised for other crops undertaken by 15 households. A respondent received land through customary inheritance, however he sold this land through formal measures to “outsiders” from Htantalan. The village leader stated that SC is not providing enough livelihood for their family alone. Privately owned land is registered however shifting cultivation land is not. To gain registration for private land the process is to request from the VTA, who assists the process of claiming to the relevant department at the township level. The village leader was concerned that some lands are not registered. Conflict resolution in regards to land is mediated by the village leader with consultation with village members. The village leader was aware that if private land (rather than common property land), is to remain registered the land holder must utilise the land productively for at least three years, otherwise the government can revoke registration.

“Land should be kept and nurtured very carefully, we love the land” - Elder, male.

“all land should be recognised by the government as our land, if not we don’t feel secure about protecting our lands” - village leader, male 41

Village Van Zaang; Village Tract Van Zaang



Common & Private Property

The Chin customary land tenure system has been integral for governing and administering over land and remains influential today. However, evidence of an increase in private property ownership is emerging particularly in this village. In order to register terrace land, negotiation occurs first among the community and village leader/chief, and then the farmer consults with the VTA, for the township application process. The village has practiced terracing for 200 years at least, it is not a new practice. More profits can be earned from terraced land according to the village leader. Individual household control over land (as opposed to common property land use) has increased due to increased population, land demand, and profit needs. However, farmers require capital to commence terrace farming. For example the wealthiest man has access to 16 acres of private land in total (terrace & forested land). He sourced start up capital from his animal breeding business, combined with chilli farming and forestry activities. He has given back to the community during a drought period in 1987-1990 by purchasing diesel for village electricity and rice. There is approximately 25 acres of common land that is forest land, mostly big trees, accessed for forest products, such as collecting elephant yam (around 3.5 miles away from village housing). There is 60-70 acres of forest land spread sporadically around the area which is utilised for collecting timber products. Large tracts of land remain unregistered, as SC and common

“More wealthy village members have registered roughly 25-30 acres of privately owned terrace land through the government” - village chief, male

Land allocated for private terrace or farmland is considered unlimited, anyone can invest in this practice obtaining as many acres as they wish. However limits have always been placed on SC, it is strongly reflective of a customary belief that people do not require more land than they need.

property resources (CPR) are not recognised. Each village is generally clear on their boundary areas. The respondents indicated that they would like legal recognition of their lands, particularly those common property lands utilised for SC, their main source of livelihood. The sacred meaning for land is not formal as such it is more spiritual. SC allows land to be shared, nurtured based on collective agreement. Several villages have commenced documented their land tenure systems and practices since 2002 (Far Ruwn, So Pum, Van Zarp, Van Zong). Prior to this knowledge was shared orally, and through demonstrating practice.

Shifting Cultivation..... 'the simple life'

As in most villages in Chin State SC is widely practiced and relied upon for livelihoods. Almost all 107 households access land through this common property practice. The village utilises a 12 year rotation system, and for allocating land a lottery/drawing system is used annually a village mass meeting. The main SC plants include rice, corn, bean, vegetable, chilli and ginger. SC has been practiced according to customary land tenure systems "since our ancestors time". In 2002 they celebrated their 200 year anniversary at this village site, as the village was founded in 1802 with 80 households. They are finding that SC is not yielding enough for their livelihoods, with a growing population of an additional 27 households in 200 years.

"We live a simple life and use only take enough for what we need" - village elder, male 74

Additional ways to cope with this include, casual labour, remittances from family members working in India. One day wage is between 3,000-4,000 kyat common work includes cutting down large trees. Originally villagers hailed from So Pum and Ral Pel villages in the nearby mountain area (5 miles away). The previous village has disappeared, most moved as they required better access to water for terrace farming, and services. The respondents state that there is no issue with the land and resources, there is enough. However they are facing earlier and heavier rain each year, and the soil is less fertile than the past which impacts negatively on the productivity especially of crops planted on rotating fallow lands for SC. They have received some assistance recently from **green-based NGOs** and are worried that they need more assistance, and need to change – they stated that their practice is "not sustainable" and they do not have the energy, or power / knowledge to change.



"legal recognition of SC is important to keep the mother land protected", male 47, farmers association

Land Conflict?..

Before government control, sometimes they are afraid to cut trees from other areas as revenge could involve aggression. Overall there is no land conflict in the area. Yearly, to organise SC, elders select the place where plants will be grown by calling a meeting between the villagers to discuss. Sometimes 2-3 people do not agree, but they deliberate according to consensus.

There is no land conflict in Chin State

Village So Pum; Village Tract Van Zaang

MAPPING LAND FOR REGISTRATION.....community-led!

There are 100 households in So Pum village. 45 acres of terrace land is registered. The case of So Pum village is unique from other villages, as they have a verbal agreement from the government in which has led them to believe their land is more secure. The process involved the VTA mapping the land on A4 paper, to communicate evidence of their customary land practice of shifting cultivation for legal recognition of land use. They presented it to the township level and received an oral confirmation of permission, for the one parcel of land being cultivated each year for SC. They submit this letter every year in July, and have been doing so for 10 years. However they are required to pay a tax for this permission (the cost is shared amongst the villagers) which has ranged from between 10,000-40,000 depending on the township administrators discretion. The VTA was unaware of the land use policy, which has not been included in township meetings with the various VTAs in the area. The crops used for SC practice include corn, sunflower, chilli, peanut and ginger. They have a lot of terrace land for paddy (45 acres), only one person has 4 acres, the remaining farmers have 1-2 acres.



Sketch Map Example.

4.4 Loikaw Township, Kayah State

Kayah State has had a significant history of armed conflict (around 60 years) between various ethnic armed groups and the Government of Myanmar. This has led to many people fleeing lands, or being forcibly removed by the government in an attempt to deplete human resources from the groups. Remaining people were taxed or involved in forced labour perpetrated by all sides of the conflicts. Approximately 10-15 percent of the population are now either Internally Displaced Persons (IDPs) or refugee's in Thailand.⁹⁸ Most people in Kayah rely on agriculture and land access for their livelihoods, including the lowland and highland areas (shifting cultivation). Land acquisitions and deforestation are key issues, as mining and timber production are key large-scale economic activities.⁹⁹

LAND CONFLICT & RESOLUTION IN-DEPTH CASE STUDY

Overview

The Pa-O (ethnic group) National Army (PNA) took control over approximately 100 acres of farmland in a newly appointed Pa-O administered zone on the border area of Shan and Kayah State. The area is just 40 miles from the Loikaw Township in Kayah State. In total 24 household farmers were impacted through displacement of their farmlands, which occurred 200-300 metres from their households. The farmers, who are of the Karah ethnic group, had been farming this land since 1988-89. The land was taken with force, and at least 1 acre of farmland was destroyed. PNA officers entered the farmland armed with guns, and stated that the area was Pa-O administered and they would be taking control of the land. The farmers reported feeling threatened and frightened. There was no discussion, consultation, or compensation provided. Not even recognition of the farmers past land use in this area. The PNA are now occupying the area, they are living and cultivating there, they are constantly guarding the area. The land is close to a good water source, the Da Beh Canal.



"If the officers proved their right to the land, through negotiation not force the farmers would be ok with letting the issue go" - female, smallholder farmer, 42 years

Pa-O Self Administered Zone

The farmers were not informed that the area had become a self-administered zone of the Pa-O. Photo evidence was taken of the armed soldiers entering the farmland, their presence is now very strong. Only farmer had land registration (Form 7, for 4 acres) however the PNA took this land, by stating it was legal to do so, with guns in hand. The area of Sei Si Township has been in conflict since 2003, as a result no farmers dared register their lands. According to the constitution of 2008, to avoid conflict between central government and ethnic armed groups, Sei Si was designated a Pa-O Self Administered Zone, it was officially declared in 2010. Most people of the ethnic group Pa-O are now residing in this area. After the farmers met for an interview with the Kanbawza Tai News Journal, a reporter phoned a Pa-O and spoke with a defence officer, who informed that the land has

⁹⁸ UNDP 2014 "Local Governance Mapping: The state of local governance trends in Kayah", United Nations Development Programme

⁹⁹ *ibid.*

Land Conflict Timeline

*Since 2012, farmers verbally raised the issue of land registration to GAD;

2014:

*In May 2014 villagers followed formal procedure, requested to the VTA for land registration. The VTA stamped the letter and submitted to the GAD;

*In June 2014, PNA arrived at the lands with guns, and threatened farmers them to leave;

*In August 2014 PNA built a house on the land, and attended 2-3 times that month threatening the farmers;

2015:

*In February of 2015 GAD attended to record the boundaries, investigate the land, and stated that the farmers should wait 3 months for a response.

*Late February 2015, the farmers can not farm their land due to fear;

*20 March 2015 a plea letter was sent to Shan State Government, and Pyitaugsu Hluttaw;

*In April the Shan State Government responded by requesting the Kayah Special Office investigate the issues;

*April 24 2015 the PNA took full control over the land by setting up a base for the storage of weapons and blockaded 30 acres of additional farmland areas.

*During April 2015, the PNA commenced collecting taxes for using the nearby road ways.

*29 April 2015, a group of farmer representatives attended Taunggyi to conduct be interviewed by a reporter of Kanbawza Tai News Journal, however the story was not printed.

*On May 10 2015, the Kayah Special Office came to the area to investigate, and said they will report to the Shan State Government.

*On 30 May 2015 a GAD officer attended the area in response to the communities original registration request, to inform them that due to the conflict the lands are not applicable for land use certificates.

*As of 2 June 2015, the farmers have received no response yet from the Government at the Ministry or Hluttaw levels.

*In June, the PNA threatened with guns a group of 20 who attended this meeting including NGO staff, local farmers, and Taunggyi farmers association, at the location of the conflict.

Impacts & Community Voices

Physical harm

Some farmers, and daily workers attend the farmland, some have been beaten, and farmers assets such as farming equipment have been stolen. The farmers want justice through negotiation rather than being threatened to leave.

Livelihoods

They have earned small amounts of money from the previous harvest however the impact will be most strongly felt in 2016. They only now possess a small amount of assets, and income for their future. The land was their main source of livelihoods, they only know how to work their land and are worried for their future.

Mental Health & Injustice

Several farmers are working tirelessly each day to have the issue resolved, they feel angry, and disempowered, and silenced. The government have provided some support – through the investigation by the Kayah Special Office, they feel

some hope from this. However they have come to distrust authority, they even have concerns that the media are cooperating with the PA-O. Some farmers expressed feeling disappointed, and depressed, unsure what their future holds. They would respect a decision from the government. However, they have had no resolution or closure. So they continue focusing on getting their land back.

Safety Concerns

Their safety is a stronger concern to them now than in the past “we have to open our eyes

and ears”. Starting from the moment they wake, they are worried about their land, and can not fully focus on their livelihoods. The land is heavily secured by the ethnic group, they only return with a group, if its necessary to assess the situation. They are concerned for the greater safety of all in the region they feel as though PNA are like an insurgent group. They are aware that the PNA know where they live.

“will I be shot today by the PNA?”

LAND CONFLICT & RESOLUTION MINI CASE STUDIES

been allocated as a military base for the PNA operations.

Daw Law Khu Village

According to respondents, land is highly important to them, particularly as it is the source of many villagers access to livelihoods. In 2012, the Military acquired part of the village farmlands for a military base. The Military took control over land, without physically displacing the villagers houses, however they accumulated fertile land which the villagers were dependent on. There was no adequate consultation, relocation support or compensation. One respondent stated that some villagers received documentation informing them of the upcoming eviction, however the remaining respondents stated they had not heard of any documentation. All respondents stated that livelihood

*"If we try to cultivate on the lands we will be punished" -
smallholder farmer, male 42*

situations have worsened as a result including social, health and education status, and local people have not seen any benefits of development in their village. Civil society such as CSOs, Farmers Union and the media have provided some support to the villagers. They have tried to resolve the issue by demonstrating, and speaking to civil society, they continue to try to received their land back.

Htay Htu Phya Village

In this village there have been two cases of land conflict, involving the Military and the Irrigation Department. In 2001 Military battalion number 427, removed cultivated land from farmers for "national security". It is estimated that 50 acres removed by threat and force. One respondent stated he lost 2 acres of farm land. Land was removed with no compensation provided, the community has not improved as a result of development, the situation is worse. In 2014 the Irrigation Department removed cemetery land and returned this land to a past user for stone breaking. The villagers did not receive compensation or consultation. Some villagers try and cultivate the land regardless. The villagers are facing difficulties in regard to their livelihoods, they believe that the two land conflicts have negatively impacted on their livelihoods, education and health. Concerned villagers continue to engage with a CBO in attempt to reclaim their lands, however there has been no resolution. They have held meetings to plan the next steps. They were drafting a letter to high officials in the government to request their lands back. The village leaders will be conducting the negotiation. Their first priority is to retrieve the cemetery land, as it holds great significance to them. Overall they are concerned for their future land security.

"We hope with time we will get our land back" -

4.5 Taninthayi Township, Taninthryi Region

Taninthryi region, is one of the most sparsely populated areas in Myanmar with 1.4 million people, 76 percent of the population lives in rural areas. Economic opportunities low, and poverty rates are at 33 percent, significantly higher than the national average.¹⁰⁰ The Taninthryi region is rich in natural resources namely metals, and natural gas. The economy of the region is defined by agriculture, forestry, mining, hydro power, and fisheries. A gas pipeline snakes through the region from the Yadana and Yetagun off shore gas fields. Rubber and palm oil plantations have increased recently, however have been linked to deforestation, displacement and land displacement. Since 2013 Taninthryi has 9 percent of the population with access to electricity, rural communities the estimate is just 4 percent, compared with the national average of 31 percent. Some parts of the region continue to deal with impacts of land acquisitions and long-lasting conflict, with a total of 70,000 IDPs in the region.¹⁰¹

LAND CONFLICT & RESOLUTION IN-DEPTH CASE STUDY

Ton Kar Village; Ton Kar Village Tract

This village has faced two key land conflicts involving reduced access to land and livelihoods. This is a unique case as most of the village population are women. Nearly all village affairs are led by women. However they spoke of challenges in improving livelihoods in the village. The researchers chose to focus on hearing the voices of the women in this village.

Prison Centre

In 1997 the prison department collaborated with the VTA of Ton Kar Village to acquire land to set up a correctional / prison facility. This land had been previously used for grazing livestock. They received no compensation or relocation support. After the prison was built and commenced operations, there was an incident where some of the livestock entered into this area, and destroyed some plants. The prison department officers ordered the villagers to compensate the damage by working for free in the prison area. Villagers feel an injustice has occurred. They are eager to understand their land rights, based on the laws in place. The impacts have been compounded for these villagers, as they now face two land displacement cases.

"we are sad for the situation, but we do not know how to deal with the issues, and feel afraid" - female farmer, 55 years

¹⁰⁰ UNDP 2015, 'Local Governance Mapping, The State of Local Governance: Trends in Tanintharyi', United Nations Development Programme.

¹⁰¹ Ibid.

Palm Oil Plantation

Women's Perspectives

In 2008 a private company acquired land for a palm oil plantation, previously used as farmland for household livelihoods, in Ton Kar Village. 40 farming households were impacted, around 100 acres were removed. The land was removed by the company without community compensation or consultation. When the company accessed the land the villagers ran away for fear. As in many remote areas, the community did not have land use certificates. Informal customary tenure practices were followed, and the community recognised the land as their own. Farmers had planted teehoo (a type of bean) on the land that was acquired by the company. The respondents indicated several impacts. Their socio-economic status had decreased, with reduced access to key resources including land for farming teehoo, and grazing land for livestock animals including chickens and pigs. The farmland was abundant and fertile. Now they are required to walk 2 miles away from the village to farm on other lands, the soil there is good. Some villagers' situation has not worsened however others have been impacted significantly. Some households, after being displaced of their access to key resources have moved to the nearby village. Others are working on the new lands. The community has been afraid to seek redress or assistance. However they have been speaking with an NGO about the situation, as they want their land back. The villagers have sensed that injustice has occurred.

"It is ancestral land, handed down to families over many generations" - female farmer, 53 years

"Some of those company owners are now in parliament (Hluttaw)." - female farmer, 39 years



Ban Kuate, Dwe Tan Kone, & 6 Mile Villages

Palm Oil Plantation

A private company acquired land in 2003, for a palm oil plantation. They accessed land from 3 villages, spread across some total area of 3,000 acres based on villager estimates. All farmers depended on this land for livelihoods, for cultivating vegetables, and other plants including teehoo (type of bean), mango, coconut, rubber, and gwan (a stone for chewing tobacco). They do not have land use certificates, despite paying taxes, and holding copies of tax receipts. There was no prior consultation, compensation or relocation support proved to the villages impacted. However the VTA was informed, the VTA did not communicate with the villagers. The impact of being displaced from access to land resources, has resulted in several villagers shifting from being self sufficient farmers to undertaking casual labour. 10 people are now

The respondents indicated that the company representatives removed the farmers through threats and stating that...
"this is no longer your land"

working for the company as casual labourers, they receive around 5,000 kyat a day, however it is not secure or permanent work, it is seasonal work, only strong workers can apply. Some families can no longer afford to send their children to school.

"we are afraid and don't know what to do".

Some are engaging in illegal logging to make ends meet. Migration to other villages or nearby towns of Taninthryi and Myeik has

occurred also. Women are no reported to be working harder in the past to support their families. Many feel sad, and sorry for the situation. The researchers commented that the villagers affected now face a challenge in supporting one another to adjust and adapt to this situation. Respondents were sad whilst sharing their accounts.

Ban Lin Village, Ban Law Village Tract

In 1981 the military government led by U Nee Win allocated a 30 year state-lease for a coconut oil plantation, of approximately 1000 acres. The VTA and the private company, consulted together without community involvement, no compensation was provided. The project plantation is in close proximity with the village housing. The villagers have faced several impacts. Several villagers have been forced into casual labour, whereas in the past they were planting seasonal crops and long term plans such as mango, rubber, gwan, teehoo. The village no longer has common resource land for grazing their animals. Villagers have been desperate for land, that they started cultivating over

"according to the details of the project the plantation is required to be at least 2 miles form the village but In reality it surrounds the village" - *smallholder male, 62 years*

cemetery land. Over the years coconut trees have died within the plantation area, some farmers (mostly younger people), have been utilising this land to cultivate. Some also plant in-between the coconut trees. However this has caused tension in the village between the older and younger generations, as the older generations do not want trouble to be caused between the company and the villagers. Most villagers are waiting to reclaim the land. It has now been over 30 years since

the land acquisition was granted, the lease has finished. The villagers were hoping that the land would be returned to the them. Some villagers have held on to their land tax receipts as proof that they should receive the land back, particularly as the coconut trees are old, and respondents suggest the plantations are no longer producing coconut oil. Some are consulting with NGOS, to learn about land laws and their rights to claim their lands back.

5. DISCUSSION

Meikhtila Township, Dry Zone

▶ **Military control and land administration...(or lack there of..)**

Statutory land administration is poor in the villages examined, in addition villagers lack knowledge of current land laws, and related procedures - including registration (particularly in areas most impacted by military practice bases). This is due in large part to limited support in the past from the government, and the history of military expropriation of land in these areas. Despite recent reforms, villagers remain mistrustful and in some cases fearful of authorities, and related legal structures/processes. This could not be made clearer by the common belief held of the farmers group of Kyaok Oe Village that registration provides no additional land tenure security than without it. The Military have a long history of expropriating land, in some cases using threats, in all three villages. This unlimited power utilised by the military, legitimised through the constitution, has broken down relationships of trust between communities and authorities. As a result many farmers are less likely to register their lands, and have therefore faced difficulties with receiving agricultural loans, and inter-community disputes in relation to selling and mortgaging land. Most villagers continue to have limited opportunities to engage in decision making around land within the formal frameworks as all land use / management decisions must be approved by the VTA. Villagers therefore face challenges raising concerns to the government in regards not only to land, but water access, and health issues.

▶ **Military and government land expropriation with no consultation or compensation...**

In all of the villages displacement has occurred due to military capture of land, or government-led expropriation of land for development projects. Villagers were not adequately consulted, nor provided with compensation. Even in the case of a recent development project initiated by the government, no consultation occurred with the whole community, although some compensation was made, the land rights of the villagers were not considered. The villagers expressed their need for water, if the government discussed with the community before commencing the project, they could have increased access to water for the villagers via the Dam at minimal cost, as a compensation strategy. There are currently no clear or adequate avenues for access to justice for villagers attempting to claim compensation or retrieve their lands back. Impacts vary depending on the village. Some villagers lost farm land and common property lands, some households were also displaced, others were stripped of their rights to register land. Villagers remain unsupported to deal with the ongoing consequences of reduced access to land and resources, and displacement. Reduced access to common property lands, is likely to continue even with the more reformist government, as current land laws do not recognise common property land use practices, these land areas can be classified as vacant lands under the Vacant, Fallow and Virgin Land Law of 2012. This is a key issue impacting most significantly on women, who tend to rely on these lands for their livelihoods to graze animals. However despite displacement by the military, some villagers are able to differentiate between the past military actions and the new government approaches, and are beginning to see the benefits of engaging with formal land governance administration structures and processes.

▶ **Customary and formal (statutory) structures are becoming more and more intertwined..**

Despite distrust some farmers are engaging with the formal government system. For example farmers attend the courts to resolve divorce issues in relation to land, whereas others will refer to elders and family members for customary based advice on how to divide land. With the past absence

of formal support and structures, customary land tenure has guided most land tenure decisions. In regards to conflict resolution village leaders have consulted with the disputing parties, and informally re-issued boundaries for equal access. On the other-hand, some villagers are applying for registration and some indicated a desire to learn more about land laws, however most of those respondents were medium or higher scale farmers, or in positions of leadership. In addition the VTA played a key role in resolving land disputes in relation to military expropriation, however with limited consultation with some parties. Therefore customary and formal land governance structures are slowly becoming intertwined in the research areas of Meiktila; which could lead to confusion, and potentially the undermining of customary practices, and power dynamics. Although it could lead to more innovation, and greater support for local decision making, if integrated in an effective way which is supportive and considerate of existing land governance structures, practices, and norms.

Pyapon Township, Ayeyarwaddy Region

► Limited accessibility of land administration services for vulnerable people..

Implementation of land administration through formal land governance structures has increased in Pyapon Township, particularly in relation to registration, boundary recording, and conflict resolution. However, significantly power dynamics reduce the accessibility and influence that vulnerable groups have in engaging with these structures. However, active engagement by vulnerable villagers in land administrative decision making or processes is low, villagers tend to refer to the village authorities rather than take alternative approaches such as attend the township departments, or seek knowledge of the land laws from experts. Land service agencies are not accessible to poor and vulnerable groups (as they exist at the township level). The law requires that villagers to go through local land governance structures for approval to reach the township level, which reinforce existing and create new power structures. However, as a result of the governments programme to issue land use certificates to farmers within areas throughout Myanmar, Pyapon farmers have high levels of registration; however most of the vulnerable groups are small fisher-folk with limited access to land and water resources. Constraints exist relating to the highly controlled management of waterways and surrounding lands. Holding a minority religious status (Islamic) was a barrier to land registration in one village, as identity cards are a prerequisite to land registration, those refused NRC cards on the basis of their religion, were unable to apply for land use certificates. Although this did not provide a barrier to receiving an Agricultural Loan, and did not reduce the faith in the system for these farmers, they feel secure in their land tenure. Therefore the flaws of the current land administration system are not widely understood, such as the fact that the law provides minimal protection to smallholder farmers and fisherfolk, and of the landless attempting to access land for production use other than what is legally prescribed. Land administration has improved for those with influence and power, however the level that it has supports vulnerable people is not yet clear.

► The impact of land management committees on land distribution...

Land Management Committees at the village tract level have been authorised with significant control over management and distribution of land (responsible for village level approval for registration, land transactions, agricultural loans, and conflict resolution). Members are predominately elite villagers and influential people. Knowledge of the land laws, and good connections with village authorities and committee members, assists in acquiring access to land. A large land holder in Kyan Kan village was able to increase his land holding through identifying vacant land, isolating others from it, cultivating it, then demonstrating productive use, in accordance with the law to register. Vulnerable members (landless and small fisherfolk) instead followed procedures, and requested to the village authorities for access to this vacant land for common property cultivation, and fishing. However they received no response - the exclusion was presumably due to their limited power in decision making;

since the land was being contested by a large holder farmer with power and influence; with capital to invest in “productive” land use. This is another example of how common property / customary land use practices continue to be seen as less legitimate than private owned property for paddy production. Vulnerable members are thereby excluded from improved access to land for livelihoods. Research suggests that landlessness is on the rise in Ayeyarwaddy region alongside increasing land fragmentation. The findings from Pyapon Township reflect this. Respondents report that land value is increasing, whilst access to affordable credit is minimal, and large holder farmers are increasingly obtaining more access to land. This suggests a shift in concentration of land from small holders to medium & large sized farmers in this area. The current land administration system only reinforces this trend, enabling elites to manage and control access over land and livelihoods.

Hakha Township, Chin State

▶ **Large tracts of land utilised by local communities are not formally secure...**

Large tracts of land relied on for livelihoods have no registration or formal tenure security. All common property resources such as forest land, grazing and land used for shifting cultivation, are legally not recognised by the government. Chin State recently emerged from conflict, and is increasingly opening up to development projects, several have been planned including an Economic Zone, Tea leaf plantation, Dam Projects. Nearby to Hakha, within the Indian border there is town called Mizoram, where the geographic and climatic features are similar. In this area 101,000 hectares have been allocated to plant oil palm, and India’s policy is promoting smallholders to plant also (previously shifting cultivators). Communities are therefore increasingly vulnerable to large scale land acquisitions particularly initiated by the government and private sector, which follow legal definitions of land classifications; and thereby define the lands as Vacant or Fallow according to the recent Land Laws. Common property resources in an increasingly globalised world are always at risk of accumulation, therefore land rights protections are required to ensure access to livelihoods continue, to avoid accumulation of land by the wealthy and powerful that dispossess local communities of vital livelihood resources. In nearby Kachin State, land seizures by agribusiness and the military have dispossessed lands relied upon by ethnic groups for livelihoods. The 2014 draft land use policy in Myanmar aims to recognise customary practices of ethnic groups such as shifting cultivation, however no respondents had heard about the draft, neither had they been invited to attend consultations in nearby Hakha Township. This suggests much improvement is required before farmers feel secure in their land tenure, and their future.

▶ **From reliance on common property resources to private property..**

All households have access to land through the practice of shifting cultivation. Land is allocated for this practice through an annual village mass meeting, with the aim of distributing land parcels equally or depending on household needs. Deliberative democratic processes are utilised to make the final decisions, based on consensus building. However the findings suggest that villagers are increasingly looking toward privately owned land tenure arrangements. This shift is a result of numerous factors. Through the formal recognition of terrace land, villagers are increasingly perceiving these lands as more secure than common property land. The undermining of customary practices by placing village chiefs within the government’s hierarchical governance system increases the validity of formal land tenure security over common property, whilst reducing land and resource autonomy for those practicing shifting cultivation. Green-based NGOs have been undertaking awareness raising campaigns against the practice of SC by highlighting sustainability issues in regard to protecting the land from degradation and deforestation. However, several research studies demonstrate in contrast to this view that shifting cultivation can be a sustainable land use practice. Villagers were found to be re-iterating the NGO rhetoric. In addition the findings suggest internal

community challenges such as labour shortage, ageing population, rising land value, greater demand for proximity to services, and increasing population are influencing the shift. These factors together act as a disincentive to the continuation of the practice of shifting cultivation. With an increase in private land ownership, wealthier families and formal structures are also challenging the validity of customary land practice.

► **Possible impacts of a shift from shifting cultivation to permanent agriculture...**

Informal customary land tenure systems recognise the benefits of nurturing land through communal responsibility, upheld by values of sustainability and conservation that underpin the practice of shifting cultivation. This customary practice also provides equal access to all villagers, power over land is more evenly distributed and thereby limits land conflict. Challenges however, are faced for those operating with leadership roles within both informal and formal systems. For example village chiefs are often assigned the formal role of VTA, requiring them to subscribe to both formal and informal systems. Customary practices governing over land and related resources have been undermined as a result. On the other hand leaders with customary tenure systems are also challenging the formal system, for example by raising issues in regards to land classification and the need for recognition of shifting cultivation. Furthermore, social and political structures, and decision making practices are shaped by customary practices such as shifting cultivation. Abandoning this practice could risk increased inequality, land conflict; and vulnerability to land acquisitions of surrounding common property lands. Increased private ownership of land in other areas of Myanmar has been linked with increased land conflict, and inequality between larger land holders and smaller land holders, and landlessness. It is therefore essential that customary land tenure and practices receive recognition and support.

Loikaw Township, Kayah State

► **Contested landscapes and forced evictions...**

The farmers in the Pa-O land conflict case were victim of a wider conflict occurring in various areas across Myanmar, over control and access to land and resources between the central government and ethnic groups. Through peace negotiations the central government of Myanmar allocated land to the ethnic group Pa-O in the form of a self administered zone. As a result Kayah farmers were recently forcibly displaced from their primary access to land and livelihoods. The fact that the displaced farmers hail from Kayah State and Karenni ethnic group, and were farming within both what used to be Shan State, and now Pa-O administered land, was likely to factor in the justification of the aggressive approach of the PNA. Due to a history of conflict and instability in this area, many farmers opportunities and accessibility to services to register land have been minimal. It is unclear whether having registration would have provided them with more land tenure security, as the Pa-O did not recognise their rights in any case. Therefore within both fragmented and problematic governance frameworks, the farmers had no formal claim to the land, despite farming the land since 1988. Without rights, the administering bodies provided them no protection during displacement. Attempts to access justice have been thwarted especially with no adequate avenues for redress. A | I land conflict cases examined in Kayah highlight issues related to past conflict between central government and ethnic armed groups, involving military capture of farmland by force, with no compensation or consultation. Villagers are significantly powerless in these situations, with no recognition of their land tenure rights. The current government has acknowledged the widespread issue of military land evictions, and consequently initiated steps to assess these cases, and present recommendations for resolutions and retribution. However for the cases in question this has yet to be actualised for those farmers involved in this research, it is unlikely that a resolution will be obtained from the armed groups either.

► **Strong community resistance & response..**

Vulnerable groups are often the most affected by displacement and dispossession, such as reduced access to livelihoods, social, and health (mental and physical) impacts. In spite of this several farmers from the Pa-O case have mobilised to promote justice and reach a resolution. They have taken tireless steps to raise their issue with key stakeholders that can affect change such as the government, civil society, and the media. They utilised multiple forms of communication strategies; through media, letters to government; meetings with farmers groups; discussions with government officials. What stood out from their voices was a strong sense of injustice and resistance that regardless of whether or not the land is contested, the measures taken to dispossess them from the land was “wrong”. The farmers are willing to negotiate a resolution peacefully through legal procedures. In particular they are targeting key decision makers for an explanation for the treatment of aggression and violence. The farmers are demanding transparency, accountability and restitution for the inadequate compensation and consulted which occurred. They want to know their rights, and to receive recognition of such rights from the relevant duty bearers. Presumably the increased role of NGOs and CBOs in the region has assisted this approach. The farmers group have demonstrated resilience, furthermore they are led by a female smallholder farmer. Although they are yet to reach a reasonable resolution, they have also demonstrated empowerment in the sense that they are actively engaging in the issues, they have some hope in their collective action. They are effectively participating in a wider dialogue, and contributing to the current debate in relation to land rights in Myanmar. This advocacy approach is different from the other cases in Kayah state observed by the researchers - who expressed mostly their despair, and powerlessness to actively participate in addressing the issue. The injustice for the other farmers occurred prior to the Pa-O, which suggests that perhaps farmers in Kayah are mobilising for their rights more now than in the past.

Taninthayi Township, Taninthiri Region

► **Displacement & the role of the VTA in facilitating large scale acquisitions...**

In Taninthiri region, displacement and reduced access to land and livelihoods arose as the key issue. There are many commonalities faced by all villages impacted by dispossession in this area. Each case involved dispossession of land without consultation, compensation or relocation support. Companies were provided land concessions often for agribusiness ventures, mostly palm oil production. Negotiations at the village level occurred between the VTA, and company representatives only. Impacts faced by villagers involved reduced access to land and livelihoods, and a common sense of injustice, and powerlessness. Many shifted from farming to the often more insecure livelihood pursuit of casual labour. Which demonstrates evidence of an enclave economy emerging in this region where many vulnerable rural households are forced from their lands to participate in casual labour for the export market. The sheer disregard for farmers access rights is clearly demonstrated particularly through the case of the Prison Centre. Farmers access to grazing land was removed, and as a result when their animals entered into the Prison Centre, farmers were forced to work at the prison to restore the damages caused by their animals. Women were particularly vulnerable in and faced two cases of land acquisitions, in a village led predominately by women. Women have limited access to rights over land, and are faced with social discrimination when demanding such rights, which allows for easy capture of their lands. One agribusiness project removed their access to farmland, the other removed their access to grazing land. The fact that they were women potentially played a role in the ability of the company and additional enablers (government) to displace them. The VTA who negotiated with the company did not live in the village, he failed to represent their

needs adequately. Most respondents report feelings of “hopelessness” and “powerlessness”, particularly as they are not aware of their land rights, or of the avenues for redress.

6. Conclusions

Land is a vital resource in Myanmar, equality of access and control over livelihoods is essential to ensuring shared prosperity in Myanmar. This requires good land governance, participation of civil society, and responsible actions by the private sector. The voices of the most vulnerable in regards to land issues must be realised, to inform land policy change in Myanmar. This research highlights the voices of local communities from 5 states/regions in Myanmar. Each faces different complexities of Land Governance issues however several parallels can be drawn specifically in relation to Eviction and Relocation; Land Conflict & Resolution; Land Administration and Customary Land Tenure (Shifting Cultivation).

Eviction and Relocation in Meiktila Township stemmed from military and governance past land expropriations.

- ▶ Land issues for villagers were linked to **displacement impacts** such as reduced access to land, common property resources, **livelihoods, and land scarcity**, which has contributed to difficulties to maintain adequate production levels for livelihoods, when combined with other facts such as drought.
- ▶ **Women were significantly impacted** as common property land (an important livelihood pursuit of women to access land for grazing livestock) was targeted for lands to be converted / expropriated for state use. These land types are considered as less significant formally due to past land laws and regulations that prioritise paddy production over other land use and livelihood pursuits.
- ▶ Displacement lead to migration and the increased exposure to high risk economic enclave areas in Thailand, involving **women and labour exploitation**.
- ▶ Villagers also **suffered culturally and religiously** from displacement when land utilised by a monastery was expropriated for a development project.
- ▶ **Land rights were stripped**, when the military captured land set aside for military access to practice sites. Despite the land never being used for such purposes.
- ▶ Military removal has had long lasting impacts in terms of communities **sense of land security**. Today, villagers continue to believe they have no secure land rights even if they register their land through legal channels.
- ▶ **Distrust for government** and related land processes is another key impact of displacement, although this is not the case for all villagers.
- ▶ On the other hand some villagers demonstrated a **shift to engage with government** procedure in formal processes such as registration and conflict resolution mechanisms through the VTA. Mostly more educated and medium scale farmers.
- ▶ Authorities **failed to harness the opportunity to engage with communities for benefit sharing** in a recent development project, and instead created more distrust through lack of adequate compensation and consultation processes.
- ▶ Displacement impacts such as **reduced access to land and forced evictions** by authorities/ companies are the key issues facing the villagers in Taninthryi. Impacts included reduced access to common property and farmland utilised for livelihoods. However in some cases villagers reported improvements in new relocation areas.
- ▶ Many farmers travel long distances to access livelihoods. **Fear and security** concerns continue to impact villagers. As a result community response has been minimal. There are no clear procedure's or legal frameworks to support avenues to seek redress, **a women-led village stood out as facing significant impacts** due to two forced evictions from land and livelihoods.

- ▶ **Casual / insecure labour** has been an only option for some, where smallholders become co-opted into an emerging enclave economy for palm oil production and export.

Land conflict & Resolution was a key issue for three regions in particular: Pyapon Township; Kayah State, and Tanintharyi Region.

- ▶ The **history of armed conflict** over land and resources between ethnic groups, military and the government of Myanmar has shaped land access and distribution in Kayah State. Past and current land conflict involving the government, military and ethnic groups are a common land issue facing vulnerable populations in Kayah.
- ▶ Significant impacts of land conflict and displacement include physical harm, reduced access to livelihoods, mental health problems, and safety concerns. Despite community resistance and response to land conflict, current legal frameworks and processes have provided **little avenues for redress**.
- ▶ Issues relating to land conflict in Pyapon are linked with **poor land administration**, boundaries are unclear, conflict resolution mechanisms are lacking, and wealthy / large holder farmers stand out as having more access and control over land and livelihoods due to their positions of power within the formal and informal governance systems.

Land Administration is an issue facing all research areas, particularly in relation to access to land registration for the vulnerable, and inadequate information sharing, hierarchical decision making.

- ▶ Meiktila have **low levels of registration** as land administration is poor, often involving limited consultation with villagers, poor information dissemination, poor access to information, and limited contact from government officials.
- ▶ **Benefits of registration are not clear** to villagers, who overwhelmingly distrust government structures. On the other hand there were some villagers who want to be more involved in decision making, and are engaging in processes such as registration, divorce courts and attending land law training.
- ▶ Registration for farmland in Pyapon is high due to the government initiated distribution of land use certificates. However some **discrimination cases** were found where Muslim farmers were refused registration.
- ▶ Most land-based decisions are made by a land management committee in Pyapon consisting of elites, **vulnerable smallholders / fisherfolk were unaware of this committee** or its functions.
- ▶ Farmers have **increased access to credit** due to government initiated agricultural loans applicable to those with registration.
- ▶ In Pyapon, **awareness of land laws was higher** than in all other research areas, which is likely due to the increased engagement of government in land administration processes such as the issuing of land use certificates, and land management committees.
- ▶ Despite the increase in land registration in Pyapon access to land through the security of **formal land tenure is low for women**. None of the women respondents had land registered in their name.
- ▶ The local **land governance structures (Village Tract Administrator)** facilitated in the process of large scale land acquisitions predominately for Palm Oil Plantations in Tanintharyi Township villages, failing to consult with concerned villagers, and thereby **failed to represent their needs and interests**.

Customary Land Tenure (shifting cultivation) Every household has access to land through the main livelihood customary practice of shifting cultivation in the Chin villages.

- ▶ However the practice of Shifting Cultivation, more specifically practices that allow land to fallow, is not legally recognised, which villagers are concerned about. Therefore much land relied upon for livelihoods is **insecure and vulnerable to land acquisitions**.
- ▶ Traditional practices that are essential to the right of ethnic and indigenous groups to maintain their culture are vulnerable to be weakened. Access to land and resources is essential for the Chin ethnic group to maintain their culture and livelihoods.
- ▶ However, villagers are **facing challenges with shifting cultivation practice** due to a combination of factors: Increased legitimacy of private land ownership; undermining of customary leadership and practices, ageing population, rising land value, modernisation and labour shortage due to youth migration; and increasing pressure by green-based NGOs to become more environmentally “sustainable”.
- ▶ **Land conflict is non existent** in the villagers due to communal decision making based on deliberative democratic values such as consensus building. In addition land is distributed equally, which has reduced the incidences of conflict.
- ▶ **Private land ownership is more secure** due to increase in presence of formal land tenure systems in Chin. It is increasing, alongside a trend toward larger land holdings in the hands of a few.
- ▶ Despite an increase in formal land tenure, **Customary land tenure is the predominate land governance system**.

7. Recommendations

Land Governance Reform in Myanmar must consider the needs of local people based on each context, particularly considering the voice of the most vulnerable in terms of land issues. **A human rights-based approach** to land policymaking is essential. It has the potential to promote access and control of land and natural resources for vulnerable people. To reduce trends of food-energy production and consumption which incentives and encourages large scale land acquisitions, displacement, and adverse incorporation of vulnerable people into enclaves of industrial agriculture, forestry, and food-energy enclaves. Land and related natural resources are essential to life, therefore States through public policies should approach such resources as a matter of human rights not merely for big business.

“Not About Us Without Us”



Farmers trying to block a bulldozer in protest against the fencing off of their land by a copper mining firm. Photo by Han Win Aung, The Irrawaddy Blog

National policy making should involve a space for debate and solution making in regards to the terms and direction for development. Reform must ensure that issues, concerns expressed by those most impacted by

“who has or ought to have, what rights, to which land, for how long, and for what purposes?”

land issues, vulnerable to displacement, leave an imprint on policy that gets adopted for to ensure equality for all during Myanmar’s current future development process.

The following are **recommendations for government, civil society and the private sector to consider**; to guide actions that promote the interests of the most vulnerable in Myanmar’s future development, as it is shaped and fundamentally driven by the ways that Land and related resources are Governed. Private sector recommendations are included separately, as *Mary Robinson the former UN High Commission of Human Rights* state “the issue of human rights is central to good corporate citizenship and to a healthy bottom line. Many companies find strength in their human rights records; others suffer the consequences of ignoring this vital part of corporate life. Today, human rights is a key performance indicator for corporations all over the world”.¹⁰²

¹⁰² UHCHR 2000 ‘Business and Human Rights: a Progress Report’, Office of High Commission for Human Rights.

Government should consider the following recommendations:

- ▶ Ensure that governance structures involve the participation of poor people, to insure that their interests are protected; for “people-centred” development;
- ▶ Be more accountable, disseminate information more widely in relation to land governance particularly with vulnerable groups, not just leaders and elites;
- ▶ Implement public policy that promotes effective access to land where poor, vulnerable and marginalised people have little or no access, through distributive and redistributive reform
- ▶ Implement public policy that protects effective access to land where this already exists but is or may be threatened;
- ▶ Protect the distinct right of women to their own land rights;
- ▶ Implement the UNFAO Tenure Guidelines on land, fisheries and forests;
- ▶ Improve local governance which incorporates and supports existing and effective customary practices;
- ▶ Protect the distinct right of ethnic minority groups, and other customary communities in minority areas, to their territorial claims;
- ▶ Recognise customary land use practices such as Shifting Cultivation and provide adequate protection of these practices;
- ▶ Implement policy that supports ecological land and labor uses in pursuit of productivity;
- ▶ Implement public policy to restore democratic access to land (restitution) in cases where people have previously lost such access for different reasons;
- ▶ Include clear measures within law and policy to remedy historical injustices;
- ▶ Implement new, and improve existing mechanisms that ensure access to justice for all including the poor, vulnerable, and marginalised;
- ▶ Incorporate in law with regard to large scale land projects the procure of ensuring free, prior and informed consent of impacted communities;
- ▶ Review public policies that incentivise and facilitate large scale land acquisitions, and focus on policy reform that prioritises the needs of vulnerable small holder farmers, those with limited access to land, and women;
- ▶ Ensure that legal mechanisms such as Foreign Investment Law’s have regulation parameters to ensure that private sector are fully accountable for protecting human rights, within their sphere of influence / operation;

Private sector should consider the following recommendations:

- ▶ Should protect the human rights of communities within their sphere of influence / operations;
- ▶ Should conduct social impact assessments prior to commencement through independent researchers;
- ▶ Should be involved in the important, best practice principle of providing free, prior and informed consent before commencing development projects;
- ▶ Respect the rights of communities to say ‘no’ to large scale land deals;
- ▶ Ensure community involvement in benefit sharing schemes.

Civil society should consider the following recommendations

- ▶ Continue to promote land governance reform that addresses and reflects the needs of the poor, vulnerable and marginalised, at all official levels;
- ▶ Advocate for the legal recognition of common property based land use practices such as grazing and forest lands, shifting cultivation practices;
- ▶ Support communities (particularly the most vulnerable) to be more informed on land laws and procedures for improved access to land by conducting inclusive and accessible Land Law and Land Governance Training;
- ▶ Support communities to engage in participatory approaches to land use mapping and planning;
- ▶ Defend the rights of the most vulnerable (particularly) when in having involvement in decision making in regards to land governance in their villages;
- ▶ Commission further research on land governance issues in Myanmar, by partnering with local CSOs;
- ▶ Conduct policy analysis on Land Governance issues on incentives to large scale land acquisitions (tax-breaks, foreign investment laws, land banks, trade agreements, special economic zones);
- ▶ Conduct policy analysis on Land Tenure Systems (legally or customarily constituted) to examine how rights to land are allocated within societies; focusing on who can use what resources for how long and under what conditions;
- ▶ Initiate multi-stakeholder platforms that establish with specific purpose for engaging with and monitoring the implementation of UNFAO Tenure Guidelines, with participation of public actors, civil society inter governmental organisations and private companies; that have resources and decision making powers to make legislative;
- ▶ Monitor and promote the rights of access for women to secure land access; record case studies of women who defend and advance their right to restitution from land acquisitions;
- ▶ Engage in coordinated land related campaigning; sharing planning, research and campaign actions;
- ▶ Engage and support CSO / grassroots campaign efforts to address key land related issues.

8. Annex

8.1 Research placement guideline example: LAND ADMINISTRATION

Placement Guidelines GROUP: Land Administration

1. Context and Rationale WHY THIS RESEARCH?

Overall research question:

“How do vulnerable communities in Myanmar access land rights, and what are the existing land governance issues?”

Reforming the organisations and practices responsible for land administration is one of the most difficult governance challenges in the land sector. Legal or policy reforms in any other area ultimately must be operationalised through the system of land administration. Efforts to improve land governance may directly target the land administration system. Reform may require the transformation of systems that have been operational in their current form for a long time and changes to an organisational culture that has developed around existing rules and procedures. Land administration includes the systems for land registration, land use planning, land management, and land related and property taxation.

Land registration: refers to the “front office / back office” concept which can restrict access to customers to staff who carry out the registration tasks.

1. State land management: maintaining up-to-date inventories of state land and its use.
2. Property taxation and valuation: updating valuations on a regular basis.
3. Land use planning: ensuring public participation and avoiding conflict of interest
4. Management of customary lands: improving record-keeping and simplified mapping of boundaries.

Understanding the barriers related to accessing land rights is linked closely with implementation of land law and policy embedded within the institutions and structures assigned as responsible for land administration. It is therefore important to understand in depth the land administration issues facing vulnerable communities such as barriers to land registration, participation in land management and planning decision making, and accessibility of vulnerable groups to land related information and records.

Research and analysis can assist civil society to produce strategies to promote improved land governance in relation to eviction and relocation; and ultimately to increase access to land and resource rights to local communities.

This Research will be used in a variety of ways:

Action Aid

- Research report as a program development tool in order to inform program strategy and implementation of activities
- Research report as an advocacy tool to governments, and NGOs for ways to improve land rights for vulnerable people

Researchers (YOU)

- Gather evidence from the ground in regards to land issues, for your understanding
- Learn how to plan and conduct research in the field on land governance issues
- Inform your future work with Land Governance eg. Action Plan
- The research document can be a tool for you to use with community and during advocacy related activities

2. Research objectives: WHAT ARE WE EXAMINING?

- To understand how land is administered at the village and township level including the processes and structures through which decisions are made in regards to land use, management and access (registration)
- To understand the ways that vulnerable communities access information in relation to land use, management and access
- To explore how decisions are made in relation to land at the village and township levels
- To examine how competing interests in land are managed
- To understand vulnerable communities knowledge and barriers to registration and accessing land related services

3. Research tools WHAT TOOLS WE WILL BE USING?

- Desk-based study
- Participatory land mapping (Power analysis, Stakeholder analysis)
- Qualitative research (in-depth interviews)

4. Research Methodology: HOW WILL WE USE THE RESEARCH TOOLS?

Step by Step

1. Review land related documents / laws/ policy; and review ministry documents to understand the local governance structures (desk based study)
2. Undertake research to understand the issues involved in the implementation of land administration in your area

Vulnerable populations; Land Administration decision makers: WHO TO INTERVIEW?

- small holder farmers, fisher folk
- women
- landless
- poor/marginalised
- Land Committee representative
- Village Leader

- VTA

a) Participatory Land Mapping methods

- power analysis with the community (who has access to administration services, and control over decision making, why and how?)
- stakeholder analysis with the community in relation to land and resource use, management and status of registration
- draw a map with the community outline areas of land use, registered land, non-registered land, landlessness

b) Qualitative Research In-depth Interview

Sample: 4-5 villages (5-7 people per village)

Question Guide (Themes)

1. Land Registration
2. Participation in decision making on land (land planning)
3. Access to land records and information
4. Knowledge of Land Governance structures

(please develop “open ended” questions for each them)

5. Research tips: WHAT SUPPORTING INFORMATION SHOULD WE REFER TO?

- Interview guideline
- Power and Stakeholder analysis guideline
- Action Plan: Research Steps

6. Data Analysis HOW DO WE MAKE MEANING FROM THE DATA?

What are the key findings?

- How do they relate to the key objectives / research questions?
- What common themes or patterns emerge based on the research?

Themes

1. Land Registration
2. Participation in decision making on land (land planning)
3. Access to land records and information
4. Knowledge of Land Governance structures

7. Presentation: HOW DO WE COMMUNICATE AND SHARE THE EVIDENCE WE GATHER?

Presentation of your findings and analysis
5-10 minute presentation

Presentation format:

1. Methodology
2. Key Findings (4 themes)

8. Report Submission: HOW DO WE COMMUNICATE AND SHARE THE EVIDENCE WE GATHER?

Due date: June 8th 2015

Report format:

- Introduction
- Findings
- Comments / Recommendations

9. Online resources: WHAT FURTHER INFORMATION AND RESOURCES ARE AVAILABLE?

United Nations Food and Agriculture Organisation / International Best Practice
<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

Eviction Case example online:

<http://qz.com/342395/a-canadian-mining-company-allegedly-booted-thousands-of-burmese-villagers-from-their-homes/>

Business and Human Rights Resource Centre:

<http://business-humanrights.org/>

Global Land Tool Network

<http://www.gltcn.net/>

Mekong Region Land Governance

Mrlg.org/

Land Matrix

www.landmatrix.org/en/

Land Core Group (FSWG)

<http://www.myanmarfswg.org/homepage/fullpost/land-core-group1>

Google Group: LCGmyanmar@googlegroups.com

(email to request joining their mailing list)

Land Core Group: Online Database "MILAFF"; Google account, send a request through Google groups; occupation land role; Land Laws, Academic Research, NGO Reports Land Conflict news

10. Contact: WHO TO CONTACT IF YOU NEED HELP??

Contact Persons:

1. **Claire Burgess (Research & Placement Coordinator)** Mob: +95 (9) 261 939 965
2. **Program Staff (Land Governance)** May Thi Ri Min han Mob: +95 (9) 4200 95955; Naing Aye San; Mob: +95 (9) 2626 76184
3. **Line Manager (current supervisor)**

8.2 Research Placement Concept Note

Land Governance Research & Training Concept Note

Problem statement and background:

Myanmar is a country with diverse ethnicities, geography, and is rich in natural resources including gas, oil, timber, and minerals. There have been a significant occurrence of **'land grabbing'** in Myanmar for large scale projects for development, agribusiness, mining and gas exploration (such as economic zones, infrastructure projects, dams, mining for jade, bio-fuels, rubber plantations, forestry), involving **displacements** with little or no compensation, **human rights violations**, and significant impacts for local livelihoods and **environmental damage**. Many key actors have been distinguished including military backed governments, national/foreign and multinational companies.

Poor land administration is another common concern raised by the communities. Adding to the already weak land laws/policies in Myanmar, the inadequate knowledge from both the government staff and communities, and the history of large-scale acquisitions and forced evictions all impact vulnerable communities significantly. **Women** are facing disadvantage as a result of laws or social practices, leading to insecure land rights. **Customary land tenure systems** and practices are not yet legally recognised in law, which make some local communities vulnerable to land acquisition. **Land conflicts** are widespread throughout the country because of poor implementation and access to adequate resolutions.

Current Land Reform process in Myanmar:

To secure access to land is arguably one of the most contentious issues impacting on Myanmar and the reform process. On October 18th 2014 the Government of the Republic of the Union of Myanmar released its draft of the new national land use policy. Once approved, the new policy will guide the development of an all-encompassing framework for the governance of tenure, and management of land and natural resources, including the collaboration of all land related laws into a National Land Law. The new land policy has unveiled specific intentions to recognize land use management and tenure systems in ethnic minority regions, and utilize resources to improve the land administration system. The government has highlighted the process of participatory land mapping to record and document land use, boundaries and tenure systems - to be inclusive of ethnic nationalities particular complex and sometimes in contrast with government concepts in relation to land ownership and communal spaces, with the aim of securing land tenure rights. *ActionAid Myanmar* has an opportunity to work together with the community to support vulnerable groups using VGGT's as best practice, to link communities and key stakeholders with the UNFAO's forums, and information tools whilst supporting and aligning governments bottom-up participatory land use planning approach.

Research and analysis is the first step to understand in detail the issues facing Myanmar in relation to Land Governance. It can assist civil society to produce strategies to promote improved land governance in relation to eviction and relocation; and ultimately to increase access to land and resource rights to local communities. This research and training program has been developed in order to ensure research from a participatory approach – gaining

insight from local Action Aid and partner staff / Fellows who are experienced and knowledgeable on land issues in the field.

Overall research question

“How do vulnerable communities in Myanmar access land rights, and what are the existing land governance issues?”

This Research will be used in a variety of ways:

Action Aid

- Research report as a program development tool in order to inform program strategy and implementation of activities
- Research report as an advocacy tool to governments, and NGOs for ways to improve land rights for vulnerable people

Research Participants

- Gather evidence from the ground in regards to land issues, for their understanding
- Learn how to plan and conduct research in the field on land governance issues
- Inform their future work with Land Governance eg. Action Plan
- The research document can be a tool to use during advocacy related activities

Research training and placement support:

During the Land Governance training participants will receive detailed training on Good Land Governance, Land laws and policy, and Research Methodology & Skills. Participants will receive support from the Governance Program team in the field at various stages of the research process. In order to improve their skills, support their learning and ensure quality data is collected. The research will then be developed into a research report, for advocacy and program strategy purposes. Participants will collect the data, analyse and then present as a report during the second round of training..

Research Participant Tasks:

Participants have received placement tasks based on a theme they are interested in: (Land Eviction and Relocation; Land Administration; Women Rights; Land Conflict and Resolution). Including the following methods:

1. Desk based study
2. Participatory Land Mapping
3. Qualitative Research
4. Analysis
5. Report/Presentation

Participants will receive detailed **Placement Guidelines & Package** to support their learning from the training including:

- ¥ Relevant legal documents
- ¥ Step-by-step research guidelines
- ¥ Research Questionnaire
- ¥ Consent Forms
- ¥ Power analysis and Stakeholder analysis hand outs

Participants will develop **Action Plans** for conducting the research in groups based on location and context specific challenges.

8.3 Research Survey: Demographics & Key Data

Survey Land Governance

Date: _____

1. Demographics

- a) Name : _____
- b) Age : _____
- c) Gender : _____
- d) Ethnicity: _____
- e) Township : _____
- f) VillageTract: _____
- g) Village: _____
- h) Social role: _____

2. Land Access

- i) Do you have legally documents of recognition of evidence of tenure?
- j) Y/N If yes: What kind of document and how much land do you occupy?

- k) How confident are you that your land rights are recognised and protected? (please circle)

1. Strongly Agree 2. Agree 3. Neutral 4. Disagree 5. Strongly Disagree

Comments:

- l) Do you have access to common land? (eg. forest, water, grazing land) Y/N

If yes,

- i) What type of land? _____
- ii) How much land? _____
- iii) How is this recognised? Please circle: customary / legally recognised (government)
- iv) Is it documented? _____
- v) Is your land register under your name? _____
- vi) Do you have inheritance rights to the land, if your husband should pass away?

