



## Land and Law in Myanmar: A Practitioners Perspective Workshop Report and Recommendations

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Yangon

ရှေ့နေများကွန်ရက်

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## INTRODUCTION

The management of land as a state resource in Myanmar has been increasingly problematic, driven in part by a model of development based on Foreign Direct Investment in natural resources and agribusiness, as well as infrastructural development projects. As the demand for land (and its value) has increased, so has conflict over use rights, sometimes leading to violence.<sup>1</sup>

In July, the Myanmar Lawyers Network and Basil Fernando from the Asian Human Rights Commission (AHRC)<sup>2</sup> joined a two-day conference<sup>3</sup> involving over 30 lawyers from many areas of Myanmar, civil society networks working on land issues, international experts and government advisors on land, and Australian academic Nick Cheesman<sup>4</sup>. This report details the discussions that took place at that workshop and sets out some recommendations suggested by participants for addressing the problems identified.

### KEY RECOMMENDATIONS:

(See annex 1 for detailed recommendations]

#### (1) TO MYANMAR LAWYERS:

- a. Lawyers need to form strong networks and associations to support farmers, ethnic groups and community organizations.
- b. Lawyers need to develop new skills to participate in policy advocacy, including collecting data about current practices, and engage in a national debate about land rights.
- c. Lawyers working on land rights cases need to use all available tools to strengthen their case work (see annex 2 for a list of practical actions lawyers can take).

#### (2) TO CIVIL SOCIETY ORGANISATIONS:

- a. CSO's need to work with lawyers to understand the law regarding land ownership and use, how it is being applied and how it can be used to protect land rights and should share this knowledge with communities.
- b. CSOs should be involved in collecting evidence of the current relationships between communities and land; this will be essential for developing good policies and new laws.

#### (3) TO INTERNATIONAL DONORS:

- a. Donors must look beyond the letter of the law and information produced by the government to explore how laws are currently being applied and how the legal system operates in practice. Many challenges faced by lawyers working on land rights cases would not require legal reform to correct; international donors should demand immediate changes to remove some of the existing barriers to justice.
- b. International donors must translate information relating to land rights into Burmese as a minimum. Understanding of these issues and ongoing reform processes within Myanmar is currently very limited, with residents of Yangon and other cities able to access information far easier than people in rural areas; efforts need to be made to address geographic and ethnic differences in understanding.

<sup>1</sup>As for example the death of a policeman in Ma-U-Bin in 2013, the shooting dead of protestor Daw Khin Win at Letpadaung in 2014 and reported death of Saw Johnny and NLD member in Hpa-An in July 2015. For reports by local groups see [www.mylaff.org/folder/view/69](http://www.mylaff.org/folder/view/69). To find out about MYLAF see <http://www.mylaff.org/static/MyLAF FAO long.pdf>

<sup>2</sup>Basil Fernando is a Sri Lankan poet and lawyer. He was forced to flee Sri Lanka in 1989, and since then has lived in Hong Kong working for the Asian Human Rights Commission since 1994. He served under the UN in Cambodia 1992-94. In 2014 his 20 years at the AHRC was recognized when he was presented with The Right Livelihood Award. For more information see <http://www.rightlivelihood.org/fernando.html>

<sup>3</sup>Details of the structure and aims of the workshop can be found in annex 3.

<sup>4</sup>Dr. Nick Cheesman is a faculty member of the Department of Political and Social Change at Australia National University in Canberra and convener of the Myanmar Update Conference series. See <https://researchers.anu.edu.au/researchers/cheesman-nw?term=politics>

## LAND LAW IN MYANMAR - BACKGROUND

In 2012, the government enacted two new laws concerning land use rights<sup>5</sup>, and since November 2014 civil society has been actively engaged with a public consultation mechanism to draft a National Land Use Policy (NLUP). One of the recommendations of the NLUP is that a new comprehensive Land Law should be drafted that will make obsolete all other laws relating to land ownership, use, and acquisition. This is much needed, as the current legal framework is fragmented and contradictory with colonial laws and socialist/command state laws still on the books. The new 2012 Farmland Law allows land user rights and certification (titling), several administrative departments remain responsible for both allocating those user rights, and determining disputes. In addition, the VFV Law allows for administrative departments to determine land (often including common land and upland land used for shifting cultivation) as Vacant, Fallow and Virgin, and therefore subject to purchase.<sup>6</sup>

There is a common misapprehension that the law in Myanmar is a means by which disputes over land can be resolved. Given the number of cases involving farmers and other land users that lawyers are contesting, usually pro bono, this is hardly surprising. But lawyers take these cases, knowing they will not win, in order to test the judicial system and to indicate their demand for the rule of law, despite its apparent absence.<sup>7</sup> Lawyers attending the workshop had represented hundreds of farmers whose land that had been taken from them and not returned. The farmers are arrested under laws of trespass or protest, with the assumption that use rights over the land have already been decided. In addition, Courts routinely misuse the Criminal Procedure Code and other laws to extend sentences by piling on violations of different sections of the law to apply to one act. This situation points to a fundamental disconnect between what international organizations think is happening in terms of policy (rule of law), and what is actually happening on the ground (maintenance of law and order).<sup>8</sup> In effect, the justice system is replaced with an enforcement system that affirms unchallengeable administrative decisions.

### KEY AREAS OF CONCERN FOR LAWYERS:

#### (1) Current legal environment for advocacy in land-related cases:

The absence of mechanisms enabling appeal of administrative determination of land rights (for example judicial review) was a major cause for concern among workshop participants and an example of the impunity of the government. In the current situation there are many contradictory laws still in place, and yet still no means of contesting the decisions of administrative departments over the allocation of land use rights under the 2012 Farmland Law. It was pointed out that the 2008 Constitution allows citizens to appeal decisions made by the administration through application to the Supreme Court for a Constitutional Writ.<sup>9</sup> However, participants had applied for

<sup>5</sup>2012 Farmland Law and 2012 Vacant, Fallow and Virgin Land Law. [www.mylaff.org/document/view/2453](http://www.mylaff.org/document/view/2453) (English) [www.mylaff.org/document/view/2549](http://www.mylaff.org/document/view/2549) (Burmese) and [www.mylaff.org/document/view/2454](http://www.mylaff.org/document/view/2454) (English) [www.mylaff.org/document/view/2552](http://www.mylaff.org/document/view/2552) (Burmese). For a commentary on the laws, see Obendorf, 2012 "Legal Review of Farmland and VFV Laws" [www.mylaff.org/document/view/2451](http://www.mylaff.org/document/view/2451) (English) and [www.mylaff.org/document/view/2969](http://www.mylaff.org/document/view/2969) (Burmese)

<sup>6</sup>See for example, Obendorf 2012, op cit,

<sup>7</sup>Nick Cheesman and Kyaw Min San, 2012 "Not Just Defending: Advocating for Law in Myanmar" *Wisconsin International Law Journal* [http://www.burmalibrary.org/docs19/Cheesman\\_KMS\\_\\_Not\\_just\\_defending-ocr-tpo.pdf](http://www.burmalibrary.org/docs19/Cheesman_KMS__Not_just_defending-ocr-tpo.pdf)

<sup>8</sup>Nick Cheesman, 2015 *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order*, Cambridge UP

<sup>9</sup>Section 296 (a) though Section 296 (b) adds that the right to constitutional writs is suspended when a state of emergency is declared. See Melissa Crouch, 2014 "The Common Law and Constitutional Writs" p.147 and also her report for USAID/Tetra Tech "Access to Justice and Administrative Law in Myanmar" October 2014 available here <https://drive.google.com/file/d/0BzI030IkeET6UnJ6NUItVUIJTtG/view>. Crouch notes that since 2011 'several hundred' writs had been applied for, of them only 6 were reported on and all failed. She also notes that it is not possible to assess how many applications for writs have been made, due to the failure of the Attorney General's office to issue the Myanmar Law Report since 2012, and questions the way in which cases are chosen to be included. The power of the Supreme Court to issue writs is reinforced in the Judiciary

such writs in a number of cases and they had been granted in only about 1/100 cases; no ruling has been made that the law was unconstitutional for failure to provide judicial review. In any case, applying for constitutional writs is a very cumbersome and necessarily lengthy and costly procedure, with no meaningful return, for what would potentially be many thousands of cases.<sup>10</sup> In the absence of an appeals procedure, lawyers described resorting to negotiation with the party awarded use rights, sometimes followed by mediation or arbitration, in pursuit of a better result for the client.

If it is only by changing the constitution that rule of law can be realized, then the current situation is not so much what the law (and the ultimate law, the Constitution) allows, as what is politically permissible. *It is a political, not a technical problem.* It is therefore critical for international donor agencies and legal experts to avoid creating the semblance of movement towards the rule of law if the political will to get there is, in reality, absent. It was reinforced that lawyers need to describe and reiterate to outsiders (including Burmese audiences) the realities of how the law actually works. All foreign experts come to Myanmar with assumptions based on western practice, and where, as in Myanmar, the law is largely based on colonial laws and codes, these assumptions are likely to be strongly held. But, if rule of law does not exist then these assumptions need to be challenged.

If rule of law does not exist, then something else does. If corruption is endemic to the system, not just a few bad people taking bribes, then that needs to be explained. Simply increasing the salaries paid to judges and Law Officers will not end the problem.<sup>11</sup> The lack of judicial independence is not simply about the addition of “to the extent possible” in the Constitution,<sup>12</sup> but a mindset about what the law is for.<sup>13</sup> The misuse of the Criminal Procedure Code does not just result from bad practice that has become habituated, but an intentional use of the law to enforce control. The refusal of local courts to accept ‘political’ cases is out of their fear of reprisals, not their failure to understand the law.<sup>14</sup> But if lawyers want to have rule of law, what should change from the current situation? Bad laws followed to the letter? Myanmar people must let others know what it is they want when they talk about the rule of law.

In such a challenging legal environment, lawyers recognized they need to carefully consider how to focus their efforts to improve the legal environment. The question for lawyers becomes whether effort should be put into changing parts of the Constitution and making better laws, or to think politically about how to contain power through targeted interventions. Lawyers can learn lessons from the history of other countries, for example at the workshop Basil Fernando cited the history of Sri Lanka, where following constitutional amendments in 1978 power was centralized to the President, lawyers for many years tried to work within the system, tried to operate as if the rule of law was still present. However, change was only possible when the constitution was amended to

**Law No. 20/2010. The power to apply for writs was further restricted under the 2014 Law Relating to Writ Applications, giving a 2 year time limit and creating a three-man review board, including the Chief Justice who will decide which applications to accept.**

<sup>10</sup>It was noted that the Land Investigation Commission (established to consider only cases of land-grabs by the military up to 2011) had received over 6,000 complaints, Lawi Weng, 22 Jan 2014, <http://www.irrawaddyorg/burma/govt-recognizing-scale-land-grabs-burma-lawmakers.html>

<sup>11</sup>In Cambodia, international donors raised salaries in the justice sector, but corruption continued because contributing factors, including a poor understanding by judges of the need for their independence, were not meaningfully addressed.

<sup>12</sup>Section 11 (a) The three branches of sovereign power namely, legislative power, executive power and judicial power are separated, *to the extent possible*, and exert reciprocal control, check and balance among themselves. (emphasis added).

<sup>13</sup>Several lawyers noted that in cases they had defended, judges admitted privately that the final decision in the case was from a ‘higher authority’ and their hands were tied.

<sup>14</sup>The attempts to bring charges in the cases of the deaths of Ko Par Gyi (see <http://www.mmtimes.com/mdex.php/national-news/14402-military-acquittal-raises-fresh-doubts-about-civilian-inquest.html>) and Daw Khin Win (see AHRC 11 Jan 2015 <http://203.86.237.28/news.php?id=AHRC-UAC-001-2015>) were cited as examples.

reflect liberal democratic values. But, it took 37 years. The basic structure has to be changed to one that protects the freedom of individuals.

## (2) Practical challenges facing lawyers - political and procedural:

As examples cited by workshop participants illustrated, the Myanmar government frequently fails to comply with its own rules and laws. Numerous attorneys present identified cases where expropriation of land was carried out without any (or with legally insufficient) notice and where compensation or conditions at a relocation site were grossly below what was legally required.<sup>15</sup> Lawyers identified cases where clients had been beaten to induce their confessions to crimes they did not commit, despite laws making involuntary confessions inadmissible and broad violations of the Criminal Procedure Code, the Court Manual 1999 (1939) prohibiting multiple charges for specific instances of criminal conduct were discussed.<sup>16</sup> Other ways in which the law is used politically include extending trials through numerous routine adjournments<sup>17</sup> and charging continuing offenses (such as a protest march) in multiple jurisdictions.<sup>18</sup> Some of the procedural violations (such as a piling on multiple charges for a single act) are most commonly seen in cases involving protesters and others presenting political challenges, while others appear more general.

Decisions regarding land tenure and cases involving land conflict are currently made directly by the military as the courts in which these cases are heard are controlled by the military. The township courts are under the authority of the township administration department, the General Administration Department is under the Home Ministry, and the Home Minister has to be a (former) member of the armed forces and is appointed directly by the President. Nevertheless, lawyers suggested some actions that can be used to try and ensure accountability in the courts (see annex 1); some of these are current practice by some law firms and lawyer networks but many lawyers are not currently using all the procedures available.

While there are suggestions that the political situation is improving, for example as seen by the Myanmar government establishing a consultation process for the draft National Land Use Policy (NLUP), (which consequently includes provision for recognition of customary land tenure)<sup>19</sup> the understanding of this process remain extremely limited. At the July workshop it was clear that this was the first time many had heard about the development of the NLUP, its importance and how this process came about. Of those who did know about the process, several noted that either they or CSOs they were aware of had been excluded from consultations. In particular, it was noted that ethnic armed groups or their political representatives were not involved. Others observed that what

<sup>15</sup>The lawyers cited many examples from their experience. For further information see Displacement Solutions, 2015, "Land Acquisition Law and Practice in Myanmar" <http://mylaff.org/document/view/3054>

<sup>16</sup>Criminal Procedure Code '71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender *shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.* (emphasis added)

<sup>17</sup> Criminal Procedure Code 344 allows for adjournments of up to 14 days if there is "reasonable cause" but the judge must sign an order to that effect. The Court Manual '20(i) [in criminal cases], "When a case is tried locally every endeavor should be made to complete the trial without adjournment." Section 23 'Delay in the disposal of judicial work is frequently caused by the facility with which adjournments are granted. The mere consent of parties or the absence of an advocate is not, in itself necessarily a good reason for an adjournment.' And Section 24 puts it even more clearly: 'the hearing must be continued from day to day until all the witnesses in attendance have been examined, unless there are reasons, which must be recorded, for an adjournment'. [http://www.burmalibrary.org/docs14/Courts\\_Manual-PtII-en.pdf](http://www.burmalibrary.org/docs14/Courts_Manual-PtII-en.pdf)

<sup>18</sup> Criminal Procedure Code '182. When it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, where an offence is a continuing one, and continues to be committed in more Local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried *by a court having jurisdiction over any of such local areas.* (emphasis added) It is not intended that they be tried in EVERY court having jurisdiction.

<sup>19</sup> For more information on the NLUP, the various drafts (latest is 6<sup>th</sup> draft) and CSO/expert comments in English and some in Burmese, see <http://mylaff.org/folder/view/89>

mattered was what the policy looked like on adoption and, more so, the comprehensive land law that would be generated under the policy.

### **(3) The development of new land laws - intention, evidence and understanding:**

The current laws prioritize the interests of companies and wealthy investors and participants were concerned that the new laws would protect investors rather than farmers and ethnic groups. This reflects the reality that everywhere, and especially in Asia, laws are often designed to encourage international investment as fast as possible at the expense of small-scale user's rights.<sup>20</sup> Myanmar CSOs have an advantage in being able to learn from what has happened in other countries.

While there is no guarantee that a new law will be drafted, participants discussed that lessons learned from the NLUP consultations (for example the challenges in engaging in this process effectively).<sup>21</sup> Basil Fernando's experience is that civil society needs to be active *constantly*, not waiting to react to government policy, but have a continuous discussion in villages and townships so that the people can have a vision of what they want, regardless of what is on offer. The current NLUP policy is only that - it has no status in law; lawyers and CSOs need to be vigilant about what happens in practice and in a new law, making sure the government sticks to the principles in the NLUP that are aligned to international standards.

For any advocacy work, good evidence of current problems is essential; lawyers and CSOs need to be able to accurately describe current *practice* and use this to inform the development of new legislation. At the workshop, examples were given of the incorporation of data collection to the design of awareness of access to justice programs, the challenges of data collection after the fact, and the advantages of participatory methods where the process is as important as the outcome. In the experience of one CSO, people were very interested to have the information about what had happened in their area collected. However, there is often a *lot* of data. Lawyers maintain their files and records, but making this data useful and useable (bearing in mind confidentiality issues) is a challenge. Groups need to think strategically about what to collect and what they'll do with it when they have it. For instance, lawyers could start to log cases on a database that included case numbers, issues, how many court appearances, what reasons for delays, what witnesses were called etc., and that can then be analyzed using computer software to show what really happens in a large number of cases, and how the practice of the law differs from the intention of the written law. This will be important to frame new laws that also take into account the procedures and practices that create the existing system.

A critical issue for any new land law is communal land rights. As noted often in the meeting, language is a particular problem as different terminology results in different fundamental understandings of the issues. In international development and law there are different understandings of 'communal land tenure', "indigenous land rights", and "community land ownership/guardianship/management"; all of these phrases have ever specific histories and have evolved distinct meanings. In addition, in Myanmar there are many hundreds of ethnic languages in which the relationship between people and land is understood as one of guardianship rather than ownership. In translation, these meanings are lost. Ethnic rights to land, customary law and ancestral rights are seen as minor complications by the government, but are essential to peace and the future of Myanmar as a nation.<sup>22</sup> Shifting cultivation practices, wherein lands are not in constant cultivation, have historically not been recognized by the government, and land used in this way is

<sup>20</sup> See, TNI 2014 "Pro-Business of Pro-Poor: Making Sense of the National Land Use Policy in Myanmar" in English <http://mylaff.org/document/view/2447> and Burmese <http://mylaff.org/document/view/2472>

<sup>21</sup> For the 6<sup>th</sup> draft and all other drafts of the NLUP (in English and Burmese) and for comments on the consultation process, see <http://mylaff.org/folder/view/89>

<sup>22</sup> See TNI, LCG and MOECAAF 2015 "Policy Discussion brief (summary) on Customary Land" <http://mylaff.org/document/view/2773> and ECDF, 2015 "Statement of Ethnic Community Development Forum and the Customary Land Protection Committee Concerning Myanmar's National Land Use Policy" (English) <http://mylaff.org/document/view/2755>

often classified as ‘Wasteland’ or “vacant, fallow and virgin land”.<sup>23</sup> Even the 6<sup>th</sup> draft of the NLUP makes only passing reference to customary rights. The general public, political parties and lawyers need to be more aware of the status of customary land rights and national laws, and international examples of ways in which they can be brought together, rather than opposed.<sup>24</sup>

More work is needed to understand how lawyers can be involved in helping to secure customary rights in ethnic areas, and in arbitration. In many land cases there are many different claimants, and it is not easy to find a just solution to conflicting historical claims, including in customary law. Concern was expressed that an arbitration system with appointed Committees and Boards, as in the current NLUP draft, would create another level of unaccountable bureaucracy and a two- or three-tier system that would only add to the current confused system.<sup>25</sup> An open national discussion needs to be held, perhaps through the media, about what justice in these cases might feel like.<sup>26</sup>

Other steps that lawyers discussed taking included supporting new models of arbitration, applicable in certain types of expropriation cases (including those related to SEZ) and where there are multiple parties with competing claims generated by use or occupancy interests established under conflicting statutes. They also identified as a policy objective the streamlining and clarification of existing law, and the specific inclusion of new elements, including review by an independent judicial tribunal of land rights determinations, provision for communal/customary land tenure and other provisions ensuring an accountable and transparent system of rights determination.

<sup>23</sup> See Jane Ferguson, 2015, "The scramble for the Waste Lands: Tracking colonial legacies, counterinsurgency and international investment through the lens of land laws in Burma/Myanmar" Singapore Journal of Tropical Geography available at

[https://www.academia.edu/9033988/The\\_scramble\\_for\\_the\\_Waste\\_Lands\\_Tracking\\_colonial\\_legacies\\_counterinsurgency\\_and\\_international\\_investment\\_through\\_the\\_lens\\_of\\_land\\_laws\\_in\\_Burma\\_Myanmar](https://www.academia.edu/9033988/The_scramble_for_the_Waste_Lands_Tracking_colonial_legacies_counterinsurgency_and_international_investment_through_the_lens_of_land_laws_in_Burma_Myanmar)

<sup>24</sup> See for example, Jim Ennison 2015, "From Conflicting to Complementing: The Formalisation of Customary Land Management Systems Governing Swidden Cultivation in Myanmar" Wellington University. Available in English only, <http://mylaff.org/document/view/3048>

<sup>25</sup> The 6<sup>th</sup> NLUP Draft covers all bases. Section 40. "The following shall be carried out when resolving land disputes: (a) Arranging the establishment of special courts that will hear special cases related to law with specially trained judges and law officers if necessary; (b) Establishing independent monitoring bodies and appointing monitors that have no direct interest, to observe settlement of land disputes; (c) Determining the processes to settle land disputes between businessmen and farmers, or between farmers, through arbitration; (d) Establishing an independent tripartite arbitration process to settle land disputes, comprised of Government departments, organizations, farmers and private sector; (e) Establishing accurate and clear processes in relevant departments and organizations to improve easy access to, and use of, arbitration tribunals and courts by farmers and other land users in accordance with existing laws."

<sup>26</sup> An example from Indonesia of the complexities of land conflict is IPAC, 2014, "Indigenous Rights Vs Agrarian Reform in Indonesia" available here [http://file.understandingconflict.org/file/2014/04/IPAC\\_Report\\_9\\_Case\\_Study\\_from\\_Jambi\\_web.pdf](http://file.understandingconflict.org/file/2014/04/IPAC_Report_9_Case_Study_from_Jambi_web.pdf)

## ANNEX 1

### RECOMMENDATIONS

#### *To Myanmar lawyers*

A list of the actions that lawyers are currently undertaking or could be engaged in to assist the development of the judicial oversight of land cases are attached in the appendix. The following recommendations are more general:

- Lawyers need to build organizationally strong legal centers, networks and associations of lawyers will be needed to assist farmers, ethnic groups and community organizations to understand and use the law.
- Lawyers and local communities need to engage in an ongoing national debate to create a more critical outlook on land rights and legal issues.
- In the present circumstances, advocacy in courts alone does not suffice for proper defense of the rights of clients. Lawyers must develop knowledge and skills for advocacy, for local and international campaign work. Critical views about the lawyers' role must be developed and popularized.
- Section 19 of the Constitution guarantees the rights of public trial. Lawyers should help train juniors and interns to monitor and document trials, and write reports of their findings so that the public and international organizations come to understand the process of the law.

#### *To Civil Society Organizations (CSOs)*

- CSOs should learn from lawyers' associations and networks about the law and application of the law regarding land ownership and use. When working with communities on particular cases, they should take advice from lawyers.
- CSOs are critical in helping to develop community-based paralegals and educate the public about the law, how to engage in public consultations initiated by the government, private companies or others. Working together with lawyers will help to broaden the role and reach of lawyers, and strengthen the voices of the CSOs.
- Civil society organizations should conduct research and document with evidence the ways in which individuals and communities ground their claims to land - if there is customary law, what does it look like? Who adjudicates it? Is it 'fair' and for whom?

#### *To international donors in Myanmar*

- Donors should pay serious attention to the position that the legal system in Myanmar is a tool of government control and does not in any way respect individual rights. The system as it operates today is in opposition to any kind of genuine reforms towards democracy and rule of law.
- Donors working with the government on legal reform to ensure land rights should look not only to the drafting of new laws, but to press for immediate steps to improve practices that violate existing laws. In particular donors should insist that common practice of increasing the sentences of protestors by including multiple charges for one act, or charges in multiple jurisdictions should immediately cease.
- Donors must request the removal of present or former military officers from judicial positions and prevent future appointments. The rapid removal of military personnel

from judgeships may encourage possible reforms and a bolster public confidence in the legal system.

- International donors need to invest in research on land titles, including customary law and ethnic land use policies, in Myanmar. Donors to development projects that involve land should assess actual claims for ownership of land and should not rely solely on information provided by the authorities.
- All research papers and information about land tenure and rule of law programs in Myanmar should be translated into Burmese at a minimum, and preferably in major ethnic languages as well (at least summaries). In addition, donors should work with Myanmar translators and translation services to develop an open source 'wiktionary' with a glossary of development terms. Unlike the very useful IDEA/LRC political dictionary, such a project would allow terms and definitions to be added by anyone, and could work with existing Myanmar projects such as the newly announced Commission for the Translation of Legislation.

## ANNEX 2

### SUGGESTED ACTIONS FOR LAWYERS

#### In Court:

- Always raise objections to the use of multiple charges for one act or in multiple jurisdictions
- Always raise objections to the misapplication of procedures
- Always appeal in cases where possible
- File constitutional writs on behalf of clients where administrative decisions should be challenged
- File complaints against officials who violate the law

#### Continued Professional Development:

- Provide continuing legal education for younger/less experienced lawyers
- Discuss and promote lawyer and judicial ethics
- Provide internships for newly qualified law graduates
- Assist international training programs for law students in Universities

#### Advocacy:

- Document and make public reports on procedural violations
- Sign off on letters to Parliament
- Form a working group that will be available to review legislation, with access to international assistance
- Help train trial monitors and develop check-list
- Give advice and recommendations to international organizations working with the Attorney General's office and Supreme Court
- Request that court records are made public
- Monitor the work of the Supreme Court

#### Public Awareness:

- Help to prepare community education materials
- Engage with the media to understand Myanmar legal system
- Work with the media to publicise the worst violations of the law
- Help CSOs to develop evidence to support ethnic/communal tenure claims

## ANNEX 3

### WORKSHOP OUTLINE

The purpose of the workshop was to:

- > Describe the current situation regarding the protection and enforcement of land rights and the process of the legal system generally, as experienced by lawyers;
- > Identify legal and other practical actions that lawyers can take to increase their impact in obtaining government procedural compliance in land related cases, increasing the procedural accountability of administrative and justice officials in such cases. What evidence (documentation) is needed to support such actions?
- > Identify what lawyers and CSOs can do to influence the writing of a new comprehensive land law, and what should be included both in the process and the content. What other forms of non-legal interventions might be needed?

Over two days, the program used a mix of panel presentations and breakout sessions to present and share views, and to generate recommendations. Ample opportunities for questions and comments followed presentations. A survey was also conducted of the lawyers' interest in a list of possible lawyer roles/activities. The Chatham House Rule prohibiting attribution to an individual or organization for views expressed at the Workshop was explained at the outset, and applied (with the exception of Basil Fernando and Nick Cheesman, who agreed to be cited).

#### **About the Myanmar Lawyers Network**

The Myanmar Lawyers Network is a nationwide, independent network of practicing lawyers and was founded in Yangon in June 2012. The Patrons are U Than Tin and U Ohm Maung. The Chairmen U Kyi Myint and Vice-Chair U Aung Thane.

#### **About the Asian Human Rights Commission**

The Asian Human Rights Commission (AHRC) was founded in 1984 by a prominent group of jurists and human rights activists in Asia. The AHRC is an independent, non-governmental body, which seeks to promote greater awareness and realisation of human rights in the Asian region, and to mobilise Asian and international public opinion to obtain relief and redress for the victims of human rights violations. AHRC promotes civil and political rights, as well as economic, social and cultural rights.