



STUDY ON AGRICULTURAL INVESTMENTS

Section B – Analysis of the new Myanmar Investment Law and the Policies surrounding it with reference to the Livelihoods, Wellbeing and Food Security of the Agricultural Population

Final REPORT



Table of Contents

1	Myanmar Investment Law.....	2
1.1	Analysis.....	2
1.1.1	Analysis of situation that law or policy initiative aims to regulate	2
1.1.2	Reviewed (draft) laws or policy initiatives, and related policies.....	3
1.1.2.1	Contract Farming-Sugarcane.....	5
1.1.2.2	Lease Farming - Watermelon	6
1.1.2.3	Interpretation of the Farmer Protection Law.....	7
1.2	Institutional and stakeholder analysis.....	7
1.2.1	Key stakeholders, status of their influence	7
1.2.2	Allies and targets.....	10
1.2.3	Identification of key leverage points.....	11
2	Policy Recommendations	13
2.1	Towards more inclusive business models	13
2.2	Addressing the Issue of Tract Land Concessions.....	14
2.2.1	Halting the Progress of Tract Land Concessions until Transparent and Equitable Systems are put in Place	14
2.2.2	Correctly Mapping and Tracking the Progress and Extents of Concessions:	15
2.2.3	Alleviation of the Landless Issue with VFV Lands:.....	15
2.3	Increase Investment in Agricultural Research and other Public Goods for Rural Growth.....	16
2.4	Provide Access to Affordable Finance Systems.....	16
2.5	Environmental and Social Impact Assessments	16
3	Bibliography.....	18

1 Myanmar Investment Law

1.1 Analysis

1.1.1 Analysis of situation that law or policy initiative aims to regulate

The objective of the updated Myanmar Investment Law is explained in the following excerpt from the preamble (Government of the Republic of the Union of Myanmar, 2015):

This Law replaces and consolidates the Foreign Investment Law (Law No. Pyidaungsu Htluttaw Law No. 21, 2012, 2 November 2012) and the Myanmar Citizens Investment Law (Law No. Pyidaungsu Htluttaw Law No. 18 of 29 July 2013). The objective of the Law is to promote environmentally and socially sustainable economic growth and diversification of the productive sector of the Union. The Law also intends to provide investors, both domestic and foreign with a set of fundamental and enforceable legal rights and guarantees. The Law also upholds the principle of transparency, fairness and the rule of law, in accordance with accepted international standards and practice.

A Michigan State University (MSU) report defined improvements to the investment climate as key to increasing agribusiness (Byerlee, et al., 2014):

Improving the investment climate is the highest priority in terms of increasing agribusiness investment from SMEs to larger domestic firms to foreign investment. This is especially true for agro-industry where the food-processing sector is set to grow rapidly to meet urban food demands. The food-processing sector is especially good for inclusive growth. Higher value can be captured through relatively simple changes, such as canning, fruit drying, packaging, and even simple labeling. These additions can be an important step for a farmer or SME to expand commercial activity and access higher-value markets. The growth of supermarkets will further propel demand for such products.

The MSU report also defined the importance of changes in the Indian agro-industry to the wellbeing of Small to Medium Farmers (SMFs), which mirror the intent of the Farmer Protection Act in Myanmar, as shown in the excerpt below (Byerlee, et al., 2014):

Beyond the investment climate (including infrastructure) the other major determinants of growth in Indian agro-industry were agricultural productivity and access to credit. These findings underscore the central role of increasing productivity of SMFs in Myanmar and repositioning of Myanmar's banking sector toward agro-industry.

As shown in the following extract (Byerlee, et al., 2014), the current thrust towards large scale, industrialised farming has the potential to marginalise the smaller farming groups and families:

Private investment by agribusiness, both small and medium enterprises (SMEs) and larger agribusiness companies (ABCs) are critical to the realization of Myanmar's agricultural potential.

However, how that investment translates into jobs and poverty reduction has great implications to future prosperity of the small holder. In particular, the Government of Myanmar appears to have prioritized large-scale commercial farming and plantations, to the detriment of its millions of market-oriented small and medium-scale farmers (SMFs).

1.1.2 Reviewed (draft) laws or policy initiatives, and related policies

The initial draft (translated) of the Farmer Protection Act (Government of the Republic of the Union of Myanmar, 2013) was also reviewed, as it addresses several tangentially important areas, especially as they pertain to the small and medium sized farms and enterprises (SMFs and SMEs) in rural Myanmar. The following extract defines the purpose of the Act:

The purposes of this Act are as follow;

- (a) To support the farmers with reasonable amount of loan and grant
- (b) To supply research methodology, credit, machinery and input to transform into the modern industrial agricultural system
- (c) To help the farmers with market availability for trading farming product and obtaining fair price in marketplace for the farming product

The need for such an Act to be brought into legislation can be shown in the following excerpt from a report on CP maize production in Shan State (Woods, 2015):

The political-economic context of rural farming communities in Myanmar has slowly atrophied over the past few decades, from the socialist period, through forms of market reform experimentation in the 1990s, to the current reform period. A lack of state support, household capital, low-interest loans, market information, and institutional and infrastructural support has severely restricted the overall rural economy and especially economic opportunities for farmers. Households instead resort to local private moneylenders to obtain high-interest loans, resulting in a variety of socio-economic impacts at the household and village levels.

The report (Woods, 2015) goes on to discuss the Governments drive towards industrialised agriculture, and the potential for enhancing the wellbeing of farming families as long as adequate legislative safeguards are in place:

The current government's national development plan aims to intensify industrial agricultural production, especially in the rice sector, but also targets rubber, edible oil palm, and biofuel crops, such as sugarcane and cassava. Similarly, the Framework for Economic and Social Reforms Policy priorities for 2012-15 aims to boost agricultural productivity by increasing extension services and government loans, removing barriers throughout the supply chain, and promoting demand-oriented market support mechanisms. These reform policies could potentially have a positive impact on smallholder farmers, but only if supportive policies are in

place to direct benefits in such a way as to be pro-poor - which currently is not the case as this report demonstrates. Smallholder farmers are being further marginalized by the development aspirations of the Myanmar government, and rising urban middle class and business elite who view farmers as a hindrance rather than a national treasure to achieve sustainable national economic growth.

The use of the Vacant, Fallow and Virgin Lands Act (2012) to utilize lands deemed to fall into one of these categories in concessions for development is a practice that has large consequences for the rural population of Myanmar. The following excerpt shows the extent and types of development ongoing (Byerlee, et al., 2014):

For the VFV land, a total of 376 companies had been allocated 0.93 million ha by May 2013 with an average size per concession of about 2,500 ha. Forty percent of allocated VFV land was in Kachin State, followed by 17% in Sagaing Region, and 14% in Tanintharyi Region. The two most important commodities for VFV land allocation are rubber (87,389 ha), oil palm (71,809 ha), and rice (49,482 ha) with significant areas for jatropha, sugarcane, rice, cotton, and cassava. At least one company (or group of closely connected companies) controls over 200,000 ha of this land.

As the majority of the population in Myanmar relies upon farming in a rural smallholder setting for their livelihoods, situations which reduce or remove access to their traditionally farmed lands have large impacts on their ongoing wellbeing.

Landlessness among the rural class in Myanmar has a number of major causes. While issues such as large scale land acquisition for agri-business companies are a factor, as seen in the FAO report extract below, indebtedness among rural families is the leading cause (Srinivas & Hlaing, 2015).

Landlessness or near-landlessness seems to be on the rise, especially in the Ayeyardwady delta and dry zone (Bago-Bagan-Mandalay region), where one-fifth of the households in some villages were landless and engaged in wage labor; an equal number had marginal landholdings of less than one acre. Village tract leaders and residents reported that landlessness had been increasing over the past 4-5 years, with forced sales due to indebtedness being the leading cause of land alienation. Rates of landlessness in Upper Myanmar were generally lower but still ranged from 25 to 40 percent in every village.

As shown in the following excerpt from a report prepared for USAID/Burma (MSU/MDRI-CESD, 2013), estimates of landlessness rates among the rural community vary with time and the groups performing the studies, however a general upward trend is noted, and the amounts form a significant proportion of the population.

Although estimates of landlessness differ widely, the preponderance of available evidence suggests that between one quarter and one half of all rural households are landless in the sense that they have no land use rights to cultivable land. Okamoto (2008), for example, reports landlessness rates between 30% and 50% during the 1990s. The Integrated Household Livelihoods and Consumption Survey (ILHCA) of 2009/10 estimates rates of rural landlessness at 24%, while the FAO team conducting the UNDP agricultural

sector review of 2005 estimated landlessness at 30% of rural households. A World Bank team visiting Myanmar in late 2012 has projected rural landlessness at 55%.

One of the rising causes of landlessness among smallholders is the increasing use of land as collateral in loans for farm production (Woods, 2015). Loans are increasingly necessary, especially for low and medium capital households, as costs of production exceed available funds. Contract farming is common, and is mediated by brokers who supply farm inputs at a set price, provide loans, and purchase farm produce, often at below market price. This system makes it increasingly difficult for lower capital households to escape the debt cycle.

As seen in the extract below (Woods, 2015) from a Land Core Group report on contract maize farming, broker practices and goals seem to vary with region and ethnicity.

Using land as loan collateral is an increasingly common condition attached to loans from Sino brokers in North Shan State, a trend that is expected to increase with state-sponsored land titling and an emerging legal land market. Loss of land from debt seems much more common in North Shan State based on village-level data collection and key informant interviews for this study (although no specific quantitative figures are available), perhaps linked to the particular relationship between ethnic Chinese brokers and their village clients (see more below). In some of the villages studied for this project village headmen have enacted new village rules restricting land sales to people from outside the village to mitigate against “outsiders” obtaining and farming village land - although household interviews revealed that an ulterior motive by elite local villagers to squash outside competition to acquire land under duress is also influencing this decision.

In contrast, in South Shan State, brokers are usually of the same ethnicity as their clients, come from a nearby village, and in general have a longer trusting relationship with farmers to whom they lend. Land was never mentioned as being used as collateral in study villages in the south or according to key informant interviews. As a result, brokers in the south appear to be more lenient in loan agreements and debt forgiveness. Finally, three of the villages in the south are also either cultivating or labouring on poppy farms, and therefore have less of a debt crisis as they receive income from the poppy sector and loans are therefore not required. Consequently land loss from maize-induced debt in South Shan State appears to be less common than compared to the north.

1.1.2.1 Contract Farming-Sugarcane

Contract farming, if performed in the correct environment, can also lead to an increase in the wellbeing of the rural population, as the following extract from (Byerlee, et al., 2014) shows by contrasting the sugarcane contract farming industries in Myanmar and Thailand:

As sugarcane is a bulky product that has to be processed soon after harvest, there is a natural symbiosis between sugarcane growers and sugar millers that makes it ideally suited to adoption of contract farming. As in other countries, a formula pricing method is often used that distributes the product share between farmers and factories. For example, in Thailand,

farmers received the equivalent of 70% of the ex-mill sugar price. However, the legacy of state-owned mills has left Myanmar with a low farmer share of value. After the factories were privatized, the cane growers' value share increased to 48% but is still well below international norms.

Box 1: Positive Contract Farming Example

The (Byerlee, et al., 2014) report goes into some detail regarding a monopolistic contract farming arrangement between a Thai sugar company (Nawaday Sugar Factory) and farms surrounding the mill in Myanmar. Initially larger farms with better assets were invited to be part of their program. The mill supplies certified varieties and fertilizers, payable after cane delivery, and extension advice. After the sugarcane procurement price increased from K 13,500 in 2007-08 to K 30,000 per ton in 2012-13, small farmers (under 2 ha) also entered contracts. To enhance mechanization, tractor dealers forged a commercial link with a private bank for financing tractor purchases based on a guarantee by the sugar factory of credit worthiness, with loan repayments deducted by the mill. In a similar way, larger farmers could afford to buy the five to seven ton truck for cane transport. These arrangements have allowed a sense of trust to develop over years between farmers and the mill.

1.1.2.2 Lease Farming - Watermelon

As seen in the following excerpt from (Srinivas & Hlaing, 2015), lease farming (in this example for watermelon) is an activity that has immediate short term benefits, but can have detrimental longer term effects:

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

Leases are generally for five to six months. The rate of compensation is 250,000 to 300,000 kyats per acre (1 USD = approximately 1,000 kyats); a lower rate may be offered in some areas. Often, local farmers never see the real investors, in spite of expressing an interest in establishing direct contact with investors instead of working through brokers.

The Chinese adopt intensive and secretive farming techniques with heavy and excessive application of fertilizers and agro-chemicals. When farmers regain the use of their plots in the next season, nutrient imbalance resulting from such fertilizer use could offset crop yields. Often, acquired resistance to chemical pesticides also leads to pest outbreaks. Environmental pollution is also likely.

Land rentals, however, are quite attractive for the farmers in the dry zone, making it difficult for them to resist an offer to lease their farms for watermelon production in spite of the problems that could arise thereafter.

1.1.2.3 Interpretation of the Farmer Protection Law

A rapid review (FSWG, n.d) of a later draft of the Farmer Protection Act was performed, and stated the following, with a note concerning the possible inaccuracies inherent in translated materials:

The draft “Farmer Protection Law” for Burma is a concise, yet extraordinarily broad act purportedly designed to address constraints affecting the performance of the agricultural sector through increased access to credit and grants, access to factors of production and technologies, and greater access to end markets.

To achieve these objectives, the draft law provides for an extraordinarily high degree of government intervention at critical segments of the agricultural sector and the financial services sector.

Through the establishment of a Farmer’s Protection Central Committee, the draft law appears to create an institution with broad powers to:

- 1) Maintain data on production costs and to establish market prices to ensure a specific rate of return for producers on a number of agricultural products and to establish a competent authority for procurement of agricultural products
- 2) Establish conditions and terms to provide grants, loans, and other related financial services to producers
- 3) Establish conditions to offer insurance products to producers.

It is unclear, based upon the language of the law, whether the law vests exclusive rights to establish market rates and offer financial services and insurance products through the Central Committee, or whether the purpose of the law is to simply offer market information and regulate terms for financial services and insurance products

1.2 Institutional and stakeholder analysis

1.2.1 Key stakeholders, status of their influence

Part 2, Section 5 of the new Law requires the establishment of a Myanmar Investment Commission (Government of the Republic of the Union of Myanmar, 2015):

1. A commission with the name of the “Myanmar Investment Commission” is hereby established.
2. The Commission shall be an autonomous organ of the Union Government with perpetual succession.
3. The Union Government will provide an annual financial grant for Commission to meet its expenditure requirement.
4. Subject to and for the purposes of this Law, the Commission shall be capable in its name of:
 - a) entering into contracts;
 - b) suing and being sued;
 - c) acquiring, purchasing, or otherwise holding, enjoying and disposing of movable and immovable property; and

- d) doing or performing all such other acts necessary for proper performance of its functions under this Law.

This Myanmar Investment Commission (MIC) could be seen as the dominant and most influential stakeholder in the investment process, from the time of its inception.

The other main stakeholder group in the new Investment Law would be the investors themselves, both foreign and domestic. The law aims to put both groups on an even footing, as can be seen from the following extract (Government of the Republic of the Union of Myanmar, 2015):

Subject to the other specific provisions of this Law the Union Government is committed to providing non-discriminatory treatment to all Investors and their Investments, in particular:

- a) shall accord to Foreign Investors and their Investments treatment no less favorable than that it accords, in like circumstances, to Domestic Investors and their Direct Investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of Direct investments in its territory.
- b) shall accord same treatment, in like circumstances, to all Foreign Investors and their Direct Investments treatment no less favorable than that it accords, in like circumstances, to investors of any other third country and their Direct Investments.

A third group of stakeholders identified would be the employees, both domestic and international, of the two investor groups identified above. The new law seeks to remove barriers to an investor group using international employees, particularly in the case of a shortfall in domestic expertise in an area. This is shown in the following short extract (Government of the Republic of the Union of Myanmar, 2015):

Investors have the right to employ or engage qualified persons of any nationality to fill senior management, technical, professional and advisory positions in the investor's enterprise in the Union in accordance with the existing Laws of the Union.

A fourth group of stakeholders that will be affected by the new Investment Law are the landholders, both formal and informally recognised. The new Law seeks to reduce barriers to the lease of land for long term investment uses by both domestic and international groups, and this has the potential to severely affect those whose tenure on the land they are using is not recognised, as well as those whose financial situation is weakening. The relevant passage from the Law is shown below (Government of the Republic of the Union of Myanmar, 2015):

All Investors have the right to lease land either from private land-holders or from Government Entities in the case of State land, based on the category of usage including industrial, agricultural, livestock breeding and other forms of investment for a period to be agreed between the investor and the lessor. For Foreign Investors the right to lease land up to a maximum period of 50 years is guaranteed with an extension of 10 years and for a further 10 years thereafter.

When used in conjunction with other vague or outdated pieces of legislation such as the Virgin, Fallow and Vacant Act of 2012 or the 1894 Land Acquisition Act (Srinivas & Hlaing, 2015), the potential for this to strongly negatively affect landholders in favour of investors is very real.

Stakeholders in the ongoing legislative drafting process for the Farmer Protection Act, and also consequently for the Investment Law, have been identified in a Revision Submission (FSWG, 2013) as follows:

FARMERS:

- a. Farmers with land tenure rights over areas of differing size may have different needs to protect their livelihoods which need to be considered in this law. The full range of farmers in Myanmar with both formal and customary land tenure rights, even if these rights are not yet recognized in law, need to be consulted, including:
 - i. Small scale farmers with land tenure rights on less than 5 acres of land
 - ii. Medium scale farmers with land tenure rights on 5 to 50 acres of land
 - iii. Larger scale farmers with land tenure rights on more than 50 acres of land.
- b. Farmers in all agro-ecological regions across the country, as they differ in terms of land-use systems, crops grown and thus protection mechanisms required. This must include farmers who use shifting cultivation systems, who should enjoy equal rights as compared to farmers who practice 'permanent agricultural'.
- c. Farmers who are representative of different ethnic and religious groups as these groups may have differing agricultural/land-use systems, land tenure regimes and livelihoods protection needs

WOMEN & MEN:

- d. Women and men in all areas and across all groups mentioned above. Women's equal access/rights to land and natural resources must be explicitly enshrined in legislation. Women's requirements in terms of legislation to protect their agricultural livelihoods may be different from those of men and need to be specifically considered during consultation.

CIVIL SOCIETY:

- e. Community based organizations (CBOs) working directly with local farmers in communities
- f. Farmers networks, farmers organizations and the lawyers that support them
- g. NGOs working at local level to support farmers and CBOs
- h. NGOs working at national level to promote farmers livelihoods and rights
- i. International NGOs working to support local civil society

Another group of stakeholders in the new Investment Law would be the contract farming industry, as exemplified by the CP Maize report (Woods, 2015). This first portion of this group would consist of the contract farming companies themselves, typically foreign based currently. A larger second

sub-group would consist of the farm input brokerage cartels, the produce purchasing cartels, and credit agencies, which are all often the same entity.

1.2.2 Allies and targets

The new Law defines a number of offices within the Myanmar Investment Commission (Government of the Republic of the Union of Myanmar, 2015). As seen in the extract below, some of the terms yet to be defined are represented by [].

The Commission shall consist of the following Members:

- a) a Chairman who shall be appointed by the President;
- b) not more than [] other Members who shall be appointed by the President and of whom not more than [] shall represent the private sector; and
- c) the Secretary who shall be appointed by the President upon recommendation of the Chairman, for a mandate of [] years, renewable.

Any or all of these offices, once defined and allocated, could be viewed as an ally or target for influence.

1.2.3 Identification of key leverage points

The following selection of Committees and Commissions were identified in an FAO report (Srinivas & Hlaing, 2015) as useful in advocacy for Land Issues:

Table 1: Effective Commissions/Committees for Land Management and Administration (part 1) (Srinivas & Hlaing, 2015)

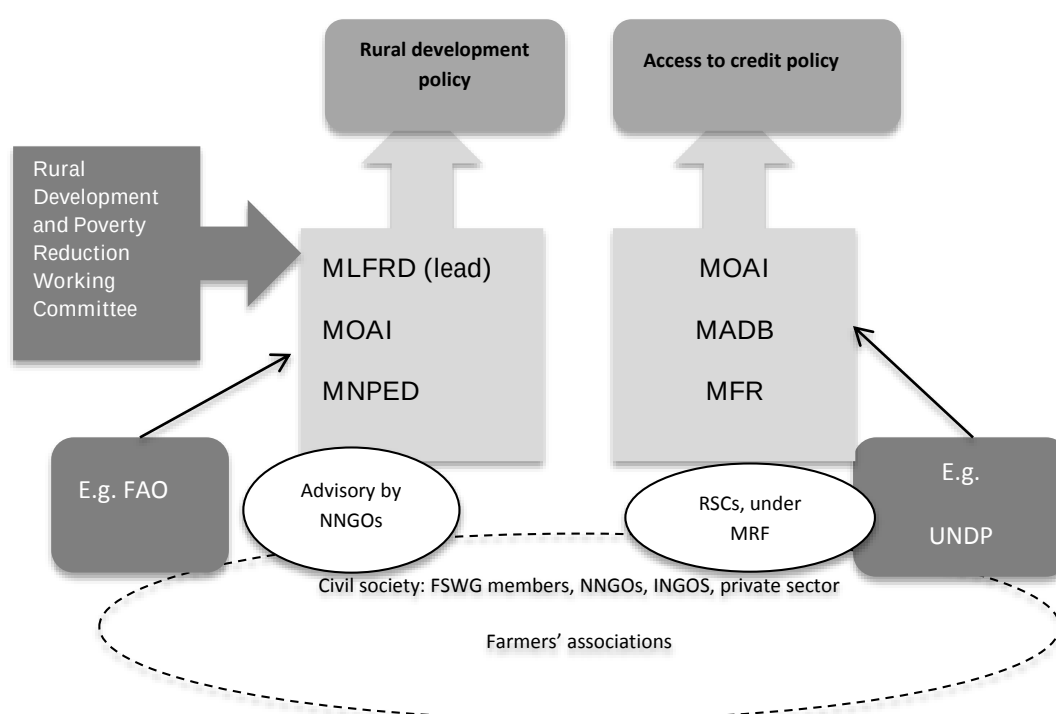
Sr. No.	Name of Committee and Date of Establishment	Purpose	Chair Person	Secretary
1	Central Committee for the VFV Land Management (March 2012)	To permit the right to cultivate or utilize vacant, fallow and virgin lands within the State for the following businesses: (a) agriculture (b) livestock breeding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

Table 2: Effective Commissions/Committees for Land Management and Administration (part 2) (Srinivas & Hlaing, 2015)

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

A more process driven examination (shown below) of leverage points for advocacy was defined by a FSWG Briefing Paper on food security related policy analysis (Mirchandani & Win, 2013):

Figure 1: Key actors and entry points for advocacy, rural development and access to credit (Mirchandani & Win, 2013)



2 Policy Recommendations

As shown in the extract below, increasing the share of the agribusiness sector that utilises small and medium sized farms (SMFs) can in fact increase productivity and output (Byerlee, et al., 2014):

Successful development experiences in Asia and elsewhere have amply demonstrated the success of a growth strategy based on SMFs. There is strong evidence that there are few economies of scale in farming and that in low wage economies SMFs are more efficient than large-scale farmers in producing most agricultural products. At the same time, improved productivity that raises the incomes of SMFs and reduces food prices to poor consumers translates into more equitable growth.

Based upon this understanding, policy direction should be taken towards a model that supports and invests in the SMF community, not just as a charitable gesture, but as a sound fiscal choice. Choices that have resulted in the large increase of the landless classes, as shown in previous sections should be curbed and/or reversed. Care should be taken that broad scale farming and investment is not at the expense of the rural working poor of Myanmar.

2.1 Towards more inclusive business models

A multi-stakeholder approach should be adopted to address land reform, pro-poor contract farming policies, micro-credit lending policies, and company regulation in the agribusiness sector. Advocating and lobbying the government to instate land policies that explicitly favour smallholder farmers rather than an industrial agribusiness development model that supports the newly emerging elite class in Myanmar and foreign investors backing them.

Contract farming agreements with the newly emerging agribusiness class in Myanmar could potentially offer unforeseen benefits to poor farmers if they negotiate beneficial arrangements. More research needs to be done on contract farming in Myanmar-both in the uplands and the lowlands-to better understand the socio-economic dynamics of this emerging farming model, and how NGOs could advocate for improved conditions for farmers to maximize benefits.

Farmers in Myanmar have little experience with contract farming and much could be done to promote more transparent and equitable contracts. Priorities to improve outcomes with contract farming include strengthening farmer organizations and building their capacity to get the most out of contracts, negotiating tripartite agreements with banks, providing model contracts, and designing dispute resolution mechanisms. There may also be a case for separate legislation on contract farming as in Thailand and Vietnam.

2.2 Addressing the Issue of Tract Land Concessions

As discussed earlier in this report, the issue of land concessions being used to grant investors access to lands that may be in use by non-registered permanent or migratory rural families is a recurring one in Myanmar. As seen in the following extract from a Land Briefing Paper (Myanmar Centre for Responsible Business, 2015), the common nature of these instances has had large effects:

The Vacant Fallow and Virgin (VfV) Lands Management Law and Rules, are clearly aimed at providing a legal framework for implementing Government land policies to maximise the use of land as a resource for generating agricultural income and tax revenues. Tenure security is deliberately circumscribed to allow the Government the flexibility to do what they believe is needed for development. Civil society groups and farmers organisations have pointed out that land regarded as VfV may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices, but which the Government classifies as VfV. The complicated registration procedures under the new agricultural laws mean that smallholder farmers, which is most of Myanmar's population, will struggle to register their land tenure claims and are at risk of having their land registered by more powerful interests. Potentially developers could register their tenure claims as land users of farmland and so-called VfV land, which has in fact long been occupied by others. By not recognising informal land rights, and formalising land rights through titling, despite pre-existing informal claims, the new laws may reinforce existing inequality and/or create new injustices, potentially creating or exacerbating tensions or even conflict.

The process by which an investor applies to utilise lands designated as VfV is described below, as given by (Myanmar Centre for Responsible Business, 2015). Note that the description of foreign investor restrictions appears to predate the current and recent Investor Law, which explicitly states that domestic and foreign investors shall be treated equally under the Law:

With respect to land designated as VfV, investors may acquire land by applying to the Government for land rights over VfV lands. Foreign investors with Myanmar Investment Commission (MIC) permits, those in joint ventures with Government bodies, or citizens and Myanmar citizen investors are permitted by the 2012 VfV Law to apply to the Central Committee for the Management of VfV Lands for the rights to cultivate and use VfV land (Article 5(a), (d), and (e)). Foreign investors without MIC permits do not appear to be permitted to do the same. These VfV land rights are temporary and not transferable.

The following series of recommendations for the control of large scale land concessions, as per the Virgin, Fallow, Vacant Lands Law (2012), and the Land Acquisition Act (1894) were proposed by (Byerlee, et al., 2014) in their report on Inclusive Growth in Myanmar:

2.2.1 Halting the Progress of Tract Land Concessions until Transparent and Equitable Systems are put in Place

As shown previously in this report, the ongoing practice of land concessions for industry is a large factor contributing to landlessness among the working poor of rural Myanmar. As shown in the

following excerpt, this has also led to a large volume of ongoing disputes and legal challenges (Byerlee, et al., 2014): Global experience indicates that the use of large-scale land concessions as an incentive to investors is especially risky—including economic, social, and environmental risks—and Myanmar is no exception.

A recommendation would be appropriate to halt further concessions until a more transparent, equitable process is put in place, and the backlog of conflicts and ambiguities of existing contracts has been resolved and addressed.

The need to apply the principle of informed consent in relation to land transfer is highlighted in the following recommendation from a rubber industry analysis (Global Witness, 2014): Adopt the standard of Free, Prior and Informed Consent as defined in the UN Declaration on the Rights of Indigenous Peoples – to which Myanmar is a signatory – for all communities potentially affected by rubber and other agricultural investments.

2.2.2 Correctly Mapping and Tracking the Progress and Extents of Concessions:

As mentioned earlier in this report, a large proportion of the existing land concessions are underutilised, and in fact are technically violating the terms of the concession contract (Byerlee, et al., 2014).

It is recommended, based upon (Byerlee, et al., 2014) that a geo-referenced open database is established that provides details on geographic information system (GIS) coordinates, the investor, targets for total investment and jobs, and the current status in terms of the area sown and infrastructure developed. Laos provides a good example of database constructed through collaboration of the Ministry of Agriculture and development partners.

A second priority recommendation (Byerlee, et al., 2014) is to monitor and track the existing concessions and cancel non-performing concessions or concessions that have violated contracts in other ways, using transparent rules and processes. This recommendation ties into the following recommendation, as seen below.

2.2.3 Alleviation of the Landless Issue with VFV Lands:

In principle, a straightforward solution to the issue of landless rural population can be at least partially solved with allocation of existing VFV land tracts. As much of the allocated VFV lands are underutilised, a recommendation was put forward by (Byerlee, et al., 2014), that suggests a large potential for programs to allocate available VFV land to poor rural families as an alternative to large land concessions to investors.

As noted in the example from Thailand (Byerlee, et al., 2014), a systematic program of formal conversion of forest land to titled farmland could be combined with public investment in basic physical and social infrastructure.

2.3 Increase Investment in Agricultural Research and other Public Goods for Rural Growth

The (MSU/MDRI-CESD, 2013) report titled Strategic Agriculture Sector Food Security Diagnostic for Myanmar defines as a key policy initiative an increase in government expenditure to support agriculture.

It is recommended that Myanmar increases the amounts of expenditure on Agricultural research to at least match the other nations in the region. Underinvestment for a number of decades has meant that Myanmar has invested only 20% as much as its regional counterparts in agricultural research, in the process systematically depriving the agricultural sector of its major engine of productivity growth.

Other areas that it is recommended are addressed for investment (MSU/MDRI-CESD, 2013) include extension, education, rural transport, telecommunications and early warning, climate monitoring and irrigation and drainage control systems.

2.4 Provide Access to Affordable Finance Systems

Also defined in the (MSU/MDRI-CESD, 2013) report is a recommendation that the rural credit system needs to be updated, as the punitive rates of interest currently demanded can easily contribute to an increase in indebtedness and consequently landlessness in Myanmar.

As was pointed out earlier in this report, use of land as collateral for farming inputs has become the leading cause of landlessness among the Myanmar rural classes.

It is therefore recommended that the effort to build up local savings instruments, credit systems and institutions that intermediate between borrowers and lenders are made. This will require investments in long-term institutional development from the Government of Myanmar.

A few international NGOs are working on micro-credit financing as a way to increase financial opportunities and security for farmers without the cycle of debt and landlessness associated with high-interest money-lending practises. The concern is that with contract farming arrangements dictated by Burmese businessmen without government regulation or oversight, farmers will become beholden to the business elite of Myanmar. Alternative methods of obtaining credit should be provided to farmers, besides the currently available moneylenders, bank loans and company loans. Various UN agencies and a few INGOs have been pushing for micro-credit schemes to be adopted in Myanmar, with limited success due to government resistance.

2.5 Environmental and Social Impact Assessments

The need for thorough prior analysis of the effects of an investment on the community and environment is shown in the following excerpt from a rubber industry analysis (Global Witness, 2014):

Environmental and Social Impact Assessments should be undertaken for all land investments prior to contracts being secured in order to prevent deforestation and other environmental impacts, and prevent forced evictions. Ensure such assessments are sufficiently rigorous to prevent projects from going forward if the negative impacts are too great. Harmonise such assessments with existing environmental laws and related regulation and ensure the results of such assessments are made public.

As mentioned in an MSU paper on Inclusive Growth in Myanmar (Byerlee, et al., 2014), a range of guidelines exist for responsible practices to maximize opportunities and minimize risks in terms of economic, social, and environmental outcomes. Such instruments include the Principles for Responsible Agricultural Investment, the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Forests and Fisheries, private standards for commodities such as oil palm and sugarcane, and good practice guides for conducting Environmental and Social Impact Assessment.

It is therefore recommended that all investments are subjected to preliminary Environmental and Social Impact Assessments, at a bare minimum. A code of practice surrounding these requirements should be adopted from those mentioned above.

3 Bibliography

Byerlee, D., Kyaw, D., Thein, U. S. & Kham, L. S., 2014. *Agribusiness Models for Inclusive Growth in Myanmar: Diagnosis and Ways forward*. s.l.:Michigan State University.

Food Security Working Group, 2013. *Draft Submission for Revisions to the Farmers Rights Protection Act*. s.l.:FSWG.

FSWG, 2013. *Submissions for Revisions to the Draft Myanmar Farmers Rights Protection Law*. s.l.:FSWG.

FSWG, n.d. *Rapid Review of Burma's Draft Farmer Protection Law*. s.l.:s.n.

Global Witness, 2014. *What Future for the Rubber Industry in Myanmar*. [Online]
Available at: <https://www.globalwitness.org/campaigns/land-deals/what-future-rubber-production-myanmar/>

Government of the Republic of the Union of Myanmar, 2013. *The Farmer Protection Act*.
s.l.:Government of the Republic of the Union of Myanmar.

Government of the Republic of the Union of Myanmar, 2015. *Myanmar Investment Law Explanatory Note V2*. s.l.:s.n.

Ministry of Agriculture and Irrigation, 2014. *Promotion and Protection of Farmers Rights - Bylaws Draft*. s.l.:Union of Myanmar.

Mirchandani, M. & Win, D. L., 2013. *Briefing Paper: Food Security-related Policy Analysis - Myanmar*. s.l.:FSWG.

MSU/MDRI-CESD, 2013. *A Strategic Agricultural Sector and Food Security Diagnostic for Myanmar*. s.l.:USAID/Burma.

Myanmar Centre for Responsible Business, 2015. *Land - Briefing Paper*. s.l.:IHRB; MCRB; DIHR.

Srinivas, S. & Hlaing, U. S., 2015. *Myanmar: Land Tenure Issues and the Impact on Rural Development*. s.l.:Food and Agriculture Organisation.

Woods, K., 2015. *CP Maize Smallholder Production in Shan State, Myanmar: Unequal Opportunities, Risk and Growing Inequality*. s.l.:Land Core Group.