



# SECURING LIVELIHOODS AND LAND TENURE IN RURAL MYANMAR

With a case study on southern Shan State

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Jesse Baver | Benoit Jonveaux | Ran Ju  
Keisuke Kitamura | Pushkar Sharma | Lila Wade | Shinji Yasui

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**Economic and Political Development Concentration**

**School of International and Public Affairs, Columbia University**

420 West 118th Street

New York, NY 10027

(212) 854 - 9885

<http://www.sipa.columbia.edu/index.html>

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## Contents

<b>Acknowledgements .....</b>	<b>3</b>
<b>Acronym and Abbreviation List .....</b>	<b>6</b>
<b>Executive Summary.....</b>	<b>7</b>
<b>1 Introduction .....</b>	<b>10</b>
1.1 Project objective and motivation .....	10
1.2 Overall objective of UN-HABITAT in Myanmar and the LAMP .....	11
1.3 Project team .....	12
<b>2 Background and context.....</b>	<b>14</b>
2.1 Recent political changes in Myanmar.....	14
2.2 Recent developments in land regulations.....	15
2.3 Ethnic diversity in Myanmar and Shan State.....	18
2.4 Agricultural and land tenure issues in Myanmar and Shan State.....	19
<b>3 Methodology.....</b>	<b>25</b>
3.1 Goals of our research and this report.....	25
3.2 Conceptual framework .....	26
3.3 Research strategy .....	28
3.4 Comparative analysis framework .....	32
3.5 Issues encountered and limitations of the research .....	32
<b>4 Theoretical background .....</b>	<b>36</b>
4.1 Ensuring equity and equal protection for all groups .....	36
4.2 Encouraging economic efficiency & improving livelihoods: The theoretical link between tenure security and economic efficiency .....	39
4.3 Operationalizing land laws: Best practices for implementation.....	47
<b>5 Findings from field research.....</b>	<b>56</b>
5.1 Understanding and respecting customary tenure.....	56
5.2 Encouraging economic efficiency & improving livelihoods .....	67
5.3 Land Law implementation considerations and governance issues .....	75
5.4 Fieldwork findings: Conclusions.....	89
<b>6 Findings from comparative regional analysis.....</b>	<b>92</b>

6.1	Understanding and Respecting Customary Tenure .....	93
6.2	Encouraging Economic Efficiency and Improving Livelihoods .....	101
6.3	Land Law Implementation Considerations and Governance Issues .....	108
<b>7</b>	<b>Recommended Interventions.....</b>	<b>116</b>
7.1	Recommendations overview .....	116
7.2	Information access.....	119
7.3	Economic interventions .....	123
7.4	Institutional development and capacity-building.....	126
<b>8</b>	<b>Conclusion.....</b>	<b>135</b>
<b>Appendix A</b>	<b>List of persons and organizations interviewed .....</b>	<b>138</b>
<b>Appendix B</b>	<b>Detailed Conceptual Framework .....</b>	<b>139</b>
<b>Appendix C</b>	<b>Summary of focus group discussions .....</b>	<b>141</b>
<b>Appendix D</b>	<b>Quantitative results of surveys .....</b>	<b>147</b>
<b>Appendix E</b>	<b>Questionnaires used for field research .....</b>	<b>152</b>
<b>Appendix F</b>	<b>Membership of new land law committees .....</b>	<b>164</b>
<b>Appendix G</b>	<b>Additional Background Information.....</b>	<b>165</b>
<b>Appendix H</b>	<b>Project Team Biographies.....</b>	<b>168</b>

## Acronym and Abbreviation List

<b>CCVfV</b>	Central Committee for the Management of Vacant, Fallow, and Virgin Lands
<b>DAP</b>	Department of Agricultural Planning
<b>FAB</b>	Farmland Administrative Body
<b>FSWG</b>	Food Security Working Group
<b>GAD</b>	General Administration Department
<b>KIA</b>	Kachin Independence Army
<b>LAMP</b>	Land Administration and Management Program
<b>LCG</b>	Land Core Group
<b>LCIG</b>	Land Confiscation Investigation Commissions
<b>LGAF</b>	Land Governance Assessment Framework
<b>LGI</b>	Land Governance Indicator
<b>LTP</b>	Land Titling Project
<b>MoAI</b>	Ministry of Agriculture and Irrigation
<b>MoECaF</b>	Ministry of Environmental Conservation and Forestry
<b>PNO</b>	Pa’O National Organization
<b>PPLA</b>	Pa’O Peoples Liberation Army
<b>SAZ</b>	Self-Administered Zone
<b>SIPA</b>	School of International and Public Affairs
<b>SLRD</b>	Settlement and Land Records Department
<b>SPDC</b>	State Peace and Development Council
<b>SSA-N</b>	Shan State Army - North
<b>SSA-S</b>	Shan State Army - South
<b>UWSA</b>	United Wa State Army
<b>VFV Law</b>	Vacant, Fallow, and Virgin Lands Management Law

## Executive Summary

In the context of transition to a more open form of government, the Myanmar government has begun to liberalize land markets and, in 2012, enacted two major land-related laws. Implementing these new land laws has proven challenging, however, as it has been difficult to integrate these laws with the existing customary practices of various ethnic minorities. To address these and other issues UN-HABITAT Myanmar is assisting the Myanmar government in developing a *Land Administration and Management Program (LAMP)*.

As part of this process a team of Masters Students from Columbia University's School of International and Public Affairs (SIPA) was invited to carry out a detailed study on customary land tenure in the southern area of Myanmar's Shan State with a focus on three ethnic groups: the Shan, Pa-o, and Danu. The SIPA team completed a desk review of secondary source material and conducted two phases of field research. The first phase of field research was conducted in Yangon in January 2013 with the purpose of identifying opportunities and challenges the new land laws present. The second phase of field research sought to gather the impressions of farmers, community leaders, and local government representatives in southern Shan State. Information was gathered during a three-day "workshop" conducted in Taunggyi, the capital city of Shan State.

The SIPA team's objectives were to provide UN-HABITAT Myanmar and the Myanmar government with needed information on three topics: 1) prevailing ideas on best practices in land management and registration procedures, 2) successful and unsuccessful land management practices in comparable countries in the region, and 3) the current status of customary land tenure and of the implementation process of the new land laws in Southern Shan State.

The findings outlined in the **theoretical background and literature review section** of this report highlight the economic and rights rationale behind increasing tenure security and best practices as part of the design and operationalization of a land administration and management programs, which includes an initiative to extend land titling countrywide. The section highlights the following key points:

- First, the two primary economic arguments in favor of undertaking efforts to increase tenure security include: 1) The benefit a clear title provides by enabling landowners to use their property as collateral in borrowing from the modern financial system; 2) Increased tenure security inspires landowners to undertake longer-term investments. Many argue that together, credit market access and incentives for investment combine to increase efficiency and agricultural productivity.
- Second, the prevailing best practices to land titling and land administration and management (LAM) programs can be grouped in two themes:
  - *Developing a comprehensive agricultural policy:* Policy should be formed with attention to customary practices, incorporating local governance structures, and facilitating public involvement. Even if institutions operate individually, they must be designed to work jointly and comprehensively. Policy should devolve appropriate responsibilities to state, regional, local levels of governments, and must include customary institutions of governance as well. An integrated land administration system must support land markets, manage urban areas, and shape natural resource and environmental management policies
  - *Building institutions:* Institutions involved in land policy must have clear mandates; must be free from political pressure; must be well-funded and well-staffed; must have enforcement mechanisms to reduce uncertainty and conflict; must have an effective system of incentives and checks and balances to ensure positive performance and remediate institutional abuse

The findings outlined in the **case study section** focus on the most relevant information in order to provide practical and actionable examples of how Myanmar might approach some of the challenges to its land program. Comparative analysis reveals the importance of:

- Incorporating customary tenure into a statutory legal framework to protect the environment and livelihoods of smallholder farmers (a problem in *Laos*)
- Ensuring that a policy that does include customary tenure is effectively implemented by addressing institutional weaknesses, ill-defined responsibilities, and lack of funds for implementation (a challenge in the *Philippines*)



- Facilitating land registration enable farmers to access credit equitably so as to encourage investment, realizing differing country situations can create unique challenges to doing so (as Thailand's experience highlights)
- Extending credit to smallholder farmers and leveraging local networks to boost productivity (a success in *Vietnam*)
- Making land titling quick, affordable, and accessible (as demonstrated in *Thailand*)
- Ensuring well-intentioned policies are supported by effective policy implementation, including ensuring cooperation between land-related ministries with competing jurisdictions (an issue in *the Philippines*)

The findings shared in the **field findings section** describe local land management practices, the economic/social conditions, and the current efforts towards implementation of the new land laws in surveyed communities. These findings can be summarized as follows under four major themes:

- *Communal tenure/customary practices*: Communal tenure and shifting cultivation are practiced minimally in southern Shan State; customary inheritance practices remain intact and there is a strong desire to continue use of customary methods of local-level dispute resolution; and there is a clear openness to including women in tenure registration however this has not yet been translated into practice;
- *Economic interventions*: Smallholder farmers experience pervasive economic insecurity often leading to tenure insecurity; migration is increasingly common for young people with limited economic prospects; smallholder farmers' access to the official financial sector is limited despite great need with most farmers relying on informal lending sources with high rates of interest; and, finally, land speculation and societal disruption from land sales are significant concerns among village elders and civil society leaders;
- *Information access*: Farmers are currently poorly-informed of government laws and do not have the ability to make informed decisions about land-related issues; farmers' limited access to information on land-related topics has undermined the economic efficiency of land markets and the integration of customary and statutory land management systems; and widespread unfamiliarity of government adjudication processes has led to government mistrust in some areas; and

- *Institutional development and capacity-building*: While many local stakeholders expressed positive opinions about recent changes in government policy, and the central government has shown commitment to adopting international best practices in land policy, many are uncertain of the government's capacity to implement these new policies; furthermore, government outreach efforts have been hampered by lack of manpower and language barriers.

## 1 Introduction

### 1.1 Project objective and motivation

This joint SIPA-UN-HABITAT research project was carried out at a time of great change in Myanmar. The Myanmar government, in the context of its transition to a more open form of government, has started to liberalize land markets. In 2012, the government enacted two major land-related laws entitled the Farmland Law and the Vacant Lands and the Fallow Lands and Virgin Lands Management Law. However, there is tension between these new laws and the existing customary practices of various ethnic minorities, which is heightened by migration, the emergence of new forms of land use, and changes in governance structures accompanying the land law implementation<sup>1</sup>. To deal with these issues, and in recognition of land tenure and land use management's key role in ensuring social stability and economic development, UN-HABITAT Myanmar is assisting the Myanmar government with a *Land Administration and Management Program* (LAMP). This program has several components, including: studies on current best practices in land management, land resurveying, and land ministry capacity building<sup>2</sup>. The two-year LAMP program began in Sept 2012 and is expected to continue through the end of 2014. It will be followed by a five-to-eight year implementation phase.

A team of graduate students from Columbia University was asked to collaborate on the research components of this two-year program, aiming at informing—in part—the trajectory of the larger program. As such, the primary objective of this project was supporting the LAMP through a detailed study on customary land tenure arrangements in the southern area of Myanmar's Shan

1 Leckie, Scott and Andrew Scherer. "Myanmar at the HLP Crossroads." *Displacement Solutions*. Geneva: October 2012. <<http://displacementsolutions.org/files/documents/MyanmarReport.pdf>>.

2 "Land Administration and Management Programme (LAMP) Myanmar." *UN-HABITAT Myanmar*. Version 25. Yangon: September 2012.

State, with a focus on three ethnic groups in the region, namely the Shan, Pa-O, and Danu peoples. Shan State was chosen for the research as it is a microcosm of Myanmar as a whole, being ethnically fragmented and featuring a number of different land-use paradigms, such as forestry, traditional rotational (shifting) cultivation, and agribusiness<sup>3</sup>. This fact, combined with its relative accessibility made Shan State a logical and practical choice to serve as the focal point of studies and pilot programs under the LAMP.

It should be noted, however, that the research team does not claim southern Shan State to be typical or "representative" of Upland Myanmar. Each upland area is distinct in culture, language and politics, and so there must be limitations on what conclusions from this research can apply to other upland areas. Many upland areas, including parts of Shan, Kachin, Mon and Kayin States, have ongoing or recent armed conflicts resulting in drastically decreased engagement by government civil servants, including Settlement and Land Records Department (SLRD), part of the Ministry of Agriculture and Irrigation (MoAI). By contrast, southern Shan State, while very ethnically diverse, is relatively stable politically and economically prosperous compared to other upland areas. Still, conclusions from this research should inform similar research in other parts of the country, especially given the nascent state of research and general dearth of knowledge about any of Myanmar's hinterlands beyond the major urban areas.

The goals of this project were to examine and describe the current state of customary land tenure and also to highlight successful and unsuccessful land management practices through research on land-related policy interventions in comparable countries in the region. Further, this research aims to support and inform efforts by the Myanmar government's SLRD to implement several new land-use laws over the next 5-8 years<sup>4</sup>. As described in Section 3.3, the project includes a descriptive research component as well as policy recommendations, informed by theoretical considerations regarding the links between land policy, economic growth, and equity.

## 1.2 Overall objective of UN-HABITAT in Myanmar and the LAMP

UN-HABITAT is the United Nations agency whose mandate relates to human settlements around the world. Because property rights and secure access to land are essential to ensuring adequate

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<sup>3</sup> "Briefing Paper: Land Tenure: A Foundation for food security in Myanmar's uplands." *Food Security Working Group*. Yangon.

<sup>4</sup> "Land Administration and Management Programme (LAMP) Myanmar." *UN-HABITAT Myanmar*. Version 25. Yangon: September 2012.

shelter for all people, ensuring security of land tenure is a key focus of UN-HABITAT. UN-HABITAT aims to provide socially and environmentally sustainable shelter for all and works on a number of topics including: providing advisory/capacity building services to national and local partners; building strategic partnerships with public, private and non-governmental organizations; and conducting research to enhance knowledge of urban issues<sup>5</sup>. In Myanmar, UN-HABITAT's past activities have included providing community infrastructure and safe water access development, disaster risk management and preparation, and government capacity building for urban planning and sustainable development<sup>6</sup>.

Recently, UN-HABITAT Myanmar has taken a more active role in land management issues, assisting the Myanmar government with the LAMP, a program aimed at assisting in liberalizing Myanmar's land market. The \$2MM program began in September 2012 and will run until August 2014. It is designed to streamline the implementation of two new land-related laws passed by the Myanmar government in 2012, the Farmland Law and the Vacant, Fallow, and Virgin Lands Law, which are described briefly in Section 2.2. Among other goals, UN-HABITAT and other LAMP participants will conduct research on land issues, organize expert meetings, and provide technical assistance and trainings on such topics as land registration, land records management, and surveying<sup>7</sup>.

### 1.3 Project team

The project team was comprised of seven 2<sup>nd</sup>-year MIA and MPA students from SIPA working in consultation with faculty advisor Sonali Deraniyagala<sup>8</sup>. The primary UN-HABITAT Myanmar representative for the project, who was involved in all phases of the work, was Eben Forbes, the Programme Advisor. Other UN-HABITAT Myanmar staff – especially U Myint Thein, the National Land Advisor – were integral to this project.

The fieldwork component of this project was carried out between January and May 2013, with background research and planning taking place in November and December of 2012. Three members of the project team traveled to Myanmar in January for two weeks to interview

<sup>5</sup> "United Nations Human Settlements Programme - About Us." *UN-HABITAT*. Accessed: November 2012. <<http://www.unhabitat.org/categories.asp?catid=1>>.

<sup>6</sup> "Training on Planning Issues Commences in Myanmar." *United Nations Human Settlements Programme*. Yangon: February 2012. Accessed: November 2012. <<http://www.unhabitat.org/content.asp?cid=10882&catid=53&typeid=6>>.

<sup>7</sup> "Land Administration and Management Programme (LAMP) Myanmar." *UN-HABITAT Myanmar*. Version 25. Yangon: September 2012.

<sup>8</sup> Short project team biographies can be found in Appendix H.

government officials, NGOs, foreign officials, and local academics in Yangon. The remaining four members of the project team traveled to Myanmar in March for a two-week research trip that included interviews in Yangon as well as meetings with farmers, local officials, and NGOs in Taunggyi, the capital of Shan State.

## 2 Background and context

Myanmar is a low-income developing country, with a per capita GDP of around \$1,400 at purchasing power parity. Since obtaining independence from the British in 1948, Myanmar has experienced a complex history, with a succession of authoritarian military rulers, ill-fated experiments with socialism, and continuous decades-long conflicts between the central government and ethnic minority armies that have displaced hundreds of thousands and left entire areas depopulated. Recently, however, political changes have swept the country and democracy has begun to take hold. These changes are taking root in a fast-growing country with an estimated population of 49.6 million<sup>9</sup> (although some sources put the figure as high as 60 million) with an astonishing amount of ethnic diversity: some 130+ minority groups inhabit various corners of the country, most speaking languages unrelated to the majority Burmese language.

While government statistics show very impressive growth rates – sometimes in double-digits – over the past several years, outside observers have questioned these figures. In general, Myanmar remains a poor, heavily rural, agrarian country<sup>10</sup>. Only 33% of the population lives in urban centers, and around 70% of employment (although only 30% of GDP) is in agriculture. These factors, along with high rates of rural poverty – around 30% on average but as low as 15% in the central regions and upwards of 80% in far northern Chin State<sup>11</sup> – make rural land tenure issues especially salient.

### 2.1 Recent political changes in Myanmar

Myanmar has been undergoing significant political changes in recent years. A new constitution came into effect in 2008, and the first election since this new constitution was held on November 7th, 2010, with a government led by President Thein Sein – the first civilian government in decades – coming to power in March 2011. The ruling Union Solidarity and Development Party (USDP) garnered nearly 77% of the vote and large majorities in the new bicameral legislature, consisting of the House of Representatives and the House of Nationalities.

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<sup>9</sup> [Myanmar Country Report](#). The Political Risk Group October 2011.

<sup>10</sup> Dapice, David, Anthony Saich and Thomas Vallely. “Appraising the Post-Sanctions Prospects for Myanmar’s Economy: Choosing the Right Path.” *Harvard Kennedy School and the Ash Center for Democratic Governance*. Cambridge: January 2012.

<sup>11</sup> See Section 2.4.3 for full statistics.

Ethnic parties gained a number of seats in this election, such as the Shan Nationalities Democratic Party with 5% and Rakhine Nationalities Development Party with 3%.

There also have been a number of government-led initiatives to limit censorship, register political parties, enable unionization, as well as release political prisoners. Partially as a result of this increased liberalization and the relaxation of the political climate, Myanmar citizens have been protesting land-related issues more openly, chiefly in opposition to agricultural and mining concessions. Many of these protests express concerns over potentially illegal concessions to well-connected insiders and the displacement of residents without adequate compensation<sup>12</sup>. A number of protests have made the international press in recent months, including a large protest of a Chinese-backed copper mine in Sagaing, near Mandalay<sup>13</sup>. This increase in protest activity has highlighted the need to ensure a strong legal framework that protects land rights for all citizens.

## 2.2 Recent developments in land regulations

In addition to political changes afoot, the government seeks to undertake substantial economic reforms in Myanmar. Land administration has been one target of this reformist agenda, a long-overdue update given that many of the laws comprising Myanmar's land management framework were created during Myanmar's British colonial era and have been amended few times since. At the same time, customary laws still play an important role in land tenure among farmers, especially in more remote upland regions of the country. For example, the most common custom is *dama-ucha*, which means those who cultivate land own the land<sup>14</sup>. As the market economy develops and political and economic liberalization continue, the Myanmar government has begun implementing several land-related reforms to provide a legal framework for continued modernization.

The most prominent recent land-related reform has been the 2012 passage of two land laws, the *Farmland Law* and the *Vacant, Fallow, and Virgin Lands Management Law* (VFV Law). Both of these laws were written and passed in a relatively rapid manner with limited consultation, a

<sup>12</sup> Hiebert, Murray. "Land Reform: A Critical Test for Myanmar's Government." *Center for Strategic & International Studies*. November 2012. [Proximity Designs Myanmar](http://proximitydesigns.com/myanmar). Accessed November 2012. < <http://csis.org/publication/land-reform-critical-test-myanmars-government>>.

<sup>13</sup> Fuller, Thomas, "Violent Raid Breaks Up Myanmar Mine Protest" *The New York Times*, 29 Nov 2012. Accessed November 2012. <[http://www.nytimes.com/2012/11/30/world/asia/myanmar-security-forces-raid-protest-camp.html?\\_r=0](http://www.nytimes.com/2012/11/30/world/asia/myanmar-security-forces-raid-protest-camp.html?_r=0)>.

<sup>14</sup> "Briefing Paper: Land Tenure: A Foundation for food security in Myanmar's uplands." *Food Security Working Group*. Yangon.

fact which makes in-depth analysis of their effects all the more important. As will be discussed in Section 5.3.4, various stakeholders have raised concerns about technical aspects of these laws and their effect on customary land management practices and the tenure security of smallholder farmers. However, other aspects of the law represent a significant step forward for property rights and may provide substantial benefits to smallholder farmers, including the provision of formal evidence of property claims and the development of more effective land markets. While opinions on these positive and negative aspects will be discussed at length subsequently, this section is intended to give a brief overview of the mechanics of the new laws.

The Farmland Law creates a major change in the administration of agricultural land by providing for the issuance of formal “land use certificates” (LUCs) that are transferable, mortgageable, and heritable. While the government of Myanmar will retain ultimate ownership of farmland (in other words, leasehold tenure instead of freehold will continue to be the dominant regime), for the first time, usage rights will be freely salable, provided transfers are properly registered<sup>15</sup>. It is important to note that only lands officially classified as farmland (as opposed to forest land, town land, or military land, for example) are eligible to bear LUCs, as the MoAI is responsible for implementing the Farmland Law and the MoAI does not have jurisdiction over these other types of land. Furthermore, as will be discussed in Section 5.3.4, a significant amount of current farming, especially by smallholders, takes place on land not officially classified as farmland. Although the MoAI does have jurisdiction over this land, its classification must be changed in order for LUCs to be issued, which could prove to be a barrier to efficient and equitable land registration. Another significant change is that the Farmland Law also codifies the government’s right to take land for public use through eminent domain as well as its requirement to provide adequate compensation in such cases.

The Farmland Law also creates a hierarchical system of administrative committees, called Farmland Administrative Bodies (FABs). These FABs are responsible for overseeing all registration efforts, issuing LUCs, and, importantly, adjudicating all land disputes – including those related to land classification and adequate compensation for public use takings - with the exception of land disputes related to inheritances (which will remain in the court system). There are five levels of FABs, with the lowest being the ward or village tract level, and the highest

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<sup>15</sup> Information in this and subsequent paragraphs comes from Oberndorf, Robert. “Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law.” *Food Security Working Group*. November 2012.; interviews with U Myint Thein (UN-HABITAT); and the team’s review of English language translations of the land laws and associated rules.



being the central government level. Disputes must first be heard at the village tract level, and then can be appealed in writing upwards. Members of the committees are drawn almost exclusively from executive branches of the central government, including prominent representation from the General Administration, Forestry, and Agriculture Ministries. Except for at the lowest level, there are no non-governmental or community representatives, and there is no representation from the judicial branch at any level. Full details on FAB committee membership are given in Appendix F.

The VFV Law deals with the conversion of unused lands to productive use. It allows private concerns, state-owned enterprises, civil society organizations, and foreign investors to apply to lease land for industrial or agricultural purposes. Leases under the VFV law will be non-transferable, but can be for up to 30 years, and require the payment of relatively minimal amounts (i.e., as low as US\$6 / acre in some cases). Entities can apply to lease up to 5,000 acres (2,000ha) of land at any one time and can re-apply for additional tracts in 5,000 acre increments, up to a maximum of 50,000 acres. Any land officially classified as vacant or otherwise unused is eligible to be granted in this way, although the law makes some accommodation for protecting *de facto* deviations from official classification. However, as will be discussed subsequently, the concordance – or lack thereof - between official classification and actual use is one of the most important issues to be addressed in the implementation of this law.

Under the VCVV law, responsibility for ruling on applications for VFV leases lies with a newly created body called the Vacant, Fallow, and Virgin Lands Management Central Committee. This committee consists of 17 high-ranking members, including seven from various departments of the MoAI (including the Union Minister), the Deputy Minister of the President, and representatives of eight other ministries (the full list is given in Appendix F). Again, only members of the executive branch of the central government are members of this committee, although, unlike with disputes covered by the Farmland Law, disputes arising from VFV land can theoretically be referred to the courts as well.

One of the chief goals of this project is to better understand how these new rules and practices will impact smallholder farmers as well as the agricultural economy as a whole. To this end, this project sought to solicit opinions from a variety of perspectives as to what effect the development of formal land markets might have on the rural economy. It also attempts to couch the empirical findings in a targeted review of theory on agricultural efficiency and land

administration and management, including highlighting best practices insofar as the field of agricultural economics has identified them. In order to highlight opportunities for reforms, as realized in like countries, as well as draw out examples of how land reforms may go wrong if case dependent factors are not considered, this report also incorporates a number of case studies on other countries' experiences with land administration and management reform. These findings, jointly, are intended to inform the effective implementation of these laws, a project on which UN-HABITAT and other agencies will be collaborating with the government of Myanmar over the next few years through the LAMP, as discussed in Section 1.2.

### 2.3 Ethnic diversity in Myanmar and Shan State

Given the importance of tailoring a country's land management infrastructure to the specific county conditions, Myanmar's ethnic profile, rural-urban population distribution, and more recent demographic trends, such as internal displacement and migration, are salient to the implementation of the LAMP. The complex ethnic composition of Myanmar consists of: the Bamar (68%), Shan (9%), Karen (7%), Rakhine (4%), Chinese (3%), and a large number of other groups (9%). In total, there are an estimated 130 different ethnic minority groups within Myanmar, many speaking languages entirely unrelated to Burmese - a fact that naturally complicates governmental administration in many areas. However, the Bamar people remain overrepresented in the army and government.

Internal displacement – the legacy of decades of widespread conflict between ethnic minority groups and the central government - is substantial. According to the Thailand-Burma Border Consortium's annual survey, an estimated 460,000 civilians were internally displaced in Burma in 2010<sup>16</sup>. As conflict is winding down in many areas with the signing of numerous peace accords, these displaced citizens will eventually return to their traditional homelands, which in some cases have been completely depopulated.<sup>17</sup> This has the potential to create further land tenure issues as returning populations confront uncertain property claims and changed usage patterns. Responding to such ethnic diversity, the Myanmar government re-arranged administrative structures in 2008, which included the establishment of Self-Administered Zones (SAZ). In these

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16 Mathieson, David S. "Flawed Math behind Burmese 'democracy.'" [Human Rights Watch](http://www.hrw.org/news/2011/05/17/flawed-math-behind-burmese-democracy). May 2011. Accessed: December 2012. <<http://www.hrw.org/news/2011/05/17/flawed-math-behind-burmese-democracy>>.

<sup>17</sup> Interview with Kevin Woods, 14 Jan 2013. Yangon, Myanmar.

zones, two of which are located in areas covered by this report, minority groups possess a certain level of autonomy, although the central government is still present.

Shan State itself is quite diverse including ethnic groups such as the Shan, Pa-O, Palaung, Kachin, Intha, Danu, Kokang, Wa, Lahu, Taungyo, Myoungzee, Lishaw, and Yinnat<sup>18</sup>. Of these, the Shan are the largest, numbering an estimated six million (although not all live in Shan State). Estimates of the total population of Pa-O and Danu vary (due to the lack of reliable censuses), but the Danu population is usually cited as 220,000 and the Pa-O population as 600,000. There are six SAZs in Shan State, belonging to the Naga, Pa Laung, Kokang, Wa, Danu, and Pa-O. The Danu and Pa-O SAZs are located in southern Shan State and were focuses of this research. The Danu SAZ consists of two townships along the western edge of southern Shan State, with a total population of around 150,000, and the Pa-O SAZ consists of 3 non-contiguous townships with a total population of 400,000. Within both of these SAZs, the central government of Myanmar is present and performs all land management-related functions.

## 2.4 Agricultural and land tenure issues in Myanmar and Shan State

### 2.4.1 Agriculture in Myanmar

Rice is the dominant staple crop in Myanmar. Myanmar has historically been a key rice producer in the region, although its output has declined on both a per capita and yield basis since 1985<sup>19</sup>. In comparative terms, Myanmar's exports have fallen behind regional rice competitors, namely Thailand and Vietnam, in both raw exports and in gross GDP. Outside observers describe a general "pattern" of underinvestment in the rice sector can be observed, manifesting itself through limited research and development, poor milling and post-harvest storage facilities, and poor farm-to-market transportation infrastructure. Further, low availability of credit is a substantial problem, reducing investment and forcing many farmers to sell their entire crop after harvest. This mass sale lowers the farm gate price of rice,<sup>20</sup> exacerbates asset depletion, and strains farmers' resources by forcing them to purchase the

<sup>18</sup> *The New Light of Myanmar*. XVI, 341. March 25, 2009. Accessed: April 2012. <<http://www.burmalibrary.org/docs6/NLM2009-03-25.pdf>>.

<sup>19</sup> Most data taken from the FAO website with the 2000 and 2005 figures for Myanmar coming from the Foreign Agricultural Service of the United States Department of Agriculture.

<sup>20</sup> Dapice, David, Tom Vallely, and Ben Wilkinson. "Assessment of Myanmar Agricultural Economy." Harvard Kennedy School, ASH Center for Democratic Governance. Cambridge: January 2009. Prepared for International Development Enterprises

same product at higher prices later in the season for sustenance. On top of these issues, farmers report that declining yields are due to increasing pest, disease, and weed problems as well as tired soils from continuous rice production (as of 2010)<sup>21</sup>. Ineffective government agricultural policies may contribute to the various problems cited above and also drive down demand by creating uncertainty and a risk premium through high port fees and frequent delays<sup>22</sup>.

While rice is the major staple in Myanmar, other crops are being cultivated in the region, especially outside the delta region, namely: cereals, oil crops, and pulses, which altogether account for 77% of cultivated areas<sup>23</sup>. Millet and maize are the other main cereals; sesame, cotton (for oil and fiber) and soybeans account for most oilseed production, while pulses and beans are also large. Pulses have occupied an increasing part in Myanmar agriculture since the liberalization of pulse export markets in the 1990s – and remain important because of their income potential, as well as their dietary contribution and their contributions to crop rotations and soil health. Most of other cash crops face the same structural problems as rice production, with a sharp fall in prices, low access to credit for farmers, large exporters controlling the market, and local market dysfunctions.

Recent increases in agricultural, timber, mining, and other concessions are another prominent land-related issue across the entire country. Current data from the government show that around 1.4MM hectares (3.5MM acres) of concessions have been granted around the country to a mixture of government and private concerns, a figure that represents around 2% of total land area in Myanmar. Concessions are most prevalent in the border states of Kachin (in the north, along the Chinese border) and Tanintharyi (in the south, along the Thai border), where 6% and 9%, respectively, of the total land area (and a very high percentage of land outside reserved forests and town land) is under concession, mostly to private concerns. Full current statistics are shown in Table 1 below.

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<sup>21</sup> Dapice, David, Tom Vallely, and Ben Wilkinson. "Revitalizing Agriculture in Myanmar: Breaking Down Barriers, Building a Framework for Growth." *Harvard Kennedy School, ASH Center for Democratic Governance*. Cambridge: July 21, 2010

<sup>22</sup> Ibid.

<sup>23</sup> "Myanmar Agricultural Sector Review Investment Strategy." *UNDP Myanmar. Volume 1*. Accessed: November 2012. <[http://www.mm.undp.org/UNDP\\_Publication\\_PDF/ASR%20Vol.1%20Sector%20Review.pdf](http://www.mm.undp.org/UNDP_Publication_PDF/ASR%20Vol.1%20Sector%20Review.pdf)>

**Table 1: Cumulative area granted through concessions, as of 2012<sup>24</sup>**

State	Private concessions	Government concessions	Area (ha)	Percent of total land area	Percent of arable land
Kachin	26	1	565,174	6.3%	11.8%
Taninthari	42	0	402,212	9.3%	20.1%
Ayeyarwady	47	23	115,677	3.3%	5.8%
Sagaing	13	41	104,924	1.1%	2.6%
Magwe	33	19	85,507	1.9%	3.7%
<b>Shan</b>	<b>64</b>	<b>21</b>	<b>65,003</b>	<b>0.4%</b>	<b>0.8%</b>
Others	42	18	44,622	0.2%	0.4%
<b>Total</b>	<b>267</b>	<b>123</b>	<b>1,383,119</b>	<b>2.0%</b>	<b>4.1%</b>

#### 2.4.2 Agriculture in Shan State

Within Shan State, rice is the main crop grown for household use. Double cropping during the 8 to 9 months of the wet monsoon with rotations are practiced extensively in southern Shan State, where rice is often followed by potato, tomato or chickpea in flat areas, while different rotations are seen in sloping hill areas. While data on southern Shan State specifically is not available, crop production figures in Shan State as a whole are shown in Table 2 below. In the dry season, wheat or potato are often grown on residual moisture in the flat valley areas while sloping fields are left fallow. Farmers with land in excess of about 10 acres frequently incorporate a fallow in the rotation, partly because of labor and other input shortages and partly to improve soil fertility. The fallow period, however, is often insufficient to have an impact on soil fertility restoration<sup>25</sup>.

**Table 2: Total crop production (tons, 2009), Shan State and Myanmar total<sup>26</sup>**

	Shan State	Myanmar total	Shan State share of total
Rice	2,555	32,166	8%
Sugar cane	2,526	9,562	26%
Maize	569	1,226	46%
Soybean	136	254	54%
Groundnut	85	1,341	6%
Tea	82	92	89%
Nigar	45	89	51%
Pigeon Pea	36	760	5%

<sup>24</sup> Myanmar government official figures, Jan 2013, as cited by FSWG; team calculations. Calculations for “percent of arable land” are based on Myanmar government 2012 statistics for the sum of total area under cultivation, current fallows, “other culturable wastes,” and “other woodlands”.

<sup>25</sup> “Environmentally Sustainable Food Security” *FAO Corporate Document Deposit*

<sup>26</sup> “Central Statistical Organization, Government of the Union of Myanmar.” *Myanmar Agricultural Statistics, 1997-2010*. Naypyitaw: CSO / Dept of Agricultural Planning, 2011, p. 202.

One relevant newer development in the region is the rise of large-scale commercial farming. Some large-scale commercial farming projects are being developed for upland rice production in Shan State, making use of a contract farming model involving small-scale outgrowers and a commercial processing company<sup>27</sup>. In addition, since the mid-2000s, the uplands in Shan State have been transformed by large-scale cash crop concessions; rubber, tea, sugarcane and cassava plantations, among other crops, are concentrated along government-controlled roads. Rubber plantations are rapidly growing in northern and eastern Shan State; official figures show that 100,000 acres were planted from 2004-2008<sup>28</sup>. As shown in Table 1, around 65,000ha (160,000 acres) of land in Shan State has been granted through concessions to a mixture of private and government entities, representing 0.4% of the total land area (although 0.8% of arable land), so concessions are, at the moment, relatively small in scale compared with other states.

Another background issue of note is opium poppy cultivation, as Myanmar is the world's second largest opium poppy grower after Afghanistan, accounting for 23% percent of opium poppy cultivation worldwide in 2011.<sup>29</sup> Ninety-one percent of Myanmar's production of opium takes place in Shan State, and poppy cultivation is a persistent occurrence in upland regions of southern Shan State, the project's area of focus. The economic impact of this production is significant on both a macro and individual level: in a country where a third of people live on a dollar a day, an acre of Myanmar poppy yields about \$1,000<sup>30</sup>. This economic dependence makes eradication efforts extremely sensitive.

#### 2.4.3 Land tenure, landlessness, and economic issues

Land use patterns are shifting in both Myanmar and Shan State, as land under cultivation increases due to population pressures. A breakdown of land use by type and recent changes in land use is given below. One interesting factor to note in the table is that land set aside as reserved forest has also been increasing, almost as fast as land under cultivation. Under Myanmar law, reserved forest land is not eligible for cultivation and can only be used for logging

<sup>27</sup> Ibid.

<sup>28</sup> "Alternative Development or Business as Usual?: China's Opium Substitution Policy in Burma and Laos." *Drug Policy Briefing No.33* Transnational Institute: November 2010, p. 6.

<sup>29</sup> "UNODC Myanmar: Working to end Shan State dependence on opium poppy." *United Nations Office on Drugs and Crime*. May 2012. Accessed: December 2012. <<http://www.unodc.org/eastasiaandpacific/en/myanmar/2012/05/food-distribution/story.html>>.

<sup>29</sup> Ibid.

<sup>30</sup> Marshall, Andrew. "In Myanmar's new war on drugs, meet the weapon of mass destruction: the weed-whacker." *Reuters*. 20 Feb 2012. Accessed: December 2012. <<http://www.reuters.com/article/2012/02/20/us-myanmar-opium-idUSTRE81J02120120220>>.

<sup>30</sup> Ibid.

and firewood-gathering with express permission of the Forestry Department<sup>31</sup>. Thus, increases in reserved forest land, while they aid the Myanmar government's goals of ensuring environmental sustainability, can also increase land pressure and potentially reduce access to farmland.

**Table 3: Land use patterns and recent change, Myanmar and Shan State<sup>32</sup>**

	Myanmar, total		Shan State	
	% of total land (2009)	2004-2009 changes (% pts)	% of total land (2009)	2004-2009 changes (% pts)
<b>Reserved forests</b>	25.0%	2.2%	19.3%	1.6%
<b>Current Fallows</b>	0.4%	-0.3%	0.6%	-0.4%
<b>Net Area Sown</b>	17.7%	2.2%	8.4%	2.5%
<b>Culturable Waste</b>	8.3%	-1.2%	12.6%	-1.8%
<b>Other Wood</b>	24.0%	-2.8%	31.5%	-2.0%
<b>Other</b>	24.7%	-0.1%	27.5%	0.0%

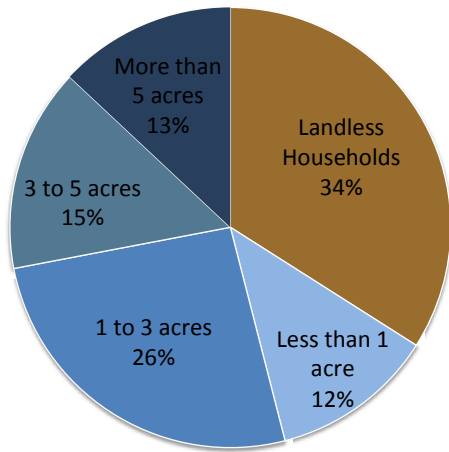
Landlessness and land fragmentation are also important concerns in Shan State and across Myanmar. Various official groups and NGOs have carried out surveys of landlessness across the country, reporting a variety of results. One survey of 45 townships in 2008, shown below in Figure 1 found true landlessness of 34% at the household level in rural areas, with effective landlessness due to marginal plot size (<1 acre) in an additional 12%. Another calculation, based on FAO data, found landlessness to be as high as 47%, with a further 8% of households being effectively landless. Finally, a 2012 calculation by LIFT found landlessness to be an estimated 53% across the country, with special severity in the Ayeyarwady Delta, where it was estimated at 72%. Upland communities, like most of Shan State, revealed much lower levels of landlessness – an estimated 26%<sup>33</sup>.

<sup>31</sup> "Guidance Note on Land Issues: Myanmar." *UN-HABITAT*. p. 8.

<sup>32</sup> "Central Statistical Organization, Government of the Union of Myanmar." *Myanmar Agricultural Statistics, 1997-2010*. Naypyitaw: CSO / Dept of Agricultural Planning, 2011, p. 202.

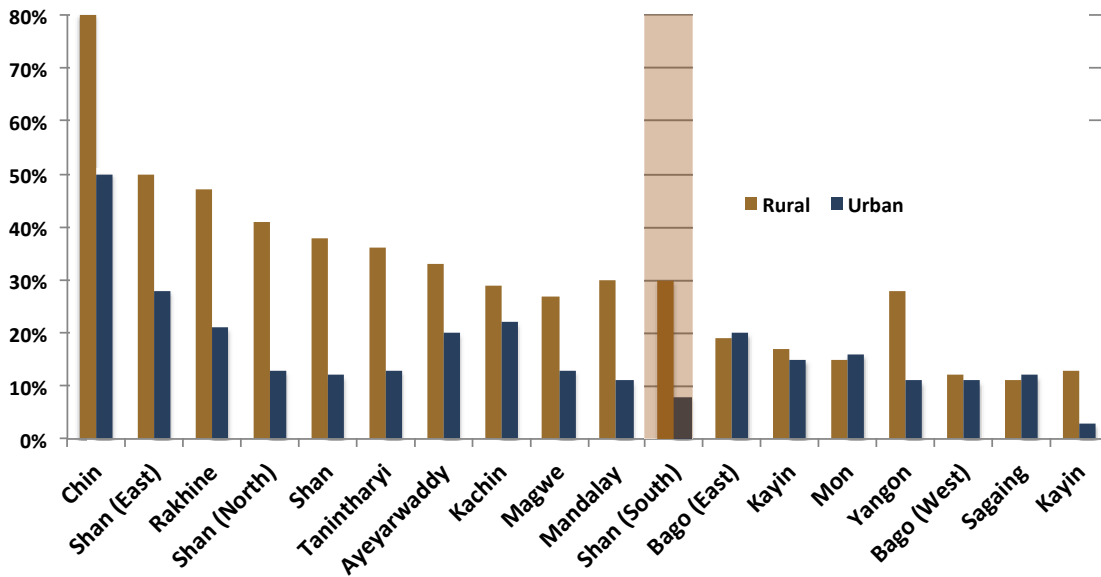
<sup>33</sup> Haggblade, Stephen et al. "A Strategic Agricultural Sector and Food Security Diagnostic for Myanmar." Michigan State University and MDRI/CESD Working Paper. 12 Mar 2013, pp. 83-84

Figure 1: Distribution of landholding in survey of 45 townships<sup>34</sup>



Finally, to put southern Shan State in context in terms of livelihood security, we can consider relative poverty levels as obtained through recent household surveys. As shown in Figure 2, UNDP finds that around 30% of rural households live in poverty in southern Shan State, ranking it in the middle of the 19 states and regions surveyed. Outside of the southern part of the state, poverty levels were much higher, reaching 50%+ in eastern Shan State.

Figure 2: Poverty levels by state and region, 2010<sup>35</sup>



<sup>34</sup> Adapted from figure provided by Ecodev Myanmar (2008).

<sup>35</sup> "Integrated Household Living Conditions Assessment (IHLCA)." *Integrated Household Living Conditions Survey 2009-10 UNDP Myanmar*, 2011. Cited in Haggblade, Stephen et al., "A Strategic Agricultural Sector and Food Security Diagnostic for Myanmar", *Michigan State University and MDRI/CESD Working Paper*. 12 Mar 2013.



## 3 Methodology

### 3.1 Goals of our research and this report

The team had several goals in mind when carrying out its research. First, the most concrete objective was to understand the traditional forms of land tenure management practiced by the Shan, Danu, and Pa-O peoples of southern Shan State. By land tenure management, the team was interested in understanding, broadly, how the concept of “who has the right to use what land” is customarily dealt with by these groups, and what forms (e.g. usufruct, private ownership, communal ownership) these rights take. As there is almost no existing literature on this topic (which is not surprising, given the sheer number of ethnic minority groups in Myanmar and the historic difficulties of conducting field research in the past several decades), this research is meant to help UN-HABITAT identify current customary tenure practices. Particular attention is paid to the features of land use that may be in conflict with the 2012 land laws so that proactive steps can be taken to ensure continued respect for and inclusion of ethnic minority group traditional practices in the Myanmar legal framework.

The second goal of the research was to explore how traditional and statutory forms of land management contribute to the protection or impairment of equal rights for all groups, including women, ethnic minorities, and the poor, as well as how such legal forms related to economic efficiency and development. A secondary theme related to both economic efficiency and equity is the theme of environmental sustainability, which the team sought to touch on in the field research. These goals called for both a literature review to understand the importance of land dynamics to these issues as well as field research to understand the realities facing different groups of people in rural Myanmar.

The final goal of this project was to place the Myanmar-specific findings into a broader context by analyzing the land policy-related experiences of several countries in the region with similar initial conditions, in order to understand both what types of land management policies have and have not worked in the past, as well as what consequences or results Myanmar can reasonably expect from pursuing various policy choices. This aspect of the work necessitated extensive desk research and comparative analysis and was meant to inform concrete policy recommendations,

which UN-HABITAT can consider jointly with the government over the course of the LAMP program and land law implementation.

With these goals in mind, this report is meant to serve four functions:

- 1) Briefly outline the theory behind the effects of land management and registration policies, procedures, and institutional structures, on various social and economic outcomes;
- 2) Document the actual tenure and land management practices used by the Shan, Pa-O, and Danu people of southern Shan State as well as their chief land-related concerns, and present firsthand insight into tensions between statutory and customary frameworks in Myanmar;
- 3) Highlight the experiences of a select group of comparison countries across several dimensions related to land management in order to show the types of positive and negative outcomes that have stemmed from specific policy choices of neighboring countries; and
- 4) Tie the above three strands together in order to discuss concrete ways that UN-HABITAT can help strengthen the implementation of the 2012 land laws in line with the overall mission of LAMP.

Sections 4 through 7 are dedicated to these four functions, proceeding as outlined above, followed by concluding observations in Section 8 that advances a series of recommendations.

### 3.2 Conceptual framework

Given the specific objectives of the project and the goals of UN-HABITAT, our basic research question is, “What is the ideal legal framework to address the specific land-related needs of Myanmar and the Pa-O, Shan, and Danu ethnic groups in S. Shan State, and how do the new land laws align with this ideal?”

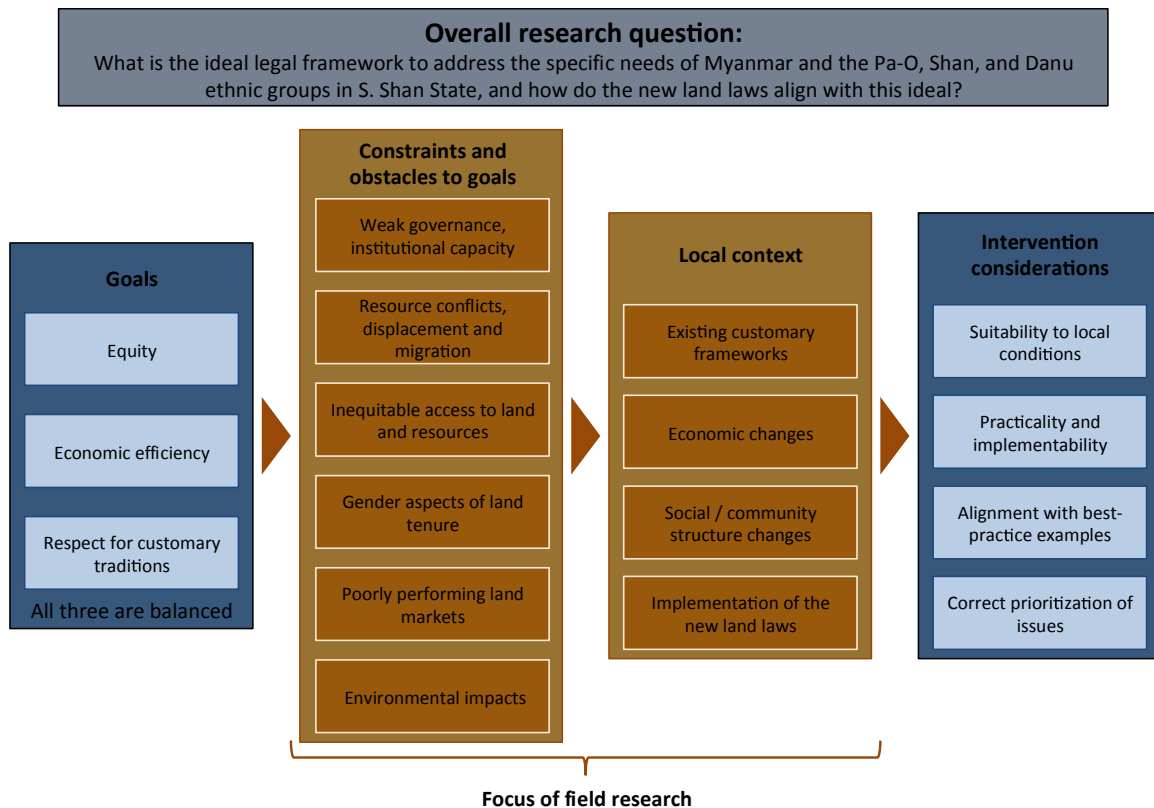
A legal framework of this sort needs to be built around the following key objectives:

- **Understanding and respecting the customary land management practices** of southern Shan State ethnic minorities;
- **Ensuring equity and equal protection** under the law for all groups, including women, ethnic minorities, and economically-disadvantaged populations; and
- **Encouraging economic efficiency** and livelihood security, and inclusive growth.

In order to develop recommendations to further these objectives, the team conceptualized its field research as focusing on the potential constraints and obstacles faced by farmers and the ways in which local context shaped agricultural productivity outcomes. Finally, to complete the conceptual framework, the team considered the intervention considerations needed to evaluate potential recommendations. Taken together, these various factors comprise the guiding conceptual framework for the project.

In developing a comprehensive conceptual focus, the team surveyed the methodologies used by prominent development agencies focused on land issues. Both FAO guidelines for land tenure projects and USAID conceptual frameworks were examined<sup>36</sup> to ensure the conceptual framework was comprehensive and methodologically sound. Partially based on this research, the team also created an expanded conceptual framework which further breaks down the themes in into a detailed list of research questions and subtopics. This detailed research guide is found in Appendix B.

**Figure 3: Conceptual framework for research**



<sup>36</sup> "Land Tenure Studies 3: Land Tenure and Rural Development." *Land Tenure and Property Rights, Vol 1: Framework*. FAO; USAID and ARD: 2002, chapters 4-5.

### 3.3 Research strategy

This project included both desk research, conducted from New York using the resources of the Columbia libraries, and field research, conducted in Yangon and Taunggyi, Myanmar.

#### 3.3.1 Desk research to understand theoretical context

Desk research was conducted throughout all phases of the project in order to develop a background understanding of issues facing Myanmar, ensure that information collection instruments for field work were relevant and comprehensive, and place findings from the field in context. In line with the three aims described in Section 3.2, chief research topics included equity considerations in land policy, ways of designing inclusive land frameworks, and the economic rationale for various forms of land tenure and land management policies.

#### 3.3.2 Interviews with higher-level stakeholders aligned with various interests

With initial context established through desk research, three representatives from the team traveled to Myanmar in January to interview various stakeholders. This first phase of field research was conducted in Yangon and was aimed at identifying opportunities and challenges presented by the new land laws, as seen by a variety of different perspectives. The team's chief goal was to hear from a cross-section of interests, without privileging one perspective. Thus, the team sought out four broad types of stakeholders:

- Representatives of the Myanmar government, to understand government motivations and desires for the new laws
- Civil society groups engaged in pressuring the government on various land-related issues, to highlight concerns surrounding the new laws
- Outside observers such as US government officials, to put land-related concerns into context among broader economic and governance issues
- Academic sources such as visiting scholars with experience in Myanmar, to mediate among the differing perspectives of frontline stakeholders and provide a deeper historical understanding of the context

The team used these interview findings to identify the most pressing concerns related to the land laws and to better understand what areas of land law implementation might be most

problematic with respect to the social structures and livelihoods of ethnic minority communities. This more nuanced understanding helped the team develop appropriate survey instruments for the second field trip, which was dedicated to frontline research in southern Shan State. Findings from all of the interviews were used to flesh out the framework described in Section 3.2 and to develop a specific list of hypotheses to validate through the March field trip. These hypotheses were then transformed into focus group guides and questionnaires.

### **3.3.3 Interviews of farmers and local community / government officials**

The second phase of field research was designed to gather the actual impressions of farmers, community leaders, and local government representatives in southern Shan State. Information was gathered during a three-day “workshop” conducted in Taunggyi, the capital city of Shan State. Because the team was not able to travel to rural areas of southern Shan State due to limited human resources and delays in obtaining a letter of agreement from the government, an alternative approach was developed through discussions with UN-HABITAT and a local NGO partner (Metta Foundation). Stakeholders were gathered in a single location in Taunggyi, to take part in individual interviews and focus groups and to complete surveys. A set of questionnaires and surveys was used for each category of stakeholders and participants at this workshop (village elders, male farmers, female farmers, CSOs and NGO representative, local government representatives). These questionnaires were developed using a matrix of issues identified through desk research and January field trip interviews. Issue areas and discussion topics were consistent across the various stakeholders in order to compare perspectives and triangulate information.

The three-day gathering was financially supported by UN-Habitat, logistically organized by Metta Foundation and hosted by Karuna Myanmar. Prior to travelling, the team asked Metta Foundation to invite farmers and to pay attention to certain characteristics: gender, ethnic group (Pa-O, Danu and Shan), age, farming practices, and role in the community (i.e. village elders or community leaders). Metta Foundation successfully invited 24 farmers with a satisfactory mix of these characteristics. The team also invited local NGO representatives to be interviewed, while UN-Habitat invited local government representatives. The workshop included different phases of information gathering:

- Informal individual interviews and small focus groups with farmers, community leaders and CSO representatives present on the first day of the workshop;
- A first round of focus groups on the second day of the workshop. For this round, the team invited farmers to form three different groups, based on preferences. Another focus group was formed with the six female participants in order to allow for gender-sensitive data collection. Team members paired with local facilitators (either nationals from UN-Habitat or Metta Foundation) and conducted focus groups based on the questionnaires previously drafted, and adapted to participants;
- A second round of focus groups touching on another set of topics. The composition of the focus groups was changed in order to modify the group dynamics: grouping farmers with other farmers who didn't know each other allowed for more information to be gathered;
- Quantitative surveys of farmers administrated at the end of day two of the workshop. These surveys covered issues related to land tenure, agricultural characteristics, and socio-economic changes;
- An education session conducted by UN-HABITAT to inform the farmers about the new land laws. Metta Foundation expressed a deep interest in this informational session, and it also allowed the team to conduct another set of post-session focus groups to gather impressions and new perspectives from the farmers on the land laws and their interaction with customary practices;
- Interviews with local NGOs and CSOs, conducted alongside the main workshop. Additionally, two local government representatives were also interviewed at the end of the workshop and team members were able to interviews them. The team also provided other local officials with translated versions of the questionnaires, and two of them sent their answers back.

Overall, the “workshop” structure was flexible enough to gather extensive information from various stakeholders. Upon completion of the field research, interview notes and survey answers were tabulated. As many questions were posed to multiple groups of similar stakeholders, the team created a grid, organized by theme, with each question against a summary of the qualitative answers for that question from each interviewee or focus group. To analyze the findings, the team went through each question in the overall framework and first outlined the initial hypothesis, as obtained from the January interviews. The team then looked

for quantitative findings from the individual farmer surveys that either supported or potentially refuted this hypothesis and summarized these findings. The team then analyzed the qualitative answers from each interviewee and highlighted quotes that provided a more nuanced view of the hypothesis. Special attention was paid to findings that potentially altered the initial hypothesis. Finally, when these findings were summarized, the team developed a single synthesis for each question that presents the main conclusions, implications, and the team's confidence in the findings, keeping in mind the limitations discussed below in Section 3.5.2.

### 3.3.4 Comparative studies of land interventions in neighboring countries

The final phase of research involved putting the Myanmar experience into context by understanding the modern history of land management policy changes in neighboring South and Southeast Asian countries. While the team had initially anticipated restricting the comparative research to a single country in the region, it soon became clear that no single country was truly comparable in a meaningful sense to Myanmar, when considering Myanmar's extensive ethnic diversity, history of conflict, colonial and post-colonial systems of land management, and the specific community structures and land-use paradigms of the ethnic minorities of Shan State. Additionally, there were concerns about the relative scarcity of English-language materials on individual comparator countries.

To get around these obstacles and deliver a more relevant final report, the team chose to consider a cross-section of regional countries, comprised of Nepal, Laos, Cambodia, Thailand, Vietnam, the Philippines, and Indonesia. These countries were chosen in order to give the team a full set of neighboring countries with one or more of the following characteristics relevant to understanding Myanmar:

- Large ethnic minority populations
- A history of conflict,
- Population groups practicing traditional forms of agriculture and agroforestry
- Land and population pressures

- Transformations of the agricultural economy (e.g. due to inflows of agribusiness investment, decollectivization, post-colonial transitions away from plantation agriculture).

With these countries in mind, the team first undertook a literature review to understand each country's similarity to or difference from Myanmar along dimensions like those above. The team also surveyed modern (i.e. post 1950s) land management policy changes. With this survey completed, the team conducted a deeper analysis of some of the practical lessons offered by comparison countries, as described in Section 3.4.

### **3.4 Comparative analysis framework**

While understanding the political context and theoretical lessons offered by each potential comparison country is interesting from an academic perspective, given this project's focus on delivering concrete recommendations to assist UN-HABITAT and the government of Myanmar, the team's comparative analysis framework is deliberately practical in nature. Specifically, the team was interested in two questions:

- What are the underlying technical or practical reasons for the success or failure of various land management policies adapted by neighboring countries?
- What were some of the unintended consequences of previous land management policies adapted by neighboring countries and how can Myanmar anticipate and mitigate them when making similar changes?

Consistent with the overall framework described in Section 3.2, these two questions are evaluated in light of the three overall aims of the project, namely respecting customary tenure, ensuring equal protection under the law, and encouraging economic efficiency.

### **3.5 Issues encountered and limitations of the research**

#### **3.5.1 Issues and obstacles in field research**

Although working in Myanmar is becoming easier with the opening of the country and increasing freedoms of movement, discussion, and association, the project location still created



some difficulties. However, the team was generally able to push the research forward, albeit sometimes with compromises.

The chief obstacle was a delay in the government's signing of a letter of agreement for the overall LAMP project. Because of this delay, the research trip, while being allowed to proceed, had to remain somewhat informal. This complicated efforts by the team to meet with certain government officials from critical ministries such as MoAI and MoECaF. More importantly, it prevented the team from getting the permits necessary to travel to rural regions of Shan State and meet directly with farmers in their home villages. In the end, the team was able to arrange a compromise "workshop" solution that involved bringing farmers into Taunggyi and meeting with them as well as lower-level government officials on more "neutral" territory in a way that avoided the need for line ministries to be seen as endorsing the project.

Other issues included difficulties in making contact with smaller, field-based organizations and difficulties in conducting phone interviews from New York. Here, the team drew lessons about the need for constant, proactive communication, identifying multiple backups for interview targets, and flexibility when developing interview guides. The team also had great success by working through a local NGO to facilitate the workshop in Taunggyi, as their local network of contacts and expertise was invaluable in identifying and sourcing the proper interviewees.

The uncertain structure of the workshop (due to late-breaking political considerations) created some difficulty, which the team dealt with by developing a comprehensive set of data collection tools that allowed for flexibility and adaptability in the field. Another issue, inherent to any focus groups or interviews, is the quality of information collected. Indeed, it appears that some farmers might have expressed reluctance to talk freely and honestly, which is a limitation specifically significant in the political context of Myanmar. The team developed a strategy based on confidentiality, anonymity, and insuring a comfortable and safe environment for the interviewees. Additionally, the quality of information is also exposed to the translation risk, a process during which some information may be lost. Fortunately, translators from UN-Habitat and Metta Foundation were fluent in English and trained as facilitators, which minimized the risk.

### 3.5.2 Limitations of the findings

The chief limitation of the team's findings relates to the narrow geographic focus of the field research and the small sample size. As mentioned above, Myanmar has over 130 ethnic groups with highly varied farming practices, forms of societal organization, and relationship with the majority Bamar people. For example, some groups, like the Danu in our study, speak a language related to Burmese and have no history of conflict, while others have been in open conflict for generations and actively desire independence. However, our study focused only on three ethnic groups, in just one region, that together make up around 10% of Myanmar's estimated population.

Additionally, due to the travel limitations imposed by the project's uncertain status, the interviews and focus groups conducted during the field workshop have two important limitations. First, there may have been a selection bias. Even though Metta Foundation offered appropriate compensation for the travel and time of the farmers, they were only able to reach people they were already working with, and people willing to come and participate to such a workshop. Therefore, the sampling strategy heavily relied on the partner's strategy – which was overall successful as they invited farmers with the desired characteristics (gender, age, ethnic group). The sampling strategy for the interviews and focus groups also implied dealing with small subsamples of individual representing larger groups: due to the small number of farmers, it resulted in interviewing one or two representative of subcategories (for instance, Pa-O female farmer, young Shan farmer or Danu village elder). Thus, validity of the data collected is highly dependent on a small number of key interviewees. This is an obstacle inherent to any setting for which field research is time constrained with limited human resources.

Land use patterns also differ significantly across the country. This study focused exclusively on upland agriculture primarily involving fixed, privately-owned plots. But in various other areas of Myanmar, paddy rice farming, large-scale plantations, agroforestry, and shifting / swidden cultivation are dominant. These land use paradigms can have a dramatic effect on the specific tenure-related challenges that small farmers face. Similarly, the presence of government and outside actors varies from region to region, and these differing power dynamics can greatly affect farmers' perceptions of tenure security and economic position. In the Ayeyarwady Delta region, population densities are very high, government presence is strong and consolidated, and most aspects of land management - registration, taxation, governmental oversight - are more

developed. Meanwhile, in the far upland regions along Myanmar's borders, central government presence is limited or non-existent, as ethnic group national organizations provide most administration, and land registration is limited. Likewise, in areas along the Thai and Chinese borders, foreign business and economic presence - especially in the form of natural resource concessions - is much larger than in other areas.

Southern Shan State, meanwhile, is somewhere in the middle as it is becoming a popular destination for agribusiness investment, and its relatively central location means government presence is well-established, although several areas in the study are specially-designated zones where ethnic minority groups have more autonomy. Thus, it is critically important when reviewing this study to realize that the conclusions arrived at are not strictly applicable to all contexts in Myanmar. While the concerns and hopes expressed by farmers, NGO leaders, and officials in Southern Shan state are certainly suggestive of what might be occurring elsewhere in the country, it will be necessary to conduct further research - just as UN-HABITAT currently plans to do - in a varied set of societal and land-use contexts across Myanmar to ensure that the interests of all stakeholders are taken into account.

## 4 Theoretical background

In nearly all societies, land and property rights are a complex, emotional issue. Land is not just a source of wealth but also represents a connection to ethnic identity, a concrete asset to be passed on through generations, and a source of security in an uncertain world. Thus, any land management project raises a number of theoretical issues. These issues include, first, ensuring equal protection and the right to enjoy the full economic potential of their land for all members of society. Second, it is also critical to shape land management institutions to meld with the complex web of formal and informal institutions that define a society and are consistent with the principles of good governance. This section briefly discusses some of these considerations and provides theoretical context that may be helpful in understanding the typical processes and objectives embedded in a land administration and management program.

### 4.1 Ensuring equity and equal protection for all groups

#### 4.1.1 Especially vulnerable groups: Women and ethnic minorities

In societies around the world, women face greater risk of poverty and economic exclusion, in addition to facing other challenges related to rights and voice. One critical dimension of this challenge is access to land and the free exercise of property rights, which is highly unequal between men and women. Unequal access to property rights stems from an array of historical reasons that vary from country to country, but it is often deeply rooted in traditional practice. As a result there is growing acknowledgement that promoting “gender neutrality” in land management frameworks is not nearly sufficient – instead, land management interventions must specifically target the inclusion of women<sup>37</sup>. Even when women are granted equal rights under the law, social conditions and cultural factors – such as religious prescriptions, traditional views of the man as “breadwinner” – can easily prevent women from exercising these rights. To address this gap, many land management capacity-building programs have begun to include specific outreach efforts directed at married women and female-headed households, or have begun to include explicit and separate targets for female registration (to ensure that

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<sup>37</sup> Dalrymple, Kate and Brenda Batistiana. “Bringing Land and Gender Equity to the Surface.” *7th FIG Regional Conference Spatial Data Serving People: Land Governance and the Environment – Building the Capacity*. Hanoi, Vietnam, 19-22 October 2009. Accessed: November 2012. <[http://www.fig.net/pub/vietnam/papers/ts02d/ts02d\\_dalrymple\\_batistiana\\_3596.pdf](http://www.fig.net/pub/vietnam/papers/ts02d/ts02d_dalrymple_batistiana_3596.pdf)>.

government agencies can separately track female and male enjoyment of land-related rights) as part of the set of key performance indicators<sup>38</sup>.

As the World Bank notes, however, ensuring women have equal access to property rights can have significant societal benefits, as women who share equal property rights with their spouses are generally more empowered to control important household decisions such as investment in children's education and health<sup>39</sup>. Women, of course, also serve as heads of household and sole providers in great numbers across the world – the UN estimates that around one third of households are female-headed. Ensuring that these women, who already face marginalization and threats to livelihood, have access to secure property rights and can participate fully in society and the economy is critical.

Another group at risk of exclusion is the ethnic minority population, which in Myanmar is substantial. Economic exclusion of ethnic minorities is common across South and Southeast Asia and indeed the world. Higher rates of poverty and lower rates of landownership in minority groups are perpetuated across generations to create concentrated exclusion, a situation that is often exacerbated by ethnic minorities' locations in remote regions of countries, on marginal lands at the very edge of state control<sup>40</sup>. Another factor that worsens exclusion of minority groups is the use of communal tenure, which is a fixture in many indigenous societies in Southeast Asia and worldwide. Academics note that communal property systems have long been "dismissed as a sign of backwardness and economic inefficiency, as an obstacle to economic development and commercial production"<sup>41</sup>. Because of this prejudice, along with physical remoteness, language barriers, lack of formal education, and illiteracy, minority groups in the region often find it difficult to advocate for their rights<sup>42</sup> and as a result can be excluded from even well-designed land tenure management frameworks.

<sup>38</sup> Ibid.; see also: Varley, Ann. "Gender and Property Formalization: Conventional and Alternative Approaches." *World Development* 35:10 (2007): 1737.

<sup>39</sup> World Bank. "Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report." *Gender and Rural Development Thematic Group (PREM/ARD) and the Land Policy and Administration Thematic Group (ARD) of The World Bank*. June 2005. Accessed: February 2013. <[http://siteresources.worldbank.org/INTARD/Resources/Gender\\_land\\_fulltxt.pdf](http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf)>.

<sup>40</sup> Lipton, Michael. *Land Reform in Developing Countries: Property Rights and Property Wrongs*. London: Routledge, 2009, p. 19.

<sup>41</sup> Von Benda-Beckmann, Franz and Keebet. "How Communal is Communal and Whose Communal is it?" in *Changing Properties of Property*. New York: Berghahn Books, 2006.

<sup>42</sup> Anderson, Kristen. "Communal Tenure and the Governance of Common Property Resources in Asia." *FAO Working Paper*. April 2011.

#### 4.1.2 Applying international human rights laws and norms

A number of international human rights law and legal norms apply to issues addressed in this study. The most relevant legal themes include the rights of indigenous and minority groups, local development, environment, culture, and women's issues. In addition to the major international human rights conventions, Myanmar has supported three other pieces of international human rights law that specifically acknowledge these issues. These are the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by Myanmar in 1997;<sup>43</sup> the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (DROM), adopted by the United Nations General Assembly (UNGA);<sup>44</sup> and the 2007 Declaration on the Rights of Indigenous Peoples (DRIP) which Myanmar voted to support in the UNGA.<sup>45</sup>

While the Myanmar Government may describe Shan, Pa-o, and Danu as members of "ethnic minorities" under international human rights law, they are effectively indigenous groups. The legal distinction between the two being that (a) minorities seek institutional integration while indigenous peoples seek to preserve a degree of institutional separateness; (b) minorities seek to exercise individual rights while indigenous peoples seek to exercise collective rights; (c) minorities seek nondiscrimination while indigenous peoples seek self-government<sup>46</sup>. Since these three groups each have sought to exercise collective rights, institutional separateness, and self-governance (demonstrated by historic secessionist movements and contemporary self-administered zones), they could legally be considered indigenous groups. Regardless of how they are defined – as indigenous or minority groups – Myanmar has taken on the commitment to provide these communities with international legal standards through DRIP and DROM.

Currently the government has not effectively provided local citizens with sufficient information or agency in regard to development or environmental decision-making process (as required by the *Rio Declaration on Environment and Development*, Principle 10, which Myanmar has adopted).<sup>47</sup> Having adopted DRIP<sup>48</sup> Myanmar is further obligated to engage in the creation of

<sup>43</sup> "Convention on the Elimination of All Forms of Discrimination against Women." *UN Treaty Collection*. 28 April 2013. <<http://treaties.un.org/>>.

<sup>44</sup> United Nations Bibliographic Information System (UNBISNET). 28 April 2013.

<sup>45</sup> *Ibid.*

<sup>46</sup> Kymlicka, Will. "The internationalization of minority rights." *International Journal of Constitutional Law* 6: 1 (2008): 1-32.

<sup>47</sup> "Rio Declaration on Environment and Development." *United Nations Conference on the Human Environment, UN Treaty Collection*. Rio de Janeiro: 14 June 1992. <<http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>>.

strategies for development and natural resource management for indigenous populations. DRIP also requires the state to hold effective consultation with indigenous communities over the concessions process.

International law defines a community's land and way of life as part of its culture. As government concessions affect the land and therefore the culture of indigenous and minority groups, the Myanmar government is obligated to protect these communities' lands<sup>49</sup>. The national government should ensure the respect of the cultural rights of indigenous and minorities groups and allow them to use their land as they see fit<sup>50</sup>.

Finally, CEDAW outlines the state's responsibility to eliminate discrimination against women on economic and social issues, and specifically spells out women's rights to access bank loans, mortgages and other forms of financial credit. CEDAW also specifically protects rural women, ensuring them the right to participate on development planning at all levels and for their equal treatment in land reform, agrarian reform, and in land resettlement schemes.<sup>51</sup> The Myanmar government should continue to work to ensure that these rights are realized.

## 4.2 Encouraging economic efficiency & improving livelihoods: The theoretical link between tenure security and economic efficiency

The chief objective of the UN-HABITAT LAMP program, assisting the Myanmar government in implementing a new land titling and management program, is central to modernization of the country's agricultural sector, and therefore to its economic development. Increasing the security of property rights through registration in developing countries can be a catalyst for agricultural investment, rising productivity, and diversification of market activities. Development economists highlight two main arguments in favor of undertaking efforts to increase tenure security. Firstly, having clear evidence of title allows landowners to use their property as collateral in borrowing

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<sup>48</sup> "United Nations Declaration on the Rights of Indigenous Peoples." *United Nations Permanent Forum on Indigenous Issues*, *UN Treaty Collection* 13 September 2007. <[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)>.

<sup>49</sup> "Universal Declaration of Human Rights." *United Nations* 10 Dec. 1948. <<http://www.un.org/en/documents/udhr/index.shtml>>.

<sup>50</sup> "The Office of the High Commissioner for Human Rights General Comment No. 23: The rights of minorities." *Office of the High Commissioner for Human Rights* 8 April 1994.

<<http://www.unhcr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111?Opendocument>>.

<sup>51</sup> "Convention on the Elimination of All Forms of Discrimination against Women." *UN Treaty Collection*. 28 April 2013.

<<http://treaties.un.org/>>.

from the modern financial system. In doing so, farmers obtain valuable, low-cost capital to put towards productivity-enhancing investments. Secondly, increased tenure security inspires landowners to undertake longer-term investments, confident in the knowledge that they will be able to reap the full benefit of such investments. Together, it is hoped, the investment incentive and credit market access should combine to increase efficiency and agricultural productivity.

However, economic considerations are not the only factors to be taken into account. In order to guide construction of a holistically sound framework, the following section 4.3 will discuss various best practices to land titling and land administration and management (LAM) programs. This review advances the need for a broader agricultural policy, formed with attention towards customary practices, incorporating local governance structures, and facilitating public involvement. In shaping agricultural policy, attention to context-specific factors or preconditions will also be important.

#### 4.2.1 Benefit One: Secure title allows access to the modern financial system

In many developing countries, financial systems are underdeveloped and access to credit is limited. Without credit, smallholders cannot make necessary investments to increase the productivity of their land or business. Supporters of land formalization believe that one of the biggest obstacles to obtaining credit is that banks shut untitled landowners out of the market due to concerns over their ability to collect their debt in the event of default. As a result, borrowers without clear title are forced to either pledge less desirable assets like machinery (which are harder for creditors to liquidate and thus cannot support large-scale borrowing) or seek credit from informal moneylenders, where interest rates are higher and terms are less favorable<sup>52</sup>. As will be discussed in Section 5.2.1, the team's field findings confirm that credit is indeed limited in Myanmar.

Economist Hernando de Soto, one of the most vocal proponents of this line of reasoning, notes that land titling can be an engine of growth by enabling countries to access their substantial land wealth. Although the agricultural economies of typical developing countries seemingly lack wealth, in reality, they have substantial capital in the form of land assets<sup>53</sup>. However, under an

<sup>52</sup> Feder, Gershon and Akinihio Nishio. "The Benefit of Land Registration and Titling: Economic and Social Perspectives." *Land Use Policy* 15:1 (1999): 27.

<sup>53</sup> For example, De Soto estimates the total amount of "dead capital" in the informal sector at \$240 BN in Egypt and \$133 BN in the Philippines; this compares to year-2000 GDP of approximately \$100 BN in Egypt and \$80 BN in the Philippines.



informal property rights regime, these assets are illiquid and thus cannot be deployed to support investment. Thus, in order for countries to translate this wealth into investment growth and subsequently into GDP growth, land assets must be made liquid through formalization of property rights. Using formal registration to turn this “dead capital” into liquid financial collateral can be a vehicle for productivity-enhancing investments and future economic development, given the right alignment of other institutional factors<sup>54</sup>.

#### 4.2.2 Benefit Two: Formal title encourages investment

In all economic sectors, future production is dependent on investments made today. Specifically, long-term agricultural productivity growth is a function of investments in irrigation, mechanization, new seed varieties, and anti-erosion measures like trees or terracing<sup>55</sup>. Agricultural productivity also requires forgoing destructive farming methods like improper crop rotation or insufficient fallowing that sacrifice long-term soil quality for short-term productivity boosts. This sort of long-term planning and investment can only happen if farmers are confident in their ability to remain on their land for a long period of time. In other words, “the incentive to undertake these investments is thus affected significantly by expectations regarding the length of the horizon over which the investor might reap the benefits”<sup>56</sup>.

Thus, any intervention that increases a landholder’s expectation of the length of time he will be able to remain on his property, or that increases the transferability of land, should encourage him to invest more in the long-term productivity of his land.<sup>57</sup> This is the outcome desired by proponents of registration formalization. Proponents also hope that formal title will enable landowners to shift investments from visible ones designed to increase informal tenure security to less-visible ones more relevant to enhanced productivity<sup>58</sup>.

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<sup>54</sup> De Soto, Hernando, *The Mystery of Capital*, New York: Bantam, 2000.

<sup>55</sup> Feder, Gershon and Akinihio Nishio. “The Benefit of Land Registration and Titling: Economic and Social Perspectives.” *Land Use Policy* 15:1 (1999): 26.

<sup>56</sup> *Ibid*:27.

<sup>57</sup> Deininger, Klaus, *Land Policies for Growth and Poverty Reduction: A World Bank Research Report*, Oxford: Oxford University Press, 2003, pp 41-42.

<sup>58</sup> For example, Deininger (2003: 38) cites examples from Ethiopia, where farmers without formal title concentrate investment spending on demarcating borders rather than actually enhancing productivity by improving soil quality or terrace structure.

### 4.2.3 The end result is increased efficiency and productivity

Together, increased access to credit and increased incentives to make investments should combine to boost the productivity of agricultural land. A more efficient use of agricultural land will raise incomes for small farmers and, it is hoped, contribute to economic growth. Other efficiency gains arise from the proposition that formal title registration should lead to a well-functioning, liquid property market. A well-functioning market serves to ease the reallocation of land from inefficient to more efficient users while, at the same time, raising property values and wealth for all landowners<sup>59</sup>. Further, because some traditional inheritance systems – such as those used by many ethnic groups in southern Shan State – require property to be divided equally among all or most heirs, another advantage of a liquid property market is that heirs who do not wish to farm can be “bought out” by those that do, preventing inefficient subdivision or fallowing of productive farmland. Researchers also believe that a formal registration record can serve as a smallholder’s first toehold in modern society, facilitating a variety of activities (such as accessing public utilities or bank accounts) that depend on a formal residence<sup>60</sup>.

Nonetheless, there are limitations to the effectiveness of the new land laws in promoting agricultural development. First, title formalization, while desirable in its own right, may not be the most direct and effective means of achieving increased productivity and may not result in substantial progress in the absence of necessary institutional capabilities and a baseline level of economic development. Further to this point, land titling can trigger landlessness and inefficient or unjust land consolidation if not executed concurrently with complementary economic and, especially, institutional reforms.

One worrisome but very plausible outcome under an improperly executed land titling program is that farmers will mortgage their land to take out loans or make investments, which prove to be unprofitable, resulting in their land being seized or liquidated by creditors. Similarly, farmers may feel compelled to sell land once it becomes transferable if they are not able to derive short-term value from it, leaving them without a viable livelihood alternative. This outcome is especially likely if agricultural market failures – such as information asymmetries, monopsonistic crop-purchasing markets, and poor post-harvest infrastructure – are left unaddressed within the

<sup>59</sup> Feder, Gershon and Akinihio Nishio. “The Benefit of Land Registration and Titling: Economic and Social Perspectives.” *Land Use Policy* 15:1 (1999): 27.

<sup>60</sup> Deininger, Klaus, *Land Policies for Growth and Poverty Reduction: A World Bank Research Report*. Oxford: Oxford University Press, 2003: 41; De Soto, Hernando, *The Mystery of Capital*, New York: Bantam, 2000: 51.

context of reform. Aside from livelihoods, titling may also affect community structures in other ways and exacerbate existing fault lines within a society, such as those between customary and statutory notions of land and ownership, and those between disempowered poor and wealthy elites.

Another concern is the difficulty of achieving desired results due to a poor institutional environment and inadequate supporting policies. The agricultural economy is as dependent as any other on financial mechanisms that facilitate savings and capital investment. When the financial sector is weak, smallholder farmers will have special difficulty realizing potential productivity growth. This is because large landowners are not only better able to self-finance but also have more credibility in external financing markets, even when secure titles are relatively widespread. This advantage will jeopardize smallholder farmers disproportionately, which in addition to driving down aggregate performance also creates the opportunity for inequitable aggregation of wealth as a result of agricultural policy reform. Further, from an economic standpoint, disadvantaging smallholder farmers is problematic as they already confront particular challenges. These challenges include managing a farm with little capital and unequal access to input and output markets. As a result, farmers face considerable uncertainty and risk due to weather, soil quality, government policies, and price fluctuations. Combined with inefficient markets, which exacerbate some of these uncertainties, and unequal political clout, smallholder farmer may be particularly vulnerable to changes in agricultural policy, especially when they entail transitioning from a largely informal economy to a formalized one.

Not only are smallholders relatively weak in terms of leverage, bargaining power, and organizational capacity, they are also largely unfamiliar with government institutions or interacting with officials. This unfamiliarity means farmers might be less skilled at articulating their needs and concerns through officially recognized mechanisms, especially if they lack knowledge of the nature of systemic policy changes. This historical distance from the state, combined with lower education levels, and little knowledge about the pace or content of reforms, will put smallholders at a distinct disadvantage for attaining the same rights as other actors. Importantly, these asymmetrical disadvantages raise a strong argument for proactive government policy beyond the scope of normal citizen outreach. Proactive government policy to advance the interests of smallholder farmers is central to a burgeoning agricultural economy, not only to correct for disequilibrium in information access and political clout, but also to ensure

that market failures do not further hamper smallholder farmers from investing to realize gains in growth that benefit both individuals as well as society at large.

Government involvement in the economy is needed, as — even in rare environments when uncertainty is not an issue — there are other problems that arise from inefficient markets. One chief problem is misaligned input and output markets. Ideally, in a competitive market, smallholder farmers would be able to buy inputs and sell product at fair prices at will without being subject to arbitrary barriers. This is not typically the case, however, because of market conditions as well as socio-political dynamics. For example, the conditions necessary for efficient economic transactions in a rural economy — competitive markets, well-developed infrastructure, and pro-poor policies — typically do not characterize a country like Myanmar. For this reason, small farms can become financially unviable, leading to abandonment and consolidation by wealthier actors due to the inherent advantages enjoyed by wealthy or influential actors. Consolidation can be problematic, not only from an equity point of view, but also from an efficiency standpoint: many studies have found that, counter to simplistic assumptions, small plots can actually be more efficient<sup>61</sup>. At any rate, ensuring that smallholder farmers have the latitude to preserve their livelihoods and also prosper economically is certainly important in maintaining a diverse and stable economy along the path of transition.

In order to enable smallholder farming, government policies must proactively ensure that smallholders have equal access to credit, input, and output markets. Farmers often face difficulty breaking even much less increasing productivity when input and output markets are misaligned or other market imperfections prevail and drive up costs of production. One classic challenge is when farmers are required to grow certain crops regardless of demand or are forced to sell crops at a set price. This scenario can often create disequilibrium between input prices and output prices, making it unprofitable to produce<sup>62</sup>. Often, farmers operate at a loss, either because of official dictum or in order to service debts; the end result is typically rising landlessness and poverty. Even in situations where the output market is not formally regulated, artificially low output prices might still prevail where farmers are not able to bring their goods directly to market. Low crop prices can also result from monopsony market structures, as can

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<sup>61</sup> For a full, updated discussion of the potential inverse relationship between plot size and productivity, see Lipton, Michael, *Land Reform in Developing Countries: Property Rights and Property Wrongs*, London: Routledge (2009), Chapter 2.

<sup>62</sup> Goletti, Francesco and Philippe Chabot. "Food policy research for improving the reform of agricultural input and output markets in Central Asia." *Food Policy* 25 (2000): 670.

high input prices from de facto monopoly structures. Both of these situations can prevent farmers from reaping sufficient value from their crops to make the enterprise viable.

Monopsonies may evolve in multiple ways. In one scenario, historically segmented value chains, which result from a dearth of ways for farmers to bring goods to market or through tacit coercion, remain in use, either out of ongoing utility or driven by residual relationships. These segmented value chains create opportunities for arbitrage and exploitation by better-supplied or more influential 'brokers.' Another cause of the same outcome is the widespread lack of post-harvest infrastructure like farm-to-market roads, storage facilities, and crop-processing equipment. These 'binding constraints' all make smallholder farmers more vulnerable to price fluctuations, as well as opportunistic pricing by brokers in remote areas where there are few alternatives for accessing larger markets.

Governments can address these market failures by explicitly designing policies and programs to support the activities and needs of smallholders. Specifically, the government should invest, to the extent possible given resource constraints, in expanding infrastructure, constructing a regulatory framework to guide market interactions, liberalizing policies, such as fixed pricing or requiring the production of specific crops. Alongside leaving production decisions to the producers themselves (the best informed agents to make these decisions), government policy should also empower farmers to make informed decisions by addressing the lack of market information, which often serves to lower farm-gate prices<sup>63</sup>. This information provision should include not only publishing crop prices, but also providing relevant education to farmers through agricultural extension services. Underpinning this work would require expanding agricultural research within a Myanmar-specific context.

One other prominent barrier to efficient production, a lack of credit, can also be addressed through government policies<sup>64</sup>. Credit markets are foundational to increased productivity, as many farmers rely on access to credit to purchase improved inputs on a seasonal basis. Past experience shows that special tailoring may be necessary to advance the position of smallholder farmers, as farmers often face difficulty obtaining credit at all, much less at a competitive rate, even when they hold land titles. This is because lending to the poor is expensive as loans,

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<sup>63</sup> Goletti, Francesco and Philippe Chabot. "Food policy research for improving the reform of agricultural input and output markets in Central Asia." *Food Policy* 25 (2000): 670.

<sup>64</sup> Ibid: 670.

regardless of size, carry substantial fixed costs, which are typically independent of and in addition to the risk costs associated with potential credit losses. Because, the interest income generated by loans is a direct function of the loan size, commercial banks may not find it viable to shoulder the fixed costs for loans below a certain size<sup>65</sup>. Thus, even if the availability of formal property titles makes lending to smallholders safer, it does not necessarily make it less costly or more feasible for most lenders<sup>66</sup>.

The policy implication of this observation is the need for government involvement in agricultural credit to correct market imperfections and subsidize interactions, which are socially sub-optimal. This issue is critical to the implementation of any land registration policy, as without improvements in credit markets, tenure security cannot be channeled to rising productivity and economic growth. Some examples of useful government involvement in credit markets include correcting information asymmetries by ensuring that land records are widely available, and supporting the development of credit bureaus to lessen the transaction costs of evaluating credit risk. However, these goals are long-term; they require changes to regulatory frameworks and the reform or development of sophisticated institutional structures. In the short term, then, it is all the more critical for governments to incorporate customary practices and institutions as well as community-based land records into the official LAM framework. To illustrate, consider the rationale behind microfinance: by concentrating on small geographic areas, minimizing reliance on modern banking technology, and utilizing community knowledge and customary infrastructures to improve collections and monitoring efforts, governments can facilitate lending to previously underserved populations in developing economies<sup>67</sup>. These targets suggest the rationality of small-scale basic reforms first.

Yet, even with these conscientious reforms, when one accounts for the high fixed costs, lack of information on borrowers, small loan sizes, and legal systems of questionable efficiency and reliability, it would be a surprise if formal title programs had a major effect on the ability of banks to lend to smallholders. Additionally, the institutional structures in place, which present opportunities but also constraints to streamlining policy, as well as general lack of market development will slow change, although not retard it completely. In these regard, Myanmar's

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<sup>65</sup> Armendariz, Beatriz and Jonathan Morduch. *The Economics of Microfinance*. Palatino: Bestset Premedia Limited, 2010.

<sup>66</sup> Deininger, Klaus, *Land Policies for Growth and Poverty Reduction: A World Bank Research Report*. Oxford: Oxford University Press, 2003: 50.

<sup>67</sup> Armendariz, Beatriz and Jonathan Morduch. *The Economics of Microfinance*. Palatino: Bestset Premedia Limited, 2010.

position is fairly typical: given the lack of penetration of financial institutions countrywide and the low-level of institutional sophistication overall, land titling is not likely to yield rapid or sizable gains in credit-driven agricultural investment. However, this observation is not cause for delay in land titling reforms. Land titling should remain a goal in order to lay the foundation for long-term development. Moreover, land titling will likely produce tangible short-term benefits if implemented in a manner that recognizes the other challenges facing farmers and responds to them with an appropriate policy framework.

### **4.3 Operationalizing land laws: Best practices for implementation**

Given the potential pitfalls and missed opportunities of poorly implemented land reforms, governments must pay careful attention to the technical, normative, and operational aspects of remaking land policies. The translation of land titling efforts into rising smallholder productivity is a long-term process. Both the manner in which the legal framework is shaped and the mode of implementation are critical as they affect the likelihood of realizing more rapid economic gains as well as social stability. Stability relates to land tenure because if smallholder farmers — the majority of citizens in an agrarian country like Myanmar — are marginalized during the reform process, then protests over land grabs, the unjust seizures of land, or land purchases perceived as opportunistic are likely to occur. Instability may also arise due to the weakening of community structures that comes with a move to statutory land management frameworks.

These dual sources of instability suggest that, even if the government takes pains to compensate landholders fairly for appropriating parcels, there are still underlying threats to public stability inherent in designing a ‘modern’ LAM framework. More specifically, if the framework disregards or insufficiently incorporates community structures, customary tenure, and local governance, the chance of engendering instability due to weakening social institutions could be significant. Land is central to most ethnic groups’ cosmology, as well as to a community’s economy and inter-generational bonds, so the government must approach land reforms carefully. Otherwise, land titling may undermine traditional community governance structures and customary institutions, dissolving social bonds and disrupting local networks, leading to possible political

instability or increased vulnerability<sup>68</sup>. In recognition of the importance of holistically shaping land policies and institutions, many international organizations and NGOs have drafted guidelines on best practices in land administration and management. These recommendations are interwoven throughout the ongoing discussion of best practices for LAM frameworks, which highlights the factors that make land policy effective: an inclusive definition of land tenure; good governance; inclusion of the public; designing a legal framework; and couching LAM within an institutional infrastructure.

#### 4.3.1 Shifting perspectives on land administration and management

Perspectives on land administration and management have evolved over time in accordance with changing dynamics surrounding land tenure and use. For example, population pressure, environmental degradation, globalization, and an increasingly complex nexus of rights and responsibilities associated with land have placed greater demands on the infrastructure of land management. These changes, as well as recognition of the social and cultural dimensions of people's relationship with land, have shaped a new paradigm of land management. Under this paradigm, land can no longer be treated as a commodity alone but is rather an asset for economic and social development. Recent policy innovations on land management reflect these changes, including the 1996 Bogor Declaration on Cadastral Reform and the 1999 Balhurst Declaration on Land Administration for Sustainable Development.

This contemporary discourse emphasizes new end goals and innovative approaches to national land policy. Broadly, international consensus has converged around the importance of shaping land policy based on a definition of land tenure which encompasses not only physical tenets of ownership but also political, social, and cultural dimensions, as well as incorporating an intergenerational understanding of equity and environmental protection. Achieving sustainable development will require a more holistic view of land management. Accordingly, policymakers have shifted away from narrowly defining land management as primarily cadastral mapping and titling. Now, in addition to technical aspects, governance, institutional reform and national-level policy planning are considered central to land management.

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<sup>68</sup> Bromley, D. W. "Formalising property relations in the developing world: the wrong prescription for the wrong malady." *Land Use Policy* 26 (2008): 20–27; and: von Benda-Beckmann, Franz. "Mysteries of capital or mystification of legal property?" *European Journal of Anthropology* 41 (2003): 187–191.



This broader view highlights that land is a deeply rooted social, cultural, and political institution. It also recognizes that the selection of appropriate tools and institutional approaches for LAM will vary given “that countries are at different stages of the development of the relationship between their people and their land”<sup>69</sup>. Nonetheless, several overarching principles, which we turn to now in more detail, inform successful LAM outcomes. These principles include:

- Anchoring land programs to a national land policy;
- Legislating a context-appropriate and inclusive definition of land tenure;
- Promoting public participation in land management;
- Couching land policy in a robust legal framework (including appropriate dispute resolution mechanisms);
- Shaping effective LAM institutions; and
- Strengthening governance toward the transparent and accountable implementation of land laws.

#### 4.3.2 Assigning land rights using an inclusive definition of land tenure

Although the formalization of land rights can underpin a virtuous cycle of economic development, the relationship between land titling and growth is not automatic; appropriate policies must buttress land titling and management efforts. As experts write, land rights will not yield the presumed market outcomes unless governments take “more caution...to ground project design and to implement market goals in local reality”<sup>70</sup>. For states like Myanmar, which have large rural populations, substantial ethnic diversity, and traditional agrarian economies, context-appropriate policy-making means protecting land use rights held by indigenous and poor rural populations as well as recognizing collective and communitarian land uses which are crucial to community’s well-being<sup>71</sup>.

This holistic view of land tenure derives from the realization that “property rights are a social construct [and therefore] property is not merely the assets themselves, but consensus between people about how these assets should be held, used, and exchanged”<sup>72</sup>. Accordingly, for a land policy to have legitimacy, it must be shaped around citizens’ traditional relationship with the

<sup>69</sup> 1996 Bogor Declaration on Cadastral Reform, cited in Grand, Don, Ian Williamson, and Lisa Ting. *The Evolving Role of Land Administration in Support of Sustainable Development A review of the United Nations - International Federation of Surveyors Bathurst Declaration on Land Administration for Sustainable Development*. SI (2000).

<sup>70</sup> Wallace, Jude and Ian Williamson. “Building Land Markets” *Land Use Policy* 23 (2006): 124.

<sup>71</sup> Ibid.

<sup>72</sup> Land Policies for Growth and Poverty Reduction.” *World Bank Land Policy and Administration Division* (2003): 22.

land as well as local governance institutions (which will be focal points for implementation). Failure to do so will affect citizens' view of the state's efficacy and legitimacy and therefore compliance. Beyond just the technocratic success of the land laws or titling practices, the disruption of deeply rooted community norms can dissolve bonds that are integral for group cohesion, especially in the presence of other socially transformative trends, such as modernization of farming techniques, urbanization, and migration<sup>73</sup>.

In addition to being an expedient way to minimize backlash from abrupt reforms, constructing a land law framework that respects customary tenure is also, in most cases, more efficient. As the World Bank notes,

*Customary systems of land tenure have evolved over long periods of time in response to location-specific conditions. In many cases they constitute a way of managing land relations that is more flexible and more adapted to location specific conditions than would be possible under a more centralized approach*<sup>74</sup>

Not only are customary models of tenure management often efficient, they can also be a boon to resource-constrained states, as they often provide sufficient tenure security at low cost to encourage available forms of investment<sup>75</sup>. Furthermore, the costs associated with abrupt reform can outweigh the benefits of introducing a more modernized form of property rights without laying the appropriate groundwork.

It should be noted, however, that framing the discussion as a choice between forestalling reform of customary practices or advancing a 'modern' paradigm of land management misses the larger point, which is that an effective tenurial system may be a blend of both. In fact, a binary view of customary and modern practices distracts from the potential benefits of blending the two systems so as to extract the most value from the customary institutions, which are widely understood by experts as being context-appropriate and adaptive, notwithstanding any glib popular perception of 'backwardness'<sup>76</sup>. Moreover, customary systems are already

<sup>73</sup> Slaats, Herman, "Land Titling and Customary Rights: Comparing Land Registration Projects in Thailand and Indonesia", in Van Meijl, Toon and Franz von Benda-Beckmann eds., *Property Rights and Economic Development*, New York: Kegan Paul International, 1999: 89.

<sup>74</sup> *Land Policies for Growth and Poverty Reduction*, World Bank, 2003, cited in Fitzpatrick, Daniel "'Best Practice' Options for the Legal Recognition of Customary Tenure." *Development and Change* 36:3 (2005): 450.

<sup>75</sup> Fitzpatrick, Daniel "'Best Practice' Options for the Legal Recognition of Customary Tenure." *Development and Change* 36:3 (2005): 453.

<sup>76</sup> *Ibid*: 450-1.

institutionalized, and thereby enjoy broad legitimacy and compliance among communities, as well as operations, which are underpinned by a longstanding functional system of governance.

If disregarded completely, this underlying system of governance and institutional inertia can be a source of tension and institutional conflict; however, if modern systems recognize the legitimacy of local leaders, norms, and institutions, these preexisting structures can lessen the burden on formal systems to provide information, structure market interactions, monitor compliance, and enable participation in the system. Given the myriad benefits of preserving customary institutions, governments should be keen on exploring the potential for constructing complementary and even mutually reinforcing models of land tenure, titling, and management practices when introducing efficiency-driven modern tenure frameworks.

### 4.3.3 Governance

Land policy both requires good governance and creates opportunities for it. Governance affects and is affected by land administration systems, because land policies are “tied in with politics and are quintessentially areas for government intervention rather than market policy”<sup>77</sup>. Accordingly, effective policy must first instill confidence between citizens, businesses, and local and national government in order to effectively engage stakeholders in reform.<sup>78</sup>

In addition to encouraging buy-in, well-enacted LAM policies will have positive impact on the state’s capacity to govern its citizens by “generating the sense of participation and belonging [which] is a precondition for good and democratic governance at the local level”<sup>79</sup>. According to the World Bank, generating this trust in and goodwill towards government is especially important for post-conflict countries or those in which resources and political power have been unequally distributed historically. Thus, ensuring a minimum level of accountability, transparency, and consistency in land law implementation by encouraging good governance will produce positive externalities and increasing returns in the state’s ability to govern effectively. This end can be pursued in a myriad of ways; however, the first and most crucial step is promoting public participation throughout the land reform process.

<sup>77</sup> Wallace, Jude and Ian Williamson. “Building Land Markets” *Land Use Policy* 23 (2006): 123.

<sup>78</sup> Marquardt, Mark. “Global Experiences in Land Registration and Titling.” Standardization of Rural Land Registration and Cadastral Surveying Methodologies Event at the International Office of Cadastre and Land Records.

<sup>79</sup> “Land Policies for Growth and Poverty Reduction.” *World Bank Land Policy and Administration Division* (2003): 56.

#### 4.3.4 Inclusion of the public

Public involvement is crucial to successful land titling and LAM programs<sup>80</sup>. Incorporating a public awareness campaign, promoting participation in the reform process, and designing land management programs to be accessible and inclusive are integral to the efficacy and equity of land policy. From a rights perspective, all citizens should have the opportunity to give input into policy changes affecting such a key source of wealth and wellbeing. Social stability and long-term economic efficiency are also at stake. As Feder and Nishio observe, public awareness and involvement in LAM reform minimizes negative social impacts, including the exclusion of women, as well as land speculation and rapid consolidation, all of which negatively impact the rural poor<sup>81</sup>. Furthermore, promoting public involvement is pragmatic; locals are most likely to have the information needed to successfully title land and including the public in the process is the easiest way to avoid costly *ex post* disputes<sup>82</sup>. Additionally, if the public does not see demonstrable benefit from registering land and recording land transfers, the system will become obsolete.

Providing information not only ensures farmers can actively participate in the titling process, it also empowers them to make rational economic decisions regarding their primary asset, land. This empowerment translates into concrete benefits for the state as enabling efficient micro-level decisions is crucial for economic development. Farmers can only make rational, profit-maximizing decisions if they have adequate information and access to a competitive market. This is the case because knowledge is a driver of economic development, as it helps land markets to develop dynamically. In order to spur improvements, it is necessary create the secondary market interactions that drive productivity and economic growth. In other words, “the rules [surrounding land rights] and routine administration are necessary but not sufficient to turn the opportunity sets specified by the rights into marketable commodities”<sup>83</sup>. Accordingly, government policy must actively inform farmers to give them a working knowledge of their rights and the opportunities associated with land in order to enable them to realize the economic potential of this asset. Under these dynamics, the theorized link between land titling and agricultural productivity growth are more likely to be achieved.

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<sup>80</sup> “Land Policies for Growth and Poverty Reduction.” *World Bank Land Policy and Administration Division* (2003): 3.

<sup>81</sup> Cited in Mitchell, David, Matthew Clarke, and James Baxter. “Evaluating land administration projects in developing countries.” *Land Use Policy* 25 (2008): 464.

<sup>82</sup> “Land Policies for Growth and Poverty Reduction.” *World Bank Land Policy and Administration Division* (2003): 3.

<sup>83</sup> Wallace, Jude and Ian Williamson. “Building Land Markets” *Land Use Policy* 23 (2006): 124.

#### 4.3.5 Defining a Legal Framework for Land administration & management

In addition to the technical aspects of land titling, the institutional and legal components are also integral and intertwined<sup>84</sup>. Sound LAM rests on a flexible yet exact body of law, clearly defined jurisdiction for legislating and enforcing the law, as well as a capable and transparent judiciary. Equally as important is the institutional structure derived from the legal framework. Governments must carefully consider not only the substance of the law but also questions of institutional mandates, capacity, and performance management.

Substantively, land laws should be an extension of the rights granted by the state and should distinguish between real and personal (moveable) property as well as ownership, possession, and use of land (i.e. ownership versus use or mortgage rights)<sup>85</sup>. Land law should also define how rights can mature; establish a public, independent, and self-financing land registry institution with clear statutory powers; setup administrative systems for registration of transfers and mortgages; coordinate legislation relating to urban planning, land use, and the recording of cadastral information; ensure the enforcement of contracts in land; clarify ministerial responsibilities and authority; and specify the administrative role of the agencies responsible for mapping, land valuation, and land use oversight<sup>86</sup>. These varied and intertwined functions the state must assume in managing land highlight the need for an overarching land policy which defines national priorities, vests responsibility for LAM functions, and creates an institutional system that incentivizes strong government performance. As Glenn Denning writes, “Myanmar has reached the stage in its agricultural reform process where substantial resource increases and significant institutional restructuring are required to advance an effective reform agenda”<sup>87</sup>.

#### 4.3.6 Erecting an institutional infrastructure for land administration & management

Land administration is, fundamentally, an institutional process as it involves providing the infrastructure to support land law on an ongoing basis. Accordingly, achieving optimal efficiency

<sup>84</sup> Barnes, G., “Lessons learned: an evaluation of land administration initiatives in Latin America over the past two decades.” *Land Use Policy* 20 (2003): 367–374.

<sup>85</sup> Marquardt, Mark. “Global Experiences in Land Registration and Titling.” Standardization of Rural Land Registration and Cadastral Surveying Methodologies Event at the International Office of Cadastre and Land Records.

<sup>86</sup> Ibid.

<sup>87</sup> Denning, Glenn. “A Strategic Agricultural Sector and Food Security Diagnostic for Burma Working Paper.” *Michigan State University (MSU) and the Myanmar Development Resource Institute’s Center for Economic and Social Development (MDRI/CESD)*. 14 March 2013: 6.

and equity in land administration is possible only if the institutions involved have “clear mandates and a structure that allows them to function efficiently and free from political pressure”<sup>88</sup>. Building an institutional infrastructure, which can capably demarcate and survey boundaries, register land and keep records on an ongoing basis, and adjudicate land conflicts, is an organizational challenge,<sup>89</sup> as well as a politically charged process. This is the case as policy change does not occur in a vacuum but rather requires reform of existing institutions, which have powerful leaders and vested interests. Nonetheless, even if these institutions are operational individually, they typically lack the integration and synergies necessary to comprehensively and effectively handle LAM functions.

The tendency to let institutional inertia overtake a reform should be avoided at all costs, as new land laws will produce at best ambiguous results absent the necessary follow-up in terms of implementation<sup>90</sup>. At worst, studies have demonstrated that the institutional vacuum created by new laws lacking actual institutions for enforcement can become a major source of uncertainty and conflict<sup>91</sup>. To avoid this situation, “adequately funded, staffed, and motivated institutions to resolve conflicts and assist communities” are necessary, “implying that the implementation of advanced legal provisions will require significant effort and resources to be put into dissemination and capacity building at the local level, and to ensure that mechanisms of appeal are available”<sup>92</sup>. Capacity is not the only issue, however. An institutional framework for LAM must be rationally structured to produce the desired effects.

Successful institutionalization entails attention to the horizontal and vertical dimensions of reform. A government’s framework for LAM should clearly specify what agencies and actors are responsible for land management. It should also erect an effective system of incentives, as well as checks and balances, to ensure positive performance and remediate institutional abuse. Horizontally, government institutions across ministries must have clear LAM mandates. Vertically, LAM policy must explicitly devolve appropriate responsibilities to state, regional, and local levels of governments, taking care to include customary institutions of governance as well. Typically, creating this coherence is not possible *ad hoc*. Therefore, a state must tie legislative

<sup>88</sup> “World Bank Land Policy and Administration, Land Policies for Growth and Poverty Reduction.” *World Bank* (2003): 70.

<sup>89</sup> *Ibid*:69.

<sup>90</sup> *Ibid*: 65.

<sup>91</sup> Deininger, Klaus and Raffaella Castagnini. "Incidence and impact of land conflict in Uganda," *Journal of Economic Behavior & Organization* 60:3 (2006): 321-345.

<sup>92</sup> “World Bank Land Policy and Administration, Land Policies for Growth and Poverty Reduction.” *World Bank* (2003): 70.

and institutional reforms to a national policy that clarifies the role for an integrated land administration to support land markets, manage urban areas, and shape natural resource and environmental management policies<sup>93</sup>. This policy should drive legislative action, which should then inform institutional reform and finally implementation<sup>94</sup>.

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<sup>93</sup> Williamson, Ian P. "Land administration 'Best practice' -providing the infrastructure for land policy implementation." *Land Use Policy* 18 (2001): 303.

<sup>94</sup> *Ibid*: 304.

## 5 Findings from field research

Having presented an overview of how land management policies and land registration procedures can affect social and economic realities, this report will now present firsthand field findings. The field research undertaken by the authors of this report focused on three key topics meant to inform SLRD's efforts to implement several new land-use laws. First, field research sought to document the actual tenure and land management practices used by the Shan, Pa-O, and Danu people of southern Shan State. Second, the authors of the report sought to outline major economic issues, livelihoods issues, and land-related issues facing surveyed communities. Third, field research sought to articulate challenges facing land law implementation and governance in southern Shan State.

### 5.1 Understanding and respecting customary tenure

#### *Main Themes and Key Findings:*

- Most villagers use customary, community-based dispute resolution and land tenure management practices; using official, government-sponsored mechanisms for these issues is less common
- Shifting cultivation practices and communal farmlands are rare in southern Shan State, although communal forests are still used in these areas
- Inheritance is still the most common form of land acquisition; farmers express a strong emotional connection to the land and little desire to sell it
- Community structures are changing due to migration (often from southern Shan State to Thailand) by young couples and increasing land scarcity from population pressure
- Tenure insecurity is an ongoing worry with 48% of farmers report having less land than their fathers did at the same age; however, episodes of government-led land seizures are rare

#### 5.1.1 What are traditional forms of land tenure and management in southern Shan State?

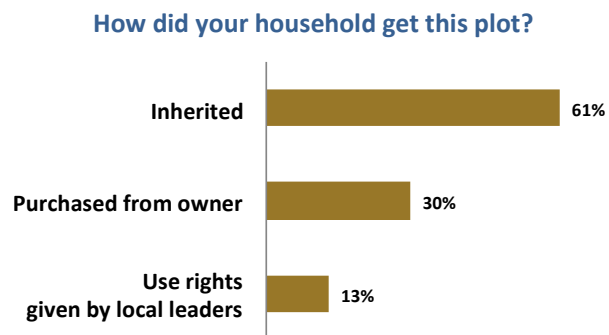
All farmer groups reported that the most commonly used system for recording land tenure is oral history with community members respecting historic borders that are recognized generation by generation. Although formal records are rare, it is common for a villager to hold a



tax receipt that could be used to prove land ownership. For example, of the farmers surveyed, 61% could produce a tax receipt. Also, although not formal land titles, 26% had some kind of written record, like a map with his name on it, from the village elders as evidence of ownership. Twenty-two percent had registration from the government, which may have to do with the fact that two focus groups, including the Danu group, reported that SLRD had already been registering land in the area. While official records of individual transactions with the government are common, when dealing with neighbors, the situation is much less formal. Most farmers interviewed, along with NGO representatives, agreed that nearly all customary land records are unwritten, frequently making statements like, “We don’t write anything down, and everyone in the area knows which plot belongs to who, what we cultivate, and where.”

Although government officials recently began registering land plots under the auspices of the new land law, the Danu said that government officials registered most of their land prior, during previous visits, and separate from these recent initiatives. These same farmers seemed content with this process and noted that the visits saved them the time it took to travel to the township offices to register land, and that it was affordable as there were no extra fees for registration and the land tax was cheap. This observation, however, should be taken in context, given that only one group reported this view. Also, today many farmers do not hold formal titles despite reporting tenure insecurity as one of their main fears and generally expressing optimism that registration could help improve tenure security. This evidence suggests that it has either not been so easy or compelling for farmers to register land in the past.

Under customary practices, land tenure is typically transferred through inheritance, although land purchases and community-driven transfers also take place. In the survey, 61% of farmers had received their land through inheritance whereas 30% of farmers purchased the land and 13% received the right to use the land from a



local leader. Eighty seven percent of farmers reported they were the full or partial owners of the land they used. Other forms of tenure, such as rental or temporary use of land that has been vacated because of immigration, are also increasingly common. Farmers generally expressed a

desire to continue the tradition of leaving land to their children, even if selling land becomes an option. Views of land as a gift from the ancestors and a source of emotional connection to their families and communities were often noted.

Communal land is almost obsolete in southern Shan State: no farmers reported using communal land in the quantitative survey. A number of farmer organization leaders reported that communities had held land communally until about 2001-2002, at which time changes in the market towards private ownership and increasingly large communities began to provoke disintegration of communal land holdings. One farmer reported that virgin lands were sometimes cropped communally and another that the collective harvests are sometimes used to support local temples. In the uncommon case that communal lands still exist, it is unused and reserved for future generations, such as when a new family line is created through marriage. If community members are going to farm communal land, they must first gain permission from village elders. However, many farmers reported using communal forest land for logging firewood informally, although this land is required to be registered with the Forestry Department.

As for the role of women, surveyed communities appear to divide labor equally between men and women though interviews with farmers suggest that women are more likely to work on farmlands (generally weeding and harvesting the land) rather than owning and operating lands. Farmers stated that single women often work as labor on other farmers' land, trade crops, and raise animals. Outside experts further emphasized the role of women, saying they generally did all of the farming, except clearing the land — especially in the Pa-o community<sup>95</sup>.

### **5.1.2 What are traditional forms of community organization in surveyed communities?**

Customary governance structures remain the most widely used; village elders and community arbitration is by far the most common practice. All groups placed great trust in village elders, acknowledging that they would still follow their counsel even if they were required to enforce government policies. However, one limitation of local leaders' ability to manage disputes is that they have limited knowledge of and no influence over the practices of outside actors (e.g. private companies and the central government). The continued importance of community

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<sup>95</sup> Interview with Joern Kristensen, Institute for International Development, 17 Jan 2013. Yangon, Myanmar.

resolution is reinforced by the apparent difficulties of acting through official channels. For example, farmers noted the slow, confusing, and costly bureaucracy of official routes detract from their use of them. Other groups referred to nepotism and corruption in government, although these issues were not cited widely, surfacing only in two focus groups.

While all farmer focus groups referred to community reliance on village elders for resolving land disputes, there were some groups, such as those from Linkee/ Sesai, who relied on government administrative offices for resolution of local disputes, although this group did not explicitly state that customary institutions were never used. Other groups stated that they used both approaches: going to the village elders and then to the village tract-level administrative office if local resolution did not work. These practices seem to be consistent with the past and probably result from southern Shan State's relative proximity to and integration into the formal state bureaucracy. It is an open question, however, if the introduction of village level Farmland Administrative Bodies (FABs) will change the dynamic between customary and formal practices, a topic, which is addressed more thoroughly in Section 5.3.2.

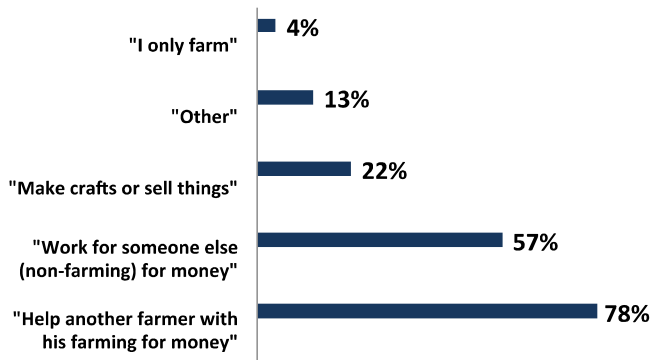
### 5.1.3 How is community structure changing?

The changes in land holding patterns and community structure is likely affecting the cohesion of local communities, although the data did not explicitly address dynamism of social or cultural factors so much as capture the current snapshot in time. One emerging trend that was identified by some farmers was increased migration, both to Thailand and to urban areas of Myanmar for work, which has affected community structure and landholding. These changes are affecting demographics, as it is predominantly young couples that are migrating to Thailand, leaving their elderly parents and children back in the village. As a result, older farmers whose younger family members have left the village often hire laborers to farm their lands. In addition to migration, multiple farmer groups reported that it was common for men to move locally across villages to seek work or land.

Farmers and village elders both noted an increase in landlessness, due to population growth and market trends including economic pressure from agribusiness. One farmer noted that inheritance practices which split land plots among family members ("fragmentation") is also creating smaller and less viable holdings, an observation that seems very plausible given the nature of inheritance practices, which nearly all farmers noted generally involve granting equal

shares of land to all children (although at least one farmer indicated that land is sometimes transferred to just one child if that child agrees to take care of the elderly parents). It also appears that people are engaging in more non-agricultural practices, either solely or to supplement farm incomes, although it is difficult to tell from the farmers focus group data how much this has changed recently. However a village elder said he thought landlessness and alternative livelihoods (although not necessarily viable ones) were emerging much more rapidly

Besides farming, I and other members in my family also do these things to make more money:



of late. Farmer groups agreed that there is a high prevalence of non-agricultural work, such as harvesting bamboo and timber to sell, and working in shops.

Despite migration and land pressure placing strains on community cohesion, community ties appear strong. This appears to be the case

given that many farmers still strongly valued their link to their land and its traditional symbolism as a conduit of their heritage. Land is also viewed as important to preserving community structure. This relevance of tradition is evident in the fact that farmers, even after receiving offers to sell, largely rejected the idea of selling their land. All farmer groups said they would prefer to keep their land to farm and pass to their children, specifically citing reasons like attachment to the community and the importance of land inherited from ancestors.

Nonetheless, in contrast to these desires to retain the community structure, each of the farmer organization leaders discussed a definitive increase in land sales. Farmers stated that other farmers in their communities have been motivated to sell land to buy cars and other goods. Land sales are also driven by land speculation, which is possible because of increasing land prices due to infrastructure investment, such as roads, as well as the changing bank investment system that allows people to invest more in land instead of putting cash in the bank. These changes will certainly impact the character of communities as local bonds weaken and there are more outsiders in the villages.

As far as the future role community leaders will adopt, it is likely their position will diminish with the introduction of the land committees at the district, township, and village level, according to

a Danu farmer/CSO leader. The Shan CSO leader felt that community leaders already had no or little influence on government. While the Pa-O CSO leader stated that Pa-O organizations have managed their own lands independently (due to the cease-fire agreement), government officials still have a lot of power over village leaders. Consequently, the Pa-O CSO leader felt a need for external third-party coordinators to facilitate the dialog between villagers and the government.

### *Inclusion of women and changing gender norms*

- **100% of farmers surveyed agreed** with the statement that “women should be able to own land today”
- Male farmers also expressed **a strong willingness to put their wives’ names on registration documents**
- However, when asked about their land certificates, women reported that currently “**only the family head’s name (usually a man) is on the registration form**”

As for emerging gender norms, based on our focus groups there appear to have been strides made in gender equality even within traditional societal frameworks. In our female focus group, women reported that traditional power structures have been changing, with women now allowed to participate in village administrative meetings. Additionally, farmers and NGO leaders were nearly unanimous in stating that they would divide their land equally among their male and female children, although at least one NGO did note that when a man dies, sometimes the eldest son receives the land instead of his widow. However, women do still face an information gap, as the female farmers reported that the men often deal with government and registration issues on behalf of the family.

The new registration drive underway by SLRD offers an opportunity to make even greater progress, as 100% of farmers surveyed agreed with the statement “women should be able to own land.” Additionally, the mixed-gender focus groups expressed a willingness to put both husbands’ and wives’ names on registration documents. Although the Farmland Law has no explicit provision for joint ownership, two names may be written on the "Application For Farm Land Use Rights" ("Form 1") and both names will appear on the Land Use Certificate. However, one group claimed that since men were the breadwinners, male-only registrations might be more likely, and the female farmer group confirmed that in the current registration documents, it is common for only the man’s name to appear.

### *Tenure insecurity & landlessness*

- 100% of farmers reported being **“afraid” of losing their land**
- 100% also claimed that they see **environmental problems** (i.e. bad soil, erosion, dirty water or air) in their area worse than a few years ago
- **57% of farmers reported having less land than their fathers** did at the same age, against only 9% having more

A net 48% of farmers report having less land than their fathers. The group of Pa-o farmers discussed land speculation, which villagers worry, will exacerbate the land scarcity and make it so their children do not have enough land to support themselves. This speculation is increasing as private companies and wealthy people move to Taunggyi, which is pushing land prices up. The high prices for land make it attractive to sell, but if they do, few people have alternative livelihoods options. Further, it is increasingly difficult for farmers to buy land back, given inflation and the increasing complexity of brokering deals, which most companies do through third party ‘land brokers.’ Additionally, farmers, village elders, and NGO officials all expressed concern about potential increases in land sales and negative impacts caused by the arrival of local and foreign companies. This issue is further addressed in Section 5.2.3 below.

While these new market dynamics are threatening, on a positive note, few farmers reported first or secondhand experiences with government takings without adequate compensation. While several reported bad experiences in the past with the military and with abandoned government public works projects, even these farmers reported recent improvements in the government’s handling of public use takings. However, government encroachment on community forest land was reported as a source of tenure insecurity. There was one case of a farmer reporting of an incident where someone in his community was forced to leave his farmland by the military in 2004 with compensation of only 800 Kyats<sup>96</sup> provided. The situation appears improved today, however. One focus group reported that recently, a public works taking (for a bridge) was accompanied by adequate compensation. Farmers appeared to be impressed with this as they described that such an event “would not have happened before.”

As a result of these market trends, as well as due to population growth and in some cases

<sup>96</sup> Around US\$120 at official 2004 exchange rates, but only ~US\$1 at prevailing black market rates.

economic pressure from agribusiness interests,<sup>97</sup> landlessness is common in southern Shan State. Perhaps not incidentally, the use of hired labor is also frequent, although this factor relates to the shortage of labor resulting from trends like migration as well. Pa-o farmers from Sesai cited landlessness at approximately 15% of the village. If true, this would actually compare favorably with overall reported landlessness in Myanmar, which various studies put at between 34 and 53%, and close to 70% in the Ayeyarwady Delta<sup>98</sup>. Landlessness and the overall lack of sufficient land combined with food scarcity (due to increasing population pressure) drives families to rent land.

### *Alternative forms of tenure – land rental*

Farmers rent land in order to feed their families, either because their plots of land are too small or they are landless. Some, such as the group of Shan farmers from Linkee, Sesai, and Nam Sam, estimate that approximately 20% of their village rents land because they do not own it. Rental fees are approximately 50,000 kyat/acre (US\$60) or farmers negotiate to pay in-kind (e.g. 10 baskets/acre) for a whole year for rice cultivation, a cheaper option given current low rice prices. Two groups of Shan farmers from Pilau and Linkee/Sesai/Nam Sam said the minimum contract was 1 year but often people might also rent for several years at a time. However, some farmers observed that some people rent seasonally, even though most rent year-round. Overall, land scarcity is increasing and, therefore, renting is less common, presumably limiting options even further for the landless.

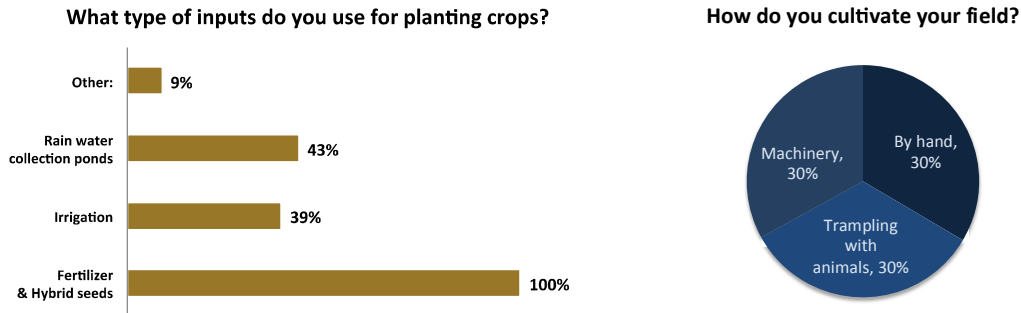
### *Customary agricultural practices*

As shown in Figure 4, mechanization is somewhat uncommon (reported by 30% of farmers) and 60% of farmers reported preparing their land by hand or with draft animals. However, land use is changing in accordance with environmental change (reported by two groups as a driver of change), the introduction of new forms of technology, and the introduction of farming technology like irrigation systems). In terms of inputs, traditional fertilizer (cow dung) is used less and the use of chemical fertilizers has risen.

### **Figure 4: Farming practices and use of inputs**

<sup>97</sup> Interview with Dr. Ohmar Kaing, Director, Food Security Working Group, 29 Mar 2013. Yangon, Myanmar.

<sup>98</sup> Ecodev, citing 2008 study of 45 townships; see also: Haggblade, Stephen et al., "A Strategic Agricultural Sector and Food Security Diagnostic for Myanmar." *Michigan State University and MDRI/CESD Working Paper*. 12 Mar 2013.



The result is greater soil degradation, which leads farmers to believe they need to use still more chemical fertilizers to improve it. One driver of the switch to fertilizer is the decline of cattle due to increased double cropping and space constraints, which means less traditional fertilizer and draft power and more reliance on machines and chemical fertilizers<sup>99</sup>. The land use and cropping pattern is also changing as farmers have shifted to planting hybrid seeds/high yield variety for vegetables. Crop variation has increased, although due mainly to increased number of varieties within the same basic categories of crop types.

#### 5.1.4 Is there a conflict between customary and statutory land management?

In general, CSO leaders feel that relations between customary and statutory systems will be increasingly uneasy. The Karuna representative stated that conflicts between the government and villagers are unbalanced and that conflicts have increased in recent years.

#### *Different goals in agricultural practices*

To understand potential sources of conflict, we must understand government goals for agricultural development. Local officials cite the priorities for agricultural policies as “(1) transforming from manual farming to mechanized farming, (2) to obtain modern techniques of farming, and (3) to obtain a reliable market.” Higher-level government officials have additionally pointed out the government’s overriding focus on and concern with food security, which often manifests itself through intensive oversight of rice cultivation<sup>100</sup>. Outside researchers note that this oversight may also result from a very strong desire to keep domestic retail rice prices low, presumably in the interest of social stability<sup>101</sup>. The focus on rice may also reflect the

<sup>99</sup> Interview with Sai Sam Kham, Metta Foundation, 11 Jan 2013. Yangon, Myanmar.

<sup>100</sup> Interview with Dr. Win Htut, SLRD, 18 Jan 2013. Yangon, Myanmar.

<sup>101</sup> Dapice, David, Tom Vallely, and Ben Wilkinson. “Assessment of Myanmar Agricultural Economy.” *Harvard Kennedy School, ASH Center for Democratic Governance*. Jan. 2009.



government's desire to regain competitiveness as a regional rice exporter after decades of declining yields and vanishing export surpluses. While at the end of the colonial era, Myanmar was the world's largest exporter of rice, in the recent past, production has stagnated, falling far behind population growth and leaving Myanmar just barely able to meet its domestic rice consumption needs<sup>102</sup>. This intensive focus on rice cultivation can sometimes have negative effects for farmers, as was reported in the Ayeyarwady Region, where, according to observers, government-mandated two-season rice planting has depressed farmer incomes and forced them to take losses<sup>103</sup>.

### **Land management**

The local government's stated policy to deal with environmental degradation is to switch land use from shifting cultivation to perennial cropping. Although not a source of conflict in southern Shan State, where there appears to be little shifting cultivation, this commitment could potentially cause conflict in other regions of Myanmar, where shifting cultivation is more prevalent. Government officials' views towards customary production methods and land management appear largely dismissive. For example, a government official expressed that, in his view, customary laws are "in general...simple but narrow in terms of perspectives"<sup>104</sup>. Overall, the government officials have a uniform preference towards introducing more modern forms of cultivation and inputs to replace customary practices.

Farmers are by and large uncertain of how the government views their village's way of farming and managing land. Sixty-five percent of interviewed farmers expressed uncertainty about government's intent. However, in the focus groups, some farmers suggested reasons why government officials and policy did not reflect their best interests, including:

- The government has historically forced farmers to cultivate crops and fruits that are difficult to grow in their climate or region;
- Officials have historically imposed arbitrary rules or deadlines for compliance just before harvest so farmers lose their harvest when they have to grow something else infeasible, like sunflowers;
- If farmers refuse or can't deliver, the government has been known to seize land and transfer

<sup>102</sup> Dapice, David, Tom Vallely, and Ben Wilkinson. "Revitalizing Agriculture in Myanmar." *Harvard Kennedy School, ASH Center for Democratic Governance and International Development Enterprises*. 21 July 2010.

<sup>103</sup> Interview with Sai Sam Kham, Metta Foundation, 11 Jan 2013. Yangon, Myanmar.

<sup>104</sup> Interview with anonymous government official, 24 Mar 2013. Yangon, Myanmar.

it to people who can cultivate what they ask or levies fines; and

- The government has historically forced farmers to engage in unprofitable double cropping in a coercive manner, as discussed above.

Groups with little experience with the government responded differently. One group thought the government respected their traditions but did not give concrete examples of why, whereas in other instances, such as in Linkee/Sesai, the government had been trying to implement useful policies of giving new rice seeds and techniques to farmers. However, these plans largely failed after revealing a lack of awareness by the government about customary techniques and local constraints<sup>105</sup>. The local farmers found that reverting to traditional farming was easier and more suited to the climate.

Although farmers are not necessarily averse to adopting more modern techniques if the technology is suitable to local conditions and affordable, there is discontinuity between farmers' and government officials' understanding of the conditions farmers face. For example, one government official reported that he has no idea how farmers get inputs. There also appears to be some tension surrounding community forests. While the consensus was that there is almost no communal land left in southern Shan State, community forests still exist and the Ministry of Forest is introducing the use of community forests for firewood. To use community forest land, villages must register it with Ministry of Forests once every 30 years. However, a separate group of farmers, the Pa-O from Sesai, observed that, in the past, the government has given permission to outside groups to come in and log community forest land, even though they are aware that the village is using it.

### **Land registration**

Perspectives on the government's land titling practices varied, likely reflecting the non-standard practices in different contexts or between different SLRD officials. For instance, the Danu CSO leader said the government is fine with most customary registration systems, except for fallow lands, and the Karuna representative said that the SLRD reviewed maps made by the village leader. However, there are clear issues as the Karuna representative also cited the government's purposeful seizure of vacant lands to sell to private companies, rich individuals or the military. Similarly, the Shan CSO official also had a negative opinion of the government, claiming they did

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<sup>105</sup> In this example, the new seed was only suitable for summer cultivation. However, the new seed required hard labor unsuitable to the weather, so farmers stopped using new seed rice, even though government had offered 15-20,000 kyats (US\$20-25) for households who adopted the new seeds.

not provide any services for lands without official record.

## 5.2 Encouraging economic efficiency & improving livelihoods

### ***Main Findings and Key Themes:***

- Farmers are facing increasing challenges to their livelihoods and many are making less money from farming compared to a few years ago
- Farmers are typically vulnerable to the fluctuation of agricultural output prices due to their poor access to market and inability to adjust shipment. Universal access to credit, mixed with other initiatives, may be effective to improve downstream market linkages
- In addition, the cost for input such as fertilizer is increasing, making agriculture a less attractive option of income generation especially for younger generation
- Mining and agribusiness enterprises are increasing their sometimes disruptive presence in the region, purchasing lands, displacing populations, and employing landless laborers
- With the exception of a few complaints about rice and forced growing of inappropriate fruit crops, most farmers did not cite any government involvement in cropping decisions, a notable change from previous policies

In an agrarian economy like Myanmar, where much of the population is heavily dependent on the land for subsistence, economic issues are intimately related to tenure security issues. Farmers that cannot make an adequate living from the land, whether due to land fragmentation, declining yields and soil health, low crop prices, or high input prices, may be forced to leave their land in search of employment in cities or in neighboring countries. Sometimes in this situation, family members will remain behind on family lands, but with the upcoming introduction of land transferability and the rise of land speculation, leaving the land may soon take the form of a permanent decision to sell under economic pressure, with negative effects on the social fabric. In other cases, farmers may fall into debts to informal moneylenders that they cannot service, resulting in the loss of their land. For all these reasons, it is critical to understand the economic situation of smallholders and the changing economic circumstances (including the influx of foreign business interests) in southern Shan State.

### 5.2.1 What is the economic situation of smallholder farmers in S. Shan State?

#### *Output markets*

The majority of farmers reported that their incomes are generally decreasing. When asked, 57% of the farmers stated that farmers in the area are making less money than they did a few years ago. While they mentioned a number of reasons: an increase in input prices, a drop in crop prices, and increased competition from better quality crops (i.e. Chinese garlic), farmers identified crop price fluctuation as having the most significant negative impact on their livelihood. For instance, the price of brown sugar at which they sell to brokers can change from 125 kyat to 500 kyat per kg. Both Pa-o and Danu farmers grow multiple kinds of crops to offset the risk of market fluctuation. While crop rotation for economic risk management is an inevitable part of farming, there is a danger that it could conflict with the optimal crop rotation strategy for soil health.

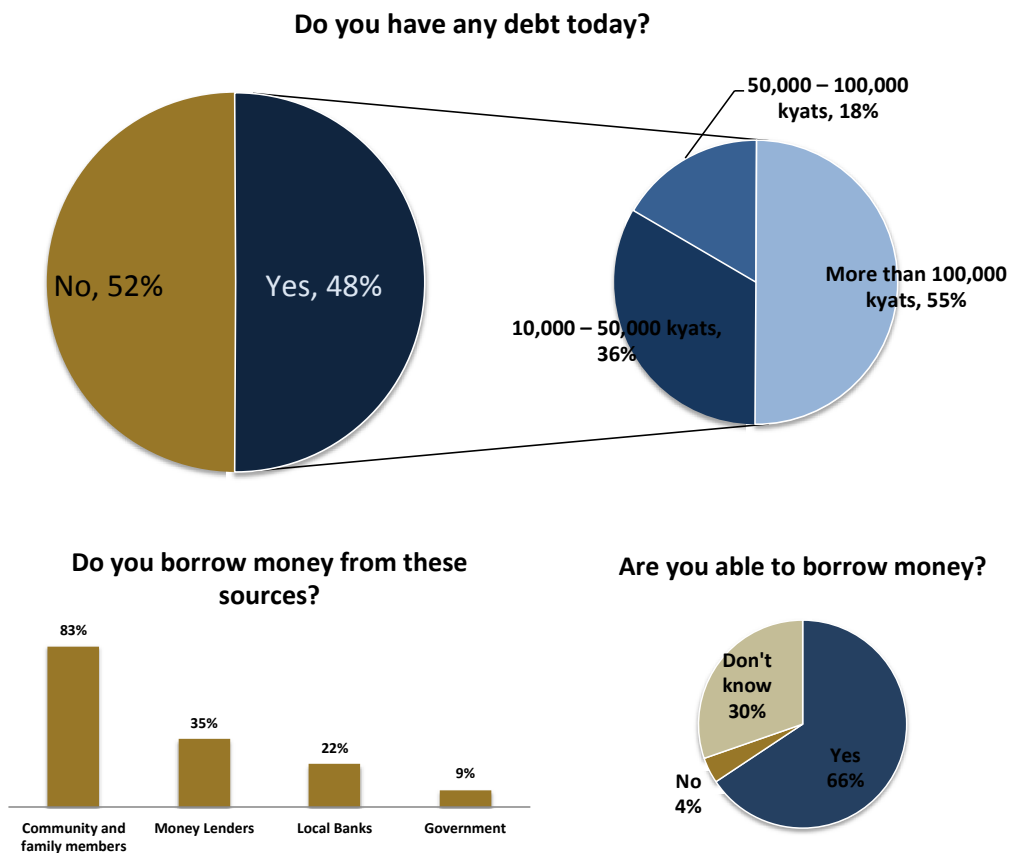
Farmers identified an unbalanced market where brokers had great power over small farmers for many reasons, including information asymmetries, and stated that they were unable to sell crops directly to wholesale buyers since they could not supply large enough quantities. Farmers usually sell all crops to brokers and do not capture any of the additional value added during processing, since they do not have the equipment to process the outputs. Lack of transportation is another reason that the farmers have to rely on brokers. Some wealthy brokers are reportedly involved in speculative activity, buying crops when prices are low and sell them when prices increase. Even worse, most farmers need to sell most of their outputs (other amounts retained for subsistence) to meet financial obligations that required cash immediately, leaving them more exposed to fluctuations in market price.

#### *Access to credit*

A complex picture emerged regarding indebtedness. As shown in Figure 5, many farmers surveyed stated that they would borrow money from family or community if necessary, but farmers' access to credit and willingness to borrow varied from village to village. It seems that many small farmers face increasing challenges and have limited financial resources to meet these challenges.

Access to credit differs among communities and areas. Danu farmers indicated that there is a loan system in their community with a reasonable interest rate; however, there did not appear to be a credit system in Pa-o areas. Most farmers from Danu villages say they borrow money from multiple sources; but in Shan and Pa-o areas, borrowing is not common and not considered desirable. Danu farmers say most farmers borrow from the Myanmar Agricultural Development Bank (MADB), and some borrow through the UNDP-led microfinance program (although there is a long waiting time for using this program). Hence, limited access to MADB seems to limit the amount of credit available to these communities.

**Figure 5: Statistics on debt in farmer sample**



Some farmers reported signing advance contracts with middlemen (outlining a fixed price for the crop) and receiving advanced payments with which they would pay for farming inputs. They borrow money for seeds, fertilizers and labor charge, at a 5-10% interest rate per month on average, up to 200,000 kyats (US\$250). Collateral is often required for lower-interest loans, in the form of land, agricultural output, or even jewelry. An expert interviewed suggested that moneylenders charge upwards of 10% per month while both providing inputs and buying

outputs, thus controlling every aspect of the farmers' livelihood<sup>106</sup>. Clearly this situation leaves farmers more vulnerable to price manipulation, etc. All farmers who reported debt outstanding for more than one year reported that they owed more than 50,000 kyats, compared to only half of farmers who had borrowed in the past year, suggesting the presence of heavy, long-term debt burdens.

- **65% of the farmers say they can borrow money if they want to.** Most borrow money from family or community members, while some use money lenders (35%), local banks (22%), and the government (9%)
- **Half of the farmers have outstanding debt** and 55% of farmers who have debt (26% of total) have debt of more than 100,000 kyats
- **Most farmers use borrowed money for agricultural inputs**, although one reported borrowing for consumption and one to finance education

### *Access to improved inputs*

As discussed in Section 5.1.1, farmers' input use is changing over time, with increasing use of chemical fertilizer and declining access to draft animals in some communities due to lack of grazing space. In terms of labor inputs, some farmers point out that their family members are the primary source of labor. However, when labor help is needed from outside the family, families generally tend to rely on friends or other farmers. The cost of hiring labor can be 2,500-3,000 kyat / person / day and vary by season (in dry season it tends to be higher). However, as discussed above, ongoing migration to Thailand and to cities may be affecting the labor supply. Among farmers who have their own land, it was common for farmers or someone in their family to work temporarily on another's land; 78% of farmers stated this.

- **87% of the farmers say they use more inputs** than they did three years ago

In order to maximize the output from their small plots, farmers tend to rely on increased use of fertilizer. All farmers use some types of fertilizer, which are obtained from market sources in most cases. Most of them use more inputs than they did three years ago; farmers stated that the amount of fertilizer needed increases year by year as the soil fertility gradually degrades. In addition, the price of fertilizer is increasing due to inflation, for instance, standard fertilizer price

<sup>106</sup> Interview with Sai Sam Kham, 12 Jan 2013. Yangon, Myanmar.

for 1 bag (50kg, sufficient for 1 acre) rose to 25,000 kyat this year, up 25% since last year. Other inputs such as irrigation or rainwater collection ponds are also used, but not by all farmers.

### ***Impact of landlessness on community economic structure***

Landlessness appears to be affecting regions differently. Some farmers in Pinlau said that landlessness was not as visible, also highlighting that they felt landless people could be better off moving to Thailand. In contrast, farmers from Pa-o areas pointed out that there are many landless in their communities and that they worked the land of others. They did not use vacant land because such land requires a lot of fertilizers to make the soil arable and is thus too costly to till. In addition, some farmers related fertilizer use to the shrinking size of land plots; farmers use more fertilizer to try and increase harvests from their smaller plots. There seems to be a tendency for farmers to diversify their sources of income rather than farming more intensively. One source of income includes agroforestry (picking bamboo shoots and logging timber). Some older villagers tended to depend on remittances from emigrated family members and did not farm.

### ***Government intervention in farming practices***

Although some specific farmers are concerned about government intervention in farming (as discussed in Section 5.1.4), the quantitative survey revealed a perception of limited government intervention. Sixty-five percent of farmers did not know whether or not government is intervening on community farming practices, while 29% say there is no intervention. This finding of non-intervention was also referenced by outside researchers, who noted that it represented a break with past government policy during the pre-1988 era, which involved significant oversight of all cropping decisions. Researchers today confirmed the farmer and NGO observer consensus that intervention today is generally limited to rice-related issues<sup>107</sup>. However, this field finding is technically in conflict with the letter of the new Farmland Law, which states that crop changes must be registered,<sup>108</sup> raising the potential for a mutually-beneficial outcome if the law can be clarified and the remaining issues regarding forced cultivation of inappropriate crops can be addressed.

<sup>107</sup> Haggblade, Stephen et al. "A Strategic Agricultural Sector and Food Security Diagnostic for Myanmar." *Michigan State University and MDRI/CESD Working Paper*. 12 Mar 2013, Table 10, p. 43.

<sup>108</sup> Farmland Law, Provisions 12 (h) and (i).

### 5.2.2 Economic effects of farming and land use changes

Most farmers interviewed agreed that no significant change in farming practices has happened in their villages. As mentioned above, farmers change crops responding to market conditions, microclimates, and soil conditions. For example, cheroot leaf, previously grown in the Pa-o area, is no longer grown, replaced by the need for firewood. Similarly, potatoes are grown less than in the past because of the adverse effects of pesticide.

However, outside observers with a potentially broader perspective note that in southern Shan State as a whole, land use paradigms have gradually been changing. The decline of pastoralism was cited as a large trend, with many Shan communities relying less on cattle-raising (traditionally a very important part of community agricultural practice) due to lack of grazing land. Shifting cultivation has also been in decline across the region for many reasons, especially increased land pressure and a desire to become settled to take advantage of government services like schools<sup>109</sup>. One other trend caused by the relatively central location of southern Shan State is the increasing presence of agribusiness and subsequent rise of cash-crop monoculture farming. Outside observers note that many smallholders struggle to compete in this new land-use paradigm, due to lack of capital to purchase the necessary intensive inputs, and, consequently, they worry that this changing land-use trend will hamper the economic (and eventually tenure) security of smallholders<sup>110</sup>. Land pressure has also put demands on soil health, as lands are continuously in use. This in turn has economic impacts, as fertilizer use must increase to compensate for the decline in soil fertility.

This last finding is backed up by our quantitative survey; the vast majority of farmers surveyed reported using their entire land to grow crops; only 4 out of 23 farmers left any land fallow. Those who only farm part of their lands did so for different reasons; one farmer mentioned rotational farming, while others named the lack of manpower or problems with soil as reasons. Shifting cultivation is not popular in the areas studied and appeared to be regarded as having a negative impact on the environment; among 23 farmers surveyed, only one farmer reported practicing shifting cultivation. Farmers also noted the economic impacts of more intensive cultivation, saying yields had declined, input spending had increased, and renting extra land was less commercially viable due to declines in yields.

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<sup>109</sup> Interview with Sai Sam Kham, Metta Foundation, 11 Jan 2013. Yangon, Myanmar.

<sup>110</sup> Ibid.



- **83%** of the farmers say they **plant crops on entire their land**
- **96%** of farmers **practice settled (non-shifting) cultivation**

### 5.2.3 What are private actors' roles in land?

#### *Land concessions and dominant position in land in the region*

Interviews with farmers reveal no clear consensus over whether or not land concessions have increased. However, farmers, village elders, and NGO officials all expressed concern about potential increases in land sales and negative impacts caused by the arrival of foreign companies (mainly from China) in Kalaw and Pindaya Townships. One farmer group reported secondhand experience with forced sales to a Chinese company, while an NGO leader expressed concern about the arrival of a Chinese mining company and attendant increase in corruption, prostitution, and lack of security. A Danu expert reported privately-owned timber concessions in the Danu SAZ<sup>111</sup>.

Pa-o militias appear to be dominant in their areas. Leaders of formerly armed groups benefited as they received development funding and land through cease-fire agreements with the government. An interview with an expert suggested that Pa-o residents have emphasized strengthening Pa-o civil society groups as a way to ensure just administration by the PNO and Myanmar government<sup>112</sup>. The local dominance of Pa-o leaders does not appear absolute, as Pa-o farmers stated that the central government has in the past authorized the military or companies to log communal forests without providing compensation to or seeking consent from locals. However, these farmers did indicate that this practice has become more rare.

#### *How is agribusiness operating within Shan State? What are the potential impacts of agribusiness' involvement in the implementation of the land laws?*

Commercial agricultural entities are increasingly present in highland regions, especially in tea plantations. A Danu consultant reported that timber concessions are fairly common in forests, usually privately owned and 100 acres in size. He noted that the Danu self-administration has thus far been unable to stop or affect them<sup>113</sup>. A former MoECaF official noted that "Forest concessions used to be based on a top-down approach, with negotiations at the higher level

<sup>111</sup> Interview with Dr. Sao Kyi Than, Institute for International Development, 28 Mar 2013. Yangon, Myanmar.

<sup>112</sup> Ibid.

<sup>113</sup> Interview with Sao Kyi Than, 28 Mar 2013. Yangon, Myanmar.

between private companies and government.” This official expressed hope that these concessions will take a more bottom-up approach moving forward, more often including civil society organizations. However, the central government still maintains significant power to change land classifications<sup>114</sup>. Policies to provide local communities with public consultations that would facilitate informed and non-coercive consent currently do not exist.

***What land disputes occur in the region? What is the general dynamic of these disputes?***

Based on interviews, most disputes seem to occur between farmers owning adjacent lands, rather than between farmers and government or non-farming entities. Farmers mentioned that people conducting shifting cultivation tend to get involved in land disputes more often; when they leave their land fallow for several years, other farmers may come in and start farming the seemingly-vacant land. A group of farmers observed that disputes arose over land plots without clear ownership where two or more people wanted to use the land at the same time.

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<sup>114</sup> Interview with Htun Paw Oo, former Ministry of Environmental Conservation & Forestry, 27 Mar 2013. Yangon, Myanmar.

### 5.3 Land Law implementation considerations and governance issues

***Main Themes and Key Findings:***

- Southern Shan State farmers express optimism about the prospect of increased tenure security due to the new land laws, but also substantial concern about the rise of land speculation and its impact on customary land tenure practices
- Land disputes are usually settled by community leaders due to farmers' lack of access and / or confidence in formal systems
- The new land laws seek to establish land rights. However, there are major obstacles to implementing these laws and establishing these rights, including a lack of farmers' knowledge of the new laws and farmer concerns about working with government
- Civil society is concerned about wealthy business and foreign interests being favored over farmers due to corruption and provisions of the Vacant Fallow and Virgin Lands Management Law that seem to favor large farms/agribusiness
- Providing equal rights in land across different ethnic groups will be an important task to ensure the legitimacy of the new land law administration system; this issue is particularly relevant in Pa-o communities where former rebel groups are benefiting more than others from ceasefire agreements.

As discussed above in Section 5.1.1, land management in Shan State is a complex mix of statutory and customary systems. Our field findings revealed that while government ministries including SLRD maintain a strong presence in the region and do conduct outreach in various villages and engage with farmers on many occasions, the overall day-to-day reality of land management is largely based on traditional practices. Community leaders and village elders play an important role in resolving land disputes and even government-appointed village officials are reported to defer to traditional practices when settling disputes. However, the new land laws promise several major changes – increased land sales, more concrete protections against appropriation, and a more formal government-led dispute resolution system. In light of these changes, it is necessary to understand the potential impacts of these new laws as viewed by local stakeholders, and also examine government and civil society capacity in several critical areas, including information provision, dispute resolution, and commitment to equal protection under the law. This section examines each of these aspects in southern Shan State and comments on potential governance-related challenges to land law implementation.

### 5.3.1 How are the new land laws expected to impact land tenure practices in the region?

In theory, the new land laws will provide small farmers with the right to own, sell, transfer, and cultivate land, and the right to use their land as collateral for loans, which ideally will help support the development of efficient land markets. Additionally, the land laws are intended to provide an orderly, efficient venue for dispute resolution (the FABs) that gives farmers the right of appeal. The stated goals of the laws, if achieved, should thus provide increased tenure security and greater options for smallholder farmers, as well as a more flexible and fluid land market.

On the ground, some NGO leaders are indeed optimistic about the new laws, saying that “Small farmers are more protected under the new law, if they register their land,” although they noted that ‘before farmers know how to register they may have some difficulties’<sup>115</sup>, an information gap that is discussed below in Section 5.3.3. Another NGO leader also noted that he expects the issuance of official LUCs will result in fewer land disputes in the region, and a farmer organization leader also expressed a view that official registration would increase security.

However, local observers and farmers themselves are somewhat less optimistic about the other large change promised by the land laws – the prospect of increased land sales. Numerous NGO leaders and farmer organization leaders expressed serious concern about the rise of land speculation and its effect on community structure and land tenure practices. Concerns included farmers being priced out of buying new lands by the arrival of wealthy outsiders, farmers selling their lands for a relatively small amount of money upfront and then ending up landless and with few options once the money is spent, and the arrival of middlemen profiting from land speculation and potentially creating pressure for forced sales. Of course, it should be noted that many farmers expressed a commitment to keep their lands and continue their traditional practice of transferring tenure through inheritance, so these concerns may eventually prove to be overstated.

To give a broader perspective, outside observers have raised significant concerns about the land laws’ effects on traditional tenure practices across Myanmar, specifically regarding the use of shifting cultivation. Because shifting cultivation is not expressly recognized in the Farmland Law,

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<sup>115</sup> Interview, Saw Mint Than-- Dutch NGO CDN Representative 27 Mar 2013. Yangon, Myanmar.

and due to restrictions on fallowing land embedded in the laws, there is a fear that groups that practice shifting cultivation will be disadvantaged<sup>116</sup>. However, given that shifting cultivation appears to be rare in southern Shan State- due largely to economic trends, societal trends, and land pressures that pre-date the new laws<sup>117</sup> - the land laws themselves may not have a significant impact on customary tenure practices in the regions surveyed by this study.

### 5.3.2 How are land disputes handled in southern Shan State?

- According to a village elder, “**village administrators do not apply laws to handle land conflicts**. Instead, they go to parties involved and persuade them to re-negotiate. No one understands the law or rule to handle such issues”
- 61% of farmers **do not believe it is easy to fairly resolve land disputes**

Village heads and committee members often take the primary role in settling disputes between farmers. Since many farmers do not keep written records or at least do not keep them up-to-date, disputes are likely to occur at the local level when implementation of the Farmland Law begins and precise demarcation of land holdings is required. Farmer focus groups reported that farmers typically go to village elders to settle disputes, but they have also recently considered going to village administrators as well<sup>118</sup>. While village-level administrators are sometimes involved, a village elder reported that these administrators often settle disputes on an informal basis with the parties involved. He noted that village administrators “do not apply laws to handle land conflicts; instead, they go to parties involved and persuade them to re-negotiate. No one understands the law/rule to handle such issues.” One farmer group said they preferred going to the village level administrators, but also felt that these administrators were unable to challenge private companies who, it was claimed, received preferential treatment by township (i.e. one or two levels up) officials.

In general, there was a lack of confidence in formal systems of adjudication, with one focus group saying the courts were confusing and too expensive to rely on, and another group saying that village administrators lacked real power in disputes against private companies. This lack of confidence is indicated by the fact that 61% of farmers do not believe it is easy to resolve land

<sup>116</sup> Interviews with Tobias Jackson, FSWG; and Kevin Woods. 11-14 Jan 2013, Yangon, Myanmar.

<sup>117</sup> Interview with Sai Sam Kham, Metta Foundation, 11 Jan 2013. Yangon, Myanmar.

<sup>118</sup> Village heads and committee members are elected or otherwise chosen by villagers while the village-level administrators are appointed by the state government.

disputes in a fair way. On the other hand, four of the five focus groups indicated that they trusted their village elders. One group said that the arrival of land certificates would reduce fighting and thus be a good thing. Shan farmers were skeptical of court-based approaches to land disputes, saying that courts cost too much and are complicated and confusing. It remains to be seen if this same skepticism will also affect villagers' acceptance of the new FABs, which will have sole jurisdiction over land disputes (except those related to inheritance). Skepticism in formal adjudication systems is likewise echoed by outside observers. Both NGO representatives and foreign government observers note that the judiciary still has many issues with transparency and corruption<sup>119</sup>. However, they also note that the legal profession is for the first time talking openly about corruption and there is growing awareness and discussion of the issue. Positively, the Attorney General of Myanmar was cited as being fairly responsive to these concerns.<sup>120</sup>

While statutory dispute systems are currently not often used, the focus groups telegraphed that they could be important institutions in the future. One farmer group, for example, expressed hope that the arrival of land registration certificates would reduce disputes and have a positive impact. If the government can improve communication and efficacy of statutory adjudication procedures, many of the farmers' concerns may be allayed. Additionally, one CSO leader expressed a belief that if farmers were better-educated, they would tend to go to the courts to settle down the land disputes. All of the government officials emphasized the official over informal dispute resolution, saying that formal systems operate within the community at all levels and that, to the extent it is not effective, citizens can appeal decisions to a higher level. Looking towards the anticipated changes, local government officials generally claimed that "the community dispute resolution mechanisms are in line with the new FABs and new land law procedures," although it is unclear whether this sentiment is based on actual experience with the new FABs. A higher-level SLRD official noted that informal and unwritten forms of evidence would be accepted by FABs, although evidentiary standards are not specified in the official text of the law.

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<sup>119</sup> Interview with Sue Mark, Pyoe Pin Foundation, 14 Jan 2013. Yangon, Myanmar.; and anonymous foreign government official, 8 Jan 2013. Yangon, Myanmar.

<sup>120</sup> Interview with Sue Mark, Pyoe Pin Foundation, 14 Jan 2013. Yangon, Myanmar.

### 5.3.3 Equal access to rights under Myanmar land laws

**Main Themes and Key Findings:**

- Many farmer focus groups felt that government actions were generally equitable, or at the very least, improving in recent years
- 61% of farmers reported that they did not “know about the new government land laws”
- Access to officials is a persistent concern; an effective system that has been suggested for registration would be for SLRD to go directly to each local village to register land
- Stakeholders in Yangon worry about whether small farmers and wealthy businesses would be provided equal protection under the land laws, given corruption problems in Myanmar and perceptions of bias in both laws, but especially the Vacant Fallow and Virgin Lands Management Law, in favor of large farms/agribusiness
- At the end of the workshop, after a discussion of the new land laws, farmers seemed to trust the government and perceived the new land laws to be fair though some farmers were worried about some people cheating the laws

To date, government land law implementation efforts appear to have been limited, with few farmers reporting receiving new use certificates. This is not surprising, however, given that the new land laws have just been introduced and is not necessarily a cause for concern. In terms of previous land-related contact with the government, 22% of the farmers reported having registration from the government, and an additional 39% of farmers have a tax receipt suggesting some ongoing contact. As land law implementation proceeds, the government will need to be concerned about ensuring equal access to rights under the new laws. In this section, we explore several dimensions of “equal access,” including access to information, ability to interact with government on an equal basis, and equal application of laws to all.

Access to information about the new land laws appears to be a major obstacle to their implementation. A full 61% of farmers reported a lack of knowledge of the new land laws, and all NGO leaders interviewed in the field also echoed this concern. Even among various NGO employees, knowledge was limited and obtained through informal channels. Chief obstacles cited by NGOs and farmer representatives were widespread illiteracy, lack of government outreach, and lack of government materials / official presence in local languages. Farmers in the focus groups reported learning about the laws through CSOs (i.e. the NLD) who sometimes

traveled to the villages to distribute pamphlets. This data was consistent with findings from interviews with local NGO leaders. One NGO leader did not know about the new land laws at all, and another only knew about them because her friend worked in the government. NGO leaders in particular were eager to learn about the laws and have many unanswered questions about implementation.

In terms of outreach, government officials noted that state government put up posters and announcements in advance of field education sessions on the new land law in villages. They further noted that they made announcements by loudspeaker and conducted education sessions at venues as announced, explaining the laws and by-laws to farmers. However, other groups viewed government outreach as insufficiently advertised and too short. For example, one farmer noted that SLRD officials only remained in their community for two days, and that farmers living on the further ends of the community could not travel in to register by the time they had heard about the officials' presence. One farmer group further noted that their main source of information was outreach efforts by opposition parties like the NLD, rather than official channels. These highly varying perceptions suggest a significant disconnect between government officials and the common farmer.

### ***Prevailing community views on government access and interactions***

There were mixed responses from farmer organization leaders about their interactions with government. Concerns included: difficulties with the registration process; fees being set too high;<sup>121</sup> and fears of interacting with the government. However, another farmer stated that the registration process was easy. One NGO leader expressed hope for the new land laws, but was concerned about whether farmers would actually be able to register their land. Another said that the rights of smallholders were not currently protected, but he had hopes that the new laws would make things better, assuming farmers could actually get registered. On a positive note, three focus groups did report some degree of experience with the government in registration. Two of these groups had primarily secondhand experience, but in both cases, the officials came to the village to talk to either farmers or village heads. In the other group, one village claimed it was very easy and the government officials just came to the village to collect

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<sup>121</sup> Officially there is no fee to apply for first time registration, only a nominal fee of 500 Kyats for issuance of the Land Use Certificate. Therefore this view may indicate that officials have been demanding bribes.



forms. However, this same group reported that some of their neighbors are afraid to pursue registration due to fears about costs. They also noted that large farmers have been more active in registering lands, potentially creating concerns about unequal access.

Contrary to what is claimed by government staff members interviewed, one farmer group was concerned about the lack of local-language SLRD staff in the villages, saying “there will be problems because SLRD officials only talk in Burmese and no local language. Therefore, people don't understand the laws. The communication is a problem.” This same group said, “there is a mobile team that goes from village to village to talk about registration but there are only 2 persons in that team. They stay only a few days in the village so they can't register anything. [It would take] 15 days at least for the whole village (100 households) [to be registered].” He also raised objections to the cumbersome process of getting neighbors' approval for each measurement.

Another factor that could potentially impede registration efforts is time and ease of travel. Both farmers and outside observers noted barriers to farmers traveling to the townships where offices are located. A much more effective system that has been suggested for registration would be if SLRD initially could go to each local village to register land directly<sup>122</sup>. This would alleviate concerns over lack of transparency and difficulty, and experts note that there is precedent for such direct action in southern Shan State where, for example, the PNO brought officials to local communities to give national ID cards in advance of the elections, encouraging participation and accomplishing registration quickly and cheaply<sup>123</sup>.

### ***Application of laws and government authority***

On the whole, the farmers themselves were undecided on their opinion of the central government. In the first focus group, farmers shared a negative impression of the government. One group reported that treatment was unequal and that those with personal relationships and government connections benefited the most. Another group expressed concern about rich people being able to bribe officials at various levels, reporting bribe requests of 10 times the official registration price, or 5,000 kyats. This same group expressed concerns about former

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122 Interview with Sai Sam Kham, Executive Director, Metta Foundation. Yangon, Myanmar.

123 Ibid.

armed-group leaders being advantaged as well. However, two other focus groups said they had relatively little concern about unfairness or that the situation was getting better, with the government recently becoming more equitable with small farmers. Similarly, in the last focus group, farmers seemed quite trusting of government fairness: two of the three focus groups expressly said that government generally treats people equally, and the other perceived the laws to be fair but were worried about some people “cheating” during implementation. In summary, at least in southern Shan State, official corruption – a concern expressed by outside NGOs and academics about Myanmar as a whole – was not reported as a significant issue to the extent originally expected. Of course, our sample was limited, and corruption may have been an issue that farmers felt uncomfortable speaking about directly or did not encounter often due to previous isolation from government officials.

One persistent worry in discussions with high-level stakeholders was whether small farmers and wealthy businesses would be provided equal protection under the land laws, given corruption problems in Myanmar. In Shan State, two NGO leaders commented that “rich people” are favored due to their ability to pay bribes and one mentioned that groups who previously fought and then negotiated cease-fires were also better off, although one of these groups expressed that things have been getting better recently. It remains to be seen, though, whether this degree of equitable treatment will persist if foreign money continues to flow into the region, as one NGO leader expressed concern about foreign businesses:

*“Businesses are mainly Chinese companies.... They have local agreements with local government (and the State government doesn't intervene). This happens mainly around Kalaw and Pindaya. Chinese workers bring a lot of money to employ local workers as "gangsters" (to protect their enterprises). It also increased insecurity, prostitution, bribing of village leaders. These companies also take over land over the mines in order to build factories.”*

### 5.3.4 What are the key governance issues surrounding land law implementation?

#### **Main Themes and Key Findings:**

- Government administrators rarely enter the government-controlled areas of the far uplands and have limited to self-administered areas
- Concerns about government capacity in terms of an effective judiciary and independent and neutral oversight committees need to be addressed
- Ministerial fragmentation and lack of coordination between forestland and farmland management is cited by many observers – including some government officials – as a potential problem in ensuring equitable land law implementation
- Civil society organizations will be needed to play an important watchdog role in land law implementation and also to provide essential legal aid and information access

#### **Role of SAZs in land management and links between central government and SAZs**

Among different armed groups, differing political cultures prevail. For example, the Pa-o have achieved self-administration since the 2010 election, running three villages in the area officially. Encouraging the rise of the Pa-o ethnic group has been reported as a central government strategy to counterbalance the Shan<sup>124</sup>. Aligning with this view, the conflict and rebellion has, in terms of outcomes thus far, benefitted the development of Pa-O areas as land and development money was provided as part of the cease-fire agreement. In Shan State, outside observers report that the Pa-o National Organization has made some concessions to agribusinesses, and it remains to be seen if these concessions are in the best interests of the citizens of the SAZ<sup>125</sup>. In contrast to Pa-o community, the Danu ethnic leaders have no dominant position in managing land issues. According to a Danu expert, the Danu SAZ has more autonomy, and the Chairman of the SAZ (the head of the community) reports directly to the President's Office. The Chairman, as well as the head of the local GAD, is appointed by the central government based on technical capacities<sup>126</sup>.

In the larger Myanmar context, one expert also noted that many ethnic groups still seem to indicate that they would prefer to be ruled by their own people, even if the indigenous governance is poor, rather than by the central government. This same observer noted that it is important to recognize that certain ethnic group administrations (though not the Pa-o or Danu)

<sup>124</sup> Interview with Sai Sam Kham, Executive Director, Metta Foundation, 12 Jan 2013. Yangon, Myanmar.

<sup>125</sup> Interview with Tobias Jackson, FSWG and Land Advisor, LCG & Dr. Ohmar Khan, Director, FSWG, 14 Jan 2013. Yangon, Myanmar.

<sup>126</sup> Interview with Sao Kyi Than, IID. Yangon, Myanmar.

have a quasi-authoritarian relationship with their people and may not be well-placed to ensure equitable and just administration of land laws<sup>127</sup>. Similarly, as the State has used strongmen as a mechanism of state building, there is reason to second-guess if all officials are well-suited for government office, particularly given that the typical activities they pursued in the past. Until recently (and even ongoing), strongmen roles might include trading in arms and involvement in drug trade, activities which the regime countenanced as long as these local leaders project the interests of the state by maintaining control and providing a source of taxation revenue.

***Role of traditional land administration structures in land management and their interaction with the government***

As discussed in Section 5.3.2, above, traditional land management primarily relies on the interactive efforts of village elders, committee members, and government clerks. It remains to be seen how these traditional structures will interact with the new FABs. For example, a CSO leader, in describing land concessions around Kalaw due to the expropriation of minerals, noted that “community leaders had power in the land issues. Yet the government requires them to have land committees at the district, township and village level, which will hinder the participation of community members”<sup>128</sup>. At the same time, the state intervenes actively in the land market, which retains a hugely important role in economic life. While extensive disputes over land use between farmers and authorities did not surface in focus group interviews, farmers reported conflicts related to forced sales of land to local companies and intra-community disputes on land use or ownership. Under these circumstances, land management mechanisms involving village elders and religious leaders play an important and effective role. Yet according to some observers, there has traditionally been little trust between villagers and the government, so informal governance structures have remained dominant<sup>129</sup>. However, one open question for the future is whether these community structures will still be able to play a strong and respected role in the future. Shan State experts note that, today in southern Shan

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127 Interview with Kevin Woods, 14 Jan 2013. Yangon, Myanmar.

128 Interview with Danu CSO leader. Taunggyi, Myanmar.

129 For example, Sai Sam Kham (Metta Foundation) notes that some villagers would place a flag in a different person's house each day designating him as the “village leader” and point of contact for government officials. This was a mechanism for risk sharing, as the central government was viewed as somewhat harsh and unpredictable in overseeing the village.

State, community structures and the authority of village elders have been weakening due to greater commercialization, competition between ethnic groups, and extensive migration<sup>130</sup>.

### *Civil society's role in capacity building*

Although SLRD and other government agencies are the major players in the formal political process of land reforms and law implementations, there are also societal groups seeking to influence the conduct of land issues in a positive way. Fortunately, a network of civil society organizations is flourishing in southern Shan State. However, the strength of civil society remains a concern among many locals. In a survey conducted as part of ongoing development work, “strengthening civil society” was listed as the first priority by Pa-O residents, due to concerns over equitable and just administration by either the PNO or the central government<sup>131</sup>.

Civil society groups are currently playing and will continue to play a very important role in land law implementation through educational campaigns, monitoring evaluation of land law implementation, and the provision of legal aid. Observers note that, so far, Myanmar’s activists have been surprisingly strong responding to land grabs, even though the enabling environment – for example, cell phone penetration – is very poor<sup>132</sup>. Currently, local farmer leaders note that CSOs are also taking more of an active role to educate villagers and to protect the individual farmers’ rights, with village committees helping farmers to protect their land use and ownership rights. However, an increase in the availability of public records (for example, about land sales and values) would certainly help farmers and CSOs in their quest for better access. Additionally, outside NGOs have been successful in recruiting lawyers (some retired) to help fight expropriation and land seizures on behalf of smallholders, although legal aid and access to legal services is limited<sup>133</sup>. This area is one in which outside groups could potentially have a significant positive impact.

Moreover, given the experience of neighboring countries like Cambodia, outside observers felt very strongly about the need to develop an effective civil society presence in rural areas<sup>134</sup>. For example, a representative of the FSWG indicated that service provision is not enough – civil

<sup>130</sup> Interview with Sai Sam Kham, 12 January 2013. Yangon, Myanmar.

<sup>131</sup> Interview with Joern Kristensen, Country Director, IID Myanmar, 17 Jan 2013. Yangon, Myanmar.

<sup>132</sup> Interview with Tobias Jackson, FSWG, 14 Jan 2013. Yangon, Myanmar.

<sup>133</sup> Interview with Sue Mark, Pyoe Pin Foundation, 14 Jan 2013. Yangon, Myanmar.

<sup>134</sup> Interview with Tobias Jackson, FSWG, 14 Jan 2013. Yangon, Myanmar.

society groups must also engage in advocacy, build flexible and robust community-based activism organizations, and enable non-hierarchical community networks. A focus on grassroots advocacy is a natural way to maintain social stability in rural areas and to encourage change. Also, encouraging non-hierarchical organizational structures makes civil society groups more resilient in the face of outside interference.

***Government agency assessment of its role, responsibilities, and capacity to fulfill role***

Perhaps not surprisingly, local government officials interviewed were generally confident in their ability to fulfill their mandates under the new land laws. Higher-level government officials did express some desire, informally, for additional advising on international best practices and advice on specific issues such as integrating very remote ethnic groups who practice shifting cultivation into the formal system; identifying potential sources of conflict between farmers and industry; and determining appropriate occupancy length requirements to confer official title through adverse possession. Thus far, in line with the future challenges that are identified by the national developmental plans, the MoAI and the MoECaF have done some work to improve the farming system. A government official mentioned that the MoAI is working with the MADB to provide investment aid and long-term credit systems for small landholders and farmers. The MoAI is also working on improving information on the national trading systems of crops, post-harvesting storage, and transportation to the markets. Further, the government has also initiated the participatory agricultural extension for transfer of environmentally acceptable technology to farmers. Additionally, the development of a new E-governance system by the government is anticipated, which is expected to contribute to a more effective communication mechanism among MoAI, MoECaF and SLRD<sup>135</sup>.

***Supporting policies (or lack thereof) at central government level is critical in the scope of land law implementation***

For decades, the Myanmar central government has tried to devolve power to the state level,<sup>136</sup> and, as a result, government policies toward ethnic groups living in southern Shan State are becoming more flexible, involving both top-down approaches and bottom-up incentives. Though this process is a positive development, observers have noted two intra-governmental issues that will potentially affect land law implementation. The first and most serious issue is that multiple

<sup>135</sup> Interview with Ashok Nigam, UNDP/UN Resident Coordinator, 27 Mar 2013. Yangon, Myanmar.

<sup>136</sup> Interview with Joern Kristensen, Country Director, IID Myanmar, 17 Jan 2013. Yangon, Myanmar.

land-related ministries will potentially be involved in land law implementation, which have no history of cooperation. The most critical overlap of mandates is between the SLRD (housed within the Ministry of Agriculture and Irrigation) and the Forestry Department (within the Ministry of Environmental Conservation and Forestry). The SLRD has responsibility for administering and registering lands officially classified as farmland or low/paddy land, which are the only lands to which the 2012 Farmland Law applies. Land currently vacant (as well as “other woodland”) can be reclassified as farmland and then registered under the auspices of SLRD,<sup>137</sup> but land classified as reserved or public forest – which makes up at least 25% of Myanmar’s land area - is not eligible and falls under the purview of MoECaF.

Multiple observers, including Myanmar government officials, have openly acknowledged that many smallholders currently work land classified as forest due to population pressure, outdated registration, or lack of information about land classification. Unfortunately, observers are not optimistic about the prospects for inter-ministerial cooperation on this issue, and government officials have candidly noted that the maintenance of large tracts of reserved forest is a “status symbol” for the government, making reclassification a potential sticking point. It should be acknowledged that the government has established a Land Allotment and Utilization Scrutiny Committee to consider reclassification, but it remains unclear if this single central government body will have the capacity or connection to village-tract level realities to efficiently deal with the scale of this problem. Unless a way can be found for SLRD and MoECaF to work together at the local level as well as centrally, observers expect this confused mandate will negatively impact tenure security for farmers, especially those currently farming forestland.

One further concern along this theme is with vacant land granted to foreign business concerns under the new Foreign Investment Law. As a government official noted, these investment decisions are made by yet another central committee, the Myanmar Investment Committee, which may not coordinate effectively with MoAI and village-tract level officials. This official expressed concern for the status of smallholders farming officially vacant land that is allocated under the Investment Law. Additionally, the division of responsibility between the central government and local governments stands out as a potentially problematic area, as well. Outside observers noted that central and regional laws occasionally conflict (for example, regarding the regulation of fisheries) and that the local government does not always have the

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<sup>137</sup> 2012 Farmland Law, Chapter II, Section 8.

flexibility it needs to respond appropriately to local conditions<sup>138</sup>. Not only does this issue of decentralization and management need to be addressed with relation to current implementation in Myanmar's more accessible regions, this issue is particularly important for smoothing the transition to a formal land tenure system in the border regions. This import stems from the fact that, as land law implementation eventually expands into border areas currently overseen by ethnic group administrations (some of which, like the Karen and Kachin, maintain their own *de facto* autonomous land ministries and issue land certificates of their own<sup>139</sup>), this tension will likely be of a greater magnitude, as well as more likely to create significant and worrisome social instability.

One area in which the government has made attempts to improve land law implementation is by addressing long-standing concerns about land seizures by setting up a national-level Land Confiscation Investigation Commissions (LCIG). If implemented correctly, this could be a valuable practice to support efforts towards transparency. However, as one local observer expresses, there remains concerns about the LCIG efficacy and objectivity, as various people believe that so far it has not been very helpful and that there are questions of whether it is truly independent. For example, one observer worries that the LCIG is filled with business associates of the businesses accused of land-grabbing. However, the same observer is optimistic that the LCIG will improve as they learn what is and is not working in the process<sup>140</sup>.

Another key area where government policy can assist land law implementation is by providing better evidentiary standards. High-level government officials interviewed evinced a commitment to flexible standards for proving the right to cultivate, including unwritten records and testimony of community leaders and neighbors<sup>141</sup>. Given the findings that most tenure records are unwritten (discussed in Section 5.1.1 above), this flexibility will be very helpful to assisting with implementation, provided that local government officials share the same commitment.

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<sup>138</sup> Interview with Dr. Ohmar Khan, Director, FSWG, 29 Mar 2013. Yangon, Myanmar.

<sup>139</sup> Interview with Kevin Woods, 14 Jan 2013. Yangon, Myanmar.

<sup>140</sup> Interview with U Shwe Thein, CARE / Director of Land Core Group, 17 Jan 2013. Yangon, Myanmar.

<sup>141</sup> Interview with Dr. Win Htut, SLRD, 11 Jan 2013. Yangon, Myanmar.



### *Dispute adjudication and the role of the judiciary*

As noted above, observers have significant concerns about the efficiency and transparency of the judicial system. However, the Farmland Law's dispute resolution process is also viewed with skepticism by many parties. The FABs, as created by the recent Farmland Law, are administrative bodies wholly outside the judicial system and populated with a variety of ministry officers with potentially competing interests. Non-government representation is limited to the very lowest level of the FABs and, even at that level, non-government members are in the minority (two out of five seats on the board). Given the concern about using this potentially unaccountable administrative dispute resolution system, some NGOs have been encouraging smallholders to fight land cases in the court system, even though the Farmland Law technically disallows this except in the case of inheritance disputes. The legal strategy that contesting organizations has adopted is to use constitutional provisions regarding rights to land – which supersede any text of the Farmland Law – in order to gain standing in court. So far, this practice has been successful in certain cases, although primarily only when smallholders have been able to produce government records such as tax receipts or leasehold certificates<sup>142</sup>. However, this process is also difficult and time-consuming and is, consequently, a practical or sustainable work-around for any FAB deficiencies on a national scale. This caveat is especially true, given that many smallholders lack any sort of government land record. Further, this somewhat unorthodox legal aid strategy highlights broader concerns with the legal redress available to Myanmar citizens, while suggesting a continued role for capacity-building in dispute resolution.

### **5.4 Fieldwork findings: Conclusions**

In conclusion, the multiple interviews and focus groups conducted with farmers, local officials, and civil society members in Shan State and in Yangon have yielded many interesting findings. Several of these findings help fill in information gaps regarding the current land management practices and economic / social conditions of the Shan, Danu, and Pa-O people, with highlights including:

- Communal tenure and shifting cultivation are nearly extinguished in this region of Shan State with the exception of some communal use of forestland, although traditional inheritance practices are reasonably intact

<sup>142</sup> Interview with Sue Mark, Pyoe Pin Foundation, 14 Jan 2013. Yangon, Myanmar.

- Migration to the cities and to Thailand is common among young people with limited economic prospects, potentially reshaping the community in the future
- Land pressures continue to rise, with a net 48% of farmers reporting having less land than their fathers at the same age

Other findings, meanwhile, highlight areas in which agencies like UN-HABITAT can concentrate their efforts to ensure more effective implementation of the land laws. These findings, which point at several concrete policy recommendations, include:

- While farmers are willing to engage the government and are optimistic about land law changes, information access is a persistent concern among farmers and local civil society representatives
- Rights and responsibilities under the new land laws are not well-known and government outreach efforts are sometimes hampered by lack of manpower and language barriers
- Gender norms are evolving and there is a latent willingness to include women in tenure registration, although this willingness is in many cases still not translated to direct action
- While farmers interviewed currently evince no desire to sell their land, land speculation and potential widespread societal disruption, as a result of land sales, are significant concerns among village elders, and civil society leaders
- Economic concerns are paramount, including rising input prices, declining yields, and declining incomes overall; these concerns often trump even fear of land seizure in the minds of farmers
- Access to the official financial sector is limited despite substantial need, with most farmers relying on informal sources with high rates of interest
- There was very little firsthand experience with government land seizures, and farmers generally expressed a positive opinion of government actions, although there are widespread concerns about the arrival of foreign businesses and special favors given to the wealthy and well-connected
- There is a strong desire to use traditional village-level methods of dispute resolution and a relatively widespread unfamiliarity (if not outright mistrust) of government adjudication processes

Together, these findings point at several concrete policy recommendations along three main themes:

- 1) **Information access** to remedy knowledge gaps and inform citizenry;
- 2) **Economic interventions** to alleviate livelihood security issues that can force farmers off their land; and
- 3) **Institutional development and capacity building** to ensure effective government implementation and address mistrust between government ministries and farmers.

These three themes will be developed in extensive detail and related to potential policy recommendations in Section 7, following an analysis of land policy lessons from several neighboring countries, which we turn to in the next section.

## 6 Findings from comparative regional analysis

This section of comparative analysis introduces six case studies relevant to Myanmar's agriculture and land policies as a point of reference for policy makers. This comparative exercise provides an integrated and relative understanding of LAM, which can aid policy makers in considering how to shape Myanmar's land policy. While Sections 4 and 5 of this report provide an analytical framework, which integrates land management best practices with field findings in Myanmar, this framework is difficult to operationalize without an understanding of how to identify and resolve binding constraints to the effective implementation of land tenure and agricultural sector reform. Using historical case studies is a useful tool to answer the many pressing questions pertaining to land policy within Myanmar, including: What are the binding constraints to growth given Myanmar's unique agricultural, political, and cultural conditions? What are the opportunities to realize substantial improvements in productivity or equity? And, what are the appropriate policies given these constraints and opportunities? In order to address these questions and to more rigorously parse the data, a series of case studies is very helpful, both to identify what factors have led to success or failure in similar countries, as well as to suggest how generalizable broad theory is to Myanmar's specific context.

The cases comprise various South and Southeast Asian countries, chosen with a eye towards comparability in ethnic diversity, history of conflict, colonial and post-colonial systems of land management, changing community structures, and land-uses. These examples were also selected to highlight some of the challenges and opportunities associated with land titling and agricultural revitalization. The cases include the Philippines and Lao People's Democratic Republic, which jointly discuss the relationship between customary tenure and statutory framework for land management; Thailand and Vietnam, which both examine the potential impacts of land policies on economic outcomes; and, finally, the Philippines and Thailand highlight the importance of effective land law implementation to ensure positive outcomes from formalization of land tenure through titling.

## 6.1 Understanding and Respecting Customary Tenure

For states like Myanmar, which have large rural populations, substantial ethnic diversity, and traditional agrarian economies, protecting land use rights held by indigenous and poor rural populations, as well as recognizing collective and communitarian land uses is crucial to community well-being. The issue of customary tenure is especially relevant in Myanmar's context given the diversity of ethnic groups and the multiple stakeholders involved. CSO representatives from southern Shan State and international organizations have expressed concerns related to the integration of customary tenure into official land laws. Starting off with examples from Laos and the Philippines, the first cases expose the potentially drastic consequences for the environment, social cohesion, and rural poverty if land laws do not recognize and respect customary tenure and related traditional agricultural practices.

### 6.1.1 The Laotian Experience: Conflicting Customary Practices and Statutory legislation can lead to degraded livelihoods

The recent history of land reforms in the Lao People's Democratic Republic (Laos), an ethnically diverse country, demonstrates the need to integrate customary land tenure and traditional agricultural practices into statutory law. As highlighted in the theoretical section, a land policy that ignores customary systems can jeopardize social stability, local livelihoods, environmental sustainability, and growth. This fact, however, seemed to be lost on Laos as it blatantly disregarded customary land tenure when shaping its land policy. Ignoring the centrality of upland shifting cultivation and other customary practices to various ethnic groups, the government of Laos implemented a land law designed to support marketization of the economy and modernize its agricultural sector, which essentially forbade customary practices. The outcome of this well-intentioned but bungling attempt illustrates how the treatment of customary practices — especially shifting cultivation and land tenure for upland farmers can have very significant effects on the environment, food security, and the well being of smallholder farmers. The resulting ill effects from this ignorance should grab Myanmar's attention given the similarities between the countries, which both have large agricultural economies and substantial ethnic diversity.

The fact that, in Laos, there are 49 distinct ethnicities and 200 ethnic subgroups, most of which are highly dependent on agriculture for their livelihoods<sup>143</sup> was not adequately accounted for when the government enacted new land laws in order to modernize its agricultural sector. These laws included several land registration and management laws and regulations, the first of which was enacted in 1996 (the Forest Law No. 96/NA11 and the Land Law No. 33/PO/1997). The Forest and Land Laws included restrictions on the use of swidden agriculture in order to stop deforestation, intensify agricultural production, increase land taxation, and – according to certain observers – increase pressure on minorities practicing this type of agriculture<sup>144</sup>. To operationalize the 1997 Land Law, the government started, first, with a land titling and registration phase. The program proved very effective to secure property rights in urban areas, providing urban dwellers with systematic and permanent titles. However, during the titling process, the state issued only Temporary Land Use Certificates (TLUCs) (for an initial period of 3 years) in rural areas, which could be withdrawn in the case of “degradation” of the land plots, including the practice of shifting cultivation. In addition to constraining upland Laotian ethnic minorities from practicing traditional forms of agriculture, such as communal tenure and shifting cultivation, which the government considered ‘backward,’ the Laotian government also attempted to assimilate ethnic groups into the broader Laotian population through resettlement<sup>145</sup>. These restrictions and forced resettlement resulted in a plethora of negative economic, social, and environmental impacts.

Due to these negative impacts, this land policy is widely perceived to be the main cause of impoverishment in rural areas, as it reduced access to land, increased degradation of local farming conditions, and prompted internal resettlement and migration<sup>146</sup>. Further, the constraints on shifting cultivation and communal lands led to shorter fallow periods, which decreased soil fertility and thus negatively impacted agricultural productivity<sup>147</sup>. These observed outcomes surprised policy-makers who expected the Forest and Land Laws to encourage farmers to switch from shifting to settled agriculture, ushering in a new era of modern agriculture. Instead, the new constraints introduced by the law led local farmers to reduce

<sup>143</sup> “Implementation Completion and Results Report: Lao PDR Second Titling Project.” World Bank. 2010.

<sup>144</sup> Evrard O. “La mise en oeuvre de la réforme foncière au Laos: impacts sociaux et effets sur les conditions de vie en milieu rural.” *FAO Land Tenure Service Paper* (2004).

<sup>145</sup> Baird, I. G. and Shoemaker, B. “Unsettling Experience: Internal Resettlement and International Aid Agencies in Laos.” *Development and Change* 38:5 (2007): 866-888.

<sup>146</sup> “Participatory Poverty Assessment in Lao PDR.” *Asian Development Bank*. 2001.

<sup>147</sup> Evrard O. “La mise en oeuvre de la réforme foncière au Laos: impacts sociaux et effets sur les conditions de vie en milieu rural.” *FAO Land Tenure Service Paper*. 2004.

fallow intervals (from a range of 7 to 10 years down to 2 years), shrinking average farm sizes and thereby deepening rural poverty<sup>148</sup>.

Another unintended consequence of the policy was the increase in farming land registered as protected forests, decreasing available agriculture space and increasing pressure on non-protected forests and new farming lands<sup>149</sup>. Indeed, the Forest Law was designed such that some farmland and forest communal land has been classified as protected forest — an outcome that was amplified by the non-participatory and non-inclusive process of land surveying. While the law was aimed at promoting environmental sustainability, its effects are uncertain and some qualitative evaluations reveal negative outcomes on the local environment in some regions<sup>150</sup>. As a consequence, internal migrations and resettlement increased, leading to rising social tensions, increased land rentals and sales, and haphazard slash-and-burn agriculture. Not only were these outcomes environmentally, economically, and socially detrimental, the increase in migration produced secondary effects, such as increased mortality when upland people relocated to lowland areas (due to their low resistance to the malaria strain in the lowland)<sup>151</sup>. Also, greater landlessness and the use of hired labor in the region, as a result of the new laws, left small farmers worse off as estimates of the Asian Development Bank show a decrease of paddy yields by more by 50%<sup>152</sup>.

To the extent that some characteristics of the Laotian context are similar to southern Shan State, it is important to note that, while the Laotian government has been trying to assimilate upland ethnic minorities through top-down policies,<sup>153</sup> the Myanmar government has generally abstained from doing so. In Myanmar, however, the central government does discriminate against ethnic minorities (e.g. the Rohingya people) in some areas. But, in other instances, the government has signed cease-fires with ethnic groups, granting them some autonomy (e.g. Pa-O in southern Shan State). Nowhere has the government adopted a policy of forcible relocation, but the Laotian experience is still pertinent for Myanmar as it raises several challenges with regard to land reform implementation and their relationship with customary systems relevant to

<sup>148</sup> Baird, I. G. and Shoemaker, B. "Unsettling Experience: Internal Resettlement and International Aid Agencies in Laos." *Development and Change* 38:5 (2007): 866-888.

<sup>149</sup> Evrard O. "La mise en oeuvre de la réforme foncière au Laos: impacts sociaux et effets sur les conditions de vie en milieu rural." *FAO Land Tenure Service Paper*. 2004.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> "Participatory Poverty Assessment in Lao PDR." *Asian Development Bank*. 2001.

<sup>153</sup> Baird, I. G. and Shoemaker, B. "Unsettling Experience: Internal Resettlement and International Aid Agencies in Laos." *Development and Change* 38:5 (2007): 866-888.

Myanmar's current land law implementation. For instance, the Myanmar government, while recognizing informally the centrality of customary practices to ethnic groups' culture and economy, has not explicitly codified protection for these practices or recognition of customary tenure into its land laws such as the Farmland Law of 2012. Indeed, it is unfortunate that the new law does not recognize long-term sustainable use of the land as the basis for land rights. The law instead places a premium on a registered land use certificate or some other formal piece of evidence as the basis for granting land rights in farmlands, a practice which leaves a gap for potential loss of land for those without the capacity to apply for a title. These policies, while not antagonistic to customary practices, are prone to subjective interpretation and could easily result in unintended outcomes similar to those observed in Laos if the government does not officially grant ethnic groups the right to maintain customary practices as they undertake a natural transition to more modern agricultural methods.

Beyond the importance of recognizing customary tenure and protecting traditional practices, this case study suggests it is reasonable to expect that modernization will result organically, if the conditions are suitable for farmers to make such a transition. In Shan State, for example, this transition between customary and modern practices is already occurring, largely outside of the reach of government policy. However, there have been attempts to introduce incentives for more modern techniques against a backdrop of past policy, which coercively mandated specific agricultural practices. While the Myanmar government's policy on dictating agricultural practices to farmers is, overall, falling to the wayside, the provision allowing the government to enforce agricultural production decisions by fiat is still on the books. The Laotian case highlights why this policy is inadvisable given the dangers of forced modernization, especially without access to the appropriate resources like inputs and credit to facilitate the transition to modern agricultural practices.

Specifically, as illustrated by Laos' history, the likely result of dictating agricultural practices is growing impoverishment, landlessness, migration, and unproductiveness, all of which will incur additional costs to the government. Instead, the Myanmar government should focus on changing the incentive structure and resolving binding constraints to modernization rather than mandating a change in practices and penalizing farmers for not complying. Finally, Laos' experience highlights the importance of a participatory and inclusive process during the implementation phase of the reform to ensure appropriate land categorization. Especially, the



classification of farmland and communal land as preserved forests is a crucial issue to protect livelihoods, which may prove a challenge for the implementation of land policies in Myanmar. In Laos, the failure to protect these vital customary rights, whether intentional or not, was highly problematic. Not only did the practice of issuing farmers temporary use titles and largely disregarding customary use rights disenfranchise farmers from the new formal system (undermining the goal of improving the functioning of land markets), the procedure also fell short with respect to inclusiveness. Laws based on inadequate dialogue with stakeholders will undermine minority rights and livelihoods, as the case of Laos highlights. Consequently, Myanmar's government should focus on avoiding these errors by incorporating recognition of customary tenure into the rules and procedures of the land laws as well as seeking to ensure the practice of titling and land administration and management builds trust by incorporating all stakeholders' views throughout the process.

Lessons learned from Laos	
<b>Lessons learned from the case</b>	<ul style="list-style-type: none"> <li>• A top-down, non-participatory land reform can generate negative social, economic and environmental impacts.</li> <li>• Not including customary practices and tenurial systems can have unexpected outcomes in terms of agricultural practices.</li> </ul>
<b>Relevance to Myanmar</b>	<ul style="list-style-type: none"> <li>• Laos and Myanmar face similar ethnic diversity with similar customary agricultural systems.</li> <li>• Ethnic minorities in both countries see their customary practices challenged by economic changes.</li> </ul>
<b>Implications for Myanmar</b>	<ul style="list-style-type: none"> <li>• In order to generate equitable and positive outcomes, it is important for the current reform in Myanmar to take into consideration customary tenure systems and implement a participatory and inclusive reform.</li> </ul>

### 6.1.2 The “Indigenous People Rights Act”: *de jure* versus *de facto* recognition of customary practices in the Philippines

While the Laotian experience demonstrates the importance of integrating customary tenure consistently in land reforms, the Philippines’ experience highlights how, even if explicitly recognized, policy protecting customary rights must be operationalized effectively to realize the benefits of reform. In the Philippines, for example, the Indigenous People’s Right Act (IPRA) was designed in a way to explicitly protect the land rights of ethnic minorities. Much like Myanmar, the Philippines have a large population of minority groups, but, whereas Myanmar’s minorities comprise various ethnic groups, the Philippines’ minorities include around 15 million indigenous people<sup>154</sup>. Like ethnic groups in Myanmar, indigenous people in the Philippines engage in a mix of production systems, including swidden agriculture in the forests and mountains<sup>155</sup>. Given these similarities, the Philippines’ experience incorporating the practices of a large indigenous population into its land policy is very relevant to Myanmar’s current situation. Specifically, the Filipino government’s efforts to codify the right to retain and use land in a customary fashion through the IPRA provides an interesting perspective on the importance not only of recognizing rights within a legal framework but also ensuring those rights are upheld through effective policy implementation.

In the Philippines, the IPRA sprung from the government’s recognition that land, for indigenous people, is both a social and economic asset. Not only are indigenous communities’ livelihoods greatly dependent on customary land and deeply rooted traditional practices, the right to continue these practices affects social cohesion given that associated customary rules shape marriage, inheritance, power relationships, and things of this ilk. As these rules are affected by land use traditions, government intervention will likely have reverberating social effects. In recognition of this fact, and after many years of unsuccessful agricultural reforms, the

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<sup>154</sup> Carino, Jacqueline. “Country Technical Note on Indigenous People’s Issues. Republic of the Philippines.” IFAD.2012.

<sup>155</sup> Perera, Jayantha. *Land and Cultural Survival: the Communal Land Rights of Indigenous People in Asia*. Manila: Asian Development Bank, 2009.

government of the Philippines enacted the IPRA in 1997. This law allows Filipino citizens to register in their land, provided they can prove they have been living on their land since “time immemorial” (as stated in the Act). This law was part of a broad policy designed to “recognize, protect and promote the rights of indigenous cultural communities and indigenous people” by attempting to account especially for customary tenure and traditional rights<sup>156</sup>.

Some notable aspects of the law include its provision to ratify individual and community land use as well as its use of “certificates of ancestral domains.” These certificates recognize that some lands (that may no longer be exclusively occupied or possessed by indigenous communities, but to which they traditionally had access to) are of crucial importance for their subsistence and traditional practices, including shifting cultivation (mentioned explicitly in the IPRA). The law also initiates titling for the groups that traditionally occupied these lands and mandates that indigenous peoples have the right to “free and a priori informed consent” on projects directly affecting them (i.e. development, environmental and industrial projects). Broadly, the IPRA was designed in order to preserve ancestral land of indigenous communities and protect it as a cultural and social (and not only an economic) asset, which is crucial in the communities’ history and ongoing social structures.

Despite this law’s advancements towards equity in dually recognizing ‘modern’ and ‘traditional’ practices, the Philippines’ reforms also failed to achieve notable success in enhancing productivity due to failures of implementation. These failures derived from a number of factors, including institutional weaknesses, ill-defined responsibilities, and lack of funds for implementation<sup>157</sup>. Specifically related to the IPRA, implementation was incomplete because of bureaucratic and expensive titling procedures that place the burden of proof on indigenous people; conflicting laws and overlapping jurisdiction; lack of mechanisms for conversion of existing titles; and ineffectiveness of titles in affording protection of indigenous property rights,

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<sup>156</sup> Republic of the Philippines “Republic Act No. 8371, 07/28/1997.” *Congress of the Philippines*. 1997.

<sup>157</sup> Adriano L. S. “A General Assessment of the Comprehensive Agrarian Reform Program.” *Philippine Institute for Development Studies - Working Paper Series*.1991: 19-13.

broadly<sup>158</sup>. Indeed, indigenous communities still suffer from food insecurity and poverty, because of the loss of some ancestral lands due to development projects and extractives industries (mining, logging, dams). This issue prompted the government to pass a recent law enacting a temporary ban on new mining projects in indigenous lands (both national and foreign) as of March 2013.

The Philippines experience exemplifies how regulations and legislation can be designed to accommodate the needs of ethnic minorities for which customary tenure systems and traditional agricultural practices are crucial. Even if the situation of indigenous people in the Philippines and ethnic minorities in Myanmar differ with regard to history and politics, this case can highlight some key policy implications for Myanmar. Indeed, Myanmar's minorities face comparable challenges in terms of land expropriation, without the same legal protection for their right to retain ancestral or community land or to integrate customary tenure systems and practices into their land management system. This case suggests the importance of explicitly recognizing ethnic groups' rights to defend against land appropriations, misclassification of land, and the loss of land due to inability to practice customary land management. Further, it shows that it is possible and desirable to purposely provide a legal framework, as long as there is institutional capacity and political will to translate these dispositions into effective protections.

Lessons learned from Philippines' IPRA	
<b>Lessons learned from the case</b>	<ul style="list-style-type: none"> <li>• It is central to incorporate customary land tenure systems into land reforms in order to explicitly address the specific practices of minorities.</li> <li>• Such a framework can be designed to protect the land rights of minorities; however, it requires institutional capacity and political will to be effective.</li> </ul>
<b>Relevance to Myanmar</b>	<ul style="list-style-type: none"> <li>• Ethnic minorities in Myanmar and indigenous people in the Philippines share similar customary practices and tenurial systems.</li> </ul>
<b>Implications for Myanmar</b>	<ul style="list-style-type: none"> <li>• It is central for the government to provide an inclusive legal framework to incorporate customary practices in land reforms. This should be formulated explicitly and be supported politically, administratively and institutionally. The IPRA could be a good model for Myanmar to learn from.</li> </ul>

<sup>158</sup> "Philippines Indigenous Peoples ICERD Shadow Report" submitted for the Committee on the Elimination of Racial Discrimination (75<sup>th</sup> Session). *Office of the United Nations High Commissioner for Human Rights*. 2009.

## 6.2 Encouraging Economic Efficiency and Improving Livelihoods

As we have discussed in this report, policy interventions to improve the availability of agricultural credit and other agricultural services and to address information failures play a key role in promoting rural development and reducing poverty. The case studies of Thailand and Vietnam are particularly significant as they discuss how to integrate a lending mechanism into agricultural policy. Both of these examples explain how countries can facilitate better access to credit through reform, with the Thailand example demonstrating the facilitative role land registration plays in expanding access, and the Vietnam case highlighting the utility of a group lending method, which can help ensure that access translates into adoption. Based on these two studies, this section derives implications for Myanmar on the importance of relying on land registration, as well as existent community structure, as dual engines to improve farmers' access to credit.

### 6.2.1 Land Titling and Access to Credit and Input: Case of Thailand

As discussed in Section 4, land registration helps to ensure access to credit for smallholder farmers who are typically excluded from credit markets, because they cannot produce adequate collateral. This relationship between titling and expanded access to credit is exemplified in Thailand's 1984 to 2003 land titling reforms. Thailand initiated the Land Titling Project (LTP) with a mind toward issuing freehold title deeds to eligible landowners. Importantly, the LTP recognized documents and testimony of land use, which would not have been sufficient for titling before the program. As a result, 63% of the population has registered their land today and about 90% of the land transactions are recorded. This policy allowed farmers to assert their rights to their lands, which resulted in greater possession of title deeds across the population<sup>159</sup>. The jointly realized effects of increased land tenure security and improved access to credit,

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<sup>159</sup> Byamugish, Frank F. K. "How Land Registration Affects Financial Development and Economic Growth in Thailand." *World Bank* November 1999. Accessed: April 2013. <<http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-2241>>.

operative facets of productivity growth, revitalized the land market in Thailand, contribute to the development of a strong agriculture sector.

However, in spite of an uptick in land titling, a boon to the agricultural economy, the program still had some shortcomings as it did not equitably ensure that smallholder farmers had the needed access to credit. As discussed in Section 4, titling should help farmers access loans, as was the case in the early stage of the land titling project in Thailand. However, the experience in Thailand illustrates how titling, while a key first step, is not sufficient to ensure farmers have access to credit; even though overall titled farmers in Thailand had better access to loans than untitled farmers, even farmers with land titles faced differential access to credit due to local conditions, such as if the farmers depended on group guarantees. Thus, the farmers that were able to form these unions had better access to formal finance mechanisms, which offered significantly lower interest rates and longer-term loans. The import of group bonds is highlighted by the fact that, whether they were titled or untitled, farmers, in general, faced greater transaction costs to entering credit markets when they were individual borrowers. This finding is significant as it shows that in a country like Thailand, where there were no formal institutions that linked farmers such as agricultural cooperatives, the real price to accessing credit might be higher than expected (or at least for certain segments of the population).

This experience in Thailand reinforces the importance of land titling, while also calling attention to the importance of access to credit as part and parcel of agricultural growth. Specifically, this case suggests that supporting institutional reforms and policy adjustments to ensure access to agricultural credit (alongside other resources that enable modernization) can be as deterministic as titling itself in expanding production and spurring economic growth. And, despite the additional challenges that farmers faced in Thailand accessing credit without institutions, the fact that the titling-credit-growth nexus still held shows that significant benefits can be realized in Myanmar's context, where farmers also do not typically have cooperatives that could serve as the backbone for group lending.

Lessons learned from Thailand in terms of accessibility to credit	
<b>Lessons learned from the case</b>	<ul style="list-style-type: none"> <li>Facilitating land registration can improve credibility of farmers because of the reliable mortgage of lands</li> </ul>
<b>Relevance to Myanmar</b>	<ul style="list-style-type: none"> <li>Low land titling rates might be affecting the low accessibility of farmers to formal financing sources</li> </ul>
<b>Implications for Myanmar</b>	<ul style="list-style-type: none"> <li>Facilitating land registrations can mitigate the farmers biggest concern today, low production</li> </ul>

### 6.2.2 Access to Credit: The case of Vietnam

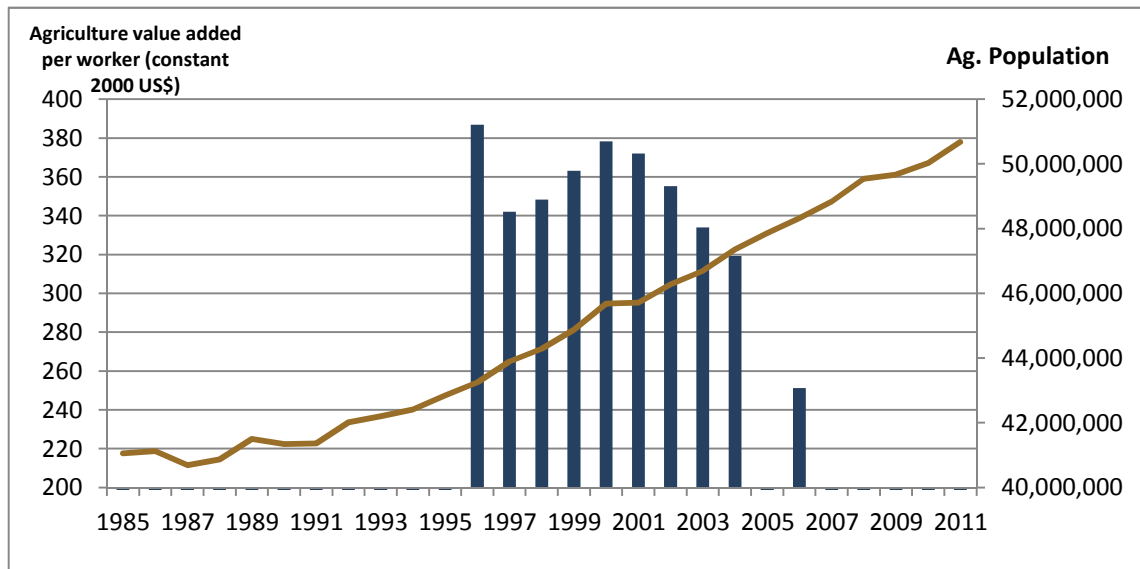
Many factors besides land titling can affect access to and demand for credit. These include the level of risk a farmer faces, information availability, education levels, and economic factors such as the price of credit. Although numerous factors affect these variables, one important facet that can drive down the price of credit (by increasing the borrowers' credibility in the eyes of lenders) is group lending, as suggested in the previous case on Thailand. Group lending leverages social bonds among a community network to minimize adverse selection and moral hazard, which often scuttle lending programs in rural areas. By compensating for unreliable information about participants' credit worthiness and poor oversight and enforcement mechanisms, group lending improves the prospects for repayment, making individuals less risky for lenders, in the aggregate. The value-added of such community networks is illustrated through Vietnam's success in expanding access to credit through formalization of tenure and reliance on group lending.

Vietnam's provision of agricultural credit through group loans, which effectively utilized agricultural associations rooted in the socialist regime of the country, highlights the importance of improving farmers' access to agricultural credits and some considerations for doing so. Figure 6-1 and Figure 6-2 demonstrate Vietnam's sustained improvement in agricultural productivity both in terms of labor and land productivity since 1986, when the country experienced economic reform. This improvement of productivity can be attributed to Vietnam's attempts to

change its agricultural regime since 1986, when the country announced economic reform plan *Doi Moi* to liberalize its economy. In the era before this reform, Vietnam's agricultural economy was shaped by strong government initiative through agricultural associations. Most of the land, technical facilities, and other factors of agricultural production belonged to and were managed by agricultural collectives and state organizations. There were 55,000 agricultural associations and 800 agricultural state farms in the country by 1985, which held 83% of farm households, managed 80% of cultivated land, and 87% of agricultural labor<sup>160</sup>.

**Figure 6-1 Agricultural Value-Added per Agricultural Worker<sup>161</sup>**

Population: Blue bars, right axis; Value-added: Red line, left axis



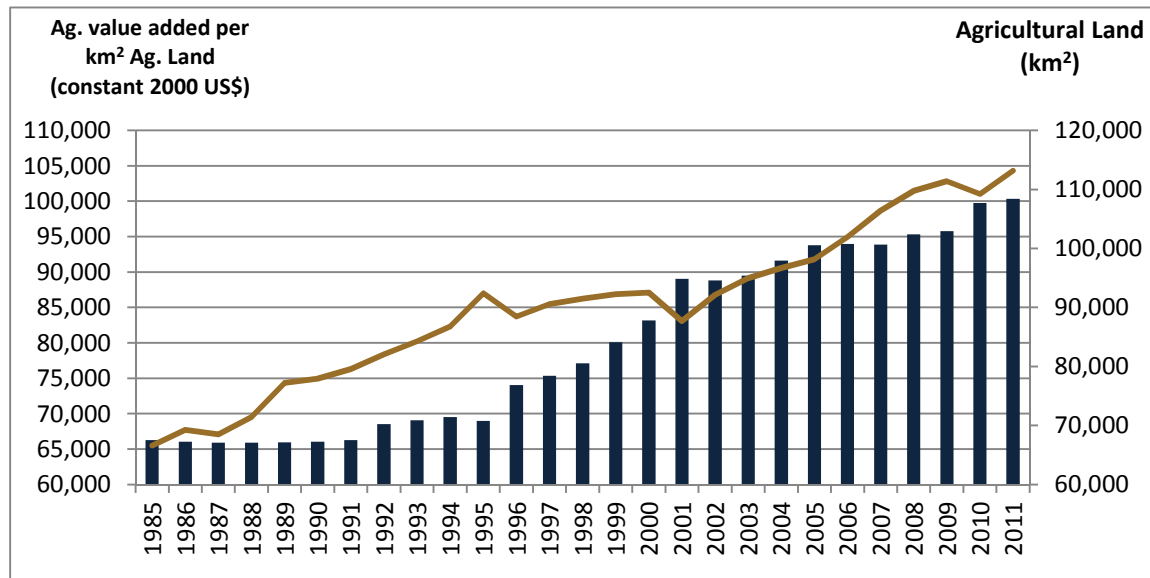
<sup>160</sup> Man, Phan Si. "Farm Organization in Agriculture in Vietnam - Actors for Poverty Reduction in Vietnam." *Institute of Developing Economies*. 2006. Accessed: April 23, 2013, pp.81-109. <[http://d-arch.ide.go.jp/idedp/ASE/ASE007300\\_005.pdf](http://d-arch.ide.go.jp/idedp/ASE/ASE007300_005.pdf)>

<sup>161</sup> The World Bank Databank, accessed Apr.24, 2013. <<http://data.worldbank.org/>>. Based on indicators "Agriculture value added per worker (constant 2000 US\$)" and combination of "Employment in agriculture (% of total employment)" and "Population, total" for Vietnam. As shown in the graph, especially since 1996-2001, the change in agricultural population does not seem to be affecting value added per worker.



**Figure 6-2 Agricultural Value Added per Land<sup>162</sup>**

Land: Blue bars, right axis; Value-added: Red line, left axis



Vietnam's collectivization policy was abandoned after the announcement of *Doi Moi*, but the ties between each farmer the past program had helped to create played an important role in the strong growth of agriculture, especially in terms of finance, which shows significantly high repayment rate and broad availability. Currently, farmers in Vietnam have access to credit through two sources: the Vietnam Bank for Agriculture and Rural Development (VBARD) and the Vietnam Bank for Social Policy (VBSP). VBARD operates on a commercial basis, financing profitable agriculture with relatively high interest rates. Conversely, the VBSP functions as a microfinance agency with little profits made from financing. A study by the Central Institute for Economic Management in Vietnam shows that 49% of households surveyed received a loan for agriculture, a much higher proportion than other developing countries. This number has been increasing since 2006, with the VBSP taking the lead as the top source of financing in 2010, as shown in **Table 6-1**.

<sup>162</sup> "The World Bank Databank." *The World Bank*. Accessed Apr.24, 2013. <<http://data.worldbank.org/>>. Based on indicators "Agriculture, value added (constant 2000 US\$)" and "Agricultural land (sq. km)" for Vietnam. As shown in the figure, land productivity is increasing despite the increase in land under cultivation.

**Table 6-1: Access to credit in Vietnam**<sup>163</sup>

	2006	2008	2010
<b>Total</b>			
Number of households Surveyed	1,180	998	1,079
% of households	57.79%	45.38%	49.07%
<b>Proportion by Sources</b>			
VBSP	25.85%	25.95%	41.52%
VBARD	40.25%	34.87%	24.19%
Informal	27.54%	21.34%	25.95%
<i>Friends and relatives</i>	14.15%	11.62%	13.81%
<i>Money lenders</i>	5.08%	3.91%	3.52%
<i>Group schemes</i>	0.25%	0.5%	0.46%
Other	25.76%	20.64%	24.84%

Vietnam's success in establishing robust financial mechanism for farmers can be attributed to the use of the group lending method, which was formally institutionalized through the VBARD and a farmers' union joint resolution in 1999 to establish borrowing-savings groups. Per this agreement, the VBARD loans to borrowing-savings groups typically consisting of 5-7 farmers who are then jointly responsible for repayment to VBARD. As they cannot borrow money when there is an outstanding debt, mutual monitoring of individuals' financial management is necessary. Farmers' unions, cooperating with local authorities, are responsible for management of the borrowing-savings groups, such as assessment, lending on the field, debt and interest collection. VBARD encourages these links by exempting operating fees of farmers' union, as well as offering supportive training on agriculture and orientations for borrowing procedure<sup>164</sup>. These

<sup>163</sup> Development Economics Research Group in the University of Copenhagen, Central Institute for Economic Management in Ministry of Planning and Investment of Vietnam, and Centre for Agricultural Policy Institute of Policy and Strategy for Agriculture and Rural Development in Ministry of Agriculture and Rural Development of Vietnam. The availability and effectiveness of credit in rural Vietnam: Evidence from the Vietnamese Access to Resources Household Survey 2006-2008-2010. June 5, 2012. <[http://www.ciem.org.vn/home/en/upload/info/attach/13388684552500\\_InDepthStudyRuralCredit.pdf](http://www.ciem.org.vn/home/en/upload/info/attach/13388684552500_InDepthStudyRuralCredit.pdf)>.

<sup>164</sup> "Overview of Microfinance in Asia/Pacific and selected experiences from WSBI members." *World Savings Banks Institute*.

October 2008. Accessed: April 2013.

<[http://www.wsbi.org/uploadedFiles/Publications\\_and\\_Research\\_%28WSBI\\_only%29/microfinance%20WSBI%20Asia%20Pacific%20screen.pdf](http://www.wsbi.org/uploadedFiles/Publications_and_Research_%28WSBI_only%29/microfinance%20WSBI%20Asia%20Pacific%20screen.pdf)>.

mechanisms have helped VBARD enhance its coverage of rural households and reduce transaction costs<sup>165</sup>.

This example has an implication for Myanmar even though, as noted in the above section on Thailand, Myanmar does not have organizations that function akin to the farmers' cooperatives in Vietnam. Nonetheless, the gist of the policy's success — addressing the multifaceted incentives affecting participation in credit markets — could be applied in many ways in Myanmar. These applications might include designing agricultural credit institutions to play off of extant community structures or subsidizing agricultural credit to compensate for the lack of a tool, such as group lending, which can lower the barriers to entry into financial markets for smallholder farmers. Proactive policies to expand credit are badly needed in Myanmar where, according to the field findings, farmers' main sources of credit are community and family members; formal institutions such as banks do not play a significant role. Regarding this dearth of formal credit in Myanmar, Vietnam's embrace of agricultural credit shows the importance of a country's broader land policy and specifically the inclusion of provisions to facilitate access to agricultural credit. Vietnam's example also shows the importance of constructing a policy that encompasses supporting services that encourage investment in general, and specifically bearing in mind the features needed to make credit functional for farmers, given the various constraints they face. Knowing that, to date, community structure is still strong in most local areas in Myanmar and that some agricultural groups do exist, these networks might be plausibly used for improving access to finance.

Lessons learned from Vietnam	
<b>Lessons learned from the case</b>	<ul style="list-style-type: none"> <li>• Preparing various lending methods can enhance lending to farmers</li> <li>• Existent community structure can be used for new lending method</li> </ul>
<b>Relevance to Myanmar</b>	<ul style="list-style-type: none"> <li>• Each ethnic group has a robust community structures</li> </ul>
<b>Implications for Myanmar</b>	<ul style="list-style-type: none"> <li>• MADB can utilize the existing community structures to expand lending to farmers in the communities</li> </ul>

<sup>165</sup> "Vietnam Bank for Agriculture and Rural Development (VBARD) or AGRIBANK." *Asia Resource Center for Microfinance*. n.d.

Accessed: April 2013. <[http://www.bwtp.org/arc/vietnam/II\\_Organisations/MF\\_Providers/VB"ARD.htm](http://www.bwtp.org/arc/vietnam/II_Organisations/MF_Providers/VB)>.

### 6.3 Land Law Implementation Considerations and Governance Issues

The manner in which the legal framework for land laws is shaped as well as the implementation of the laws are crucial to realizing equitable economic and social improvements. Although an effective titling program might take many shapes, one framework for analyzing the potential impact of the land registration system on equity and improvement of livelihoods relies on the identification of key factors: affordability, accessibility and simplicity<sup>166</sup>. Both of the following cases on Thailand and the Philippines provide insight into how land laws can be optimally operationalized along these criteria.

#### 6.3.1 Defining a simple, affordable and accessible land registration system: the case of Thailand's Land Titling Project

Thailand's Land Titling Project (TLP), which was initiated in 1984, is widely considered a resounding success. The program streamlined the country's land administration system, which is renowned for its efficiency and transparency<sup>167</sup>. The Thai registration systems impressively ranks 5<sup>th</sup> in the World Bank's Doing Business Report (2012) in terms of number of days for registering property and also had a score of 0.796 (on a scale from 0 to 1, 1 being the best score) on the Land Rights and Access indicator of the 2009 Millennium Challenge Corporation Scorebook. As mentioned previously, key aspects of an equitable and inclusive land reform implementation are affordability, accessibility and simplicity. In Thailand, these three criteria have been notable, as the system is:

- Affordable with low registration fees of about 2% of the appraised land value, calculated by the Central Valuation Authority and announced by the Land Department every four years<sup>168</sup>. Moderate fees, both during first-time registration and subsequent registration (land sales,

<sup>166</sup> Interview with Ian Lloyd, LAM Senior Advisor for UN-Habitat Myanmar, conducted on March 26<sup>th</sup>, 2013. Yangon, Myanmar.

<sup>167</sup> "Property Rights and Resource Governance – Thailand." *USAID Country Profile*. 2012.

<sup>168</sup> "Registering Property Doing Business 2012 Report." *World Bank*. 2012. Chapter 12.

transfer, inheritance) are requisite for an inclusive land registration that allows all actors, no matter their income level, to register their land.

- Accessible, with registration occurring at the district, province and national levels (the Department of Land has a very extensive regional network with 76 provincial land offices, 212 branch provincial land offices, and 758 district land offices). Extensive geographical outreach is necessary, which requires financial and administrative support from the government.
- Simple and modern by making use of a well-developed infrastructure and communication networks, allowing the use of technology (Internet) that makes registration almost instantaneous, and reducing uncertainty during the registration period. There has been comprehensive policy support to this end, with a government backed “National ICT Strategic Master Plan 2009-2012,” identifying the Thai Spatial Data Infrastructure and land information for land registration as being one of the key pillars. A comprehensive land registration system should use technology available in the country in order to maximize outreach and improve effectiveness.

There is also positive empirical evidence that the quality of the titling program is an integral factor in producing positive and significant impact of the quality of land registration services — as measured by the proxy of public spending on land registration — on long-term economic growth<sup>169</sup> in Thailand. Thus, Thailand’s status as a country with an enviable land-titling program is evidence that commitment to the implementation of an affordable, accessible, and simple land registration pays economic dividends.

Even though the Thai context differs significantly from Myanmar’s in terms of poverty, ethnic minorities, political and institutional context, and infrastructure development, it is important to keep in mind that the factors central to Thailand’s successful implementation are relatively straightforward and attainable. Simplicity, affordability and accessibility can be realized in a

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<sup>169</sup> Byamugisha F. “How Land Registration Affects Financial Development and Economic Growth in Thailand.” *World Bank Policy Research Working Paper No. 2241*. 1999.

variety of ways tailored to the country context, provided the government makes implementation of land-titling a priority and provides strong support to this end. Some of the ways the Myanmar government might seek to parallel Thailand's exemplary implementation of the Thai TLP might include: crafting a strong and well-defined policy framework and long term development plan; introducing systematic land adjudication; supporting technical capacity-building; instituting a strong management regime focused on performance measures; partnering with local advocacy groups to educate citizens on their land rights; and devising an implementation strategy with an affordable cost<sup>170</sup>. In terms of policy implications, this case study displays key features of an optimal implementation strategy that Myanmar would do well to emulate to the extent possible in the implementation of its land laws.

Lessons learned from Thailand's implementation strategy	
<b>Lessons learned from the case</b>	<ul style="list-style-type: none"> <li>• Key features of an effective land registration system rely on affordability, accessibility and simplicity.</li> <li>• A comprehensive land policy implementation can be successful and effective, provided it benefits from sufficient funding and administrative capacity.</li> </ul>
<b>Relevance to Myanmar</b>	<ul style="list-style-type: none"> <li>• There are differences between Thailand and Myanmar; however, Myanmar is now expanding its land registration and titling, just as Thailand did 25 years ago, and it can benefit from best practices.</li> </ul>
<b>Implications for Myanmar</b>	<ul style="list-style-type: none"> <li>• Myanmar land registration system should focus on affordability, accessibility and simplicity, supporting the implementation strategy with adequate funding and administrative capacity.</li> </ul>

### 6.3.2 The importance of institutional capacity: lessons learnt from the Philippines

As underlined in Section 4, policy-makers have shifted from a focus on narrowly defining land management as primarily cadastral mapping and titling to include land administration, institutional reform, and national-level land use policy and multi-level land use planning. Successfully institutionalizing a land policy, which encompasses these various administrative and management functions, requires attention to horizontal and vertical dimensions of reform. A

<sup>170</sup> Bowman C. "Thailand Land Titling Project." *AusAID Working Paper*. 2004.

government's framework for LAM should clearly specify what agencies and actors are responsible for land management. It should also erect an effective system of incentives, as well as checks and balances, to ensure positive performance and action in cases of institutional abuse and to ensure that resources are applied effectively. Horizontally, government institutions across ministerial agencies must share land data and have clear LAM-related mandates. Vertically, LAM policy must create an explicit structure to devolve responsibilities to state, regional, and local levels of governments, taking care to include customary institutions of governance as well. In Myanmar, the institutional aspects of land law implementation are important given that institutional capacity is limited and overlapping. Ill-defined institutional mandates for land management (i.e. between SLRD, the Ministry of Environmental Conservation and Forestry, or the GAD) make inefficiencies and mismanagement more likely. In Myanmar, other potential obstacles to effective land law implementation may include institutional fragmentation, weaknesses and lack of cooperation between different stakeholders at the government level.

The Philippines provide an interesting example of how these limitations, if left unaddressed, can scuttle a country's land policy. As mentioned previously, institutional weakness and limited capacity constrained implementation of the IPRA. While the Philippines struggled to convert "certificates of ancestral domains" into proper land use titles, an even greater problem was the overlapping responsibilities and ill-defined institutional responsibility between different agencies. The current framework for land management in the Philippines is the CARP (Comprehensive Agrarian Reform Program), which is considered a relative failure, probably due in no small part to its emergence as a product of political conflict between landlords (represented in the Senate) and parliament representatives. In the Philippines, powerful landlords benefitting from local politics intervened in order to delay and skew implementation of the CARP laws. Due to this politicization of the process, the text represents a political

compromise between pro- and anti- land reform<sup>171</sup>, to the detriment of the policy's coherency and comprehensiveness. The negative manifestations of these vested political and economic interests, which contributed to making the program inefficient, and largely ineffectual, highlight the significant drawbacks of allowing politicization of land policy to proceed unaddressed.

In addition to political economy factors, which tainted the policy making process, observers have noted that the actual implementation of the law suffered from several drawbacks. First, the information system for land titling and registration was considered poor and inadequate. Besides, rural services have been slow and did not coordinate with other departments in order to provide education sessions or to work consistently with departments in charge of providing infrastructure, equipment, civil works or inputs. Additionally, information about ownership, boundaries, location, land uses and land values was not provided in a systematic way to many local governments. Thus, fraud or mistakes occurred in land titling and, when land was disputed, conflicts over land ownership could take years to be resolved. The delay resulted, in part, from the proliferation of land agencies which had a hand in the process; in the Philippines there are almost 20 agencies involved in land administration with poor coordination among them, inadequate legal framework, and inefficient records management. Further, the cadastral information was also inadequate and the information available is not easily accessible<sup>172</sup>.

Other identified constraints to efficient implementation include the complex and unfair land valuation system, which favored landowners and gave rise to corruption. Also, the weak administrative and financial penalties for non-compliances with the CARP operationalizing laws was problematic as was the dearth of funding for implementation, further weakening the agencies' capacities. Finally, too many implementing agencies were provided with overlapping responsibilities (PARC, PARCCOM, BARC, DAR, DENR, LRA, LBP) with poor financial management,

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<sup>171</sup> Adriano L. S. "A General Assessment of the Comprehensive Agrarian Reform Program." *Philippine Institute for Development Studies - Working Paper Series*. 1991: 19-13.

<sup>172</sup> Llanto G. and Ballesteros M. "Country Case Study: Philippines" presented at the Regional Workshop on Land Issues in Asia (Phnom Penh, June 4-6, 2002). *World Bank*. 2002.



budget allocation, limited capacity, bureaucratic functioning<sup>173</sup>. The government tried to address the poor performance of bureaucratic agencies through the creation of Agrarian Reform Communities (ARCs), local institutions channeling support services to the beneficiaries. However, these ARCs suffered from similar financial strain and poor support from the government.

This case study highlights some features crucial to understanding what contributes to the failure or success of a land policy implementation. At the high level of the administration, political power was constrained by the economic interests of large landowners, which created constraints to formulating and enforcing land regulations and obtaining an adequate allocation of resources. Additionally, in the absence of a comprehensive framework for the reform, institutional responsibilities were scattered across various agencies with limited funding and capacities. This issue is also problematic in Myanmar, where responsibilities, as stated in the different laws and regulations, are not well defined between different government bodies (SLRD, MoECaF, GAD, and City Committees). Additionally, NGO representatives highlighted the limited human and financial capacity of SLRD (largely due to increasing demand for its services and historic under-funding) to effectively reach out to all rural areas, a concern which was also unofficially raised by at least one government official. At the local level, registration had been limited or imperfect in the Philippines, because of the absence of information, corruption, and because of complex and expensive processes. In Myanmar, several stakeholders (farmers and high-level officials) mentioned the limited capacity of SLRD local offices. Regardless of Myanmar's distinct colonial legacy, institutional set-up, or political environment, the field research combined with the Philippines' experience suggests the import of petitioning the central government to adequately capacitate the land agencies in Myanmar and particularly to resolve institutional mandates between them to make their work more efficient and effectual.

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<sup>173</sup> Byres T. J. "Contextualizing and Interrogating the GKI Case for Redistributive Land Reform." *Journal of Agrarian Change* 4:1 (2004): 1-16.

### Lessons learned from the Philippines's implementation strategy

<b>Lessons learned from the case</b>	<ul style="list-style-type: none"> <li>• The institutional environment is crucial for an effective implementation of the land laws.</li> <li>• Political support has to be continuous in order to translate de jure principles into actual changes.</li> </ul>
<b>Relevance to Myanmar</b>	<ul style="list-style-type: none"> <li>• Myanmar faces similar institutional challenges in terms of institutional fragmentation and uncertainty, including limited administrative capacity and a young legal framework for land management.</li> </ul>
<b>Implications for Myanmar</b>	<ul style="list-style-type: none"> <li>• Several policy implications derive from this case: responsibilities have to be well defined, administrative and financial capacities have to be strengthened, local branches have to be empowered and institutional fragmentation has to be lowered, in order to improve effectiveness of land law implementations.</li> </ul>

#### 6.3.3 Conclusion: What can Myanmar learn from other countries' experiences?

All case studies highlight that the factors explaining the successes or failures of land reforms in different countries, as well as their impact on customary systems, socio-economic variables or livelihoods of farmers vary according to country-context and, moreover, are complex and interrelated. Nonetheless, this comparative framework enables policy-makers to derive some lessons learned in terms of best practices, and policy implications for Myanmar, lessons which are summarized in the table below.

#### Lessons learned and policy implications for Myanmar

<b>Lao PDR and customary systems</b>	In order to generate equitable and positive outcomes, it is important for the current reform in Myanmar to take into consideration customary tenure systems and implement a participatory and inclusive reform.
<b>Philippines' IPRA</b>	It is central for the government to provide an inclusive legal framework to incorporate customary practices in land reforms. This should be formulated explicitly and be supported politically, administratively and institutionally
<b>Thailand's access to credit and inputs</b>	MADB can utilize the existent communities structures to expand lending to farmers in the communities
<b>Vietnam and access to credit</b>	Facilitating land registrations can mitigate the farmers biggest concern today, low production
<b>Thailand's implementation strategy</b>	Myanmar land registration system should focus on affordability, accessibility and simplicity, supporting the implementation strategy with adequate funding and administrative capacity.

**Philippines’  
institutional  
features**

Several policy implications derive from this case: responsibilities have to be well defined, administrative and financial capacities have to be strengthened, local branches have to be empowered and institutional fragmentation have to be lowered, in order to improve effectiveness of land law implementations.

These overviews are intended to provide a practical context for policy-makers, both at the national and international levels. Although this comparative analysis adopts a narrative and descriptive perspective to provide in-depth, qualitative context, it cannot provide comprehensive understanding for the policies implemented by other countries. Consequently, the case studies hone in on the most relevant information in order to provide practical actionable examples of how Myanmar might approach some of the challenges to rationalizing its land program. However, it is important to highlight any comparative analysis is bound by the inevitable variations between different national contexts, and therefore these policy lessons cannot be transposed identically to Myanmar’s situation; nonetheless, these regional experiences are important as they highlight how land policy succeeds and fails, in doing so underpin the policy recommendations expressed in Section 7.

## 7 Recommended Interventions

### 7.1 Recommendations overview

After the two field visits and interviews with high-level and local stakeholders, a number of clear common themes related to implementation of the new land laws have emerged. The main findings have already been summarized in Section 5.4, so now the task remains to link these findings to concrete actions that UN-HABITAT can either pursue directly or encourage other stakeholders to address. Thus, in this section, we present a series of recommended actions and evaluate the relative feasibility of implementing them in terms of both economic resources and political capital. We also attempt to prioritize these recommendations by differentiating shorter-term goals from longer-term projects.

Recommendations are divided into three broad groups that align with major themes of the field findings:

- **Information access:** Expanding access to information about land-related topics is not only critical to ensuring equal access to rights but is also a fundamental component of improving the economic efficiency of land markets and deepening integration between customary and statutory land management frameworks. The main goal of recommendations in this section is to ensure farmers are well-informed of government laws, procedures, and actions and have the ability to make informed decisions about land-related issues of critical import.
- **Economic interventions:** Our discussions with farmers raised a consistent concern over pervasive economic insecurity among smallholders, and in many cases, economic concerns ranked just as high (or higher) than land loss concerns. As there is a clear link between economic viability and tenure security (farmers have been forced to abandon unprofitable lands and migrate to urban areas, and farmers have lost land to lenders, government, and private companies as a result of debts and land concessions), short- and long-term improvements to the economic climate are essential to increasing security of land tenure.

- **Institutional development and capacity-building:** While many local stakeholders expressed positive opinions about recent changes in government practice, and the central government shows commitment to incorporating some international best practices into its land legislation, opinions were divided as to whether government ministries are equipped – in terms of resources and legal frameworks - to implement the new laws. Thus, a variety of capacity-building activities and gradual institutional changes, both at the local and national levels, can make this positive potential a reality.

Within each of the three categories, some recommendations are naturally more appropriate to tackle first, while others represent a substantial long-term undertaking that may not be feasible at first. Thus, we also indicate which actions may be more appropriate for the short run. This step yields a matrix of recommendations, which is summarized in Table 4 below. Other than the division between short- and long-run recommendations, we believe that all the recommendations shown below can be beneficial and should be pursued in parallel to the greatest extent possible. Thus, *the numbering of the recommendations should not be viewed as a prioritization or ranking*. Sections 7.2 through 7.3 walk through the recommendations, their rationale, and their feasibility in greater detail.

Table 4: Summary of recommended actions

	Shorter term	Longer term
<b>Information Access</b>	<p><b>R1</b> Continue support of NGOs' information-dissemination programs (in local languages), covering rights &amp; responsibilities under the new laws and the dangers of land speculation, including women's outreach component</p> <p><b>R2</b> Help SLRD and NGO partners to develop effective village-level outreach programs</p> <p><b>R3</b> Create a forum and means for farmers to share positive experiences with new registration process with other villages</p>	<p><b>R4</b> Develop long-term information gathering policies to provide feedback to the government on livelihoods and land tenure security concerns</p>
<b>Economic Interventions</b>	<p><b>R5</b> Improve transparency and efficiency of public registry of land sales</p> <p><b>R6</b> Work with MADB to increase agricultural credit capacity and accessibility</p>	<p><b>R7</b> Improve agricultural extension services by increasing funding and building capacity</p> <p><b>R8</b> Develop and act on a long-term national agricultural policy (integrated with a national land law policy) to address input / output market problems</p>
<b>Institutional Development</b> <i>Local</i>	<p><b>R9</b> Encourage SLRD recruitment of more officials with minority language abilities</p> <p><b>R10</b> Encourage MoAI to use alternative dispute resolution and integrate with proposed village-tract level FABs</p>	<p><b>R11</b> Ensure SLRD training curriculum is up-to-date with new by-laws and procedures and also addresses gender issues</p>
<i>National</i>	<p><b>R12</b> Align rules &amp; by-laws of land laws with <i>de facto</i> government practice of limited interference in cropping decisions</p> <p><b>R13</b> Establish "transition policy" to provide for greater review of concessions during initial land registration / resurveying</p> <p><b>R14</b> Help SLRD track gender-specific statistics on land registration; encourage use of gender equality metrics as a KPI</p>	<p><b>R15</b> Resolve institutional fragmentation by encouraging closer cooperation among ministries with overlapping land jurisdictions</p> <p><b>R16</b> Establish national body to conduct environmental/social impact assessments for large concessions; strengthen capacity of independent ESIA providers</p>

It is important to reiterate upfront that the team found significant evidence of optimism about the new laws and the new direction that Myanmar is taking in strengthening rule of law and protecting its citizens. *Thus, these recommendations should primarily be viewed as a way to ensure that the existing potential for positive changes is realized, rather than as criticism of the*

*actions of various stakeholders.* The recommendations should also be viewed as an attempt to continue incorporating international best practices into the Myanmar policy environment, a priority widely agreed upon among all stakeholders.

## 7.2 Information access

**Recommendation 1: Support NGO information-dissemination programs covering land speculation and rights and responsibilities under new laws; include women's outreach component**

Two issues are particularly salient here: First, the finding that 61% of surveyed farmers had no information about the new land laws, and that even local NGOs had relatively little access to information; and second, that there is a strong willingness to embrace new forms of land registration, including registration that empowers women. As equal access to information is one of the key pillars for equal protection under the law, to address these findings, UN-HABITAT can (with the Land Core Group) continue to support and expand campaigns to disseminate information about the new land laws, including farmers' rights, responsibilities, the procedures they should expect to use, and the importance of including their female family members in all land-related decisions and actions. These campaigns should also seek to inform farmers about the long-run consequences of selling their land (e.g. the significant uncertainty in finding an urban job that can replace lost farm income) and encourage them to consider their decision carefully, in order to combat the inevitable land speculation. The Land Core Group is already active in this space, publishing pamphlets and cartoons in collaboration with SLRD,<sup>174</sup> so the next logical step is to expand these efforts in terms of languages covered and issues addressed. Materials should be drafted in many ethnic minority languages and a wide variety of local NGOs and civil society organizations should be involved in the effort.

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<sup>174</sup> Interview with U Shwe Thein, 11 Jan 2013. Yangon, Myanmar.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Existing campaigns should be expanded quickly in advance of registration efforts</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>Essential to reducing information asymmetries that put small farmers at risk of exploitation; fills a demonstrated need for local-language information</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Political costs should be minimal provided materials present the laws in a neutral manner</li> <li>Economic costs are largely dependent on how many farmers are targeted</li> </ul>

### **Recommendation 2: Help SLRD develop effective village-level outreach programs**

This recommendation comes from the finding that a majority of farmers lack knowledge of the new land laws, as well as specific comments by farmers that SLRD officials were not able to satisfactorily explain aspects of the registration process when they visited villages. To address this, it would be beneficial if UN-HABITAT and its partners could work with SLRD officials to design an outreach program that SLRD can use when visiting villages. The design process would involve sharing farmers' concerns (based on this research and other groups' research) with village-tract level SLRD officials, discussing ways to improve SLRD's village level processes (or to supplement existing SLRD Procedures and Field Manuals), and potentially developing SLRD materials that could be distributed to farmers in areas targeted for land registration efforts. In particular, efforts should be made to connect SLRD to with local NGOs as local NGOs can serve as a strong intermediary with villagers and can help SLRD adapt its procedures appropriately to the local context.

Supporting this recommendation is the fact that the government of Myanmar has supported a number of international legal instruments, which commit it to engaging populations at the local level (particularly indigenous and minority groups) in charting local level development and environmental plans (as outlined in Section 4.2.2). The design process should also encourage SLRD to develop materials and programs that are specific to ethnic minority groups' language needs and cultural traditions. At the moment, SLRD documents and government notices are



generally only published in Burmese,<sup>175</sup> which makes it difficult for certain groups to gain access to information.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Should be introduced quickly in alignment with SLRD roll-out of registration</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>Can break down barriers between SLRD and villagers, providing easier and more efficient registration process</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>If high-level officials can be brought to view the program as capacity-building rather than criticism, should be politically palatable</li> <li>Can be cost-effective if structured as a series of informal workshops between UN-H / LCG and local SLRD officials</li> </ul>

**Recommendation 3: Create forum for farmers to share positive registration experiences with other villages**

This recommendation arises from the finding (noted in Section 5.1.4) that while farmers in a few villages – for example, in the Danu SAZ - have already had very positive experiences with SLRD registration efforts, farmers in other villages have no idea what to expect and are hesitant to engage with the government due to concerns about the cost and complexity of registration. If farmers could be encouraged, in an organized manner, to travel to nearby villages and speak with their neighbors about the reality of registration (including the process, actual costs, and potential benefits), perhaps these other villagers would be less hesitant about participating in the process. This in turn could break down barriers between government officials and farmers, and lead to more effective collaboration. While this effort is difficult to scale if undertaken by a single party, if UN-HABITAT can work through a number of local NGOs and have them facilitate the process, it is possible that many farmers could be targeted.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Could be examined in a pilot program in alignment with SLRD roll-out of registration efforts</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>As a “trusted source,” neighboring farmers could be very effective at breaking down barriers and increasing take-up of registration</li> </ul>

<sup>175</sup> Interview with Dr. Win Htut, SLRD, 10 Jan 2013. Yangon, Myanmar.

**Costs**

- If it takes the form of simple meetings between farmers in nearby villages, facilitated by local NGOs, should be very low-cost
- Ideally, farmer gatherings would be completely independent of SLRD officials, which may create some political resistance – this may need to be examined in a pilot

**Recommendation 4: Develop information-gathering framework to provide feedback on livelihoods and tenure security concerns**

One of the interesting dimensions of our fieldwork was observing the different perspectives held by stakeholders in Yangon and local stakeholders in rural, ethnic minority regions. While some concerns – such as corruption and the influence of foreign corporations – were shared by all, other concerns, such as the fear of expropriation relative to other economic worries, were prioritized differently by different groups. Additionally, some basic information about farmer livelihoods and landlessness were simply not available or were outdated – especially for smaller ethnic groups. Thus, to make government policies and civil society actions more relevant and impactful in the long run, Myanmar needs more detailed sources of information about threats to livelihood security and tenure security. This information also needs to be much more granular and ethnic group / region-specific, as various concerns will be more or less salient in different parts of the country. Ideally, over the long term, the Myanmar government would expand its own statistical capabilities to gather information about things like trends in farm and non-farm income, land fragmentation and plot size, landlessness, and migration in search of employment. Gathering information about changes over time is especially important, as this is what allows the government to evaluate the effectiveness of its land management policies and any unintended consequences of various policies. This is an area where UN-HABITAT (and other UN agencies) should be able to contribute a great deal of information about international best practices.

**Timing**

- Longer-term effort; as MoAI capacity is expanded through LAMP, they should gradually expand information-gathering capacity

**Impact**

- Can help the government tailor and improve agricultural and land-management policies over the long term

<b>Costs</b>	<ul style="list-style-type: none"> <li>▪ May require substantial investment in government capacity, but can gradually be implemented</li> </ul>
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### 7.3 Economic interventions

#### Recommendation 5: Improve or expand public registry of land sales

With LUCs making formal land transfers possible for the first time in Myanmar, there is both optimism and concern about the development of land markets. On the one hand, land markets should make more efficient allocation of a valuable resource much easier, but on the other hand, markets will not function properly when there are information asymmetries. In our interviews, there were concerns about sudden land price swings, farmers being unaware of the true value of their land, and many other speculation-related issues. To address this, the government of Myanmar should make sure that critical information about land transfers, including the parties involved and prices, is widely available to the public, consistent with registries in use in many countries around the world. It appears that the Myanmar government already maintains a register of usage rights and other land-related information, so this register could be the starting point. Transparency is critical to well-functioning land markets, and the government should ensure that all citizens have access to the necessary information. In line with the government's stated desire to increase e-governance, this registry could also have an online component (although low-tech solutions will be particularly helpful in many rural areas).

<b>Timing</b>	<ul style="list-style-type: none"> <li>▪ Registries should make sales data available as soon as land transfers under the new law begin</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>▪ While it may not have a direct impact on tenure security, public registries are a necessary foundational component of well-functioning markets</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>▪ SLRD would already be gathering information related to land transfers as part of their mandate, so the only cost would be in disseminating the information; this could be done through very low-tech means initially</li> </ul>

**Recommendation 6: Work with MADB to increase agricultural credit capacity and accessibility**

As discussed in Section 4.2.1, one of the main benefits of land registration formalization is that it is supposed to increase access to credit. Our findings clearly revealed that most farmers lack access to the formal financial system, yet still required large amounts of agricultural credit to purchase inputs. As a result, they turn to informal systems, including local moneylenders, and pay very high rates of interest. Given this, in order for Myanmar's investment in land registration to have its full positive effect, the formal agricultural credit sector will have to be developed as well. MADB is already active in many rural parts of the country, but outside observers note that the loan amounts offered by the bank are not sufficient to meet farmers' financing needs. This observation is not unique to this project; other researchers have published findings that MADB credit capacity should be increased significantly, perhaps by as much as ten times<sup>176</sup>. Thus, in conjunction with the development of land markets and the issuance of LUCs, the government should be encouraged to allocate funds to increase MADB's lending capacity and increase access to its services by smallholders. Participation by private sector financial institutions could also be valuable in accessing more capital. This is not necessarily UN-HABITAT's core area of expertise, but perhaps through the LAMP, UN-HABITAT or other partners could facilitate discussions with a multilateral financial institution that might wish to get involved.

<b>Timing</b>	<ul style="list-style-type: none"> <li>▪ Access to credit is an immediately pressing issue and MADB's role should be defined relatively early on in the development of land-based lending markets</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>▪ Could ameliorate a significant threat to farmers' tenure security - crippling levels of high-interest debt</li> <li>▪ Could also lay the foundation for future increases in agricultural productivity</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>▪ Private-sector participation would increase access to the necessary capital, but may not be in line with GoM's goals</li> <li>▪ Purely working through MADB and using government funds to expand access would be more expensive and perhaps not feasible in the near term</li> </ul>

<sup>176</sup> Dapice, David, Tom Vallely, and Ben Wilkinson. "Assessment of Myanmar Agricultural Economy." *Harvard Kennedy School, ASH Center for Democratic Governance*. January 2009.

**Recommendation 7: Improve agricultural extension services by increasing funding and building capacity**

Low agricultural productivity is a significant worry for the Myanmar government and for individual farmers. Low productivity in turn causes low rural incomes and significantly impairs the ability of farmers to remain on their lands. Several farmers discussed neighbors who had abandoned their lands and moved in search of work due to declining incomes, and this was just as salient a concern in terms of tenure security as outright expropriation or land seizure. While the causes of decreased productivity are manifold, one area highlighted by several outside observers is a comparative lack of funding for agricultural research and agricultural extension services<sup>177</sup>. Addressing this gap would require increased government funding at all levels, including frontline extension services, and various other capacity-building efforts. Here, there is a clear opportunity for UN-HABITAT to build bridges with partner agencies like the FAO who traditionally focus on agricultural productivity and coordinate efforts to improve the economic and tenure security of smallholders from multiple angles.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Given the demands on government capacity associated with land law roll-out, this may be a longer-term project</li> <li>Other agencies like the FAO would be the dominant actors in this recommendation</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>Lack of agricultural extension and related infrastructure is cited by many observers as a chief obstacle to livelihood security; this in turn hurts farmers' ability to remain on their land</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Would require significant additional allocations from the government on an ongoing basis</li> </ul>

**Recommendation 8: Develop long-term integrated national agricultural and land management policy**

<sup>177</sup> Interview with Joern Kristensen, Institute for International Development, 17 Jan 2013. Yangon, Myanmar.; and Haggblade, Stephen et al., "A Strategic Agricultural Sector and Food Security Diagnostic for Myanmar." *MSU and MDRI/CESD Working Paper*, 12. March 2013.

Our field work has revealed that smallholders face a complex set of economic and institutional challenges to achieving security of livelihoods and land tenure. Addressing individual facets in a piecemeal fashion is thus not likely to have any lasting impact and is not the most efficient use of resources. Instead, the government should be encouraged to develop a comprehensive plan to address the full range of agricultural issues - access to inputs, credit, output markets, tenure security, agribusiness development, etc - in an integrated manner. This plan would serve as a guide for future legislative efforts and also coordinate the actions of the various ministries involved in rural issues. Coordination of different laws and ministerial actions is especially critical in light of the current context, where some aspects of new laws appear to conflict with de facto government policy or with existing laws that nominally remain in force. At the moment, outside observers have noted that land- and agriculture-related laws appear to be developed in a very rapid and disjointed fashion. Here, UN-HABITAT and its partners in the LAMP could play a valuable role by highlighting the types of integrated policies and plans adopted by other countries and helping to play a coordination role between different ministries and political interests.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Given the scale of changes taking place in Myanmar at the moment, it is advisable to begin thinking about a national policy very soon, but developing and implementing the policy is a long-term process</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>In-depth studies of the rural Myanmar economy make it clear that land market improvements and LUCs alone are not enough to tackle the real long-term economic issues confronting farmers</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>In order to make land management and agricultural policies effective, there would need to be extensive cooperation between different ministries and also between different agencies advising the government</li> </ul>

## 7.4 Institutional development and capacity-building

### 7.4.1 Local-level interventions

**Recommendation 9: Encourage SLRD recruitment of more officials with minority language abilities**

While high-level government officials in SLRD have expressed a strong commitment to providing service in ethnic minority languages, our field research revealed that some villagers are still having difficulty communicating with government officials in their native language<sup>178</sup>. This, of course, is a substantial barrier to participating in the registration process and can lead to farmers being unaware of their rights or unable to capitalize on the protections and opportunities offered by the new laws. To combat this, UN-HABITAT might wish to work with SLRD to set targets for local-language representation in the civil service ranks and gather regular information about progress towards targets. UN-HABITAT or other groups could also fund language training programs for especially-underserved areas.

<b>Timing</b>	<ul style="list-style-type: none"> <li>First step should be to determine the scale of the problem relatively quickly, but increasing recruitment will necessarily be a long-term process</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>Given the nature of diversity in Myanmar, increasing local language capabilities is imperative if farmers are to enjoy equal protection</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>If UN-HABITAT's role is mainly coordinating and advising SLRD efforts, it would be very low-cost; funding language training could be more costly</li> <li>Because the field findings conflict with the perception of higher-level SLRD officials, initial discussions might be slightly difficult</li> </ul>

**Recommendation 10: Encourage MoAI to formalize existing village dispute resolution structures and integrate with village-tract FABs**

One of the prominent findings in our field research was the degree to which farmers trusted their village elders and expressed desires to see disputes adjudicated by traditional means, rather than government channels<sup>179</sup>. The new Farmland Administrative Bodies are an unknown concept to many farmers, and they will likely be somewhat hesitant about engaging with the FABs. If farmers keep disputes outside the FABs, this could make it difficult to resolve disputes in an equitable and transparent manner, and the current system will deny farmers the right of

<sup>178</sup> cf Section 5.3.3, discussion of "Equal Access to Information"

<sup>179</sup> cf. Section 5.3.2, "How are Land Disputes Handled?"

appeal to higher levels of FABs. It could also lead to capture of the FABs by special-interest groups, which would make disputes between groups with different economic or political power very difficult to resolve fairly. To ensure this does not happen, UN-HABITAT should hold discussions with MoAI about ways to include community structures in the FAB decision-making process – for example by establishing a precedent that decisions or recommendations by village elders would generally be upheld by village-tract FABs except in extraordinary cases. At the very least, the two non-government representatives on the village-tract FABs should be selected in close consultation with village elders, and traditional community leaders might even be given a place on the district-level FAB as well.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Disputes will begin arising very soon after registration begins, so it is critical to build confidence in dispute-resolution processes from the very beginning</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>Uniting traditional and statutory forms of dispute resolution could significantly increase citizen confidence in the judicial process and reduce power inequities</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Potentially a sensitive area in political terms, as it would require the government to yield some autonomy at the local level</li> <li>However, in economic terms, would not require significant investment</li> </ul>

**Recommendation 11: Ensure SLRD training curriculum is up-to-date with new by-laws and procedures, responds to local needs, and addresses gender issues as well**

This recommendation works somewhat in conjunction with the recommendation to help SLRD design effective outreach programs (Rec. #2). However, in addition to simply helping SLRD design programs, it would be beneficial to work with SLRD to ensure their training curriculum for local-level government officials reflects current by-laws and procedures under the new Land Laws and also covers “softer” skills related to engaging with local farmers. Topics covered (the curriculum would ideally be customized for different districts to reflect the varied conditions across the country) could include the economic concerns of typical farmers in the area, traditional farming practices, and ways to defuse tension between villagers and government.



This curriculum update could help address the finding that 26% of farmers surveyed felt that government officials do not respect traditional ways of farming and managing land. Additionally, the training should cover the need to include women in registration efforts and potential strategies for expanding joint registration and protecting women’s rights when registering land. This will help the government take advantage of the positive sentiment towards gender equality found in focus groups. It is possible that this training could occur through the Central Land Records Department Training Center, where training is centered currently, with supporting workshops or short-courses at the regional level, either through government agencies or NGOs.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Curriculum redevelopment and roll-out would be a longer-term process, especially given the need to have training take into account local conditions</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>Can have follow-on positive effects not only in making registration more efficient and gender-neutral, but also in building SLRD internal human capital</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>SLRD already has the experience of training local officials, so if it can be tailored to fit in with existing training programs, could be very cost-effective and avoid giving the sense that SLRD is being shut out of the process</li> </ul>

#### 7.4.2 National-level interventions

##### **Recommendation 12: Update rules & by-laws of Land Laws to reflect de facto government practice of limited interference in cropping**

When farmers were asked about government oversight of cropping decisions, 94% said either that there was no government interference in land use decisions or that they did not know of any interference. Interviews with local NGOs and farmer organizations revealed similar findings of non-interference, and other researchers have found similar results<sup>180</sup>. This is in marked contrast to the situation even a few years ago, when government oversight of crop choices and growing patterns was more prevalent. This practice of limited interference is also eminently sensible, given that farmers must consider a wide variety of economic and agronomic conditions

<sup>180</sup> cf Section 5.2.1, “Government intervention in farming practices”

when deciding on which crops to plant, and often wish to rotate crops (or leave land fallow) to preserve soil health, take advantage of favorable market conditions, or diversify their crop price exposure in order to reduce risks to their income. Involving local MoAI representatives in all of these decisions would create an enormous burden for both smallholders and the government of Myanmar, and would take away government capacity that could more effectively be used for other issues. Given these theoretical arguments, and the de facto situation of non-interference, it seems logical to remove or greatly reduce in scope provisions 12 (h) and (i) of the new Farmland Law, which nominally require all farmers to register changes in crops or temporary fallowing of land. If the law itself cannot be changed (e.g. due to government concerns about ensuring food security), perhaps the by-laws of the Farmland Law can be adjusted to clearly delineate a narrow set of circumstances or crops for which changes must be registered, with a provision that all other changes are permissible.

<b>Timing</b>	▪ Should be done soon to avoid unnecessary conflicts between farmers and government
<b>Impact</b>	▪ While the practical effect in most areas will be small (since limited interference is apparently policy in at least some areas), it is always better for farmers' security to make limited interference an official policy
<b>Costs</b>	▪ Economic costs are nil, although political opposition to changes in official policy might be significant

**Recommendation 13: Establish “transition policy” to provide greater review of concessions during initial land registration**

While our field interviews revealed that fortunately, land grabs are relatively uncommon in our target areas of S. Shan State, we know that large-scale concessions have become increasingly common in more remote areas such as Kachin State, and the prospect of land seizures and displacement causes concern in many locations. With registration and resurveying efforts being rolled out across the country, the next few years will be a time of great change, with land tenure status in flux for many people. One natural fear is that large industrial or agricultural interests will quietly work to secure LUCs for large tracts of occupied but officially “vacant” land before

the smallholders actually working the land can establish their claims. While the new land laws wisely include an official provision for establishing usage rights based on actual historic usage rather than classification, it is likely that the capacity of government officials will be stretched quite thin in the next few years, which makes problems more likely. To address this, UN-HABITAT could work with MoAI and the new CCVfV to establish interim higher standards of evidence and more stringent review procedures and waiting periods for large-scale concessions and land claims. These procedures would be intended to significantly slow down the rate of new concessions during the interim implementation & resurveying period so that outside interests do not take advantage of the situation to the detriment of smallholders. Such restrictions would certainly not have to be permanent and could easily be relaxed once the country has been adequately resurveyed.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Essential to implement this transition policy very soon in light of the changing situation and significant recent increases in concessions</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>Can help protect smallholders at a crucial juncture when they are most vulnerable</li> <li>Initial land law implementation is a one-time opportunity to build a solid foundation of trust in the country's new democratic institutions; abuses in the transition period might have significant negative impacts for many years</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Potentially imposes some indirect economic costs by slowing down industrial and agribusiness development</li> <li>Also requires the government to revisit certain land law procedures, which may be politically challenging</li> </ul>

**Recommendation 14: Help SLRD track gender-specific land registration stats; encourage use of gender KPIs**

Our focus groups and interviews found a general willingness to include women in the registration process, both at the local level (where farmers unanimously said that women should have the right to own land, and generally claimed that they would include their wife's name on LUCs) and at the national level (where officials expressed a commitment to implementing joint registration and ensuring both male and female names appeared on documents). However, our background research and comparative analysis also found that even when LAM legal

frameworks are gender-neutral and conditions seem promising, ensuring the equal access of women to property rights still can run into entrenched social and cultural factors. Hints of this challenge were found when we interviewed women separately about gender roles, as some admitted that today the man's name still appears more frequently on government documents<sup>181</sup>. Thus, to ensure that good intentions are translated into concrete actions, it is necessary for the government to track and report gender-disaggregated figures on land registration, potentially including such metrics as share of LUCs which are held jointly or by women alone, the share of female-headed households with LUCs relative to the share of male-headed households, and inheritance of LUCs by female relatives. Donors and international agencies active in LAM reform projects in Myanmar should likewise be encouraged to include gender-specific metrics in their set of project key performance indicators. Over the longer term, government agencies could even consider setting explicit targets for female access to property rights under the new Land Laws.

<b>Timing</b>	<ul style="list-style-type: none"> <li>SLRD should begin tracking gender issues from the earliest stages of land registration to make data collection and monitoring more effective</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>An accurate sense of progress on gender inclusion is impossible without a commitment to tracking</li> <li>Better data would allow agencies to concentrate gender-inclusion efforts more effectively on key areas</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Depending on cultural norms in certain areas, it could potentially be politically sensitive for certain local administrations; however it seems like national officials would be receptive</li> </ul>

**Recommendation 15: Resolve institutional fragmentation among ministries with competing land jurisdictions**

Multiple outside observers and government officials have noted that the structure of the Myanmar government will make certain aspects of land law implementation difficult. Dealing with smallholder farmers who currently work land classified as forest will be especially

<sup>181</sup> cf Section 5.1.3, "Evolving Gender Norms"

problematic due to the fact that the Farmland Law does not apply to this type of land. Our comparative analysis also reveals that in other countries (e.g. the Philippines), competing or overlapping institutional mandates hamper the effectiveness of new land laws. To address this, the government should seriously consider ways for MoAI, MoECF, and potentially the Ministry of Mines to work together. The Farmland Law could be extended to expressly include provisions for granting LUCs to smallholders who have worked forestland for many years (subject to caps on the total amount whose classification is changed, in line with government goals for the preservation of forests). Or, a unified body containing representatives from all land-related ministries could be set up with jurisdiction over the classification of all types of land, so that realignment of land classification with actual historic usage could be done in a more efficient manner. At the very least, the government should work to ensure that MoAI and MoECF establish formal lines of communication and procedures for sharing land tenure management responsibilities at all levels of government.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Given the scale of changes already being addressed by the ministries, this type of reorganization would have to be a longer-term process</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>May play a substantial role in addressing the needs of smallholders currently farming non-farm land; may also create long-term savings and efficiency gains</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Closer integration and/or reorganization would be a sensitive political issue and might be politically quite difficult</li> <li>Direct economic costs should be very manageable, however</li> </ul>

**Recommendation 16: Establish national body for environmental / social impact assessments for large concessions**

One of the chief concerns raised by outside observers is the potential for large tracts of land to be appropriated for commercial development under the VFV Law, with relatively unclear statutory guidance about when such concessions are appropriate. While industrial and agribusiness development will certainly be a key component of Myanmar's overall economic growth, it is always necessary to consider both the benefits and costs of development schemes.

To this end, large-scale concessions – especially those above 5,000 acres granted through the “for the interest of the State” exemption to the normal size caps<sup>182</sup> – should be subject to a thorough environmental and social impact assessment that focuses especially on issues of smallholder displacement and adverse environmental impacts and assesses whether these trade-offs are worth the promised economic benefits. While presumably the CCVfV fully intends to take these issues into account on an ad hoc basis when making their decisions, UN-HABITAT could encourage the government to move towards a more formalized ESIA structure that is written into the by-laws of the Land Laws, potentially including a nationally-recognized body that would carry out important ESIA. This would be in accordance with international best practices and would ensure that Myanmar is a leader in protecting farmers’ rights. As part of this process, UN-HABITAT and other international actors may also wish to fund or otherwise encourage the development of independent local bodies with the capacity and skills to carry out these ESIA.

<b>Timing</b>	<ul style="list-style-type: none"> <li>Longer-term recommendation that would be implemented once the CCVfV is running and making decisions; capacity-building would be a longer process</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>If ESIA are done to international standards by a neutral party and respected by all parties, could serve as a very valuable means of protecting people and the environment</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>If this recommendation can be framed as a way for GoM to follow international best practices, may be politically feasible</li> <li>Capacity-building would presumably be somewhat expensive, but high-level policy consultations could be cost-effective</li> </ul>

<sup>182</sup> VFV Law, Chapter IV, Section 10 (a) (i).

## 8 Conclusion

Drawing conclusions to such an extensive yet finite project is difficult and also subject to many limitations. Accordingly, although this project has accomplished its stated objective — outlining the most salient challenges facing the Myanmar government and UN-Habitat as they jointly work to implement the 2012 land laws — much more information is needed to underpin Myanmar's land law reforms. The need for further research, which is perhaps the most significant albeit unsurprising finding of this study, is understandable given the limited scope of topics addressed and the narrow range of contexts this project was able to cover. In regards to the potential for future data collection and study, the true value of this work — beyond meeting the immediate needs of our client UN-Habitat and its partner, SLRD — is, hopefully, providing a foundation for future inquiry into Myanmar's agricultural economy.

Further inquiry is critical given the substantial diversity between regions. This diversity is especially important to keep in mind when contextualizing this study, because southern Shan State, the focus of this study, faces very different circumstances than other areas. For example, the findings show that shifting cultivation, government takings, and agricultural concessions were not exceptionally divisive issues. However, desk research and key informant interviews revealed unequivocally that these concerns are persistent and growing in other regions. Accordingly, conducting other studies that enable more detailed region/ethnic group-specific analysis will be invaluable going forward. Even within Shan State, there is a need for ongoing research and data collection to monitor land concessions and the pace of agribusiness development in the region, two trends in Shan State that many actors are concerned about.

Hopefully, this project can lay the groundwork for future, broader studies by identifying fieldwork challenges and Myanmar-appropriate methodologies. In spite of being constrained by time, resources, and political considerations, this study's outline of a preliminary yet current view of Myanmar's rural economy is a significant achievement given the scarcity of information available. Although not conclusive and also rich with differing views, this study can hopefully

provide a reference point for advocacy and a basis for policy-planning. Moreover, despite the substantial variation in perspectives advanced by stakeholders – from farmers to outside experts – in Yangon and Shan State, a variety of shared viewpoints and priorities emerged regarding Myanmar’s status quo and the future of its agricultural sector.

These common themes together comprise a narrative of Myanmar’s rural economy that is promising, even in the face of various obstacles to realizing the full agricultural potential of the country. First, civil society experts alongside a unanimous chorus of farmers emphasized their dual concerns with tenure security and economic uncertainty deriving from unknowns related to both government policy and fluctuating market dynamics. Importantly, these dual concerns show that Myanmar’s land policies will not meet with success unless the government takes a holistic view of land policy reform that also addresses the need for complimentary improvements to agricultural credit markets, extension services, SLRD outreach, and timely and comprehensive information dissemination about land policies. Long term, these efforts will require rationalization of institutions at the macro level by articulating national priorities about agricultural development, rural poverty reduction, and the reform of institutional mandates.

This agenda, while substantial, is common to other developing countries and, further, Myanmar should be well positioned to revitalize its agricultural economy given its rich natural endowments and past position as a key rice exporter. However, as the case studies point out, other countries with promising outlooks have often stagnated due to a failure to integrate protection for customary tenure explicitly into the statutory land framework; inattentiveness to developing complimentary policies to backstop investment; and political and organizational challenges that impeded effective implementation of land laws. Nonetheless, these challenges are also opportunities, and Myanmar seems well-positioned to tackle them.

Going forward, dedication and pragmatism will be instrumental in overcoming the inevitable political impediments to land law implementation. Undertaking this task will require acknowledgement that current policies and capacities are insufficient, which, rather than marring the reputation of Myanmar’s institutions, demonstrates realism and a sophisticated



understanding that any undertaking of this size will necessitate ongoing organization reinvention, creativity, and determination to minimize special-interests for the betterment of Myanmar's long-term prosperity. One notable fieldwork finding was that, despite Myanmar's turbulent political history, the rural population still holds a neutral or even optimistic view of government's ability to act in the public's interest. This impression – which will certainly dissipate if land seizures are arbitrarily or unjustly executed or if policies undermine local livelihoods – is currently a bright spot for implementation efforts in Myanmar.

To build upon the public's largely positive impression, and to head off the potential for negative outcomes that could accompany modernization, UN-Habitat, SLRD, and NGOs will hopefully find the recommendations this report advances useful. Broadly, these recommendations encompass disseminating information equitably to farmers, especially non-Burman speakers, women, and other groups typically marginalized; ensuring that women are included equally in titling and other land tenure rights; integrating community structures into land management, administration, and arbitration; improving the transparency, efficiency, and capacity of government procedures to build confidence in state institutions; implementing more robust dispute settlement mechanisms to ensure the process is viewed as credible; and continuing to refine the rules, by-laws, and procedures for implementation to reflect evolving consensus on how to best ensure the laws promote the dual objectives of efficiency and equity.

## Appendix A List of persons and organizations interviewed

- Glenn **Denning**, Columbia University, Professor
- Dr. Win **Htut**, Settlements & Land Records Departments, Deputy Director
- Tobias **Jackson**, Land Core Group, Food Security Working Working Group, Land Advisor
- Gary **Jahn**, USAID Myanmar, Agricultural Development Officer
- Dr. Ohmar **Khan**, Food Security Working Group, Director
- Sai Sam **Kham**, Metta Foundation, Executive Director
- Joern **Kristensen**, IID Myanmar, Country Director
- Ian **Lloyd**, UN-Habitat Myanmar, Senior Advisor
- Sue **Mark**, Pyoe Pin Foundation
- Ahsok **Nigam**, UNDP Myanmar, UN Resident Coordinator
- Htun Paw **Oo**, UNDP Myanmar, Inle Lake Project Manager
- Andrew **Scherer**, Esq., NYU and Columbia University, Professor and Researcher
- Kum **Shah**, Metta Foundation
- Brian **Stout**, USAID Myanmar, Program Officer
- Dr. Sao Kyi **Than**, IID Myanmar, Consultant
- Saw Mint **Than**, CDN Myanmar, Southern Shan State Project Manager
- U Shwe **Thein**, CARE and Land Core Group, Director
- Andrea **Woodhouse**, World Bank Myanmar
- Kevin **Woods**, Land Core Group, PhD researcher

## Appendix B Detailed Conceptual Framework

Based on the six constraints and four dimensions of local context that define the conceptual framework discussed in Section 3.2, the team developed a list of central questions to guide the development of the survey instruments. Each of these questions is intended to capture one facet of the six types of constraints towards achieving the project's goals, and in aggregate the questions are intended to provide a rich source of data on the four dimensions of local context necessary to understand the situation in Myanmar.

While not every question below was used in every survey instrument (in recognition of the realities of interviewing in a time-constrained manner and the different types of knowledge held by different stakeholders), these questions strongly guided and harmonized the development of each instrument.

Constraints and Obstacles	Sub-questions Dealing with Local Context
<b>1. Weak governance, institutional capacity and framework</b>	Who provides land registration / land-related services in the area and what is the current process like?
	What is their capacity and effectiveness?
	How much and by what means are farmers informed of new land Laws and relevant procedures?
	Will the new land laws affect interactions / relationships between government and community groups?
	How effective are court systems and alternative dispute resolution bodies?
	How legitimate are court systems and alternative dispute resolution bodies?
	How effective are customary dispute resolution mechanisms?
	How legitimate are customary dispute resolution mechanisms? How legitimate are community authorities and traditional leaders?
<b>2. Resource conflict, displacement and migration</b>	What is the impact of economic system changes on land use and land conflict?
	How are customary systems adapting to increased demand for land?
	Are land disputes arising from discrepancies or conflicts between customary and statutory law?
	Are external actors and/or other ethnic groups moving in, and what is the impact on land use, land ownership patterns, and land disputes of their presence?
	How is the land tenure situation complicated by the presence of ethnic divisions?
	How are community structures changing with increased integration to the modern economy (e.g. migration, transition to settled farming), and how are customary and statutory frameworks adapting to these changes?
	What is the status of local armed groups? Are peace agreements stable in this

	region? Are armed groups re-integrated into society?
<b>3. Inequitable access to land and resources</b>	<p>What is the actual distribution of land rights? Are there any groups having a dominant position in the distribution of land (military, community leaders, agribusiness, etc.)?</p> <p>How are the rights (usage / transaction / inherit / VFV-related, etc) of smallholder farmers protected?</p> <p>What is the impact of inequitable access to land on income distribution and socio-economic inequalities in the communities?</p> <p>What are the trends and drivers of changes in land distribution / landlessness?</p> <p>Are customary land arrangements more or less inequitable than statutory land arrangements?</p> <p>What is the impact of agribusiness in the area? Do they have privileged connections to government / local leaders and is this exacerbating land conflicts?</p>
<b>4. Gender aspects of land tenure</b>	<p>What is the status of women with regards to land rights in customary frameworks?</p> <p>What is the de jure status of women's land rights under statutory frameworks?</p> <p>What is the de facto / on-the-ground status of women under statutory frameworks and are there barriers to women's ability to act on their legal rights?</p> <p>How are women's roles in the community changing (i.e. increases in female-headed households, changing economic patterns) due to the impact of migration or conflict?</p>
<b>5. Poorly performing input / output markets</b>	<p>What is the impact of land speculation on landlessness / community structures / land use patterns?</p> <p>What is the current access to credit situation? How does land administration play a role in this situation?</p> <p>How does the current structure of land markets and land laws affect local land-use patterns (e.g. increases in plantations or contract farming, increases in non-agricultural uses, etc)?</p> <p>How well do output and non-land input markets work? Do their failures affect tenure security? How do output/input market failures compare to tenure security in terms of livelihood impact?</p> <p>What is the scale of market participation relative to subsistence farming in the community? What about non-farm livelihood opportunities?</p> <p>What are the key sources of risk to various community members? How does tenure security rank in terms of sources of risk?</p> <p>What are the current situation / trend of land concession by both domestic and foreign actors, and how sufficiently are displaced people compensated?</p>
<b>6. Environmental impacts</b>	<p>What is the impact of environmental degradation on livelihoods and community structure, and what is the cause of this environmental degradation?</p> <p>How do customary and statutory land tenure frameworks affect decisions relating to the long-term sustainability of land?</p>

## Appendix C Summary of focus group discussions

The following annex summarizes key points mentioned during focus group discussions conducted with farmers in Taunggyi. It is not an exact transcription of the farmers' words, but a synthesis of the discussion.

### *Traditional farming practices*

Groups	Summary of Discussion
Group of 6 Shan farmers from Pilau	Plot sizes vary from 4 to 15 acres, and many grow cone and sugarcane. Few farmers used machinery, and it is hand technology. Renting land is less popular, and terms of rent payment methods vary. People go and work in Thailand more often. New irrigation systems installed recently.
Group of 5 Pa-O farmers from Sesai	Corn, rice, bean, potato, ginger, garlic, tobacco are the main crops, and no machineries are used. There are many poor, landless farmers renting land, and renting arrangements vary greatly. Landlessness is increasing due to population increase.
Group of 5 Danu farmers	Plot sizes vary from 2 to 12 acres, and many kinds of crops such as tea leaf, ginger, garlic, roots, rice paddy, tomato, soy, potatoes, cabbage, wheat, beans, maize and oil seeds are grown, using rain fed water. More chemical fertilizers are used than before. Less land renting today, as land resources are limited. Typical rental fee is 50,000 kyat / acre for a year. Few people move to urban areas
Group of 6 female Danu farmers	Plot size are 2-10 acres. Farmers with less lands rent land from others, and they usually pay rent by the rice grown on the plots. Renting is popular in some villages where other economic resources are scarce. Young people are leaving villages to work as miner etc.
Group of 7 Shan farmers from Linkee / Sesai / Nam Sam	Plot sizes vary from 2 to 6 acres. Corn, sugarcane, garlic, paddy are main crops, and most farmers use some machineries. Roughly 20% of the villagers rent land from others, and typical annual rental fee is 150,000 kyat / five acres. Fewer people rent land, since profits from farming are decreasing. People are leaving to work in Thailand.

### *Traditional Tenure Management*

Groups	Summary of Discussion
Group of 6 Shan farmers from Pilau	There are no shared lands in the village. The land is inherited from parents. No written records exist for land ownership, but everyone in the area knows which plot belongs to who, what we cultivate, and where
Group of 5 Pa-O farmers from Sesai	Communal lands remain in use in some villages, but it is rare. In other villages, there are no communal lands anymore. Farmers inherit land from their parents, and no records on land ownership are written down.
Group of 5 Danu farmers	No shared land, old days there was but now these communal lands are being used as bazaar areas. Community forests for firewood collection are widely used. Heritage determines who can farm what areas, and tax receipts paid annually can be used to demonstrate ownership; names documented by government SLRD village track-level.
Group of 6 female Danu farmers	There are no communal lands in the village. Lands have been registered in their villages; government staff visit their village every year to update information.

<b>Group of 7 Shan farmers from Linkee / Sesai / Nam Sam</b>	There are no communal lands in the village. Farmers do not have any written records on land ownership. Lands are inherited from parents so everyone in village knows who can cultivate which land. Farmers put mark on lands, making borders from nearby lands visible.
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*Economic Issues relating to land*

<b>Groups</b>	<b>Summary of Discussion</b>
<b>Group of 6 Shan farmers from Pilau</b>	Farmers are making less money than before; market prices for crops have been very low these past few years and the profits are decreasing. Farmers do not borrow money from anyone. Farmers sell most of the harvest in the market. Some rich people in the area speculate, buying lots of crops when prices are low and sell them when prices increase. Labor shortage due to migration to Thailand leading to the use of non-family labor. One villager got his land seized by the government in 2004 for only 800 kyats. Farmers would transfer their land to children even if they can sell the land.
<b>Group of 5 Pa-O farmers from Sesai</b>	People make less income than before because of market prices fluctuation. Less land is available, and more fertilizers needed to be more productive. Farmers borrow money from relatives, moneylenders and brokers, at a 7% interest rate per month on average. They borrow up to 200,000 kyats. Farmers sell to brokers at the village, with fixed price non-negotiable. Selling crops at market is not available due to limited transportation and small quantity. There's no farmers' cooperation. Most farmers would not sell their land even if it were possible.
<b>Group of 5 Danu farmers</b>	Income level is not changed considering inflation. Most villagers borrow money from the government agriculture bank. People are trying to buy land from both outside and inside village but most don't sell the land.
<b>Group of 6 female Danu farmers</b>	Farmers' living relies heavily on weather. Farmers who leave the village also keep their lands. Farmers do borrow money for farming, and there's a UNDP microfinance project available with an interest rate of 5%, yet you have to wait for more one month to get the cash. Rice is mostly for consumption and vegetables for selling at market, and the price is deemed fair. Farmers want to maintain their lands not only for economic profits but also for an attachment to the community.
<b>Group of 7 Shan farmers from Linkee / Sesai / Nam Sam</b>	Farmers are making less profit than before. Income level is the same, but more investment on inputs is needed. Fertilizer price rose by 20% a year and the amount of fertilizer needed also increases year by year. In addition, crop market price fluctuates, making profit less stable. Some has to borrow money from relatives or moneylender. In one of the villages, one-third of the villagers borrow from moneylender with an interest rate of 5-10% annually. Farmers sell both to brokers and to consumers directly, at the same price. Outside labor is used when necessary, mostly from within the same village. In one village 15% of villager have had to sell lands to a Chinese company, but in general, farmers are reluctant to sell their land, unless there's a need for urgent money.

*Environmental issues relating to land*

<b>Groups</b>	<b>Summary of Discussion</b>
<b>Group of 6 Shan farmers from Pilau</b>	There hasn't really been pollution in the area, but some farmers we know that cultivate land around rivers have observed environmental problems.
<b>Group of 5 Pa-O farmers from Sesai</b>	Farmers observe more erosion than before, and deforestation is a problem too, with less trees and animals in the forests. There is less rain than before, and floods occur more often.

<b>Group of 5 Danu farmers</b>	Soil erosion and degradation has increased; streams are eroding the soil. Hillside regions often have no trees which leads to erosion
<b>Group of 6 female Danu farmers</b>	Some environmental changes such as soil erosion are happening. Rainy season sometimes starts too early / too late, which makes it harder for farmers to predict and make preparation.
<b>Group of 7 Shan farmers from Linkee / Sesai / Nam Sam</b>	Farmers haven't seen major environmental problems. Erosion from heavy rain was observed, but not often.

### *Land Disputes*

<b>Groups</b>	<b>Summary of Discussion</b>
<b>Group of 6 Shan farmers from Pilau</b>	Most of the conflicts that arise come from inheritance problems in the villages but this is rare. They often go to village leaders instead of courts to settle down the land disputes, as going to courts is too costly and complicated. They trust their village leaders and elders.
<b>Group of 5 Pa-O farmers from Sesai</b>	In Pindaya, a few conflicts and disputes arose especially with land plots without clear ownership. In some townships, farmers work on land that are fallow land and the government authorizes private companies to cultivate that land. They think that the NGOs and Internet can help to make this more equitable. On the ground, FABs are not formed yet. Armed groups and rebels are advantaged too, they have special treatment since peace was negotiated.
<b>Group of 5 Danu farmers</b>	The arguments about land often exist with farmers who use shifting cultivation. They welcome the new certificate of land ownership as they feel like certificates mean that there is less fighting and more clarity. If someone is not happy with the settlement made by village leaders, they will go to the government administrators on the township level.
<b>Group of 6 female Danu farmers</b>	They have not got involved in land disputes issues before. Normally, the village will make the arbitration of land issues. They believe that government does not give special treatment to some advantaged groups.
<b>Group of 7 Shan farmers from Linkee / Sesai / Nam Sam</b>	In two villages in Shan State, there have been no disputes as far as they know. In Sesai village, there have been some cases. Some farmers have left their land vacant for long time, but started to grow recent after recent crop price rises. In such cases, boundaries of land between nearby lands sometimes change from what they were before, and neighbors complain. In Linkee village, then military came and settle in 10 years ago, they took land to build compound, but they just used one-third of the land. The remaining two-thirds were used for farming, and military forces were hired for farming. When soldiers grow the land they asked farmers to help them for free. There was no compensation, and the 30% of the profit from farming in the taken lands went to military. Now, villagers do not have to pay to military, but these farmers still do not own land. Community level organizations treat everyone equally in most cases, but some farmers get special treatment at village level committee. They feel that gov't do not treat everyone equally, but they are treated more equally than before.

**Government Interaction**

<b>Groups</b>	<b>Summary of Discussion</b>
<b>Group of 6 Shan farmers from Pilau</b>	They reported that sometimes the government forces them to cultivate crops and fruits that are not relevant to the climate and that are impossible to grow in the area. They have not registered their land before. They just know that some registration occurs now but we don't know what and we don't have titles.
<b>Group of 5 Pa-O farmers from Sesai</b>	Customary practices were easier and they could use plots within the village as credits to borrow money. Farmers are afraid that the implementation of new land laws will move slowly, because SLRD officials only talk in Burmese and no local language. The communication is a big problem for them. Now the new companies are coming, which increase the risk of uncertainty with regards to land management.
<b>Group of 5 Danu farmers</b>	Government surveyor in the villages came to explain the new land laws and register farmers' land. Some other farmers expressed that they heard about the government visits to explain the new laws and register farmers from the neighboring village, but they haven't been visited yet. The majority of them do not have the experience of talking to government officials personally.
<b>Group of 6 female Danu farmers</b>	Some of the young female farmers' parents talked to the government staff. In most cases, government staff approached the village head and committee members. The committee members collect the receipt from the villagers household and handed in to the government staff. They feel that government respects their traditional way of farming. However, they don't know too much about the new land laws.
<b>Group of 7 Shan farmers from Linkee / Sesai / Nam Sam</b>	Villager from Sesai and Linkee have registered their land already, which was easy but took time. Some don't know about new law and are afraid to register; some believe registration fee must be expensive, while in fact it is not. Farmers holding large land plots usually have done the registration. This year, government support farmers by giving new rice seeds and techniques; rice can grow in summer by adopting the new seed. However, the new seed requires hard work and is not suitable to the weather, so farmers stopped growing new seed rice, even though gov't gave 15,000~20,000 kyats for households who adopt new seeds.

**Female Roles**

<b>Groups</b>	<b>Summary of Discussion</b>
<b>Group of 6 Shan farmers from Pilau</b>	They would put their wives names and there are no difference for women – they can use land on their own. If a couple is married and the land belongs to the husband's parents, then it's on the husband's name. If the land belongs to the wife's parents, then it's on the wife name. They said they would treat equally our sons and daughters.
<b>Group of 5 Pa-O farmers from Sesai</b>	All would put their wives' names. There are very little gender inequalities. The sons/daughters inheritance vary from family to family.
<b>Group of 5 Danu farmers</b>	They also expressed that they would like to put wife's name on the registration. "It is necessary because if something happens to the husband, the wife can get the land without problems." They said they would like to provide equally to sons and daughters" "If the holding is small and hard to divide, decision of whom to give the land to will be based on who will care for the parents"
<b>Group of 6 female Danu farmers</b>	It depends on the different family conditions. it is common for the villagers to share their lands between girls and guys.



<b>Group of 7 Shan farmers from Linkee / Sesai / Nam Sam</b>	It depends on family situation; if a family has two lands and one is inherited from wife's parents, wife's name is put on the land. However, most of the case husband's name will be put, since he is usually a breadwinner. Sons and daughters inherit equally in most cases
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### Post –awareness raising on the new land laws

#### **Government Interaction**

<b>Groups</b>	<b>Summary of Discussion</b>
<b>Mixed Group I</b>	Prior to education, their perception of new land laws is not clear. After the education, they feel that the government respects their traditional way of cultivating. They also see some negative aspects in the new land laws. The implementation process is also a question mark.
<b>Mixed Group II</b>	Most of farmers learn about the new land laws from village head and administrators. One farmer mentioned that he learned the new land laws from the sessions with the NLD. He also thinks that he will learn more in the future by pamphlets distributed at the workshop and information from professionals. Some other farmers said they would continue to attend similar workshops to keep updated and informed.
<b>Mixed Group III</b>	Before coming to the workshop, they hardly know anything exactly about the rules and laws. From the workshop, they learned that land registration is like a certificate paper for farmers' ownership of land and also the government office will also keep records of the land. It could be easier for them to solve the problem especially in terms of future compensation. If anybody takes their lands, now they know the laws and they can get compensation. They believe that the government will respect the law and act according to the laws. It gives them some chances to get benefit.

#### **Land Disputes**

<b>Groups</b>	<b>Summary of Discussion</b>
<b>Mixed Group I</b>	They will go to village leaders/administrators to settle the land disputes. But now, they know that if they have a problem with the village leaders, they would be more likely to see the administrator at the township level. They feel that the government treats everyone equally in the new land laws, but they are curious about the implementation: some people could and will cheat.
<b>Mixed Group II</b>	More farmers said they would go to the village track level, because government registered the land in the first place.
<b>Mixed Group III</b>	Now they will ask help from the people who rules the village such as village head or government officers on the village-based level. If the process of submitting disputes issues to the government officials on the township and state levels, they will definitely handle the fights with government. However, if the process lasts too long (more than one month), it is no good to wait for government to settle down the conflicts. They also believe that CSO & NGO would get involved in the grassroots education and campaign such as inviting some people in the SLRD to engage in the discussion with farmers, listening to farmers' real demands.

**Economic Issues Relating to Land**

Groups	Summary of Discussion
Mixed Group I	There is some uncertainty about the new land laws and the inheritance process: it might be expensive to change the name on the title, or if no one in the family is able to do farming then they might lose the land.
Mixed Group II	More farmers said they would give their children the land rather than the money.
Mixed Group III	They probably would still keep the lands as land means mother to them. "Your mother cannot be taken by someone else, right?" land likes mother feeding them. If he can't use manpower in his lands or facing problems like family cases or doctor bills, he might sell it but will still keep one plot.

**Environmental Issues Relating to Land**

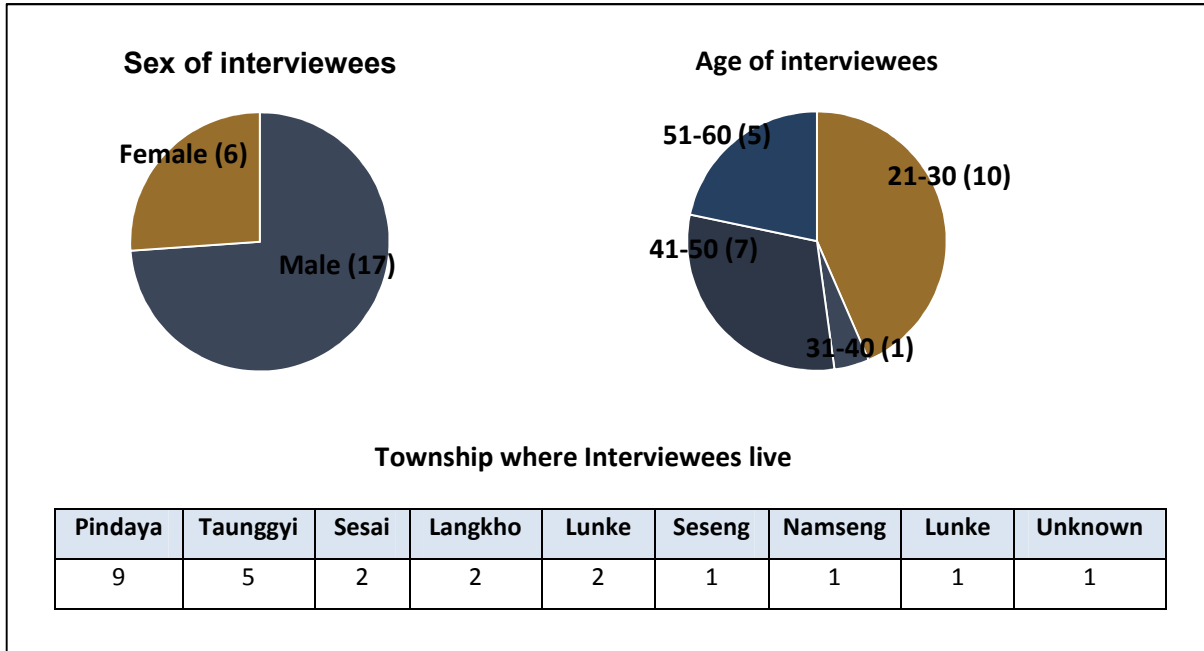
Groups	Summary of Discussion
Mixed Group I	Some farmers are not sure about the environmental aspect of the law: the law encourages people to register fallow and vacant land, and private companies can register land and cut the trees so that could increase deforestation.
Mixed Group II	A. Living in in the wetlands, in the rainy season there's been flooding, dry season, water is in short supply (for drinking and planting) C. Problem is that drought makes it tough to plant, "there has been drought" D. Yes, seedlings damaged by flooding from water erosion (and heavy rain) E. Streams collect plastic waste and carry it into the fields, maybe a future problem F. Rainy season causes flooding
Mixed Group III	it depends, not everyone knows the environmental problems. Some farmers need water supply from the rainforest, yet now they face some difficulties in getting irrigation due to the climate change. And pests are increasing also, which means more inputs to buy.

**Gender Roles**

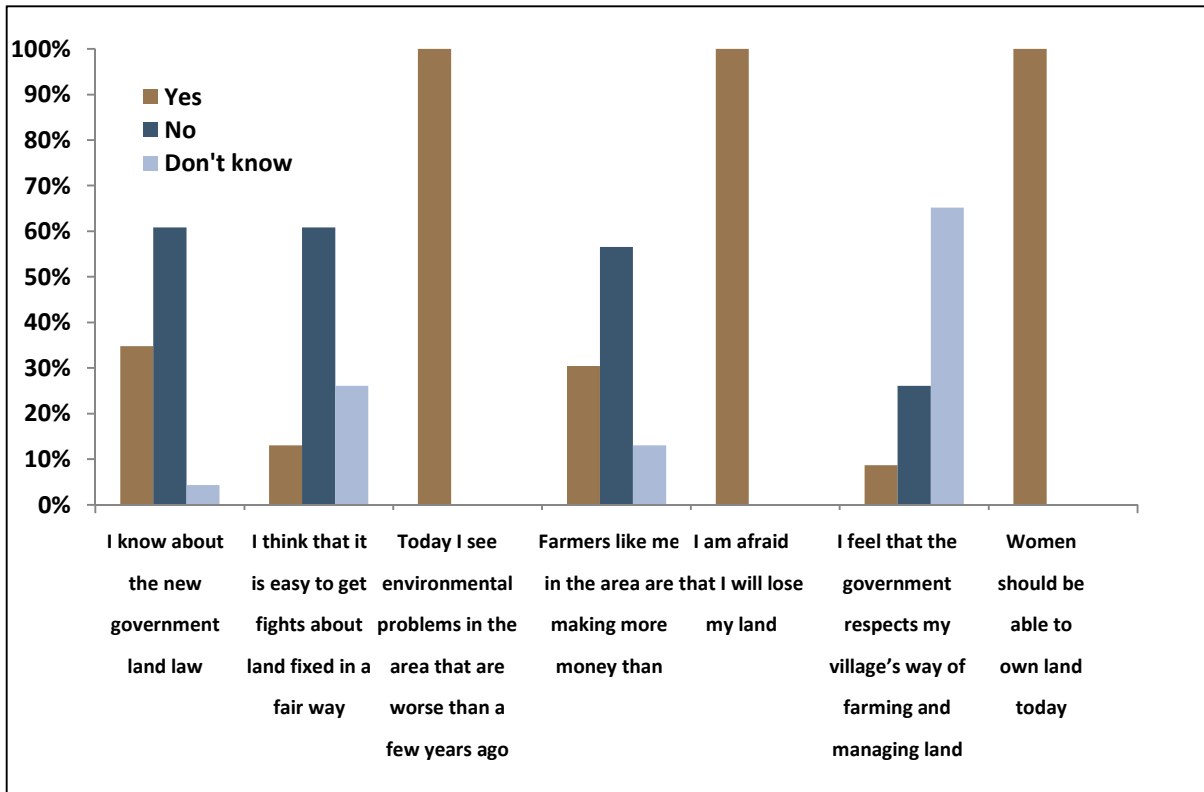
Groups	Summary of Discussion
Mixed Group I	We will put our wives' names on the titles. The only issue is the case of a divorce, and people marry a new wife, in that case they wouldn't put their second wife's name on the title because the children of the first marriage would get unhappy
Mixed Group II	More farmers said they would put their wives' name on the certificate. They also said they would split the lands equally among children.
Mixed Group III	If the government accepts, they will put all of his family's names on the registration form, including wives, kids (both boys and girls). They feel like all the property are owned by the family members.

## Appendix D Quantitative results of surveys

### Demography of Interviewees (n=23)

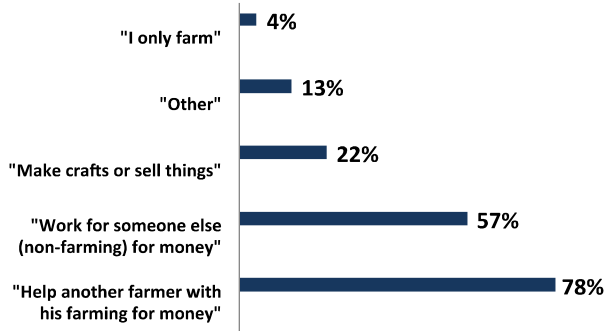


### Introductory questions (n=23)

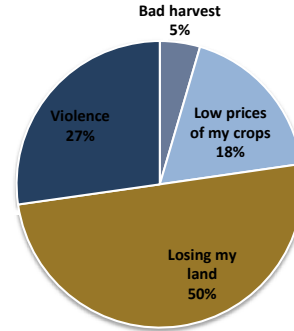


**Economic situation of the farmers (n=23)**

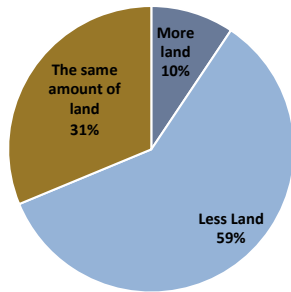
Besides farming, I and other members in my family also do these things to make more money:



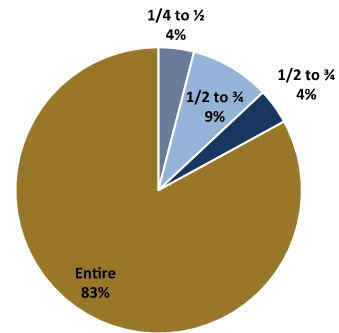
The thing I worry the most for earning enough money is ...



Compared to my father when he was my age, I have ...



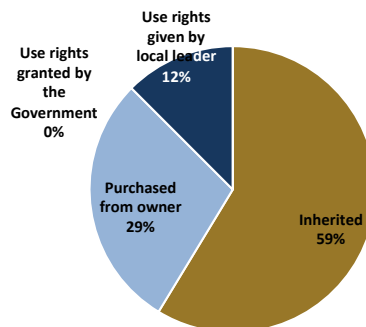
What percent of your land did you plant crops on?



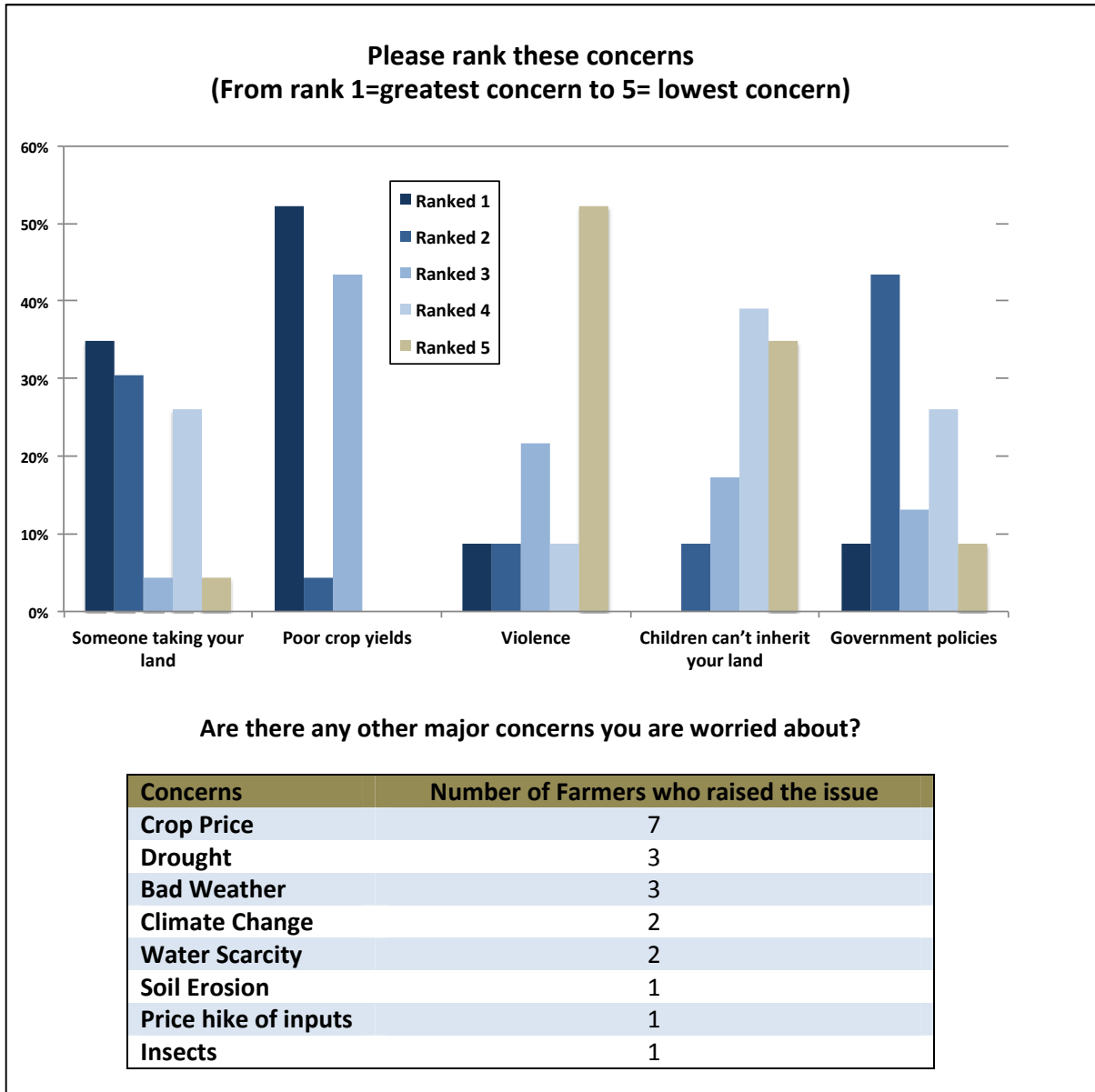
If you did not crop the entire plot, what issues forced you to make that decision?

Crop rotation	Lack of manpower	Lack of equipment	Lack of animal power	No water source	No road	Problems with soil	Others
1	2	0	0	0	0	2	0

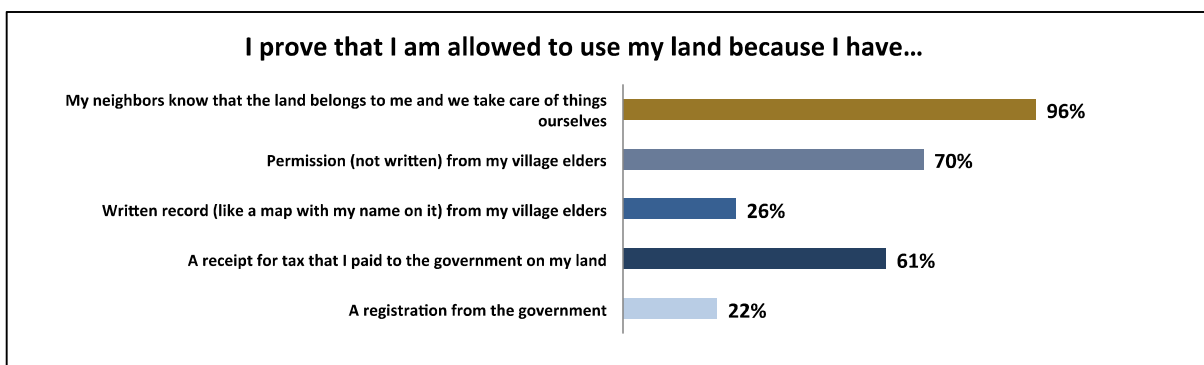
How did your household get your plot?



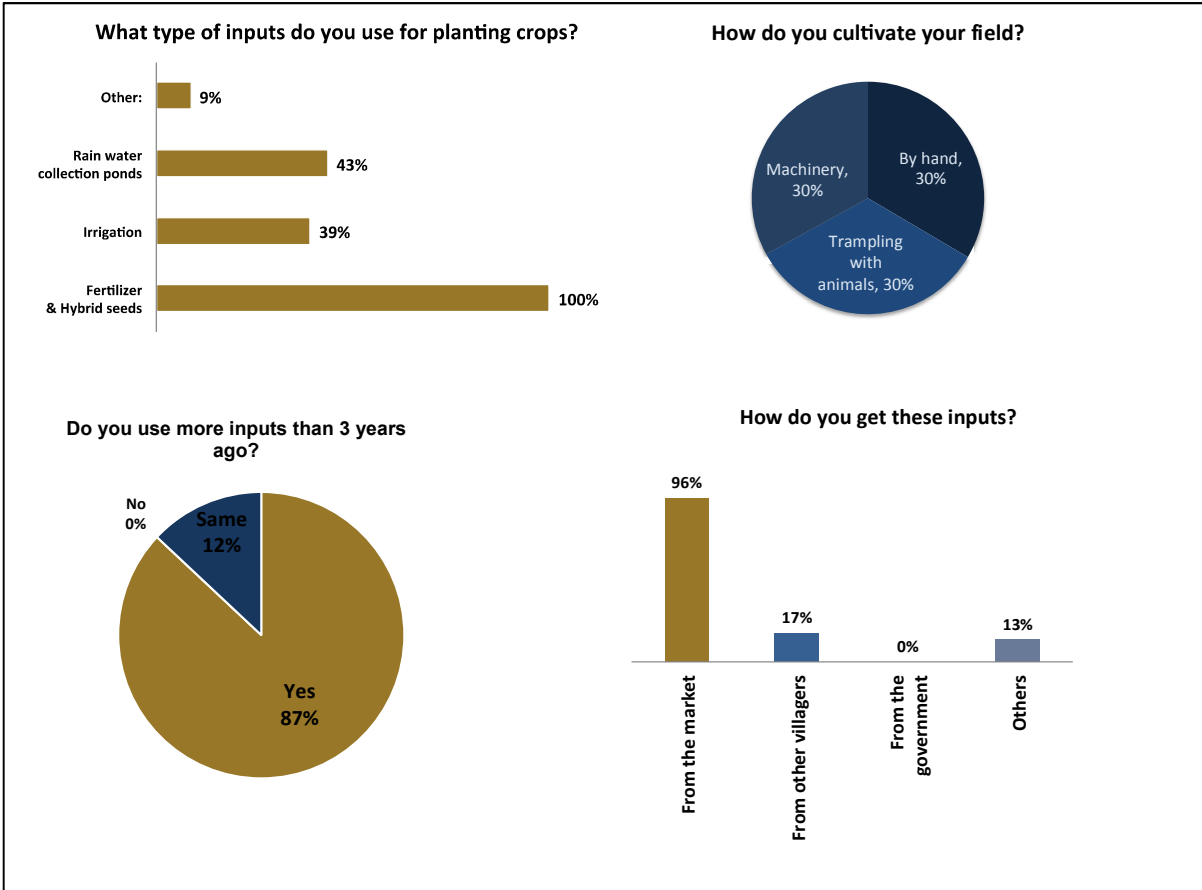
Ranking of concerns of farmers (n=23)



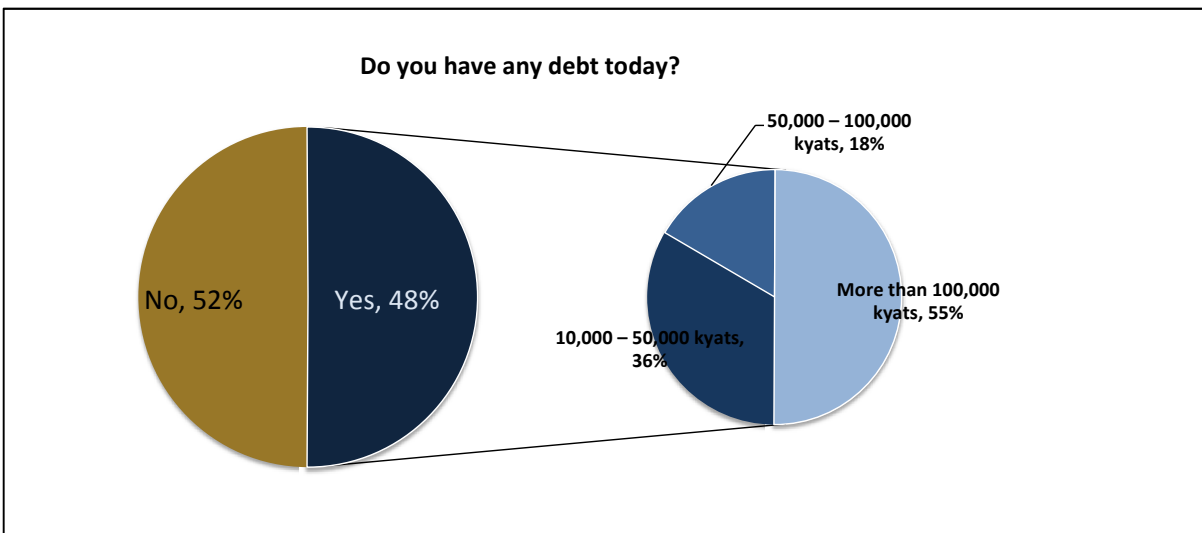
Certification of land (n=23)



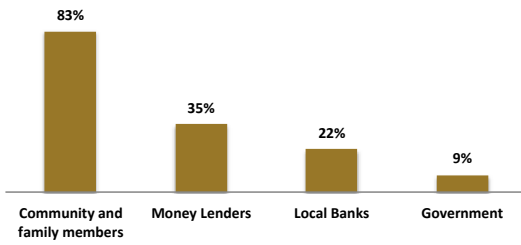
**Agricultural inputs (n=23)**



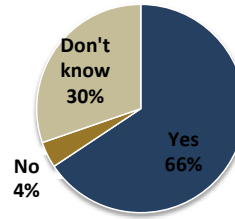
**Access to credit (n=23)**



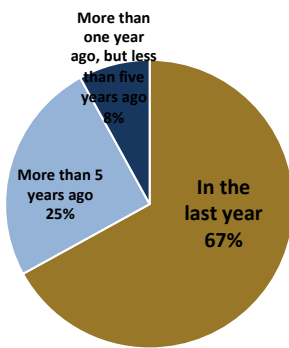
**Do you borrow money from these sources?**



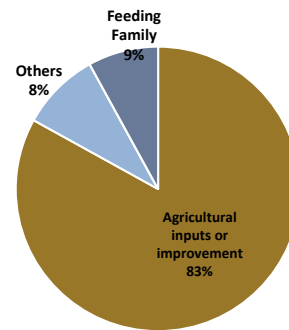
**Are you able to borrow money?**



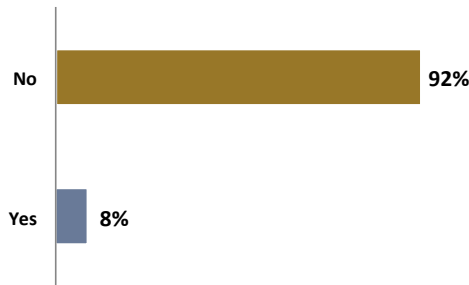
**When did you borrow the majority of your debt?**



**What are the primary use for the credit?**

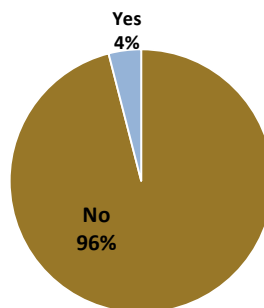


**Did you take a loan out against your land?**



**Agricultural method (n=23)**

**Do you practice shifting cultivation?**



## Appendix E Questionnaires used for field research

### QUESTIONNAIRE FOR FARMER ORGANIZATION LEADERS INTERVIEWS

#### 1. Introduction - Traditional farming practices

- 1 \*\*Tell us about the traditional farming practices in the community
- 2 \*\*How do people keep track of who is allowed to farm on what land? Is it recorded in writing? Do you think the process works?
- 3 \*\*Are people in the community changing the way they use land? Like changing the crops they grow, changing how they farm, or just not farming any longer? If so, why do you think this is happening?

#### 2. Traditional tenure management

- 4 Was communal tenure ever practiced in your community? If so, why did it end?
- 5 \*\*How is land possession recorded in the community? Are there written records? Oral records? Who keeps track of this information?
- 6 \*\*How is land passed down from parents to children? Is it always the male child that receives land? The oldest?
- 7 When land is given to children, are the records changed to reflect this transfer?

#### 3. Economic problems related to land

- 8 \*\*Tell us about the economic conditions faced by the small farmers in the area. Are people making more or less money compared to a few years ago?
  - a. What are the main sources of economic problems for small farmers?
  - b. Do you know how or if local officials collect tax from farmers? Who is in charge of collecting tax? Does the real tax rate increase by each year? Are there other fees that farmers have to pay to the government?
- 9 Do farmers who do not own land use land that belongs to someone else? When they do so, how is this relationship negotiated? For how long do they usually use or rent the land? Do they pay a fee or give a percentage of their crops? What other conditions are attached to the use of the land?
- 10 How common is it for farmers to transfer their land to someone else so he can use it? Has it been increasing or decreasing in the last 5-10 years? Do farmers who use other people's land usually do better or worse than other farmers? Why?
- 11 Do farmers use labor or do they rely on family members to assist with agriculture? Are laborers always members of the same community? Do they make their sole living working on farms or do they engage in other economic activities?
- 12 \*\*Do people come into the area and offer farmers money for land? If so, does anyone take it? Who are the people that come in?
  - a. [can probe more and ask about if there is government pressure to sell, if there is a fair price, etc]



- b. Soon, the government says that people will be able to sell their land to other people. Do you think farmers will sell their land?

13 \*\*Do farmers fear losing their land, or do they generally feel safe?

- a. [If they fear: Who would take it? How do farmers try to protect their land?]
- b. What is the thing that farmers worry about the most (if asked: for example, weather, low prices, losing land, war, etc...)?

#### 4. Economic problems related to land

14 Have you seen any environmental problems (like erosion or pollution) in the area? If yes, is it changing (is there more or less than a few years ago)? How does it affect the farming in the area?

#### 5. Government Interaction

15 \*\*Do the farmers in your area have their land registered with the government? If not, why not? If yes, do you know how easy or hard the land registration process is? Do the government officials treat farmers fairly when farmers try to register their land?

16 \*\*Does the government try to give advice or commands to farmers in the area about how to farm? What do they say / do? Do they provide help to farmers to increase their crops or otherwise help them?

- a. Does anyone else in the community give advice or commands to the farmers?

17 Do you feel that farmers know about the land laws that the government makes? How do they learn about laws for things like taxes and registration?

- a. Do you think the new land laws will be better or worse than the current laws for securing farmers' land use rights?

#### 6. Conflict / Dispute resolution

18 \*\*Who do people trust to settle land conflicts? Do they go to village elders? Would they trust the government to settle conflicts? Why or why not?

- a. Do you think there are some people who get special treatment from the government, or do you think the government treats everyone fairly?
- b. Has your organization ever got involved in any land conflicts? What role did you play in the conflicts?

19 \*\*Do you feel that the government respects farmers' traditional way of managing land? Why or why not? If farmers are unhappy, what do they want to change?

#### 7. Women's roles

20 Do you think that women's roles in the community are changing? Can women register and own land now?

- a. (If no) What would happen in the community if the government allowed women to own land?

## QUESTIONNAIRE FOR NGOs and CSOs REPRESENTATIVES

### Overview on Agriculture in the Region

1. \*\*What do you think about agricultural development today in southern Shan State? What are the most important issues that the government should address first?
2. \*\*What is your opinion on the new central government land laws? What is your opinion on the customary laws in the region in general? Do they address current problems in agriculture?

### 2. Weak governance, institutional capacity and framework

3. Who provides land registration / land-related services in the area? Are they effective? Do you feel that these services respect local community practices?
4. Do farmers know about the new land laws? What do they think about them?
5. \*\*Can land owners make meaningful suggestions about government decisions on land use planning?
6. \*\*How often does the government (make concessions) sell land in southern Shan State? For what reason? Are displaced people sufficiently compensated?
7. \*\*How strong are community leaders' powers compared to land management officials? Can they influence land usage policy?

### 3. Dispute Resolution

8. \*\*Who do people trust to settle land conflicts? Are local quarrels resolved by court systems or by local methods (i.e. customary systems, FABs, etc.)?
  - a. If so, are they recognized by the local community?
  - b. If not, what might work to resolve quarrels?

### 4. Land Recording/registration

9. Do individuals or communities keep written land certificates? Are they updated often?
10. \*\*How do government officials and communities deal with other (non-documentary) forms of evidence of land possession? Are they generally accepted?

### 5. Resource conflict, displacement and migration

11. \*\*Have recent economic changes affected land use and land conflict in southern Shan State? Has the customary practice changed because of this?
  - a. (If Yes) How have the land use and land conflicts changed?
  - b. (If No) How do you think land use and land conflicts might change as Myanmar experiences future economic changes?
12. Have you seen or heard of land disputes arising from discrepancies between customary and national laws? Have you seen or heard of conflicts between government and communities about land use?

**6. Inequitable access to land and resources**

13. \*\*How are the rights (usage / transaction / inherit / VFV-related, etc) of small land-holding farmers protected? Do you think national government laws create a more equitable land system than customary land arrangements?
14. \*\*Are there any groups that have a preferred position when land is distributed locally (e.g. military, business, wealthy landowners, etc.)?
  - a. (If Yes) If businesses are dominant, are they Myanmar based companies or foreign companies? From what countries? If the military/government is dominant, are they connected to local Pa-O / Danu leaders?

**7. Gender aspects of land tenure**

15. \*\* Do communities allow a woman to hold land in southern Shan State? Do women often inherit land from family members?
  - a. What happens when the head of household dies - who receives the right to land use?
  - b. Is there a provision for joint ownership by husband and wife to protect women farmers in case of divorce or death (of the husband/father head of household)?
16. \*\*How are women's roles in the community changing (i.e. have there been increases in female-headed households? or any other kind of changing economic patterns)?
17. \*\* Are there any regulations in customary or national laws that pay a specific attention to women's land rights? How do they affect women's land rights?

**8. Environmental impacts**

18. \*\* Is customary agricultural practices (e.g., shifting cultivation) impacting the environment, people, and community in the area?
  - a. (If Yes) How do current land laws address this problem? Can new and better laws address the issue? How?
19. \*\* How do local communities share communal lands / environmental resources in this area? Is this different from other parts of Myanmar? How?

## FOCUS GROUP GUIDE FOR FARMERS

### Traditional farming practices

1. \*\*What size is your plot? How many plots do you own? What sorts of crops do you grow? Do you have any machinery?
2. \*\*Do farmers in your village use land that belongs to someone else?
  - a. Is this because they have no land, or because they need more land?
  - b. When they rent, do they pay money, or just give some part of their crops?
  - c. For how long do they usually use or rent the land?
  - d. How common is it for people to rent land? Do you think there are more or less people who rent land than a few years ago?
  - e. Do you think farmers who rent land make more money or less money? Why?

Are people in the community changing the way they use land? Like changing the crops they grow, changing how they farm, or just not farming any more? If so, why do you think this is happening?

### Government Interaction

Tell us about how your community is changing. Are people moving to your village? How do they get land if they move in? Are people leaving your village? [Where do they go?]

### Traditional Tenure management

\*\*Do you use land that the whole village owns together? What do kind of land is it (forest, pastureland, farmland) and what do you use it for?

How do you know who can farm on what land? Do you write things down? Do you think everyone in the community knows about who can farm where?

### Economic issues relating to land

\*\*Do you think you and your neighbors are making more or less money compared to a few years ago?

Do you borrow money for farming? If yes, how do you borrow the money? Do you borrow from the same person who buys your crops? What do you use the money for?

\*\*Are there some people without land in your village? Would you say there are more or less than a few years ago?

How do you sell your crops usually? Do you sell a lot of crops, or do you keep most just for your family? Do you think you get a fair price?

Do farmers use labor or do they rely on family members or community members to assist with agriculture?

- a. If so, what is the nature of this relationship? Are laborers always members of the community?
- b. Do they make their sole living working on farms or do they engage in other economic activities?

Has anyone offered you money for your land or tried to get you to leave it? Do you think this happens in your village?

If you can sell your land, will you do that and give your children the money, or will you give them the land? Do you think some people in your village would?

### **Environmental issues relating to land**

Have you seen any environmental problems (like erosion or pollution) in the area? If yes, is it changing (is there more or less than a few years ago)? How does it affect your farming and ability to make a living?

### **Land disputes**

\*\*Are there any arguments or conflicts about land in your village? What usually causes these arguments?

\*\*Who do you go to when you have a fight about land? Would you want to go to the government to settle fights if you had to go to them? Why or why not?

Do you think there are some people who get special treatment from the government, or do you think the government treats everyone equally and fairly?

Do you feel that your village elders and community leaders treat everyone in the village fairly? Do you trust them?

### **Government interaction**

\*\*Do you know if your farmland is registered with the government? Have you talked to people from the government about your land?

Do you feel that the government respects your village's traditional way of farming and managing land? Why or why not? What would you change if you are unhappy?

Do you feel that you know about the land laws that the government makes? How do you learn about laws for things like taxes and registration?

### **Gender roles**

As part of the new land laws, the government will allow women to put their name on land titles alongside their husband or even own land themselves.

Would you put your wife's name on your land registration? Is this necessary? How do you decide which of your children gets your land? Is it different for your daughters and your sons?

## FOCUS GROUP GUIDE FOR FEMALE FARMERS

### Economic issues related to land

1. Do you think more men are leaving their land in the village to find work somewhere else, like the city?
  - a. Do their wives go with them or do they stay on the farm land?
  - b. What do women do if they stay behind? Do they continue to farm or do they sell their land?
  - c. If they continue farming, do they have any problems with getting money or selling their crops?
  - d. If they stop farming, what do they do to make a living? Where do they live?

Are there any single, divorced or widow female farmers without land in your village? What do these women do to earn income and make a living?

- a. Would you say there are more or less than a few years ago?
- b. Are they poorer than farmers with husbands?

### Gender roles

What work do you do on the farm? What about in the home? What do most women in your village do for farming and to earn money, and what do men do?

If your family's land is registered with the government, is your name on the registration? Do you think your husband would allow you to put your name on the registration?

Do you want to get your land registered in your name? Do you think the government should make any changes to laws to give women more control over land?

Can women stay on their farm land and home if they are divorced or their husbands pass away?

Do you worry about what would happen to you if something happened to your husband?

Are women in your village changing the way they make a living or are they doing new jobs? What are your other ways to make a living other than farming?

### Dispute resolution

Who do you go to when you have a fight about land?

- a. Do you feel that village elders and local community leaders treat female farmers the same as male farmers?
- b. Do you think that the government treats men and women the same?
- c. [If not involved in disputes, probe to find out if this is because it is the "man's role"]

### Government interactions

Do you know if your farmland is registered with the government? If so, who registered the farmland in your family?

- a. If you did so, was it easy for you? Or you feel it is harder for you to deal with local government officials, compared to male farmers?

If you did not do the registration, did your husband or male family member tell you he was registering the land and show you the documents?

Do you feel that you know about the land laws that the government makes? How do you learn about land laws? From you husband, sons or village elders?

Have you personally had any problems with the government or military in the past few years regarding your land or crops?

### SURVEY TOOL FOR FARMERS

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_ AGE: \_\_\_\_\_ (MALE) (FEMALE)  
 VILLAGE: \_\_\_\_\_ TOWNSHIP: \_\_\_\_\_

AGREE/DISAGREE STATEMENTS	YES	DON'T KNOW	NO
I know about the new government land laws			
I think that it is easy to get fights about land fixed in a fair way			
Today I see environmental problems (like bad soil, erosion, dirty water or air) in the area that are worse than a few years ago			
Farmers like me in the area are making more money than compared to a few years ago			
I am afraid that I will lose my land			
I feel that the government respects my village's way of farming and managing land			
Women should be able to own land today			
CATEGORY QUESTIONS			
<b>Besides farming, I and other members in my family also do these things to make more money:</b>			
<b>(SELECT AS MANY AS APPLY)</b>			
Help another farmer with his farming for money			
Work for someone else (non-farming) for money			
Make crafts or sell things			
Other (Specify)			
I only farm			
<b>The thing I worry about the most for earning enough money is: (PICK ONE)</b>			
Bad harvest			
Low prices of my crops			
Losing my land			
Violence			
Arrival of outsiders			

Other (Specify)	
<b>Compared to my father when he was my age, I have: (PICK ONE)</b>	
More land	
The same amount of land	
Less land	
<b>I prove that I am allowed to use my land because I have (SELECT AS MANY AS APPLY)</b>	
A registration from the government	
A receipt for tax that I paid to the government on my land	
Written record (like a map with my name on it) from my village elders	
Permission (not written) from my village elders	
My neighbors know that the land belongs to me and we take care of things ourselves	
<b>LANDING HOLDINGS AND TENURE PROFILE</b>	
<b>What percent of your land did you plant crops on? (PICK ONE)</b>	
None	
Up to ¼	
1/4 to ½	
1/2 to ¾	
1/2 to ¾	
More than 3/4 but not all the land	
Entire	
<b>If you did not crop the entire plot, what issues forced you to make that decision? (SELECT AS MANY AS APPLY)</b>	
Crop rotation	
Lack of manpower	
Lack of equipment	
Lack of animal power	
No water source	
No road	
Problems with soil	
Other risks	
<b>Who is the owner of the land you work? (PICK ONE)</b>	



Owner or partial owner				
Communal land				
Rented from someone				
Rented to someone				
Public land (owned by the state but not communally)				
Private land				
Others (list)				
<b>How did your household get this plot? (PICK ONE)</b>				
Inherited				
Use rights granted by the government				
Purchased from owner				
Use rights given by local leader				
Occupied				
Other (list)				
<b>How do you cultivate your field? (PICK ONE THAT APPLIES TO MAJORITY OF LAND)</b>				
By hand				
Trampling with animals				
Other (list)				
<b>TO BE TRANSLATED FROM ENGLISH (NEW QUESTIONS)</b>				
<b>AGRICULTURAL INPUTS</b>				
<b>What is the type of inputs do you use for planting crops? (SELECT ALL THAT APPLY)</b>				
Fertilizer/Hybrid seeds				
Irrigation				
Rain water collection ponds				
Other:				
<b>Do you use more inputs than 3 years ago? (CIRCLE →)</b>	<table border="1"> <tr> <td>YES</td> <td>NO</td> <td>SAME</td> </tr> </table>	YES	NO	SAME
YES	NO	SAME		
<b>How do you get these inputs? (SELECT AS MANY AS APPLY)</b>				
From the market				
From other villagers				
From the government				

Other sources	
<b>FARMERS CONCERNS</b>	
<b>Please rank these five concerns (1 = greatest concern, 5 = least concern)</b>	
Someone taking your land	
Poor crop yields	
Violence	
Children can't inherit your land	
Government policies	
<b>Are there any other major concerns you are worried about? (WRITE UP TO 2)</b>	
1.	
2.	
<b>CREDIT PATTERN</b>	
<b>Are you able to borrow money? (CIRCLE )</b>	<b>YES      MAYBE      NO</b>
<b>Do you borrow money from these sources? (SELECT AS MANY AS APPLY BELOW)</b>	
Community and family members	
Money lenders	
Local banks	
Government	
<b>Do you have any debt today? (CIRCLE)</b>	<b>YES      NO</b>
<b>If yes, what is the total roughly? (PICK ONE)</b>	
Less than 10,000 kyats	
10,000 – 50,000 kyats	
50,000 – 100,000 kyats	
More than 100,000 kyats	
<b>When did you borrow the majority of this debt? (PICK ONE)</b>	
In the last year	
More than one year ago, but less than 5 years	
More than 5 years	
<b>What are the primary uses for the credit? (PICK ONE)</b>	

Feeding family			
Doctor bills			
Agricultural inputs/improvements			
Others (specify)			
<b>Did you take out a loan out against your land? (CIRCLE)</b>		<b>YES</b>	<b>NO</b>
<b>Do you practice shifting cultivation? (CIRCLE)</b>		<b>YES</b>	<b>NO</b>
<b>If yes, do you practice it in: (MARK ALL THAT APPLY)</b>			
Forest	YES / NO	If yes, did you communicate this to the Forest Department?	YES/ NO
Communal land	YES / NO	If yes, did you communicate this to the GAD?	YES/ NO
Virgin land	YES / NO	If yes, did you communicate this to the SLRD?	YES/ NO
<b>If yes, describe the customary practice:</b>			

## Appendix F Membership of new land law committees

The Farmland Administrative Bodies are a hierarchical system of administrative committees; land use disputes and discussions begin at the Ward / Village Tract level and then appeals move upwards.

**Table 5: Members of Farmland Administrative Bodies, by ministry and level<sup>183</sup>**

Ministry or organization	FAB LEVEL				
	Central	Region/ State	District	Township	Ward/ Village Tract
General Administration / Central Government <sup>1</sup>	2	2	1	1	2
Military Intelligence	1	1			
Forest	1	1			
Internal Revenue	1	1			
Livestock & Veterinary	1	1	1	1	
Agriculture (All depts)	4	4	3	3	1
<i>Agriculture</i>	2	2	1	1	
<i>Agricultural Planning</i>	1	1	1	1	
<i>SLRD</i>	1	1	1	1	1
Community Leadership	-	-	-	-	1
Farmers Representative	-	-	-	-	1
<b>Total</b>	<b>10</b>	<b>10</b>	<b>5</b>	<b>5</b>	<b>5</b>

1.) Central Government representative is usually the highest-ranking official in the region – e.g. District Administrator or Chief Minister of the state government, etc.

**Table 6: Members of the Vacant, Fallow, and Virgin Lands Management Central Committee**

Ministry	Number
Central Government	2
General Administration	1
Internal Revenue	1
Forest	1
Mines	1
Livestock & Veterinary	1
Agriculture	7
Planning & Economic Development	1
Culture	1
Tourism	1
<b>Total</b>	<b>17</b>

<i>Agricultural departments represented</i>	
<i>Union Minister of Ag</i>	<i>1</i>
<i>Agriculture</i>	<i>2</i>
<i>Irrigation</i>	<i>1</i>
<i>Industrial Crop</i>	<i>1</i>
<i>Planning</i>	<i>1</i>
<i>SLRD</i>	<i>1</i>
<b>Total</b>	<b>7</b>

<sup>183</sup> From official by-laws of 2012 VFV Law and Farmland Law, courtesy of U Myint Thein

## Appendix G Additional Background Information

**Geopolitical relationships in Myanmar:** Myanmar joined the ASEAN in 1997, which has been a big step forward to regional integration, even if ASEAN position towards Yangon remains ambiguous. Sporadic conflicts at the border with Thailand also hinder further integration of the country within the ASEAN. Geo-politically, Myanmar remains relatively isolated from Western nation although the resumption of diplomatic relations on January 2012 has been a turning point in Yangon's global standing. Historically, US President Obama visited Myanmar in November 2012 signaling the West's commitment toward deepening trade relations and encouraging further political reform. Since the U.S. has been relaxing constraints on foreign aid to Myanmar, while maintaining boycotts and other direct pressure on corporations. The European Union also maintains its economic pressure, even if the recent political evolution has promoted reconsideration. The country can nevertheless count on Russia and China as important key players in diplomatic relations as well as commercial partners. Russia and China, for instance, vetoed in 2007 a draft resolution from the U.N. Security Council, calling on the government of Myanmar to respect human rights and begin a democratic transition.<sup>184</sup>

**Rural-urban dynamics and issues in Myanmar:** The legacy of colonization has influenced urbanization in Myanmar: In the 1930s, with the increased export of indigenous raw materials and import of British manufactured goods, several city centers developed, including Yangon, Bassein, Moulmein, and Sittwe. Due to the effect of colonization, urbanization in Myanmar proceeded alongside development of trade and commerce,<sup>185</sup> increasing rapidly after World War II. Both because of and due to urbanization, the structure of the rural economy was transformed one based subsistence farming to one in which commercial agriculture was

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<sup>184</sup>United Nations Security Council. "United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution" (S/2007/14) 12 January 2007. Official Record. New York.

<sup>185</sup>McGee, T.G. *The Southeast Asian City*. London: G. Bill & Sons. 1967. and Maung Maung Lwin. "Urbanization in Burma: An Overview". Mimeographed. Japan: Nagoya University, 1982.

dominant.<sup>186</sup> Alongside the commercialization of agriculture and economic growth, civil unrest in the countryside<sup>187</sup> and the establishment of new towns also encouraged the urbanization migration.

**Table 7: Urbanization trends in Myanmar**

Census year	% of Population in Urban places	Ratio of Urban-Rural population
1891	12.3	0.139
1901	9.5	0.104
1911	9.3	0.102
1921	9.8	0.108
1931	10.4	0.115
1941	N/A	N/A
1953	13.5	0.156
1973	23.6	0.308
1983	23.9	0.315

The trend continued through the 1970s when the tempo of urbanization peaked; it has since been in decline, however the recent political liberation and economic platform aimed at attracting investment suggest another boom is around the corner. Currently, statistics show that urban population shares 34% of the total population in Myanmar and the rate of urbanization is 2.9% annual rate of change.<sup>188</sup> Table 1 demonstrates the degree of urbanization from a historical review. To address this expected uptick in urbanization, Myanmar must increase its planning capacity and modernize its policies. Although now statistics of unemployment is not available in Myanmar, the general economic conditions suggest the urban economy of Myanmar is unable

<sup>186</sup> Furnivall, J.S. *Colonial Policy and Practice*. New York: New York University Press. 1956.

<sup>187</sup> Oo, Naing. "Urbanization and Economic Development in Burma". *Journal of Social Issues in Southeast Asia*, Vol. 4, No.2. (1989):233-60.

<sup>188</sup> "Burma Urbanization." *Index Mundi*. 26 Jul. 2012. 02 Dec. 2012 <<http://www.indexmundi.com/burma/urbanization.html>>. and "Urban Population in Myanmar." *Trading Economics*. n.d. 02 Dec. 2012 <<http://www.tradingeconomics.com/myanmar/urban-population-wb-data.html>>.

to cope with a growing population.<sup>189</sup> Urban areas have become overcrowded and lack security in term of income and employment due to its low-efficient informal sectors. Namely, Myanmar will have to confront the typical problems associated with urbanization, namely absorption of labor force from rural areas.

**Conflicts:** The Panlong Agreement of 1947, which enshrined minority rights, ethnic divisions and aspirations of succession have been the primary drivers of conflict in Myanmar. This agreement, which was signed by Aung San San Kyi's father among others, established the "full autonomy in internal administration" of Myanmar's "Frontier Areas", including the homeland of the Shan, Chin and Kachin people.<sup>190</sup> Since, the government has signed truces with 17 minority rebel groups, but six remaining groups including the Karen National Union (KNU) and Shan State South and North armies remain at war with the government. One of the rebel groups of most concern in Shan State is the United Wa State Army (UWSA), which operates in north. Its forces are approximately 30,000 strong. The lucrative drug trade finances its recruiting, training of troops, and weapons acquisition. In March 2010, there was heavy fighting between government forces and the Shan State Army-South and the Shan State Army-North. This violence, which broke a 22-year ceasefire, displaced approximately 30,000 people in Shan State.

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<sup>189</sup> Oo, Naing. "Urbanization and Economic Development in Burma". *Journal of Social Issues in SoutheastAsia*, Vol. 4, No.2. (1989):233-60.

<sup>190</sup>"Burma's ethnic conflicts see slow progress to resolution." *BBC*. 25 May 2012. 02 Dec. 2012 <<http://www.bbc.co.uk/news/world-asia-pacific-18189153>>.

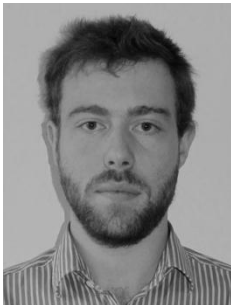
## Appendix H Project Team Biographies

### Jesse Bayer, MIA in Economic and Political Development



Jesse is currently completing the MIA program at SIPA. Prior to SIPA, he worked as a management consultant at Oliver Wyman, specializing in risk management and strategy for the financial sector. At Oliver Wyman, he worked for banks in Nigeria, Turkey, the U.S., and Canada. This past summer, he worked in the Johannesburg office of Dalberg Global Development Advisors, researching job creation models for a South African telecom and helping design a risk-transfer fund that would provide risk capital for a variety of development finance programs such as crop insurance funds and SME loan guarantees. At SIPA, Jesse is focusing on economic development and policy analysis, with a specific interest in the role of formal and informal institutions in development. He also holds a B.A. in Architecture from the University of Pennsylvania.

### Benoît Jonveaux, MIA in Economic and Political Development



Benoît is a dual degree student with SciencesPo (Paris). Prior to joining the Master of International Affairs, he graduated from the Sorbonne University (with BAs in Sociology and Economics) and from the Ecole Normale Supérieure (Social Sciences). He also holds a M.Sc. in Economics from the Paris School of Economics, where he specialized in the analysis and evaluation of public policies, especially in developing countries. Benoît interned with the Council of Europe Development Bank, the Bank of France, the French Development Agency and the UNDP. He has a strong interest in economic development issues and in South-East Asia – where he spent 8 months working in Indonesia.

### Ran Ju, MIA in Economic and Political Development



Ran is currently completing a MIA program at SIPA with a concentration in Economic and Political Development. Prior to SIPA, she graduated from Fudan University with a major in Journalism and a minor in Economics. She worked as a business report for China Business News, and interned with McKinsey & Company in Shanghai where she built cost-benefit models of business operations.



### **Keisuke Kitamura, MPA in Economic and Political Development**



Keisuke is an MPA candidate at SIPA. Prior to SIPA, he worked as a management consultant at Monitor Group based in Tokyo. At Monitor, he worked on consulting projects for various industries such as consumer goods, pharmaceuticals, finance, agrochemicals and governments. These projects in business functional themes covered various strategy issues in corporate strategy, M&A / due diligence, organization reinforcement, marketing and sales strategy. This past summer, he worked at United Nations Regional Centre for Peace and Development in Kathmandu, Nepal, one of the regional centers of UN Office for Disarmament Affairs where he conducted research on various disarmament issues in Asia and the Pacific, including insurgencies in Myanmar. At SIPA, Keisuke is focused on economic development with a specific interest in Southeast Asia. A Japanese native, Keisuke received LL.B from Kyoto University.

### **Pushkar Sharma, MPA in Human Rights & International Conflict Resolution**



Pushkar is a second year MPA candidate at SIPA. Most recently he worked as a consultant for UNDP Colombia investigating the impact of foreign investment and mining land concessions on Colombia's stability. As President of the SIPA Conflict Resolution Working Group (CRWG) he helped lead a trip with the United Nations Studies Program trip to the Democratic People's Republic of Korea in May 2012. Prior to attending SIPA, Pushkar worked with India's largest education NGO, Pratham, managing the development and implementation of a UNDP-sponsored Human Development tool (PAHELI). In addition to this, he evaluated the state of primary education in rural India through Pratham's landmark survey, the Annual Status of Education Report. Pushkar has also worked as a management consultant at The Bridgespan Group, providing social sector consulting for a variety of organizations including the Gates Foundation, Vital Voices Global Partnership, and 10,000 Women. Pushkar holds a B.A. in International Studies and Drama from Washington University in St. Louis.

### **Lila Wade, MIA in Economic and Political Development**



Lila is studying Economic and Political Development with a specialization in policy analysis. While at SIPA, she has interned in the Executive Secretariat at the U.S. Department of State, as well as conducted an evaluation of education programming in the Dominican Republic on a student-led project. As a Thomas R. Pickering Graduate Foreign Affairs fellow, she will join the U.S. Foreign Service after graduating to work as a diplomat overseas.

**Shinji Yasui, MPA in Economic and Political Development**

Shinji is studying Economic and Political Development at SIPA, as part of a dual degree with the University of Tokyo. Prior to SIPA, he graduated from the Soka University with a B.A. in Law. Shinji has previously interned in the field of human resources and labor policy. He also led publicity campaign for fundraising for UNHCR in Japan.