



**Legal Review of Recently Enacted  
Farmland Law  
and  
Vacant, Fallow and Virgin Lands Management Law**

Improving the Legal & Policy Frameworks  
Relating to Land Management in Myanmar

November 2012

Food Security Working Group's Land Core Group

## **Acknowledgments**

The author would like to thank members of the Food Security Working Group's Land Core Group and the staff of the Pyoe Pin Programme for their help and support in preparing this report. Special thanks goes out to Siusue Mark, Research & Development Manager of the Pyoe Pin Programme for her assistance in securing available materials and making arrangements for meetings with key stakeholders in Myanmar, and to U San Thein and U Thit Sinn from the Land Core Group for their guidance and assistance during field visits with Government, community and civil society stakeholders outside of Yangon.

Robert B. Oberndorf, J.D.  
Senior Law & Policy Advisor, Forest Trends Association



## **Executive Summary**

Myanmar is a country in the middle of a dramatic series of reforms which have the potential to create a more inclusive society in which the benefits of economic development and greater integration into the regional and global economies are equitably shared amongst all citizens. Natural resources in the country, including land, forests and water will be essential components of this development. Decisions on how land will be used, by whom and for what purposes could have far reaching consequences for the people of Myanmar, the majority of whom are smallholder farmers living in the countryside. In many areas of the country rural livelihoods are under threat as smallholder farmers are being displaced from their land due to granting of large-scale land concessions.

This review analyses the current laws and economic situation related to access to land for smallholder farmers in Myanmar. It makes recommendations for improvements to be written into policy and legislation, and institutions and mechanisms to be created, which will ensure smallholder farmers and especially women gain full legal protection of their land tenure rights.

The Government recognizes that if issues relating to land tenure security and land conflict are not addressed it could have negative impacts on foreign direct investment, sustainable economic growth, environmental protection, social harmony and development of a stable system of democratic governance that respects the rights of all citizens.

In respect of this recognition there is a pressing need for the Government of Myanmar to draft a comprehensive policy on land management and a comprehensive Land Law. To draft these requires careful study and inclusive consultation with civil society, farmers, private sector companies and other stakeholders. Policy and legal instruments should provide land tenure security and social safeguards for smallholder farmers, families and communities and explicitly secure the rights of women. Policy should also formally recognize customary laws relating to land resources, and provide mechanisms for communal ownership of land to ensure the rights of ethnic minority populations are protected, and their participation in decision making processes relating to land is secured. The Government needs to recognize the value of rotational agricultural systems as productive land use and protect their specific land tenure regimes. Any policy must also provide fair and transparent mechanisms for handling land conflicts when they arise, and balance interests for national food security, economic development and the rights of all citizens.

The Farmland Law and the VFV Law were approved by Parliament on March 30<sup>th</sup>, 2012. There have been a few improvements compared to previous laws such as recognition of non-rotational taungya as a legitimate land-use and recognition that farmers are using VFV lands without formal recognition by the Government. However overall the Laws lack clarity and provide weak protection of the rights of smallholder farmers in upland areas and do not explicitly state the equal rights of women to register and inherit land or be granted land-use rights for VFV land. The Laws remain designed primarily to foster promotion of large-scale agricultural investment and fail to provide adequate safeguards for the majority of farmers who are smallholders. In particular tenure security for farmland remains weak due to the Government retaining power to rescind farmland use rights leaving smallholders vulnerable to dispossession of their land-use rights. In addition there remains some unnecessary de-facto government control over the crop choices of farmers.

In particular it is recommended that recognition of land-use rights under customary law and the creation of mechanisms for communal registration of land-use rights, be included in the Farmland and

VFV Laws. There needs to be a comprehensive process of re-classifying land in the country to reflect land-use changes resulting from conversion of forests and VJV land into agricultural land, loss of agricultural land due to development projects, urban expansion and population growth. This will serve to reduce land conflict in the countryside and provide genuine tenure security for smallholders. Furthermore the specific and independent rights of women must be explicitly stated in the Laws. Added to this the fundamental principle of free, prior and informed consent should be enshrined, especially in regard to removal of land-use rights in the national interest.

It is also necessary that the Government works in partnership with civil society and farmers associations to revise the Farmland and VJV Laws. There is a need to guarantee representation of these groups in Farmland Administration Bodies at all levels. Additionally it is vital that mechanisms and information management tools are created that allow free public access to information on land use and management. This is essential if decisions made, are to be appropriate and benefit all citizens in Myanmar.

Farmers are intimately connected to the land which they farm and are best placed to make decisions over which crops are most suitable to be grown. Farmers should be supported through provision of information on sustainable cultivation techniques, crops and technologies to allow them to make informed crop choices on their own land and undue restrictions should be removed from the Farmland Law.

It is considered a priority that the system for registration and transfer of farmland and VJV land, and payment of fees and taxes, be streamlined and made as simple and accessible as possible for smallholder farmers. It is suggested that establishing a one window service for all these functions at the lowest possible level of Government be explored. This coupled with amendments to legislation to address gaps and inconsistencies will make it increasingly possible for smallholder farmers to benefit from protection of their tenure rights under the law.

Fair and equitable dispute resolution mechanisms are fundamental to the successful implementation of any law. It is therefore recommended that the Government create an independent administrative body to hear land disputes. This body must be separate from sectoral ministries and must be accessible to all citizens through having branches in all states and regions. This body must be authorized to hear appeals against decisions made by Farmland Administration Bodies. Coupled with this there is a need to develop non-judicial adjudication mechanisms which ensure equal participation of all parties involved in land disputes. Finally modern safeguards relating to the payment of fair market compensation for the public taking of land property rights should be incorporated into the Land Law, and the Land Acquisition Act should be repealed.

In conclusion the existing legal framework relating to land resources and tenure security in Myanmar is obsolete, needs to be better harmonized, and should incorporate international and regional best practices relating to land management. Current weaknesses in the Farmland and VJV Laws should be immediately addressed through revising bye-laws and regulations.

## **Table of Contents**

<b>Chapter 1</b>	<b>Introduction</b>	<b>1</b>
<b>Chapter 2</b>	<b>National Land Policy</b>	<b>3</b>
<b>Chapter 3</b>	<b>Overview of Rural Land Classification, Management and Conflict Issues</b>	<b>7</b>
<b>Chapter 4</b>	<b>Overview of Laws Relating to Rural Land Management in Myanmar</b>	<b>15</b>
<b>Chapter 5</b>	<b>Analysis of the Farmland Law (2012)</b>	<b>19</b>
<b>Chapter 6</b>	<b>Analysis of the Vacant, Fallow and Virgin Lands Management Law (2012)</b>	<b>22</b>
<b>Chapter 7</b>	<b>Recommendations for Improving the Law on Land</b>	<b>25</b>
<b>Chapter 8</b>	<b>Conclusion</b>	<b>28</b>
<b>Annex</b>		<b>29</b>
<b>Table 1:</b>	<b>Land Classification, Control, Conflict and Tenure Security</b>	<b>9</b>

## **Abbreviations**

ASEAN	Association of Southeast Asian Nations
CCVfV	Central Committee for the Management of Vacant, Fallow and Virgin Lands
ESIA	Environmental and Social Impact Assessment
FAB	Farmland Administration Body
LUC	Land Use Certificate
MoAI	Ministry of Agriculture and Irrigation
MoECaF	Ministry of Environmental Conservation and Forestry
SLRD	Settlement and Land Records Department
GAD	General Administration Department
VFV Law	Vacant, Fallow, Virgin Lands Management Law

# Chapter 1

## Introduction

This review analyses the current land laws and makes recommendations for improvements to be written into law, and institutions and mechanisms to be created, which will ensure Myanmar's smallholder farmers gain full legal protection of their land tenure rights. This review starts by detailing key changes in land policy and makes recommendations for further changes required. This is followed by an overview of existing categories of land classification, relevant government bodies concerned with land and a description of some of the main drivers of land conflict. This is followed by detailed analysis of the Farmland Law and the Vacant, Fallow and Virgin Lands Management Law (VFV Law), and recommendations for improvement, based in part on experience from other countries in the Mekong Sub-Region.

The Farmland Law and VFV Law, were enacted by Myanmar's Parliament on March 30<sup>th</sup>, 2012. This review shows how these laws, in their current form, may negatively impact on the land tenure security of smallholder farmers and communities in Myanmar if proper safeguards are not put into place. Weak land tenure security can lead to increased levels of land conflict and social instability. Finally, the report recommends that the new Farmland and VFV Laws should be incorporated into a comprehensive and balanced approach to land management and land use planning in Myanmar.

To do this, the Government of Myanmar should carefully consider drafting and enacting a comprehensive Land Law and Policy on Land Management for the country. Such policy and legal reform needs to be undertaken gradually with well-informed decisions regarding land management required to avoid costly mistakes made elsewhere in the Mekong Sub-Region. Decision-making processes relating to land management must be open to all relevant stakeholders including civil society. A gradual approach involving relevant stakeholders encourages better governance of land resources, respects the rights of Myanmar citizens, and allows for the sustainable economic development of the country's natural resources.

An overview of land conflict in Myanmar is included. It describes how classification of land and overlapping governance authorities contribute to tenure insecurity and land conflict issues. Information provided is based on recent research on land conflict in the country, field visits, meetings with stakeholders, and a review of laws relating to rural land management. The Government recognizes that issues relating to land conflict are a serious concern that could have negative impacts on foreign investment, sustainable economic growth and social stability. This report discusses initial steps taken by the Government to better understand the nature of land conflict in the country. However it must be recognized that this growing understanding by government of the nature of land conflict remains inadequately reflected in the Laws.

Considering the political, social and economic risks that land conflicts present, recommendations are offered on improvements that can be made to the policy and legal framework relating to land. Recommendations focus on the rights and land tenure security of smallholder farmers, women, households and communities in Myanmar. Recommendations focus on the need to develop a comprehensive policy on land management and Land Law for the country. A comprehensive Land Law should include all land classifications and harmonize the legal and governance framework relating to land. The new Farmland and VFV Laws should be incorporated as chapters in such a comprehensive Land Law. The recommendation to draft and enact a comprehensive policy on land

management and Land Law reflects the current thinking of many Government representatives and advisors in the country.

Recommendations on how to improve the policy and legal frameworks relating to rural land management are based on international best practices and lessons from other countries in the Mekong sub-region. The recommendations are presented as general principals and concepts that can be used by Government decision-making bodies and relevant stakeholders.

It is essential that the Government utilizes a consultative process during the development of a modern legal and policy framework. Such a process must allow a greater role for civil society participation, in which international, regional and local expertise is actively sought and considered by the Government. This process should, at a minimum, allow relevant stakeholders to comment on drafts of policies and law as they are being developed. While such a process may take more time, it is likely to lead to better decision-making, broader support for the enacted laws and improved implementation. Final decisions on content are still the responsibility of the Government.

## Chapter 2

### National Land Policy

#### Changes in Land Tenure Policy

Post-independence and through the socialist era (1947-1988), the de-facto land policy was for protection of peasant farmers' right to cultivate and hold use rights to land they cultivate while the State maintained ultimate ownership of land. This was based on the socialist concept of centralized ownership of the means of production and co-operative management of the economy. Laws implemented to reflect this policy, amongst other things abolished landlordism, established a system of land re-distribution through leases to small-farmers, protected farmers from losing their land in distress sales due to debt; and prioritized allocation of tenancies to poorer farmers.

From 1988 onwards the government adopted a new and radically different policy that targeted economic growth through market reform. Under this policy socialist controls were relaxed and domestic and foreign investment encouraged. In relation to land this policy was implemented in part through the "Wasteland Instructions" in 1991<sup>1</sup>, which enabled both domestic and foreign investment in large-scale commercial agricultural enterprises. This was mainly achieved through transfer of use rights to designated "wasteland" (or "vacant, fallow and virgin land") - often with no recognition of customary law or actual user-right - to private individuals and companies for development as large-scale export-oriented plantations. Over the last two decades, the implementation of this instruction, the intent of which was largely re-affirmed in the Vacant, Fallow and Virgin Land Law, has significantly increased the scale and scope of land appropriation and conflict across the country and especially in the uplands.

Myanmar currently has no written policy on land use and tenure. However it is clear that some members of the Government recognize the increasing importance of land issues and the need to find equitable solutions to land disputes. Recently enacted legislation which is analysed in detail later in this report gives some cause for optimism as it does reduce state control over some decisions and allow increased freedoms for farmers. At the same time much of the intent of recent legislation remains essentially unchanged and points to continued thinking of some people in Government who see only one way to create growth in the rural economy, through promotion of large-scale plantation agriculture.

#### Developing a Comprehensive Policy on Land Use Planning and Management

The difference between policy and legislation are at times confusing. Policy documents represent a guiding course of action or vision that a government has adopted, while legislation sets out specific mandates, rights and responsibilities on a subject within a rigid format of chapters and articles. Policy documents are often adopted to direct the drafting, enactment and implementation of legislation, but can also be written to assist in the interpretation of legislation by those responsible for its enactment. For policy to be truly effective, courses of action to be taken by specific government actors have to

---

<sup>1</sup> The full title is 'Duties and Rights of the Central Committee for the Management of Culturable Land, Fallow Land and Waste Land'

detailed and be both measurable and allow for monitoring by independent civil society actors. Properly written policy documents compliment and link to legislative documents.

This review has a primary focus on analysing existing land laws through a lens that balances the needs of smallholders and industrial agriculture. However, it is essential that formulation of these laws is underpinned by well thought out and clear Government policy on land use and tenure that articulates the vision which the government has adopted for Myanmar and adequately addresses issues relating to sustainable management of land resources and land tenure security of rural communities in Myanmar.

To formulate the policy, the Government should adopt a consultative process that is open to review and comment by civil society and farmers representatives and designed and agreed upon prior to drafting a comprehensive policy. The process should be open and transparent, to allow free-flow of information, and when necessary include translation into ethnic languages. Dissemination of relevant policy materials in a timely manner and a systematic series of consultations in the states and regions with participation of women, civil society and farmers is essential, as is incorporation of the results of consultations into new policy instruments. The policy must be based on the results of sound comprehensive research into current status of land and land use, land use and tenure conflicts, and analysis of sustainable national land and development options.

### **Recommended Principles of a Land Policy for the 21<sup>st</sup> Century**

The underlying principle of a land tenure policy for Myanmar is that it recognize, the key role of smallholder farmers in national economic development, and thus balance their development needs with those of industrial agriculture. A land policy will ensure the rights of smallholder farmers and their land tenure security are protected and will also ensure equitable distribution of farmland to ensure sustainable development.

The policy recognizes that **smallholder farmer land tenure security contributes to national economic growth**, including increased agricultural productivity<sup>2</sup> and food security. Research shows that under supportive conditions small-scale farming can be efficient and profitable<sup>3</sup>, more productive than industrial agriculture, provide secure employment, and contribute significantly to local and national food production and economic development<sup>4,5</sup>. Supportive conditions include appropriate agriculture policies and incentives such as access to inputs and credit at reasonable rates, technical extension support, stable markets, and strong distribution, marketing and trade channels.

The policy recognizes that **smallholder land tenure security can improve social stability**, reduce conflict and promote participation of ethnic groups<sup>6</sup> and women in sustainable development. Strong rural economies based on productive small-scale farming reduce the risk of broad-based discontent.

---

<sup>2</sup> EU Task Force on Land Tenure, *EU Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries*; November 2004

<sup>3</sup> Ian Scoones, Nelson Marongwe, Blasio Mavedzenge, Felix Murimbarimba, Jacob Mahenehene and Chrispen Sukume. *Zimbabwe's Land Reform: Myths and Realities*, James Currey; 2010

<sup>4</sup> FAO, *FAO's Land Tenure Service*, Rome; 2007

<sup>5</sup> DFID, *Land: Better access and secure rights for poor people*; 2007

<sup>6</sup> EU Task Force on Land Tenure, *EU Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries*; November 2004

When policy acknowledges local practices it can help different social and ethnic groups to live in harmony.

The land policy recognizes that secure **access to land for the rural poor promotes environmental sustainability**, as farmers conserve natural resources<sup>7</sup> and prevent further climate change. People with secure titles are more likely to manage their resources carefully and make investments, which improve yields on existing land rather than expanding cultivation into marginal or forest areas.

- *Recognition of Customary Law* – needs to be clearly stated in Government policy. Customary law varies across different ethnic groups and geographic areas and this diversity must be recognised in any policy instruments. Customary law must be afforded the same status as statutory law.
- *Recognition of the Value of Rotational Agriculture Systems* – and their tenure needs to ensure productive land use. Rotational fallow systems reflect indigenous knowledge, and when the natural and institutional environment is supportive, they have ecological resilience, contribute to soil and water conservation, as well as to cultural integrity, social security<sup>8,9</sup> and increased food production<sup>10</sup>. These systems operate under customary and informal tenure which can be based on individual or collective rights, and across land categorized as either agriculture or forestry. Government must recognise rotational fallow systems as valuable agricultural practices and protect their specific land tenure regimes under the law, by creating new tenure mechanisms that support sustainable upland agricultural systems.
- *Freedom To Farm* - adopt these principles in national policy, so farmers may use land for any productive agricultural purpose as long as the use does not negatively impact the public interest and the environment, or severely damage potential of the land to be productive. Remove rigid sub-classifications of land to allow farmers to choose most appropriate crops.
- *National Land-Use Planning* - a clear process for comprehensive and participatory land use planning throughout the country needs to be outlined. This process must balance the needs of all land users in Myanmar whilst reducing social, environmental and economic impacts.
- *Flexibility in Categorization of Land* - policy should recognize that current land classification boundaries and systems are in some cases no longer useful or practical and do not reflect on the ground reality. There needs to be a comprehensive process of re-classifying land in the country to reflect land-use changes which have resulted from conversion of forests and VFV land into agricultural land, loss of agricultural land due to development projects and urban expansion and population growth. Furthermore land classifications need to encompass the range of rotational fallow systems currently used in upland areas.

---

<sup>7</sup> Miguel A. Altieri, *Agroecology, Small Farms, and Food Sovereignty*, Monthly Review / July-August 2009

<sup>8</sup> Cairns, M. and Garrity, D. P. *Improving shifting cultivation in Southeast Asia by building on indigenous fallow management strategies*, Agroforestry Systems 47: 37–48, 1999. Kluwer Academic Publishers; 1999

<sup>9</sup> Warner, K., *Shifting cultivators; Local technical knowledge and natural resource management in the humid tropics*, FAO; 1991

<sup>10</sup> EU, 2004

- *Protect Land Use Rights* - the Government should recognize that it may only rescind land use property rights for a public purpose and the process for this to occur must be open and transparent. The international standards on involuntary resettlement which includes provisions for fair compensation should be incorporated into the land policy, which can then be incorporated into land Law (refer to Annex 1).
- *Recognition of the Equal Rights of Women to Own, Sell and Inherit Land* – Women’s independent access and right to land should be a key driver of land policy because providing women with equal access to land can lead to increased productivity, economic empowerment and enable them to challenge and change gender-based social and political inequalities. The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) should be one foundation of national land policy: Myanmar is already a signatory. CEDAW obliges governments to guarantee women equal access to land and other resources.
- *Free Prior and Informed Consent (FPIC)* – as a building block for all land policy. FPIC affirms local peoples’ rights to their land and ensures they can exercise their own decision making processes, including the right to say no to projects and the right to set terms and conditions for negotiations on utilisation, management and development of land. Gaining the consent of affected communities before starting agro-industrial plantations or infrastructure projects establishes positive relationships and prevents conflict which can result in loss of company profits and loss of Government revenues<sup>11</sup>.
- *Public Access to Information* - on land, and establish notice and comment mechanisms for Government actions relating to land.

---

<sup>11</sup> Oxfam, *Land and Power: Oxfam Briefing Paper, September 2011*

## Chapter 3

### **Overview of Rural Land Classification, Management and Conflict Issues**

Much attention is now being given to the growing issue of land conflict in Myanmar. Land conflict has had a long history in the country. Land conflict relates to how land is classified, used, and managed by Government authorities, ceasefire and non-ceasefire administrations with overlapping responsibilities. The following overview is provided to improve understanding of the issue. Table 1, presented below, illustrates how land classification, conflict and tenure security relate to each-other.

#### **Statutory Law Rural Land Classification**

In order to understand the risks associated with a rise in land conflict in Myanmar, one must fully understand how the statutory systems of rural land classification operate. Rural land classifications in the country often do not match with, or take into account, the actual land use on the ground.

Unfortunately, the various classifications of land in the country are often poorly defined in the existing legal framework, which can lead to land conflict and the unsustainable management of land resources in the future. Adding to the confusion is the fact that there are many old and conflicting laws relating to land classification and management in the country, which makes the administration of land resources difficult and confusing for all stakeholders. This can be described as a lack of law harmonization in the country.

The following is a basic overview of how rural land is classified under the existing legal framework in the country.

#### ***Reserved Forest Land***

Reserved Forest lands fall under provisions found in the Forest Law (1992). It is a protected class of forestland that is intended primarily for the production of forest products. Under existing law, it may be used for various types of local village production or Community Forestry.

Many areas of Reserved Forest land in the country have been converted to agricultural production by smallholder farmers or village settlement without a change in the classification of the land. In many areas, land classified as Reserved Forest land on existing maps does not match current use. Rural populations that have traditionally used areas of Reserved Forest land for generations are technically in violation of the Forest Law, though local authorities have often granted permission to use these lands in the past.

The new Farmland Law and VFV Law do not make mention of Reserved Forest Lands, and do not apply to areas of land that are classified as Reserved Forest Lands. There is no clear mechanism in the Farmland Law, or other legal texts reviewed for this report, to convert areas of Reserved Forest land to farmland.

#### ***Protected Public Forest Land***

Protected Public Forest Lands fall under provisions found in the Forest Law (1992) and the Protection of Wildlife and Conservation of Natural Areas Law (1994). As opposed to Reserve Forest Areas, these areas of forestland are intended primarily for conservation purposes. These areas tend to be well demarcated, so the problems related to actual use of land not matching with the official land

classification is not as prevalent as with Reserve Forest land. Encroachment on these lands is an issue, and establishment of new Protected Public Forest Lands where there are already communities who have established traditional livelihoods could lead to conflict.

The new Farmland Law and VFV Law do not make mention of Protected Public Forest Land, and do not apply to areas of land that are classified as Protected Public Forest Land. There is no clear mechanism in the Farmland Law, or other legal texts reviewed for this report, to convert areas of Protected Public Forest Land to farmland.

### ***Public Forest Land***

Public Forest lands fall under provisions found in the Forest Law (1992) and the VFV Law (2012). Areas of Public Forest land fall within the definition of virgin land under the VFV Law. The Central Committee for the Management of Vacant, Fallow and Virgin Lands, headed by the Minister of the Ministry of Agriculture and Irrigation (MoAI), may make a request from the Ministry of Environmental Conservation and Forestry (MoECaF) that these lands be used for State economic development under the VFV Law. Currently the most common land use in public forest land is by smallholder farmers in the uplands practicing rotational fallow agriculture.

### ***Farmland***

“Farmland” is a classification of land defined in the Farmland Law. Article 3 of the Farmland Law states that “farmland is areas of land designated as paddy land, ya land, kiang land, perennial plant land, taungya land, dhani land, garden land, land for growing of vegetables and flowers, and alluvial island land.” The Law further states in this definition that farmland “does not include land situated within any town or village boundary used for dwelling, religious buildings and premises, and public-owned land which is not used for agriculture purposes”.

The Farmland Law specifically defines paddy land in Article 3 as “land mainly for growing irrigated or rain fed rice paddy.” The Law also specifically defines alluvial island land in the same Article as “land flooded yearly whose character and location varies in relation to the water channel.” The Farmland Law does not further define the other sub-classifications of farmland mentioned.

The sub-classifications of farmland have historically been used in order to control agricultural outputs of farmers and provide a basis for calculation of taxes (tax rates based on agricultural land classifications). This classification system does not recognize customary land use and agricultural practices of many communities on what is commonly referred to as taungya (upland cultivation). It should be noted that the term used for ‘taungya land’ in the Farmland Law specifically refers to this land-use when it is not in a rotational fallow system.

Areas of farmland currently included in land surveys conducted by the Settlement and Land Records Department (SLRD) within the MoAI have some level of land tenure security due to formal recognition of land use rights by the Government. However in practice even when smallholder farmers have legal land tenure documents, their land is still often appropriated in the interests of the nation or the public as prescribed in the Farmland Law. Many farmers possess records that clearly show they have been cultivating and paying taxes on these lands for some time. Some farmers possess what are classified as permanent land use rights to these lands, which appear to be primarily for areas of irrigated paddy lands. Other areas of land often have land use rights classified in tax payment documents as being “non-permanent”. The non-permanent designation has made the land tenure security of these lands less certain.

### ***Virgin Land***

“Virgin land” is defined in Article 2 of the VFV Law as “new land or other woodland, in which cultivation has never been done before.” The land may or may not be covered in forest, and includes land that has been “cancelled legally from Reserved Forest land, Grazing land and Fisheries Ponds.” These areas fall outside of the land surveys conducted by the SLRD. There are mechanisms by which Community Forestry arrangements can be secured for these areas of land. The Forestry Department of MoECaF and the MoAI currently have overlapping authority over these areas of land.

The access and land use tenure claims to these areas of land generally do not appear to be very secure, due to the lack of documentation to back up land use claims.

### ***Vacant and Fallow Land***

These are areas of land defined in Article 2 of the VFV Law as “land which was cultivated by the tenant before, and then that land was abandoned by the tenant for any reason, not only the State designated land but also for agriculture or livestock breeding purposes.” The majority of these areas of land fall outside of the land surveys conducted by the SLRD. Due to the way that “vacant and fallow” land is defined, many areas of land that are under active cultivation by farmers and community groups utilizing these lands in a traditional or customary manner could be classified as “vacant and fallow”.

The land tenure claims to these lands are very weak, due to the lack of documentation to back up land use claims.

### ***Grazing Land***

Classification and management of grazing lands in Myanmar is set out in the Upper Burma Land Revenue Regulations (1889). Grazing land is not mentioned in the Farmland Law, though brief mention is made of these lands in the definition of “virgin land” under the VFV Law.

**Table 1: Rural Land Classification, Control, Conflict and Tenure Security**

<b>Land Classification</b>	<b>Delegated Government Trustee Authorities</b>	<b>Nature of Land Conflicts</b>	<b>Tenure Security</b>
Reserved Forest Land	Department of Forestry MoECaF	Agro-industrial crop developments (forest related and non-forest)	Weak tenure security of rural populations farming or otherwise traditionally using these lands.
Protected Public Forest Land	Department of Forestry MoECaF	Non-recognition of customary communal use of Protected Forest lands, encroachment.	Weak tenure security of rural populations farming or otherwise traditionally using these lands.
Public Forest Land (Virgin Land)	Department of Forestry MoECaF MoAI CCVFV SLRD GAD	Agro-industrial developments, non-recognition of customary communal use of Public Forest- lands, encroachment.	Weak tenure security of rural populations farming or otherwise traditionally using these lands which are often in upland areas. No tenure or tax records issued.

Vacant and Fallow Land	MoAI SLRD CCVFV GAD	Agro-industrial developments, non-recognition of customary communal land use, conflict between grazing land use and agriculture.	Weak tenure security of rural populations farming or otherwise traditionally using these lands which are often in upland areas. No tenure or tax records issued.
Farmland	MoAI SLRD GAD FAB	Agro-industrial developments, non-recognition of customary communal land use, buying and selling of land outside of prescribed rules or procedures, land conflicts between individual farmers.	Greater land tenure security than on other land classifications due to existing records of land use rights. Land tenure still weak due to lack of information on land valuation, poor record keeping, ability of Government to easily rescind land use rights or acquire land for other purposes, including non-public purposes (business promotion).

### **Primary Statutory Government Entities Related to the Farmland and VFV Laws**

The following is a brief overview of statutory Government entities directly related to Farmland and VFV Laws implementation. In addition, a description of recently created executive and legislative branch fact finding bodies that are examining issues of land classification and land acquisition is discussed. Their findings will directly impact on the implementation of the Farmland and VFV Laws, and drafting and enactment of a comprehensive Land Management Policy and Land Law in the future.

#### ***Ministry of Agriculture and Irrigation***

The MoAI is responsible for implementing national agriculture policy (excluding forestry), providing irrigation infrastructure for rice production, and agricultural extension services. Government line agencies established within the MoAI are responsible for implementation of both the Farmland and VFV Laws.

#### ***State Land Records Department***

This Government line agency located within MoAI is responsible for updating and maintaining land records, especially for lands used by farmers for agricultural and settlement purposes. With passage of the new Farmland and VFV Laws, this Department will be responsible for recording and registering interests in farmland and VFV land, and issuing Land Use Certificates to farmers who have received approval to use farmland from the Farmland Administration Body at the appropriate level.

#### ***Ministry of Environmental Conservation and Forestry***

This Ministry is responsible for issues relating to protection of the environment, implementing rules relating to Environmental and Social Impact Assessments (ESIA), and management of forestlands and

forest resources in the country. MoECaF has overlapping authority over lands classified as Public Forest in the Forest Law, and Virgin Land under the VFV Law.

### ***Forestry Department***

A line agency within MoECaF, the Forestry Department is the primary authority responsible for administering Reserved Forest lands. The Forestry Department also has delegated authority over areas of land classified as Protected Public Forest and Public Forest.

### ***Farmland Administration Body***

The Farmland Administration Body (FAB) is a line agency within the MoAI designated under the Farmland Law (2012). This replaces the former Land Committee which had a similar mandate. The structure of the FAB at Central level is described below.

The Minister of MoAI is the chairperson; the Deputy Minister of MoAI is deputy chairperson; the Director General of Settlement and Land Record Department is the secretary. This structure is replicated at the State / Region level where the Chief of the State / Region is the chairperson of the Committee; and the head of SLRD at the State / Region level is the secretary. At both the district and township level the head of General Administrative Department is the chairperson and the head of SLRD will be the secretary. All other departments associated with land are part of FABs at different levels.

The precise roles and responsibilities of FABs at various administrative levels of Government (Ward, Village Tract, Township, District, Region, and State) are not clearly defined. However duties of the FAB at the Central level are listed in Article 17 of the Farmland Law.

It will be the responsibility of the FAB at the Central Level to delegate specific roles and responsibilities to lower level FABs. FABs are responsible for:

- Reviewing applications for the use of farmland;
- Formally recognizing/approving rights to use farmland;
- Submitting approved rights to use farmland to the SLRD for registration;
- Conducting valuations of farmland for tax and acquisition compensation purposes;
- Issuing warnings, imposing penalties or rescinding use rights if conditions for use of farmland are not met; and,
- Resolve disputes that arise over the allocation and use of farmland use rights.

### ***Central Committee for the Management of Vacant, Fallow and Virgin Lands***

The Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFV) is a national level multi-ministerial committee formed at the President's discretion, in accordance with Article 3 of the VFV Law. The Minister of MoAI shall be appointed as Chairperson of the CCVFV; and the Director General of the SLRD acts as the Secretary of the CCVFV. The President may appoint individuals from various Government organs, or other suitable persons of his choosing, as members of the CCVFV.

The CCVFV oversees the granting and monitoring of use rights over VFV lands in the country for agriculture, mining and “allowable other purposes” under the law, in coordination with concerned Ministries and Regional or State Governments. The CCVFV is specifically responsible to:<sup>12</sup>

- Receive recommendations for the use of VFV land from various Ministries and Regional or State Governments;
- Receive applications for the use of VFV land from public citizens, private sector investors, government entities and NGOs;
- Reject applications or Grant “Permission Orders” for the use of VFV lands;
- Rescind or modify rights to use VFV land;
- Coordinate with MoECaF and other Ministries to prevent damage or destruction to forest lands and conserve natural regions, watershed areas and natural fisheries;
- Submit semi-annual monitoring reports on the use of VFV to the Cabinet of the Union Government;
- Provide input on the formulation of National Land Policy;
- Fix the rate of security fees to be deposited for use of VFV land;
- Fix the annual land revenue rate and suitable period for tax exemption in connection with the use of VFV land;
- Organize and delegate responsibilities to Task Forces and Special Groups for use of VFV land at the Regional and State level of Government;<sup>13</sup>
- Help those with rights to VFV land secure assistance upon request (technical assistance, inputs, loans etc.);
- Resolve disputes related to the use of VFV land in coordination with other Government departments and agencies;<sup>14</sup>

### ***Cabinet Level and Parliamentary Committees / Commissions on Land***

The Legislative and Executive branches of Government have recognized that there are serious issues relating to land classification, land tenure security and land conflict in the country. In response, one committee and one commission have been established. While these bodies do not have authority to directly address the problems they are examining, the information they acquire will hopefully be used to inform and further develop the legislative and policy frameworks relating to land management in the country. Information gathered will also help Parliament to provide recommendations for resolving land grab issues to the executive branch of Government.

- Land Allotment and Utilization Scrutiny Committee (established July 2012):  
This is a cabinet level committee within the executive branch of Government, lead by the Ministry of Environmental Conservation and Forestry. The Committee’s work will focus on issues related to national land-use policy, land-use planning and allocation of land for investment including in agricultural projects in the country.
- Land Confiscation Inquiry Commission (established July 2012):

---

<sup>12</sup> Roles and responsibilities of the CCVFV are not clearly defined within a specific article or chapter of the VFV Law, but spread throughout various articles in the Law.

<sup>13</sup> There is only brief mention of the Task Force and Special Groups made in Article 3

<sup>14</sup> According to Article 25 of the VFV Law, the CCVFV must work with relevant Government departments and organizations in order to protect the interests of farmers that are already utilizing lands, whether formally recognized or not, in areas where a right to use VFV land has been granted.

This Parliamentary commission's work will focus on issues relating to land confiscation in the country, specifically whether land confiscation has been carried out in compliance with existing law, if land acquired has been utilized for its intended purpose, and if adequate compensation was paid to those whose land was acquired.<sup>15</sup>

## **Land Confiscation**

Much of the existing and emerging land conflicts in the country are due to what this report refers to as "land confiscation." Land confiscation is the action of taking or seizing someone's land property through legal or other means. Land confiscation can occur as a result of the buying or leasing of land property rights by domestic and transnational companies, Government authorities, the military and individuals. Land confiscation can also occur when the Government takes land for a public or business purpose, such as development of a public infrastructure project or other development.<sup>16</sup> It is important to understand this phenomenon and the impacts it is having in the Myanmar context. Safeguards can be put in place to effectively protect against the worst aspects of land confiscation, while still allowing for sustainable economic development in the country that protects the rights of all citizens.

The following is a brief overview of the various types of rural land confiscation being reported in the country, which are impacting on smallholder farmers' land tenure security. Uncontrolled land confiscation will likely lead to a rise in land conflict in the country, which if not carefully managed could negatively impact on social stability and economic development.

### ***State Sponsored Agriculture Projects***

While often initiated with good intention, there has been a long history of State sponsored agriculture projects that have resulted in farmers being dispossessed from lands they have used productively for generations. These projects have been promoted for a range of agricultural products, including coffee, mulberry, rubber, timber, cassava, palm oil, jatropha, etc. Projects have often not been developed according to the original purpose, have had few if any benefits for local communities and project developers have been known to redistribute land allocated for other purposes to other parties. Land acquired for State sponsored projects sometimes ends up lying fallow, in violation of the terms and conditions of the project.<sup>17</sup> This type of land confiscation has historically been quite common.<sup>18</sup>

### ***Establishment of Agro-Industrial Plantations by Private Entities***

Legal mechanisms to establish agro-industrial plantations on land under lease arrangements from the State have existed in Myanmar since the mid-nineteenth century.<sup>19</sup> In recent years, establishment of these agriculture enterprises have been accomplished through the *Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land (1991)*. The rules for allocating agricultural land for agro-industrial plantation development have now been incorporated into the VFV Law (2012), which is discussed in detail below. As with State sponsored agriculture projects, many of these agro-industrial plantation leases are not developed according to the

---

<sup>15</sup> The legislative branch of government has recently formed a number of Parliamentary committees, many of which appear to have overlapping mandates or focus of interest.

<sup>16</sup> This is commonly referred to as "land acquisition," as defined by the Land Acquisition Act (1894).

<sup>17</sup> According to Article 22 of the VFV Law (2012), failure to comply with the terms of a land use grant shall lead to forfeiture of any security fees deposited, and the right of land use granted shall be revoked.

<sup>18</sup> It should be noted that conditions outlined in Article 22 of the VFV Law (2012) shall be applied retroactively to any projects on VFV lands initiated prior to 2012.

<sup>19</sup> *Rules for the Grant of Waste Land* was initially enacted in 1861.

terms of their lease agreements, or lands within development areas lie fallow. Smallholder farmers, whose land use rights were not adequately protected under the weak tenure arrangements of the old legal frameworks<sup>20</sup>, are often already productively utilizing the lands identified for use in these agricultural developments. These developments result in land being confiscated with little or no regard for existing customary land tenure arrangements. Without proper safeguards in place, these types of developments are likely to lead to a rise in land related conflicts, leading to social instability and presenting a political liability for the Government.

### ***Large Industrial Development Projects***

The development of State sponsored industrial projects can lead to smallholder farmers' land being confiscated. While historically less common than other forms of land confiscation, it is likely that there will be an increase in the development of such projects in the future as the country is integrated into regional and global economies, and Special Economic Zones are developed.

### ***Military Settlements***

Acquisition of land for military purposes has historically been common. These settlements have been established for a variety of purposes. Establishment of such settlement often leads to land confiscation in rural areas.

### ***Large Public Infrastructure Projects***

While land conflicts associated with these types of projects have been limited in the past, it is likely that there will be an increase in the development of such projects in the future. Roads, pipelines, hydropower and other development projects are already being planned and developed, so this is an area where conflict associated with land confiscation is likely.

### ***Urban Expansion***

As the country's population increases, and industrial and service economies develop over time, it is inevitable that there will be an increase in urban and peri-urban expansion and development. This will lead to changes in land use and the loss of agricultural land currently used by small-holder farmers.

### ***Land Speculation by Individuals***

Often tied to other land developments listed above, land speculation by individuals in the country is an increasing problem that can lead to conflict if not properly managed and controlled. Clear rules relating to the buying, selling and registration of land, mechanisms used to tax land transfers and speculation, and the recognition of communal lands need to be put into place to address this issue.

---

<sup>20</sup> Particularly the Land Nationalization Act (1953) and the Disposal of Tenancies Law (1963).

## Chapter 4

### **Overview of Laws Relating to Rural Land Management in Myanmar**

In addition to the recently enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law (VFV Law), there are a number of other laws in Myanmar that directly impact rural land management in the country. This section provides a brief overview of some of the most relevant pieces of legislation and describes why they are relevant to this analysis.

It should be noted that enactment of the new Farmland Law rescinded three previously existing laws. The previous system was essentially defined by the State holding all land rights, under which leasehold rights could be granted to farmers (weak tenure security), or landlord-tenant farmer arrangements were established with those defined as farmers paying rent to Government. These legislative acts created a system where the Government could exert a high level of control over what crops farmers and farm laborers were allowed to grow on the lands allocated for their use. These legislative arrangements are briefly discussed below.

#### **Laws Recently Rescinded**

These include the following laws, (fuller details are in Annex 2).

*Foreign Investment Law (1988)* which provided the framework for foreign investment in Myanmar, including investment in business projects involving land.

*Land Nationalization Act (1953)* which was established to abolish landlordism by those who had acquired large tracts of land by nationalizing this land and establishing a system of land distribution in the country.

*Disposal of Tenancies Law (1963)* which created a landlord and tenant system for the management of agricultural land in the country that was not distributed under leasehold arrangements.

*Law Safeguarding Peasants Rights (1963)* which was intended to protect farmers from creditors attempting to foreclose on land use property that had been used to secure debts.

#### **Relevant Laws Currently in Effect**

##### ***Customary Land Law***

Access to land for the rural poor is often based on informal institutions and custom which together are known as customary law. Customary law is the written and unwritten rules which have developed from the customs and traditions of communities. These customs and traditions are known to community members; followed by community members and enforced by them. Customary law in regard to land, usually incorporates the rights of community members in respect of land tenure, land-use, sale and inheritance of land. Customary law varies between communities and needs to be recognized and given equal status as statutory law.

Tenure systems may be collective, as when a village or household (clan) group works together to prepare a large contiguous area of land for cultivation each year, or manages a collective forest. Tenure may be based on hereditary ownership in which each household has rights to a set of fields or forest area, and decides on their own each year which fields they will cultivate. Or, the tenure system may be a combination of collective and individual. Reflective of the diversity of upland production systems, tenure institutions apply not only to agricultural lands. A village may organize a rotational grazing system, protect its watershed forests from cutting, or regulate valuable seasonal resources such as bamboo shoots.

Aspects of customary law, including traditional tenure systems can be explicitly allowed for in statutory law and were upheld under the British Frontier Areas Administration. Laws were enacted which detailed the specific regulations applying to each area. The 1960 reprint of the Kachin Hill Tract Manual (1895), stated “that there were two kinds of laws applicable in the Hill Tracts in the Myitkyina and Bhamo Districts. One set of laws applies personally to the races mentioned....and another set of laws extended by...the Government of Burma Act 1935 applies extra-territorially”. This example shows that customary law was applicable to the specified ethnic groups in the designated geographic areas, while statutory law applied to non-members of these groups in the same areas.

### ***Constitution (2008)***

The Constitution is the supreme law of the land. All laws, rules, regulations and policies in the country must comply with the Constitution. The Constitution has several provisions that are highly relevant to recent concerns regarding land tenure security issues in the country. The most important of these are the adoption of a market economy, in which the ownership and protection of private land property rights are clearly recognized (*Articles 35, 37, 356 and 372*). In addition, it can be interpreted that the Constitution guarantees the right of citizens to appeal decisions made regarding land rights to an independent judiciary (*Articles 11 and 19*). It should also be noted that government is required to “enact necessary laws to protect the rights of the peasants” (*Article 23*). As such, subsidiary legislation should specifically state that persons affected by administrative decisions relating to land should have the right to appeal such decisions after administrative remedies have been exhausted.

A weakness in the Constitution regarding land tenure security is the provision that the government is the ultimate owner of all lands in the country (*Article 37*). This means that only land use property rights may be granted, and that the government reserves the power to rescind these rights. The Government’s right to rescind land use property rights should be limited to takings that serve a clear public purpose in the subsidiary legal framework. This concept will be discussed in more detail in the recommendations section below.

Finally, those working on land tenure security issues should understand that the Constitution establishes a republic, in which states, regions, divisions and zones have all been granted legislative authority (*Articles 188 and 196*).<sup>21</sup> These Government bodies may enact laws that add additional safeguards to land tenure security, as long as they do not directly conflict with the laws, rules and regulations enacted at the national level of government, and the additional safeguards fit within the boundaries established in Schedules 2 and 3 of the Constitution.

### ***Foreign Investment Law (2012)***

---

<sup>21</sup> States and regions are considered as existing at the same level in the overall governance hierarchy in the country.

This Law provides the framework for foreign investment in Myanmar, which includes investment in business projects involving land. The current Law allows for foreign investment to the extent of 100% of foreign capital with restrictions in some cases (*Article 9*). The Law indicates that land may be utilized in investments for agriculture and livestock rearing in contracting partnership arrangements between local and foreign investors (*Article 35*). If a joint venture is formed with a local business, then the ratio of foreign capital to local capital invested is to be agreed between the two parties. The Law defines land lease periods with foreign investors able to lease land from the government or from authorized private owners for up to 50 years, depending on the type and size of the investment, and the deal can be extended twice, for 10 years each time (*Article 31 & 32*). Furthermore it is stated that leases longer than the standard 50 years may be granted for investments in areas of the country which are designated as less developed (*Article 36*).

#### ***Environment Conservation Law (2012)***

This Law is primarily concerned with the control of pollutants in the environment, and does not directly address land tenure security issues. The Law views land as a natural resource that should be used sustainably and protected from pollution and degradation. The Law does call for the development of an ESIA mechanism in the country, which could help to mitigate potential negative environmental or social impacts relating to loss of land tenure security as a result of any proposed development projects in the country (*Article 7*).

#### ***Protection of Wildlife and Conservation of Natural Areas Law (1994)***

This Law is primarily concerned with the conservation of wildlife and their habitats, and compliance with relevant international treaties such as CITES and the Convention on Biological Diversity. It is important in that it provides a rudimentary land classification system for natural areas that are protected (*Article 7*). Natural areas fall under the classification of Public Protected Forest land found in the Forest Law (1992).

The Law provides a mechanism for designating land as a natural area. The Law also provides a mechanism for compensating individuals or businesses who have existing rights to the land under relevant land acquisition laws (*Article 8*), and allows the Director General of the Forest Department to “make provisions for reasonable rights and privileges in respect of the affected rights of the people in the region” where the natural area is established (*Article 11*). The Law also contains penalty provisions for anyone who causes damage to any ecosystems within a natural area (*Article 36*).

#### ***Forest Law (1992)***

The Forest Law covers all forest resources in the country, including those that are protected (Reserved Forest land and Protected Public Forest land) and those that exist on Public Forest lands covered by the Vacant, Fallow and Virgin Lands Management Law (2012). While the law indicates that the Minister of the Ministry of Environmental Conservation and Forestry may change the classification of any area of Reserved Forest land to Public Protected Forest Land, with approval of the Government, there is no clear procedure as to how this would be accomplished or what standards are to be applied (*Article 8*). There also appears to be no mechanism in the existing law to declassify areas of Reserved Forest land so that they may be utilized for another purpose, such as agricultural land to be allocated for smallholder farmers. In fact, the Law clearly states that any areas of Reserved Forest existing under the Forest Act of 1902 shall remain as Reserved Forest lands (*Article 56*).

Various rights of use over forestlands may be granted under the Forest Law, such as for Village Firewood Plantations or Local Supply Plantation, but the procedure for how this is accomplished is not

clear in the current Law (*Chapter V*). There are also penalty provisions that may be applied against anyone that is found to be trespassing or encroaching on areas of Reserved Forest land (*Article 40*).

The current Forest Law will most likely be replaced with a new Law in late 2012 or early 2013. It is predicted that the new law will contain specific provisions for recognizing community forestry (CF).

***Duties and Rights of the Central Committee for the Management of Culturable Land, Fallow Land and Waste Land (1991)***

This instruction is primarily concerned with the promotion of large-scale commercial agricultural enterprises, including those established by State-owned economic organizations, cooperative societies, joint-ventures and private individuals. This brief instruction details support from government for these enterprises to obtain loans and to acquire technology and quality seeds (*Article 2*). Limits on land grants are stated as up to 5,000 acres, for lease periods of up to 30 years (*Article 3*).

No mention is made of customary land tenure regimes and it is unclear how land tenure rights detailed in other laws interface with this instruction. Provisions on maximum sizes for land grants in this instruction are not harmonized with those contained in the VFV Law (2012). The VFV Law (2012) is more comprehensive and it is not clear if this instruction has been formally repealed.

***Land Acquisition Act (1894)***

This law provides the basis for payment of compensation when land is acquired for a public purpose. The procedures and provisions in this Law are antiquated and are not well harmonized with the current governance frameworks in the country. The Law allows for the taking of land by the Government for a business purpose, as opposed to takings limited to a public purpose only, which raises concerns under the current Constitution. As discussed in detail later in this report, provisions and procedures relating to the acquisition of land for a public purpose should be incorporated into a comprehensive Land Law, and this existing Law should be repealed.

## Chapter 5

### Analysis of the Farmland Law (2012)

The Farmland Law attempts to put in place a system of securing rural land tenure through a land use certificate and registration system. In creating this system, the legislative branch of Government has created a private land use property right. Included in this land property right are the right to sell, right to exchange, right to access credit (encumber land with debt), right to inherit, and right to lease.

Under the Law, Land Use Certificates (LUC) recognizing rights granted will be issued to farmers by the newly created Farmland Administration Bodies (FABs), and registered by the SLRD, after payment of required fees. The process of how a farmer applies for an LUC, has his rights registered, and pays fees for the issuance of the LUC and registration of the land use right is not clearly spelled out in the Farmland Law. The legislative branch of Government only provided a very basic description of the Government entities involved in the process, and left implementation details and procedures for the executive branch of Government to define. The Farmland Law states that any changes in the status of a land use right, such as when it is encumbered with debt, transferred or inherited, must be properly registered.

The Farmland Law (*Article 34*) does appear to link to the VFV Law, permitting VFV lands to be reclassified as farmland when it is determined by an FAB that the use of land is stable. The VFV law does include provisions that recognize and respect existing use of land by farmers, even if there has previously been no formal recognition of the use by the Government.<sup>22</sup> In addition, the VFV law does permit application by local farmers to secure a “Permission Order” from a CCVFV for use of VFV land not already being used, which could then be re-classified as farmland under the Farmland Law.<sup>23</sup>

The tenure security provided under the law is weak, due to the fact that the Government retains ultimate ownership of all land, and can rescind land use rights if the conditions of use are not met. If a farmer breaches conditions of use, such as by not informing the FAB of reasons for land remaining fallow or by building structures without permission, the FAB may impose fines, rescind land use rights, or forcibly remove any structures constructed.

Disputes relating to allocation and use of farmland are to be heard and settled by FABs. Decisions of FABs may be appealed to a higher level of the FAB structure, up to the State or Regional level. Decisions made by Regional or State level FABs on land disputes are final. While disputes relating to inheritance of land use rights may be heard by a court of law, there is no mechanism in the Farmland Law that allows disputes involving allocation or use of farmland to be heard by the judicial branch of Government.

The fact that decisions of the FAB may not be appealed to a court of law could be considered as unconstitutional, since the current Constitution does establish clear separation of powers between the legislative, executive and judicial branches of Government. It also means that the rights of smallholder farmers, including their right to an independent appeal process will be denied. The past history of the functioning of the former Land Committees demonstrates that in only a few cases did

---

<sup>22</sup> Article 25, VFV Law (2012)

<sup>23</sup> Article 10(a)(4), VFV Law (2012)

they act as a mechanism to recognize the interests and rights of smallholder farmers and it is important that the new FABs fully embrace this role.

The Law does recognize that compensation must be paid if the Government takes land use rights for another purpose. It should be understood that the Land Acquisition Act (1894) and the subsidiary implementing rules and regulations under that Law ultimately control issues relating to Government takings, or acquisition, of land rights and the procedures for determining compensation. The Farmland Law does not appear to appeal or supersede any provisions of the Land Acquisition Act.<sup>24</sup>

### **How to Improve Implementation of the Farmland Law**

Drafting and enactment of a comprehensive Land Law, incorporating concepts relating to private land property rights found within the Farmland Law, is the ultimate solution for harmonization of the legal framework relating to land management in Myanmar. However steps can be taken immediately to improve implementation of the existing Farmland Law. It is essential that the implementing rules and regulations under the Farmland Law are carefully analyzed and understood, since the legislative branch left the details on implementation of the Law up to the executive branch of Government. Implementing rules and regulations are easier to amend than Laws enacted by Parliament, so lessons learned can be more quickly incorporated.

The following concepts should be considered for incorporation into the rules and regulations implementing the Farmland Law:

#### ***Overarching Principles:***

- Make implementing rules and regulations regarding ownership of land use rights which explicitly recognize the equal rights of women. Explicitly state a mechanism for joint ownership of land use rights between husband and wife.
- Recognize customary law in relation to land. Allow a mechanism for communal LUCs if desired by a group or community.
- Recognize farmer's freedom to farm. Only impose restrictions on what crop may be grown on lands where the Government provides irrigation systems for paddy cultivation.

#### ***Independent Legal Redress:***

- Create an independent administrative body to hear land disputes. This body must be easily accessible to small-holder farmers especially from upland areas, both in terms of language used, cost, and location. This body should be located beneath the President's office, and separate from the sectoral Ministries responsible for management of land resources and must have branches in all states and regions.
- Develop adjudication mechanisms which allow equitable resolution of land conflicts between smallholder farmers, the State, private sector and investors wishing to take their land-use rights.

#### ***Provide Legal Clarity:***

---

<sup>24</sup> Issues relating to compensation for loss of immovable property rights taken by the Government should be addressed through the Land Acquisition Act, or incorporated into a comprehensive Law on Land. They should not be handled piecemeal through a number of potentially conflicting or poorly harmonized sectoral laws relating to land use rights.

- Clarify the roles and responsibilities of FABs at various levels of Government and ensure farmers and civil society are represented in these bodies and the rights of smallholder farmers are guaranteed.
- Clearly define sub-classifications of farmland. Only “paddy land” and “alluvial land” are currently defined in the Law. The Government should consider moving away from rigid land sub-classifications to allow greater freedom of farmers to grow crops they choose to grow.
- Clearly describe a process for changing the classification of land.
- Provide clear mechanisms for the acquisition of land by the Government for a public purpose, and how fair market compensation should be calculated and paid prior to the acquisition.
- Clearly detail penalty provisions.

***Streamline Procedures:***

- Provide a single Government interface (one window service) for filing applications, changes to registration and payment of fees at the lowest possible level of Government.
- Maximize use of appropriate available technologies for the delineation, demarcation, mapping and registration of land use rights in order to reduce costs for creation of a land registry and to minimize the amount of time it takes to properly secure land property rights of farmers.

## Chapter 6

### Analysis of the Vacant, Fallow, Virgin Lands Management Law (2012)

The VFV law is essentially a repackaging of the old Rules for the Grant of Waste Land (1861), and virtually identical to the more recent Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land (1991). The Law creates a mechanism where public citizens, private sector investors, government entities and NGOs may submit an application to the newly created CCVFFV to lease VFV lands for agriculture developments, mining, and other purposes allowed by law. The law allows the CCVFFV to grant what can be considered as long-term leases on State land. VFV land that is leased may not be mortgaged, sold, sub-leased, divided or otherwise transferred without approval of the Government.<sup>25</sup>

The VFV Law allows leases of State land for a period of time up to 30 years.<sup>26</sup> The CCVFFV may allocate 5,000 acres at any one time, up to a cumulative maximum of 50,000 acres.<sup>27</sup> A lease may be rescinded by the CCVFFV if conditions of the lease are not met, such as when the State land granted is not developed in the time allotted.<sup>28</sup> The CCVFFV may determine instances where an area of land greater than 5,000 acres may be granted at one time, but the Law only provides limited guidance on when such exemptions may be made.

*Article 12* of the VFV Law does permit areas of VFV land to be leased to foreign investors or organizations consisting of foreign investors. The VFV Law does, however, give a priority preference for lease of these lands to citizens.<sup>29</sup>

While the provisions are not entirely clear as written, *Article 25* of the VFV Law indicates that the CCVFFV should work with relevant Government departments and organizations in order to protect the interests of farmers that are already utilizing lands, whether formally recognized or not, in areas where a right to use VFV land has been granted. *Article 25* does recognize that farmers are using VFV land without formal recognition by the Government. These provisions, in conjunction with language in the Farmland Law, allow for existing use of VFV land by farmers to be formally recognized by the Government, the land to be reclassified as farmland, and LUCs issued to farmers that have been using the land.<sup>30</sup>

The law also provides a mechanism for rural farmer families to apply for the use of VFV land not already utilized. A maximum area of 50 acres may be granted, based on the ability of the farmer family to develop and manage the land.

---

<sup>25</sup> Article 16, VFV Law (2012)

<sup>26</sup> Article 10 of the VFV Law covers issues relating to duration and size limitations on lease of State VFV lands.

<sup>27</sup> Grants of land for the development of orchards are limited to 3,000 acres at a time, with a maximum of 30,000 acres. 75% of the area granted must be developed prior to additional areas of land being granted for use.

<sup>28</sup> The provisions in the VFV Law (2012) relating to rescinding rights to use State land due to non-compliance with conditions are found in Chapter VI and Article 21.

<sup>29</sup> Leases permitted under the Foreign Investment Law may be granted “*in areas in which land development operations are unable to be carried out by citizens.*” Article 12, VFV Law (2012), emphasis added.

<sup>30</sup> Articles 8 and 34 of the Farmland Law (2012) appear to link to the VFV Law (2012), permitting VFV lands to be reclassified as farmland when it is determined by an FAB that that use of land is stable.

The VFV law appears to give the CCVFV a role in facilitating the resolution of disputes that may arise. There is nothing in the VFV Law that restricts appeals of decisions made regarding the use of VFV lands to the judicial branch of Government.

### **How to Improve Implementation of the VFV Law**

Drafting and enactment of a comprehensive Land Law, which incorporates concepts relating to the allocation and use of VFV lands, is the ultimate solution for harmonization of the legal framework relating to land management in Myanmar. Steps can be taken immediately to improve implementation of the existing VFV Law. It is essential that the implementing rules and regulations under the VFV Law are carefully analyzed and understood, since the legislative branch left many of the details on implementation of the Law up to the executive branch of Government. Implementing rules and regulations are easier to amend than Laws enacted by Parliament, so lessons learned can potentially be more quickly incorporated.

The following concepts should be considered for incorporation into the rules and regulations implementing the VFV Law:

#### ***Overarching Principles:***

- Make implementing rules and regulations for rights to work on and utilize VFV land which explicitly recognize the equal rights of women.
- Protection of existing productive land use, including the recognition of customary use<sup>31</sup> as productive use.
- Prioritization of land allocation to those in rural areas with no land for livelihood purposes, and farmers with inadequate amounts of land for subsistence purposes which can be converted to agriculture land after five years.<sup>32</sup>
- Principles of Free, Prior Informed Consent must be applied to any lease of VFV lands that might possibly interfere with the existing land claims of any citizens or groups.

#### ***Independent Legal Redress:***

- Create an independent dispute resolution mechanism in relation to the lease and use of VFV lands. This body must be easily accessible to smallholder farmers especially from upland areas both in terms of language used, cost, and location. This body should be located beneath the President's office, and separate from the sectoral Ministries responsible for management of land resources.
- Allow appeals of administrative decisions to the judicial branch of Government.
- Development of adjudication mechanisms which allow equitable resolution of land conflicts between smallholder farmers and the State, private sector and investors.

#### ***Provide Legal Clarity:***

- Clearly define standards for allowing the lease of VFV lands greater than 5,000 acres at one time, as limited in *Article 10*, should be incorporated into implementing rules and regulations.
- Inclusion of requirements that Environmental and Social Impact Assessments (ESIA) be conducted for industrial crop developments or leases of VFV land for non-agricultural uses

---

<sup>31</sup> Refer to explanation of customary law in section on Relevant Current Laws

<sup>32</sup> Strengthen language in Article 10(a)(4) and 25(b) in the VFV Law (2012), and strengthen linkages to Articles 8 and 34 of the Farmland Law (2012).

such as mining projects.<sup>33</sup> The results of ESIA's need to be made public and the recommendations must be followed.

- Prioritization of the recognition of land that is already being farmed by smallholders under customary or communal land arrangements as farmland. There needs to be a clear method which allows such land (including rotational agriculture) to not be categorized as fallow/vacant/virgin.
- Formulate a by-law to clarify how the CCVFV will recognize current land use as per *Article 25* of the VFV Law.

***Transparency and Accountability:***

- Creation of a publicly accessible record keeping mechanism for all VFV land lease agreements.
- The VFVL law has been enacted, and thus the CCVFV should enforce penalties on leaseholders who do not use their leased land according to original purpose stated in their lease agreements.

---

<sup>33</sup> The Environmental Conservation Law (2012), calls for the development of an ESIA mechanism. Separate sectoral ESIA mechanisms should not be developed in a piecemeal manner in order ensure proper law harmonization and equal due process under the law.

## Chapter 7

### **Recommendations for Improving the Law on Land**

The Government of Myanmar realizes that it needs to study and adopt new methods for the management of land resources that are appropriate for the unique cultural, historical and political realities in the country. The Government must embrace new approaches to land management, tenure security and land conflict resolution. What is needed is a holistic approach to land management in the country. Policies and laws need to be properly harmonized with one another. Processes need to be clear and easy to understand, and access to information and citizen inclusion in decision making processes should be identified as rights enshrined in the law. Such an approach will facilitate effective implementation and enforcement of the law. It will also lead to better decision making regarding the sustainable use of land resources. Most importantly this approach will provide a stable political environment for all stakeholders and help ensure the peaceful coexistence of all people in the country.

In order to realize a holistic approach to land management, it is recommended that a comprehensive Land Law is drafted and enacted in Myanmar. It is clear from meetings with various Government stakeholders that the Government has embraced this concept, and is in the process of researching how best to move forward to meet this goal.

In developing a comprehensive legal framework on land for the country, Government decision makers should keep in mind that the rights of citizens and economic growth are not mutually exclusive. In the modern day realm of sustainable development, a country cannot have one without the other.

The following are general recommendations relating to land management in Myanmar that the Government and other stakeholders should consider as they move forward:

#### ***Protection of Smallholder Rights***

- Protect against alienation or sale of communal land. Individuals in the community may have the right to leave communal arrangements, and be granted a portion of communal land for individual use or offered compensation for their share of the communal land use right.
- Protect land rights from foreclosure but allow land to be mortgaged in order to secure loans (debt secured by land, but cannot alienate land from owner of land use right; may only attach debt to fruits from the land, and impose restriction on any further encumbrance by debt until existing debt paid off. This mechanism encourages fiscal discipline combined with land tenure security).
- Prohibit civil courts from foreclosing on land in the interest of institutions or individuals holding debt instruments. Land property owner may sell land right in order to pay off debt if they so choose, but may not be forced to do so by any branch of the Government.
- Encourage use of tax mechanisms to discourage land speculation, discourage productive land sitting idle, and discourage accumulation of land. Adopt the use of a land transfer tax (paid by the entity purchasing land). Adopt the use of an idle land tax. Land property taxes could be scaled to amount of land owned by individuals or public entities.
- Utilise ESAs as a mechanism for identifying and minimizing negative impacts of development projects, and for stopping projects when negative impacts are too great. Ensure the mechanism works effectively to reduce environmental risk by harmonizing with existing environmental laws and related regulations.

### ***Improve Land Titling Procedures***

- Make illegal to buy or sell land that has not been properly registered (sale is not recognized under law, fines imposed for engaging in the purchase of land that has not been properly registered, placing due diligence burdens on those purchasing land rights).
- Develop separate systems for urban/peri-urban land titling, land allocation/registration of rural lands (land use certificates, communal title), and various mechanism for the long-term lease of State lands (community forestry, plantation developments, recreational or tourist facilities in rural areas, etc.).
- Nominal fess for initial registration of agricultural land and issuance of land certificates (allocation-registration procedure). Higher registration and title record fees would be charged for land transfers after this. Land registration fees should be the responsibility of the buyer.
- Embrace a system of single window government administrative services for land use allocation, registration, issuance of land use certificates, payment of land tax, payment of registration fees, etc. at the local level. This minimizes the chance for rent seeking, streamlines processes, and creates efficiency.
- Sectoral Land Agencies – embrace this concept to have ministries with delegated trustee authority over areas of land, but which do not have ‘ownership’ of the land and do not have sole control over rents gained from land under their jurisdiction. They are delegated responsibility for management, monitoring, and conveying information on areas of land resources for the Union. Delegations of responsibility should be specific and clear. Delegations come from the National Parliament (legislative branch of Government) and the Cabinet (executive branch of Government).

### ***Recognise Existing Land Use***

- Recognize and respect customary land use and customary law related to such land use. Allow for communal land use certificates granted to a community that includes farmland, housing areas, grazing land and forestlands.
- Recognise and protect in the legal framework, areas of Public Forest Land already used under customary communal law arrangements in order to avoid land conflict.
- Respect current land use (issue Land Use Certificates and register issuance of communal titles). Existing land use rights should be respected, and adequate safeguards put in place to ensure land conflicts do not increase in the future.
- Respect systems of rotational agricultural; land at rest should not be considered as fallow or idle if there is justifiable reason for the fallow period, and fallow period is reasonable in duration. These systems should be recognized as sustainable farming that requires fewer inputs. Land may not be confiscated if idle. Wood lots, commercial tree plantations, grazing areas, cut-and-carry fodder land, and agro-forestry systems shall not be considered as idle.

### ***Improve System of Land Classification***

- Adopt a nationwide system of land classification/zoning based on participatory land use planning at National, State/Regional, District, Township and Ward/Village Tract level. Technical administrative bodies should conduct land use planning at higher levels; draft land use plans should be made available for review and comment by smallholder farmers, civil society, government representatives, and the private sector. Finalized land use plans should be made freely accessible to the public and government authorities.

- Establish a clear mechanism for reclassifying areas of land to match their actual use and protect existing land tenure claims of rural farmers.
- Recognise grazing lands as a specific land classification, incorporated into land use plans, properly registered, and managed by local authorities as State land.
- Emphasize land use allocation for landless farmers and communities, with priority given to those with no land, or with insufficient land for subsistence purposes (less than five acres).

## **Chapter 8**

### **Conclusion**

Myanmar must take steps to improving its system of land management in the country after careful consultation with relevant stakeholders, including civil society. The land rights of smallholder farmers and communities must be respected in this process in order to avoid problems with land conflict and social instability, which could negatively impact on the economic and democratic development currently taking place in the country. It should recognize that there are weaknesses in the current versions of the Farmland Law and VFV Law that need to be addressed. While the drafting and enactment of a comprehensive policy on land and Land Law are strongly recommended, the Government should open up a process for improving the bye-laws for the Farmland and VFV Laws to an open consultative process.

## Annex

### **Annex 1 - International Standards on Involuntary Resettlement**

(adopted from World Bank Group's Resettlement Policy)

Involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. For these reasons, the overall objectives of Myanmar's policy on involuntary resettlement should be as follows:

- (a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.
- (b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- (c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

## **Annex 2 - Laws Recently Rescinded**

### ***Foreign Investment Law (1988)***

This Law provided the framework for foreign investment in Myanmar, including investment in business projects involving land. The Law allowed for foreign investment to the extent of 100% of foreign capital. If a joint venture was formed with a local business, then foreign investment had to be at least 35% of the total capital invested. While the Law did not indicate that land may be utilized in investments, the procedures implemented under the Law clearly stated that proposed investments had to indicate the type and area of land required for the investment. There were no limitations stated on the use of land in the Law.

### ***Land Nationalization Act (1953)***

The Land Nationalization Act was established to abolish landlordism by those who had acquired large tracts of land by nationalizing this land and establishing a system of land distribution in the country. Land distribution by the Government was managed under a mechanism of lease, with the rate of lease based on the type of agricultural land that was distributed. The lease rate was essentially an annual tax that farmers had to pay, based on the type of land they leased. It was illegal to mortgage, sell or transfer leasehold rights to land under this act. The status of the lease of lands distributed and managed by the Government could be classified as temporary or permanent, but even permanent leasehold rights could be rescinded if the farmers holding the leasehold rights to land did not meet the terms of the lease. As such, the Land Nationalization act provided a weak form of tenure security for farmers.

The Law allowed for the establishment of Agriculturalist Associations, which were essentially trade associations currently established under the Myanmar Chamber of Commerce and defined by agricultural outputs (Peas & Bean Association, Cotton Association, etc.). The Law also established Land Management Committees to oversee the distribution and use of agricultural lands.

The Law specifically barred the Civil Courts from having authority to review decisions made under its provisions.

### ***Disposal of Tenancies Law (1963)***

This Law created a landlord and tenant system for the management of agricultural land in the country that was not distributed under leasehold arrangements described above. The Law stated that only the Government, or a party designated by the Government, could be designated as a landlord over land. The Law established a system for the allocation of land to “tenants” who could work the land as laborers (disposal of tenancy), and created a mechanism for the charging of rents that tenants would have to pay for lands “disposed” in this manner for their use. Priority for the allocation of land was given to poor laborers over rich laborers. Alluvial lands were included in this distribution scheme. Land Management Committees were responsible for overseeing the allocation of land to the tenants, the collection of rents and assuring that land was utilized in a productive manner.

This Government managed landlord-tenant system over agricultural land ran in parallel to the agricultural land lease distribution system established under the Land Nationalization Act (1953), and utilized the same system of Land Management Committees to oversee lands that fell under this arrangement.

The Law specifically barred the Civil Courts from having authority to review decisions made under its provisions.

### ***Law Safeguarding Peasants Rights (1963)***

There seems to be some confusion about the actual protections this Law previously provided to peasants with rights to agricultural land in the country. The Law was only two pages long, and simply stated that Civil Courts could not issue warrants or orders that would confiscate land use rights, or confiscate any other property associated with the land rights in question. The Law was intended to protect farmers from creditors attempting to foreclose on land use property that had been used to secure debts. The Law did not provide any protections relating to inheritance right disputes, nor did it protect farmers from Government takings of land under provisions found in the Land Acquisition Act (1894) or other laws.

The Law had not been enforced for some time, due primarily to the fact that it had long been illegal to encumber land rights with debts from unregulated moneylenders. The Law appeared to be unconstitutional under provisions found in the most recent Constitution that establish an independent judicial branch of Government. With enactment of the new Farmland Law (2012), which allows farmers to encumber their land use property rights with debt, there now exists a need to provide reasonable protections to farmers that incur debt on their land in order to access credit at reasonable rates, and the accumulation of land by those entities legally allowed to offer credit (mortgages) on land<sup>34</sup>.

---

<sup>34</sup> This can be done by requiring regulated licensed creditors who hold mortgages to dispose of land use property rights through court ordered foreclosure sale, only after other reasonable administrative remedies for seeking repayment of debt have been exhausted. In this way, the country can ensure that the historical situation where moneylenders secured large tracts of agricultural land will not be repeated.

### **Annex 3 - Land Management Lessons From Other Countries in the Region**

The Government of Myanmar should learn lessons from their neighbors in the region. There is much happening in relation to land reform in the region, and there are serious problems relating to land conflict and land acquisition that the Government of Myanmar should make sure they are informed about. Engagement with civil society organizations working on land issues in the region is strongly encouraged in order to learn more about specific problems that are being encountered.

#### **Cambodia**

Cambodia has faced some very difficult and unique development issues after emerging from a quarter century of civil war and conflict. While the Government of Myanmar can learn lessons from some aspects of their land management system that are working, they should also pay close attention to Cambodia's mistakes, which are leading to serious problems relating to land conflict and social instability in the country.

Land acquisition and resulting land conflict is a serious problem in Cambodia, particularly with regards to the uncontrolled expansion of large agro-industrial concessions in the country. These have led to the destruction of large areas of Cambodia's Permanent Forest Reserves and Protected Areas, and have led to serious problems relating to farmers having no or insufficient areas of land to farm. Traditional livelihood systems have been destroyed in many areas, without being replaced by any alternative livelihood systems.

In terms of the legal system, Cambodia has put in place a solid framework for land management and land allocation in the country, but there has been a lack of political will to properly implement these systems in a manner that respects the rights of citizens.

Cambodia has adopted a cadastral land registry system, in which private land and property rights are recognized. In areas where land property rights have actually been properly registered in a systematic manner, the system works. The problem is that many people have not had their rights properly registered, and they suffer from insecure land tenure and pressures from rampant land acquisition.

Farmers do have access to micro-finance credit, which has been successfully supporting rural farmers develop their lands and avoid stress sales of land property rights. The default rates on micro-finance loans are reported as being very low.

Cambodia has had historical law harmonization problems in relation to land management and planning, particularly regarding overlapping authority of various government bodies.

One of the biggest problems in Cambodia is that the Government focused first, and almost exclusively, on registration of land property rights in urban and peri-urban areas. The Government should have simultaneously focused on securing land tenure security of rural populations in order to avoid many of the problems the country is now facing with land conflict and social instability.

The Government has put in place legal mechanisms for the recognition of communal land property rights of minority ethnic communities.

## **Laos**

Laos faces many of the same problems that Cambodia is facing with rampant land acquisition, land conflict and rising social instability.

It is in this context the Government of Lao PDR is reviewing and revising various policies and legislation pertaining to land and natural resources. This process started in 2011, and it is planned that a revision of land use policies will be completed by the end of 2012 and related legislation by the following July. Once this is complete, the revision of other related policies and regulations such as for agriculture, forestry, mining, and water will take place.

The Committee for Economy, Planning and Finance of the National Assembly of Lao PDR has identified that the cross cutting and cross-sectoral issues associated with land including tenure, ownership, titling, leasing, and other land use types pose challenges and there is a need to take a strategic view and formulate policies to ensure that the various competing forces both economic and social are balanced to both maximize growth and alleviate poverty in Lao PDR.

Some of the key concerns, identified by the Committee for Economy, Planning and Finance of the National Assembly of Lao PDR include:

- Ensuring that the vast majority of Lao households both urban and rural areas have secure land rights for example acknowledgement of traditional land rights to their land in the form of officially registered land user rights before land is opened up to foreign investors;
- Ensuring clarity and consistency in the legal framework – laws and implementing guidelines;
- Ensuring effective institutional and administrative capacity at central and local levels to administer and monitor land transactions;
- Raising awareness amongst citizens about the opportunities and risks associated with land ownership before foreign investors are invited to come to Lao PDR; and
- Ensuring transparency in all land related transactions so that citizens and local communities can monitor how all laws and regulations are being implemented – effectively performing the “watchdog” function at local level.

Laos does recognize the communal land use rights of minority ethnic communities, including rights over forestland resources in the communal land allocations.

Land use property rights are recognized. There is a mechanism in the law in place for the issuance of Land Use Certificates, and access to capital is allowed.

## **Thailand**

Thailand has historically used allocation of land and forest resources to rural populations successfully as a means to ensure political stability. In recent years, issues relating to land acquisition and resulting land conflict have begun to rise. Some of the biggest problems are in areas where ethnic minority groups have traditionally used land resources sustainably for generations, but are now losing their rights to land. Thailand does recognize the ownership private property rights of citizens.

One of the most important aspects of Thailand that Myanmar could learn from is how it allows for public participation in development processes, which is enshrined in its Constitution, which has gone through a series of important developments over the past twenty years.

The 1997 Constitution explicitly recognized the rights of individuals as well as communities to directly participate in the conservation, preservation and use of natural resources, and the protection, promotion and preservation of environmental quality.<sup>35</sup> Additional provisions require any project or activity that may seriously affect the environment, natural resources or the health of the community be prohibited unless environmental impact and health assessment reports are properly prepared, public hearings are held, and experts' opinions are secured before final approval is granted.<sup>36</sup> The rights of individuals and communities to sue state agencies to perform their duties in order to give effect to these rights, and creation of an Administrative Court to hear such cases, were also included in the changes.<sup>37</sup> These changes increased the role of citizens and civil society in environmental matters, helped to improve access to environmental justice, and contributed to the development of environmental jurisprudence in Thailand.

The most recent Constitution (2007) built upon changes made in 1997 by making it a requirement of the state to support, maintain and protect environmental quality pursuant to a principle of sustainable development, as well as to control and eliminate pollution sources that affect individuals' health, well-being and quality of life, and allowing individuals, local communities, and administrative organization to participate in formulating operational plans.<sup>38</sup> It also protects an individual's right to receive information, explanation and reasons from the state regarding projects or activities that may affect environmental quality, health, quality of life or other interests of the individual or the community, as well as the right to express opinions over these issue to the state.<sup>39</sup> Finally, the 2007 Constitution affords the right of individuals to directly file a claim with the Constitutional Court in case their constitutional rights or freedoms, which include their rights to participate in protecting their environment,<sup>40</sup> are violated and after individuals have exhausted all other available remedies.

## **Vietnam**

Like many of its neighbors, Vietnam faces issues relating to land acquisition and conflict in the country. Many of these issues stem from issues relating to conflict over the rights of State Owned Enterprises and smallholder farmers over the access and use of land. There are also serious issues relating to how compensation has been calculated for the loss of land use rights in the face of economic development pressures. Land can be acquired by the Government for economic development purposes, which has contributed to a rise in land conflict and social instability in the country.

Other problems in Vietnam's land management systems include a lack of gender neutrality in the granting of land rights, lack of freedom to farm, insufficient areas of land allocated to farmers for livelihood purposes, an overly complicated system for the granting of land use rights, and an overall lack of transparency relating to land management decision making processes.

---

<sup>35</sup>Section 67 of the Constitution of Kingdom of Thailand B.E. 2550 (2007).

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

<sup>38</sup>*Id.* at Section 85.

<sup>39</sup>*Id.* at Section 57.

<sup>40</sup>*Id.* at Section 212.

Strengths of Vietnam's legal framework relating to land include a Comprehensive Land Law that incorporates all land use classifications, incorporation of a cadastral land registry system, use of land zoning and a comprehensive process for land use planning in the country.

Vietnam realizes it faces problems relating to land acquisition and resulting land conflict in the country, and is in the process of amending its land law in order to better protect the land tenure security of rural farmers, better calculate mechanisms for compensation if land use property rights are lost, and reduce the likelihood of conflicts in relation to land. The amendments to the current Land Law are expected in 2013.