“Customary Land Tenure and Responsible Investment in Myanmar”
A Symbol of land

- land is symbolically prestigious in many societies
  - A means to power and a form of social security
  - A critical source of wealth and power
  - The single most important asset for the rural economy of South East Asia
  - Disputes and increasing demands have been a major concern of pre- and post-colonial governments

- The most significant land problems are associated with
  - issues of inequality
  - landlessness and poverty

- These factors trigger demands for land reforms
Secure land rights and food security and nutrition

- Secure rights to land are critical in achieving household food security and improved nutrition
- Secure land rights refer to:
  - rights that are clearly defined, long-term, enforceable, appropriately transferable, and socially and legally legitimate (Landesa, 2012)
- Increased agricultural productivity can enhance HH food security
- Empirical evidence illustrates positive correlation between food security and land rights
  - 76% beneficiaries HH vs. 50-57% non-beneficiary HH (India)
  - HH survey in Asia shows 70% food secured groups are owner-cultivators
Perspectives of land issues in Myanmar

• Market driven agriculture policies and recent land reform
  – “A microcosm of the current global phenomenon of land grabbing”
  – Issues of large-scale land concessions to both domestic and foreign enterprises
  – Many reports cover the issues of displacement and dispossession of land

• The current land laws and policies and existing legal framework
  – Benefits for whom?
Perspectives of land issues in Myanmar

• The post-independence era and through the socialist era (1947-1988),
  – farmers’ right to land tenure for cultivation were protected
  – any landlordism and large-scale landownership was not favored
  – land re-distribution to landless and poor

• After 1988
  – a new market-led land reform policy
  – reversed from equity to productivity
  – 1991 “Wasteland Instructions”
    • large-scale concessions of lands grant
    • the scale and scope of land appropriation and land disputes across the country increased
Two recent laws enacted in 2012

• The Farmland Law (Article 34)
  – Link to the VFV (Vacant, Fallow and Virgin land Law)
  – Permission to be reclassified as farmland

• The tenure security is weak
  – Ultimate ownership of all land by State (constitution)
  – Land use rights can be rescinded (Land Acquisition Act)
  – Resolution of disputes
    • Decisions of FABs (Farmland Administration Body) at Regional or State level
    • No access to the judicial power
      – Except disputes relating to inheritance of land use rights
VFV LAW

• The VFV law
  – lease for agriculture developments, mining, and other purposes
  – VFV land that is leased may not be mortgaged, sold, sub-leased, divided or otherwise transferred without approval of the Government (Art 16)

• 5,000 acres leases up to 30 years at any one time, up to a cumulative maximum of 50,000 acres
  – Can be rescinded by the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land though (CCVVFV)
VFV Law

• Lease to foreign investors or organizations consisting of foreign investors
  – only where citizens are not able to operate (Article 12)

• Recognize VFV land use without formal recognition by the Government

• Provide a mechanism to apply for the use of VFV land not utilized yet
  – A maximum area of 50 acres - based on the ability of the farmer family to develop and manage the land
Opportunities and Risks

• Access to land under Vacant, Fallow and Virgin Land Law
  – Private land property
  – land use certificate & registration system
• Rights include: sale, mortgage, exchange, inherit, lease
• No written policy on land use and tenure
• Farmers organisations can now be formed
• Open space for dialogue
Opportunities and Risks

- Parliamentary Land Confiscation Enquiry Commission
- Land Allocation and Utilization Scrutiny Committee
  - mandated to work on national land use policy
- LCG’s efforts to ensure smallholders right and sufficient public consultation
- Protecting Rights and Enhancing Economic Welfare of Farmers Law (FAP)
## Key Challenges

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Access to land?
Access to land?
For whom? given by whom?
Responsible investment?
Customary Land Tenure in Myanmar

- 70% population in rural areas use land as a major productive asset
- Majority of ethnic groups (over 20 millions of country population) use customary land tenure in Myanmar
Results of Study in 16 villages
(Haka, Mindat and Lashio Township)

- Communal land use systems
  - ensure access for all families in each village to productive assets
  - Strong sense of ownership and togetherness
- Management and governance: Collective Decision Making
  - All villages have capacity to plan and make common decisions on land allocation and use
  - Shared equal access for the agricultural livelihoods of community members
- It is a critical means for the poorest, most marginalized families
Results of Study in 16 villages 2
(Haka, Mindat and Lashio Township)

• Potential Risk
  – Increase in the transition from communal use systems to private land claim
• Customary land tenure and use systems need targeted and appropriate support from government
  – to maximize the benefits to the rural economy in general
  – to secure the livelihoods of poor farmers in particular
Farmer’s Voice

• “How do we live without this farmland? The authorities told us to give up our farmland... For me... if I have no farmland it means no food for my family. I can’t send my children to school and I can’t get any money to survive.” (Ko Aye .., farmer )

Key to consideration

The Home Country government must:

– Legally require companies to follow international responsible business practices including respecting land tenure

– A need for effective policies to regulate business / investment
  • Respects people’s tenure rights to local entitled resources
  • Operations ‘do no harm’
FAO Guidelines on Governance of Tenure

• A framework for States to develop strategies, policies, legislation
• RECOGNIZE AND RESPECT all legitimate tenure rights and the people who hold them
• PROVIDE access to justice when tenure rights are infringed
• PREVENT tenure disputes, violent conflicts and corruption
UN Principles on Business & Human Rights

• A global standard for preventing and addressing human rights abuses linked to business activity

• ‘State Duty to Protect’, govt. rules for business in relation to human rights

• ‘Corporate Responsibility to Respect’ a blueprint for companies on how to respect human rights

• Requires greater clarity in law and policy, on land access, land ownership, to protect rights-holders and business enterprises.
Recommendations

• Recognition of Customary Law
  – needs to be clearly stated in Government policy

• Recognition of the Value of Rotational Agriculture Systems
  – and their tenure needs to ensure productive land use

• Participatory National Land-Use Planning

• Balance of equity and productivity (growth)
  – Large scale and smallholders

• Protect Land Use Rights
  – Redistribution
  – Communal land tenure
Recommendations

- Recognition of the Equal Rights of Women to own, sell and inherit land
- Freedom of choice and voice
- Simple procedures and enabling environment for smallholders
- Transparency and Accountability
- Arbitration
  - independent dispute resolution mechanism accessible to all farmers
  - Allow the right to defence and appeal at court
Any questions please!

Thank You