



Formalisation of land rights in Myanmar

March 11, 2016
Celine Allaverdian



Land titling is not new in Myanmar!

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- Land titling was already done under the British colonial period. SRLD was created at that period in fact.
- Along with settlement surveys, cadastral mapping and issuance of tax receipts mainly **aimed at affirming the territorial control by the State** and categorizing agricultural land - in terms of quality and size - for its benefit.
- Documents such as land tax receipts and cadastral maps were produced since colonial times.

Tax receipts

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မြေစာရင်း: ၈
မြေခွန်မြေစာ

၂၀၁၂ - ၂၀၁၃ ခုနှစ်

၁။ ကေးရွာအုပ်စု	မြေပိုဒ်နှင့် အတန်း	အနံ	သင့်ငွေ
၂။ ကွင်းအမှတ် ၁၃၅၆၈			
၃။ ကွင်းအမည် သစ်ဖြာ			
၄။ ဦးပိုင်အမှတ် (၁၇၅)			
၅။ မြေလုပ်ကိုင်သူအမည် ဝေလင်း			၈၁၆
၆။ (၁) စည်းကြပ်သည့်သီးနှံအမည် (သီးနှံအနံ) ၁၆	၁၆	၈၅၅၈၈	
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(၃) မြေလပ်ခွန်			
ပေါင်း			၈၁၆
၇။ ခိုင်ကြေး			
၈။ မစည်းကြပ်သည့်စရိယာ			
၉။ သင့်ငွေပေါင်းချုပ်			၈၁၆
၁၀။ ကော်လံထွက်အရာရှိပြင်ဆင်ချက်			
၁၁။ သင့်ငွေပေါင်းချုပ်	၈၁၆		
၁၂။ ကော်လံထွက်အရာရှိလက်မှတ်			
၁၃။ ငွေပေးဆောင်သည့်နေ့			
၁၄။ ငွေရရှိကြောင်း ရပ်ကွက်/ကျေးရွာအုပ်စု အုပ်ချုပ်ရေးမှူးလက်မှတ်			

(အမှတ်: ၁/၃၃၂၄)

ခရိုင်အုပ်ချုပ်ရေးမှူး

ခရိုင်အုပ်ချုပ်ရေးမှူးရုံး

Tax receipts

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- Tax receipts are now in their simplest form and are used as simple follow up register
- Tax receipts were even delivered annually on farmlands in “illegally encroached” areas (under forestlands).
- This enabled SLRD to match holdings with individual names with kwin” and u’paing
- Nowadays, it is perceived as somewhat useless by farmers as the tax amount is now ridiculous (6 kyat!)
- However, it found significance during the 2012 land titling process, in case of disputes...



Farmer's booklet

5



Record list for “tenant” (tee-za - သီးစား)

No	“Kwin” number” ကွင်နီပါတ်	“u’-paing number” ဦးပိုင်	Kind of land	Area in Acre	Area cultivate on a yearly basis	Area of cultivate land	Area not used for cultivation by the tenant	Changes	Signature of Officer
875	66		R2	2.86					
		65		7					
875	69/2		Y2	0.67					
TOTAL				(10.53)					

[p. 3]

[p. 5]

Rules for the Cultivation of Land

- (1) The person who is working on land has the “authority/right to cultivate it” (*lei ya-myei* – လယ်ယာမြေ – *lok-paing-hkwin* = လုပ်ပိုင်ခွင့်).
- (2) Land cannot be kept “vacant” (*myei-lat* - မြေလပ်) without sufficient reason.
- (3) Land cannot be “mortgaged” (*paung-nan-chin* - ပေါင်နံခြင်း), “sold” (*yaung”cha’chin* - ရောင်းချခြင်း), “transferred” (*lwe-pyaung”chin* - လွှဲပြောင်းခြင်း), “divided into a parts” (*khwe- sei chin* - ခွဲစိတ်ခြင်း).
- (4) Change from seasonal crop to perennial crops without permission is forbidden.
- (5) Farmland cannot be used in other ways like housing, industry, or baking of brick without permission.
- (6) Do not cultivate banana tree except in the garden.
- (7) “Land tax” (*myei-khum* - မြေခွန်) and other taxes are to be paid as levied by the Ministry.
- (8) The cultivation of crops must follow the government plan. If land is cultivated without following government project or rules, the land will be taken back by the government according to 1963 law 11(8) and allocate to other “tenants” by turns.
- (9) Farmers have to sale the quantity of crops order by township specifications. If not, the land will be taken back by the government according to 1963 law 11(8) and gave to other “tenant” by turns.
- (10) According to the directive order announcement 4/78, tenants have to follow the order of the Ministry of Agriculture and Forestry.

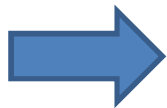
[X] Township Council

It defined farmers as tenants receiving only the “authority/right to cultivate the land” (*lei ya-myei lok-paing-hkwin*).

This framework was ruling (in principle) land relations from 1962 to 2012.

Reminder on key points of the 2012 land law

- 6
- 1) The State remains the ultimate owner of all land. The government if necessary can nationalize lands.
 - 2) Farmers have land tenure rights for cultivation through the delivery of Land Use Certificates (LUC), but only in accordance with the government's prescriptions;
 - 3) The concept of private ownership – of land use rights – is officially reintroduced: **land use rights can now be sold, mortgaged, inherited;**
 - 4) A Central Farmland Management Body is in charge of ensuring compliance with the new regulations and can transfer or revoke the right to work farmland, and provide land evaluation for various purposes.



A strong political drive by the government to proceed to land tiling of farmlands throughout the country in a very short timeframe. Officially: 8 million LUC titles delivered



Some figures on LUC delivery rates in Dry zone and Delta

- In Dry Zone, almost 80% of landowners had a Land Use Certificate (LUC, also called Form 7). The remaining 20% is mainly due to villages where *kwin* maps were missing.
- Only 71% of landowners received it in Delta. This difference is due to lands cultivated under forestland status .
- Over the households owning farm lands officially registered as such, **the LUC delivery rate is thus of 96.4% in delta**

*Data: quanti survey done August to early November 2014 over 1129 HH. 564 landowning HH in both delta and Dry zone



Form 7

8



လယ်ယာမြေလုပ်ပိုင်ခွင့်ရရှိသူ၏ အကြောင်းအရာ		လုပ်ပိုင်ခွင့်ပြုသည့် လယ်ယာမြေအကြောင်းအရာ	
၁။ ပုဂ္ဂိုလ်/အဖွဲ့အစည်းအမည်။	ဦးစောငွေဇော်	၁။ မြို့နယ်အမည်။	၇၈
၂။ အဘအမည်။	ဦးကျော်စော	၂။ ရပ်ကွက်/ကျေးရွာအုပ်စုအမည်။	ကျွန်းလှိုင်
၃။ နိုင်ငံသား/အမျိုးသားစိစစ်ရေးကတ်အမှတ်၊ ဗီဒီယို၊ ဂရုဇာ၊	၁၈၇၄ ၈၈၇၂၁၁	၃။ ကွင်း/အကွက်အမှတ်။	၁၂၁
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ကုမ္ပဏီ/အဖွဲ့အစည်းမှတ်ပုံတင်အမှတ်)		၅။ ဦးပိုင်လုပ်ကွက်အမှတ်။	၂၂၀
၄။ နေရပ်လိပ်စာ။	ရန်ကုန်	၆။ မြေမျိုး။	၇၃
		၇။ ဧရိယာ(ဧက)။	၁.၅၂
		၈။ ခွင့်ပြုသည့်စာအမှတ်။	၁၀/ လက်မီ ၁၁
		၉။ ခွင့်ပြုသည့်ရက်စွဲ။	23 SEP 2013
		၁၀။ မှတ်ချက်။	

လယ်ယာမြေဥပဒေပုဒ်မ ၆၊ ၇ နှင့် ၈ တို့အရ စည်းကမ်းချက်များ
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(သက်သေခံမြေပုံပူးတွဲထားပါသည်။)


ရုံးကဆိပ်

ချစ်သန်းအောင်
အတွင်းရေးမှူး
မြို့နယ်လယ်ယာမြေစီမံခန့်ခွဲမှုအဖွဲ့
မြို့

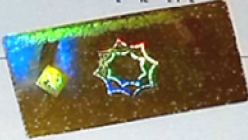
Form 105 (attached to FORM 7)

9





မြေစာရင်းပုံစံ - ၁၀၅
မှန်ကန်ကြောင်း သက်သေခံ သော လက်ရှိမြေပုံတွင် ယခုနှစ်အသုံးပြုသော ဦးပိုင်မြေပုံ လက်ခံရေးကူးရန်ပုံစံ

တိုင်းဒေသကြီး/ပြည်နယ် စစ်ကိုင်း	
ခရိုင် မုံရွာ	
မြို့နယ်/မြို့နယ်ခွဲ မုံရွာ	
ရပ်ကွက်/ကျေးရွာအုပ်စု ပုလဲကျွန်း	
ကွင်း/အကွက်အမှတ်နှင့်အမည် ၁၂၁ - ပုလဲကျွန်းအောက် ဦးပိုင်အမှတ်/မြေကွက်အမှတ် ၂၂၀ ၂၆၃	

ဦးပိုင် အမှတ်	အခွန်စည်းကြပ်ခံရသူ/ပိုင်ရှင်/ ဂရုန်ရှင်/အငှားဂရုန်ရှင် အမည်	ပိုင်ဆိုင်ခွင့်	မြေမျိုးနှင့် အတန်း	ဧရိယာ (ဧက)	မှတ်ချက်
၂၂၀	ဦးစောထွန်း	၅၀	၇၃	၁.၅၂	

ရေးကူးပေးသည့်အကြောင်းအရာ လယ်ယာမြေလုပ်ပိုင်ခွင့်လက်မှတ်လျှောက်ထားရန်
(အထက်ဖော်ပြပါအကြောင်းအရာအတွက်သာ အသုံးပြုခွင့်ရှိသည်)
- ဦးစောထွန်း -

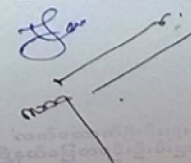
လျှောက်ထားသူအမည်
လျှောက်လွှာတင်သည့်နေ့စွဲ
လျှောက်ထားသူသို့ ထုတ်ပေးသည့်နေ့စွဲ
ယခုအထက်တွင် ပြဆိုသောမြေပုံမှာ မှန်ကန်သောချာစွာ ရေးကူးထားသော (၂၀၁၃၊ ၂၀၁၄) ခုနှစ် အတွက်
နောက်ဆက်တွဲ တိုင်းတာခြင်း မြေပုံဖြစ်ကြောင်း သက်သေခံလက်မှတ် ရေးထိုးပါသည်။

ရုံးတံဆိပ်

အမှုတွဲထိန်း/မြေတိုင်းစာရေးလက်မှတ် -
နေ့စွဲ -

တိုက်ဆိုင်စစ်ဆေးပြီး မှန်ကန်ပါသည် -
လက်ထောက်ဦးစီးမှူးလက်မှတ် -
နေ့စွဲ -

စိစစ်အတည်ပြုပါသည်။ မြေပုံစာရင်းဦးစီးဌာနမှူးလက်မှတ် -
နေ့စွဲ -



GRET

SRLD's version of the LUC procedure

10 “There are 10 standardized Forms by which farmers could start applying to SLRD until Form 7 is granted.



Form 1, available from Village Tract (VT) office, is filled up and submitted through Village Tract Farmland Management Committee (VTFMC) to Township SLRD.



The Township SLRD staff lists the applicants in Form 2 and post the list at the village Admin Office, calling for the potential claims within 30 days from anybody if there is objection to one of the applicant.



Within 30 days, the SLRD township staff scrutinizes the eligibility of the applicant for the land title registration in respect of set criteria (section 6 of Farmland law).



After verifying the validity of the information of the applicant in series of Form 3 to 6, the case is submitted to District Farmland Management Committee and is finally approved.



Township Committee then issues the Form 7 to farmers. The whole process theoretically takes 65 days from application to issuance of certificate.”



The Village tract headman's version

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“After organizing the VTFLMC, the Village Tract Leader with the help of village headmen (100 households leaders) called all the farmers in the village to come to register their farmland holdings with their annual land tax receipts.

In these papers, are mentioned the name of the owner, holding no., and plot no. and the area of the used land in acres.



After collecting the data, the SLRD officer came to the village to measure the concerned land plot areas. He documented the land profile by drawing a map and asking the farmers working on adjacent plots as witness and for approval.



After finishing the measuring process, the VTFLMC disclosed a list of land holdings and their respective holders in the village. The list was publically displayed in a board in the village public space so that anyone could object the land use right or the holding's area. Any objection of the displayed land titles could be raised within 30 days. “



A hasty top-down process

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- Only one third of HHs confirmed to have applied themselves to land registration
- Less than half (42,5%) said that a public list (Form 2) was posted in the village
- Only 37,6% were aware of who were the constituent members of their VT land management committee.
- Amongst landowners, small holders more frequently declare that they don't know if land registration started or not.
- Amongst the landowners (153) who voluntarily applied for registration, large holders were more frequent than the smaller ones.

*over 564 landowning HH in both delta and Dry zone

Errors in LUC

13



- The quality of the titles received – in terms of consistency between actual landholders and those receiving the titles, and in terms of registered surface area – remains an issue.
- SLRD officers did not have time to survey and re-measure *all* field plots, nor to check all *kwin* boundaries, nor to take note of *all* changing conditions.
- In similar rates in both Delta and Dry Zone, an average **7% of farm-land owning households** (excluding cultivated forestland “owners”) **have contested some points of the LUC.**

*over 564 landowning HH in both delta and Dry zone

Discrepancies in the LUC delivery procedures

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As from interviews and observations, **modalities of the land registration process were quite different from one village to another** – whether villagers had to pay or not the SLRD, whether plots have been actually measured or not, duration of the process etc...



This seemed to depend a lot upon :

- the commitment of the SLRD staff in charge,
- its relationship with the village administrator and other influential individuals,
- the degree of interest vested by the State in the village



Gender and LUC

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- Being a woman or a man-headed household did not impact on form 7 allocation
- In the LUC, lands are systematically registered under the husband's name for couple-headed households. Yet, one of the forms for application lists all the persons in the household.
- The qualitative survey has not identified any cases of husbands selling out land without the wife's consent. In case of husband's death, it is transferred to the wife or she can decide to transfer them directly to her children. In case of divorce, different scenarios may occur according to context.

LUC and Credit

16



....Too early at the time of the survey to see impact on access to credit and on mortgage closures



A positive point about LUCs perceived by farmers is to be able to mortgage land against money, instead of using the more traditional pawning system (*le pyan ngwe pyan*), where the full land use right is given to the moneylender for a determined period, leaving the farmer with a debt and less (or no) land to work.

Using land as collateral is officially only authorised for government banks and authorised banks, yet it is a common practice among money lenders.

Mortgage closures in these cases may be concealed and formalized in the form of land sales.



Translation of LUC

17



Form No. 7 Farmland Work Permit Certificate

Region – XXX
District- XXX
Township- XXX
Name of Farmer – XXX
National Registration Number – XXX
Kwin No. –
Kwin Name –
Oo Paing No. –
Land type (paddy land/ Ya land, etc.) –
Area (Acre) -
Permit No. –
Permit date –

As long as there is no breach of the stipulated terms and conditions as prescribed in Farmland Law Section 6,7,8, this work permit is granted.

Sd. XXX Secretary
Township Farmland management Committee

The Form No. 7 is attached with a hologram. The back cover is written with the following statement ((from Farmland Law, section 12).

CONDITIONS IN RESPECT OF THE RIGHT TO WORK FARMLAND

Section (12). The following conditions shall be complied with in respect of the right to work farmland: -

- (1) any person shall work farmland in accordance with the provisions of this law;
- (2) land-tax and other taxes in respect of farmland assessed by the Ministry shall be paid;
- (3) It is needed to register at related department with fee when the process such as selling, pawning, lending, and donation of right to work farmland is carried out, and the prescribed stamped-duty and registration of deed fees shall be paid;
- (4) Whenever inheriting or completely handing over of lands is carried out in accordance with existing law, It is needed to register at related department in accord with prescribed conditions;
- (5) "pawning" is permitted to acquire investment for agricultural production only, by means of pawning the farmland with a government bank (or) authorized bank;
- (6) farmland shall not be worked without the permission of the relevant farm management body;
- (7) farmland is prohibited using for non-agriculture purpose without permission;
- (8) farmland is prohibited to change perennial crop growing from regular seasonal crop growing without permission;
- (9) farmland shall not be fallow without a sound reason;
- (10) during the period of before getting the right for farming or disputing the right for farming, selling, pawning, lending, exchange or donation of right for farming farmland is prohibited;
11. After this Law enacted, whenever land dispute happens, registered farmland at the department can do official solution.
12. A person who has the permission of right for farming should not be sold, pawned, leased, exchanged or donated to any foreigner or organization containing foreigner without the permission of State Government

The unresolved issue of conditions on land use rights

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Many of the conditions mentioned in the Form 7 are inadequate and will probably create power imbalances and corruption from village leaders and village tract authorities towards “incompliant” farmers.

In addition, some of the conditions are inapplicable in terms of transactions costs (e.g. high costs to submit crop change requests up to Union level), further increasing opportunities for corruption practices.

What improvements with the LUC?

Farmers in Burmese lowlands were not lacking papers formalizing their rights.

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Yet, farmers have always been at threat of arbitrary land confiscations by the State.



In that sense, LUCs do not seem to provide more security than the already existing documents.



Restrictions on land use rights are still in force.

The possibility to access credit to use the LUC as collateral is too restricted to benefit smallholders.



The main change brought by the new land framework is to finally authorise the long-existing land transactions, since farmers can now legally sell, rent or pawn their land use rights. Before 2012, these were admittedly illegal, yet “formalized” in many ways.



These transactions need to be registered through procedures which are lengthy and costly. These are not applied, meaning that the same “black market” practices apply and the whole land registration will be outdated within a few years...

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LUCs in Peri-urban Yangon (Htanthabin township):

- Land markets are very active and LUCs are already outdated.
- Many land transactions concern “sub-plots” under one holding. There is no existing procedure to register subdivisions of plots.
- Land use transfers from farmland to housing lands are not registered.
- OUT OF CONTROL!

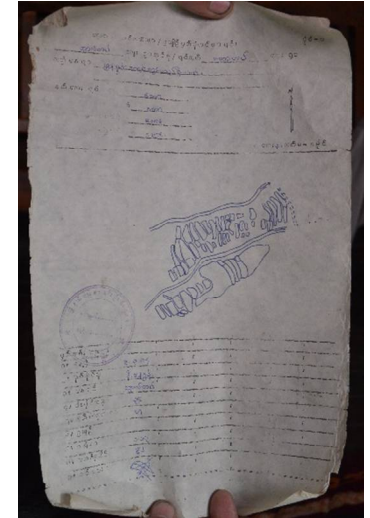
Perspectives from other regions of Myanmar

Upland area (Northern Chin State- Hakha tsp)

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- Formalisation is not new neither in the uplands!
- Paddy terraces are the main (only?) type of land to receive LUCs.
- Very different conditions b/villages in land registration of different land use categories
- Very different conditions b/ villages in terms of internal rules concerning land management.
- LUC do not address the reality of local land rights (eg: no recognition of shifting cultivation areas...)
- In some villages, limited interest in getting LUCs as farmers already feel secure on permanent farmlands.



Lessons learnt on formalization of land rights

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- **Standard procedures (systematic, large-scale, solely focused on private/individual property) raise several major problems:**
 - They do not take account of collective rights, and therefore lead to exclusion where land is owned through family landholdings or common resources.
 - Formalisation procedures are often very complex and costly, and thus beyond the reach of the majority of the population.
 - The land administration often lacks the capacity to implement procedures in a transparent, effective and sustainable manner, or ensure that land registers are kept up to date.
 - There is little demand from the people for formalisation, changes are not registered and information systems quickly become out of date, generating further confusion.

-“Formalization of land rights: from past controversies to future strategies” ‘Land Tenure and Development’ Technical Committee (2015)

Lessons learnt on formalization of land rights

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Land titling make sense if:



> the formalisation procedure makes sense in relation to the reality of land rights, responds effectively to the problems encountered by different land users, and enables the State to recognise their legitimate rights or authenticate their agreements;



> the formalisation procedure is accessible and effective, and is part of an institutional environment that is sufficiently interconnected and reliable to deal effectively with the plurality of norms and authorities; □



> land information is kept up to date, so that people benefit from using the legal mechanisms, and the institutions responsible for administering rights fulfil their responsibilities.”



“Formalization of land rights: from past controversies to future strategies” ‘Land Tenure and Development’ Technical Committee (2015)

Key points for MMR

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- Need to review the 2012 land registration due to many errors.
- Farmers should have full land use rights (eg: right to choose what crops to cultivate)
- Accessible deed registration procedures
- A proper land taxation system (including annual tax, transfer tax, betterment tax) is probably the most efficient way to secure land rights, have updated registers, reduce speculation while raising revenue to sustain sound land administration services.
- Provide space for recognition customary rights, in all their diversity
- Land administration issues should not be addressed at the expense of land management issues.



Thank you

Formalization of land rights

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1.Reconcile legality and legitimacy through clear legal recognition of existing acknowledged rights, whatever their origin (customary or statutory) or nature (individual or collective, temporary or permanent).



2.Initiate widespread debate on the choice of society that the land policies will serve (and target), the opportunities for formalisation, how it will be implemented and its possible alternatives.



3.Build consensus between all the actors concerned (central and local governments, local people, the land administration, professionals in the sector), and sustain the political will needed to implement formalisation procedures.



4.Define a realistic implementation strategy which recognises the vital importance of establishing effective and transparent governance and/or administration of land rights.

5.Progressive implementation that leaves room for learning, experimentation and adjustment.

6.Ensure from the outset that the land services will be financially viable, and put in place mechanisms to fund them.



“Formalization of land rights: from past controversies to future strategies” ‘Land Tenure and Development’ Technical Committee (2015)