13 Case Studies of Land Confiscations in Three Townships of Central Myanmar

Photo : Bawi Tha

Land Core Group of the Food Security Working Group

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Acronyms

ABC	Agricultural Business Company
ADB	Asia Development Bank
ANK Co.	Aye Nyein Khaing Company
BSPP	Burma Socialist Programme Party
GAD	General Administration Department
LBFD	Livestock Breeding and Fishery Department
MAB	Myanmar Agriculture Bank
MAS	Myanmar Agriculture Service
MCSE	Myanmar Cotton and Sericulture Enterprise
MO Co.	Min Oo Company
MoAI	Ministry of Agriculture and Irrigation
MoD	Ministry of Defence
MoEP	Ministry of Electric Power
MoF	Ministry of Forest
MoHA	Ministry of Home Affairs
MoI	Ministry of Industry
MoLB&F	Ministry of Livestock Breeding and Fishery
MoS&T	Ministry of Science and Technology
NGO	Non-Government Organization
PDC	Peace and Development Council
SLORC	State Law and Order Restoration Council
SLRD	Settlement and Land Record Department
SPDC	State Peace and Development Council
USDA	Union Solidarity and Development Association
USDP	Union Solidarity and Development Party

Executive Summary

Much attention is now being given to the growing issue of land conflict in Myanmar. Much of the existing and emerging land conflicts in the country are due to what is commonly referred to as "land grabbing." Land grabbing is the contentious issue of large-scale land acquisitions: the buying or leasing of large pieces of land in developing countries, by domestic and transnational companies, governments, and individuals. It is important to understand this phenomenon and the impacts it is having in the Myanmar context, and how safeguards can be put in place to effectively protect against the worst aspects of land grabbing while still allowing for the equitable and sustainable economic development in the country.

Land conflict has had a long history in the country. In the early 1900's with growing rural populations, villagers started to face difficulties in accessing adequate land to meet their livelihoods needs. Lands were also fragmented due to farm family succession cycles. In search of available lands, migrant farmers and landless families settled on vacant lands. Starting from 1994 until today there were also large-scale village resettlements directed by the government to accommodate infrastructural construction, i.e. dams and government factories, leading to forced relocation of farming communities and further contributing to landlessness. Some settlers encroached into forest areas including reserve forests.

With the onset of the market economy in 1988, after the SLORC government announced that Myanmar was going to be a market-economy, assumed that agriculture productivity was low and concluded that existing land resources were not fully utilized by farmers who were lacking investment. In 1993, the government created a new policy of promoting private investment in agriculture production, called the Vacant, Fallow and Virgin Land Instructions, or 'Wasteland Instructions'. If the land was developed, more land could be granted up to a maximum of 50,000 acres. Since the introduction of contract-farming into Myanmar, no systematic efforts have been made by relevant government agencies review or assess their performance. Government policy to allocate land to private companies was based on an untested assumption that private companies would make better use of this land than small holders. According to the Department of Agricultural Planning, a total of 1.9 million acres have been granted to 204 companies by

2011, with half of that in Tanintharyi and Kachin State, a huge jump from 225,242 acres since 1999; the land actually developed and cultivated by the companies are only 35.6 % and 20 % of total respectively.

Historically, there were no government-directed land re-settlement schemes for poor farmers and landless agricultural workers in the waste land areas. This led rural people to settle and resettle themselves, often on land that they would fail to register. As the agri-business model was promoted by the government, this led to patterns of land conflicts that we have today: crony companies and powerful families connected to the military government were given the land titles for large tracts of waste lands within which scattered pieces land are also being cultivated by farming communities—many of whom had settled on these lands generations earlier and often without registering their land for permanent land use rights. Moreover, upland farmers who operate under customary law have been losing their lands to agri-businesses on the ground that their "fallow lands" could be categorized as such under the Waste Land Instructions.

Today, land conflicts are compounded by a number of factors relating to how land is classified, how it is managed by multiple government entities with often overlapping authority, and a number of other economic and social factors. Myanmar does not have a comprehensive framework, policy document or clear process for land use planning that involves multiple stakeholders. This is a critical gap in the foundation for sustainable development of both land management and tenure systems.

While these recent changes, including the two new land laws, set the stage for increased investment in land and economic growth, they also set the stage for Myanmar to become the latest victim of the global "land grab" phenomenon. There is a clear danger for smallholder farmers in Myanmar, whose tenure rights are not secure and whose high debt levels put them at continual risk of stress sales leading to loss of access to land for sustainable livelihoods. Instead of creating institutions to support these farmers to become more productive in a free-exchange market, where farmers are supported by choice, information and affordable inputs, the new laws place a number of restrictions on farmers so that it will be even harder for them to retain their land. For example, most farmers do not even know how to register their land with the new Land Central Management Committee. Upland farmers that have been governed by customary land

tenure, with no knowledge of statutory laws until now are facing the greatest threats of land confiscation.

To better understand the experiences faced by farmers in this transitional context, farming communities that are involved in land confiscation cases were documented from 13 villages across three townships in June and July 2012.

Objectives of the Study

The objectives of the study are to:

(a) Share farmers' voices to decision-makers to help decision-makers reform policies that will meet the needs of their constituents

(b) Inform the design of policies that will strengthen land tenure security for farmers in Myanmar

Methodology

Study on land confiscation was conducted in the following 13 villages in three townships; Pyin Oo Lwin, Naung Cho, and Sagaing.

Choice of location was made based on the following:

1. The villages are easily accessible through support of local counterparts, lawyers' group from Mandalay, and civil society organizations from Mandalay and Pyin Oo Lwin.
2. Land confiscation cases are highly concentrated in Pyin Oo Lwin and Naung Cho Townships which allowed for coverage different types of cases in a short time

The study team purposively selected 13 villages from 35 accessible villages according to following set of criteria.

1. Representation of different types of land use: paddy, ya, kaing, shifting cultivation (taung-ya), reserved forest area, protected forest area, unclassified forest area, pasture, wasteland, and monastery land were included.
2. Different types of land confiscation: agriculture projects (coffee/ sericulture/ cucumber), timber plantation project, private farms, army settlement, large state-owned enterprise establishment, large infrastructure construction, and projects unknown to local farmers were also included.

3. Different agents taking part in major role in land confiscation; Armed Force, Ministries, local authorities, organizations, private individuals, private companies were included.
4. Different ethnic groups affected by land confiscation; Shan villages, Bamar villages, and Shan-Bamar villages were included.

The villages were chosen given ease of access to them, but the study recognizes that the sample of villages is very limited to the center of Myanmar. This does not mean that the study prioritizes problems only in central Myanmar. On the contrary, it is recognized that the uplands, where communities have traditionally managed land under customary law, and where land is largely unprotected by land tenure security under statutory law, are most vulnerable to land confiscations.

While this report does not attempt to provide a comprehensive analysis of the factors influencing land conflict in the country, the case studies included in this report reflect the many of the types of land confiscations that exist around the country.

Types of Land Confiscation

The following is a brief overview of the various types of land confiscations that are being reported in the country, which are impacting on farmers land tenure security. These present a risk of a rise in land conflict in the country that could impact on the social and political stability in the country if not properly managed.

Establishment of Agro-Industrial Plantations by Private Entities

The cases documented in this report have most to do with this type of land confiscation. Legal mechanisms to establish agro-industrial plantations on land under lease arrangements from the State have existed in Myanmar since the mid-nineteenth century[1]. 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

[1] *Rules for the Grant of Waste Land* was initially enacted in 1861.

development have now been incorporated into the Vacant, Fallow,Virgin Land Law (2012). Many of these agro-industrial plantation leases are not developed according to the terms of their lease agreements. Peasant farmers, whose land use rights were not adequately protected under the weak tenure arrangements of the old legal frameworks[2], are often already productively utilizing the lands identified for use in these agricultural developments. Without proper safeguards in place, these types of developments will likely lead to a sharp rise in land related conflicts in the future, presenting a political liability to the Government.

State-Sponsored Agriculture Projects

There has been a long history of State sponsored agriculture projects. While the state did these projects with the intention of raising agricultural output and export of cash crops, these projects also had negative consequences. They have dispossessed farmers from the lands that they have been productively using. Often carried out in partnership with farmers, these projects have been promoted for a number of different agricultural products, such as coffee, mulberry, rubber, timber plantation, cassava, fruit, etc. Due to insufficient financial and technical support, farmers have often failed at these projects and often have been asked to hand their land back to the state.

Large Industrial Development Projects

The development of State sponsored industrial projects, such as textile factories or value-added agricultural product processing centers, often lead to rural farmers losing their land. 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, such as the Dawei deep-sea port project, are developed in the country. Rumors of such developments can lead to more speculation activities, which are on the rise in the country. As such, land conflicts related to such developments will likely increase if adequate safeguards are not put into place to better control rampant land speculation, and adequately protect existing land use rights of rural farmers and communities.

[2] Particularly the *Land Nationalization Act* (1953) and the *Disposal of Tenancies Law* (1963)

Military Settlements

Acquisition of land for military purposes has historically been common. These settlements have been established for a variety of purposes. Existing land use rights should be respected and adequate safeguards put into place in order to ensure that land conflicts related to such developments do not increase in the future. In addition, land for military settlements should be allocated based on actual national security needs, as identified through a comprehensive and inclusive land use planning process in the country.

Large Public Infrastructure Projects

Given Myanmar's entry into the global market economy, is likely that there will be an increase in the development of such projects in the future. Road, pipeline, hydropower and other development projects are already being constructed and new ones are being planned. It is essential that safeguards are put into place to protect existing land use claims in order to avoid land conflicts related to such developments in the future. Public participation in the planning of such projects through the use of a public review process is encouraged. Mechanisms used to identify and minimize negative impacts of projects should be fully utilized, such as the environmental and social impact assessment mechanisms presented in the new Environment Conservation Law. Where existing land use rights are impacted, clear processes for calculating compensation must be developed and fully utilized in order to avoid land conflicts and social instability in the future.

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 in the country. This will lead to changes in land use and the loss of agricultural land currently used by rural farmers in the country. As such, clear mechanisms need to be put into place that allows for the rational and controlled reclassification of land, the recognition and protection of existing land use rights, and compensation for loss of land rights in order to avoid land conflicts associated with such development.

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. Speculative activities often occur quickly and covertly without official transfer of land registration, making these transactions difficult to monitor. 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.

1. Brief History of Myanmar's Agricultural Sector: from central planning to market economy

a. Agriculture under a Socialist Model

Myanmar is an agrarian country, where small farm households with less than 5 acres of land holdings constitute over 50% of total farming population. According to the previous and present National Constitutions, all the land is regulated as state property. In attempt to prevent the landlordism during the socialist era, farmers who actually till the land were granted the tiller's right. Even though the government adopted the market economy system in 1988, this system had been continued throughout the period of the military government, the State Law and Order Restoration Council (SLORC) later renamed as State Peace and Development Council (SPDC). The Land Nationalization Act of 1953 which was consecutively amended in 1954, 1955 and 1957 was still in force until it was recently repealed by the newly promulgated Farmland Law in 2012. The former land law prohibited transfer and resumption of agricultural land stating that no agricultural land shall be mortgaged, sold or otherwise transferred or divided. On the other hand, farmers did have a right to use the land, to obtain benefits from this use, and to transfer land use rights through inheritance. During the socialist planned economy system, the tiller's access to land was enforced and the Farmer's Rights Protection Law of 1963 was enacted stating that any Civil court shall not prohibit nor remove or sell, use or dispose the cattle, tractors and equipments of farmers or shall not arrest the farmers in respect of the tiller's right.

While there was pro-poor land tenure, the State remained the sole landlord who assigned farmers to cultivate crops in accordance with the state economic plan, without allowing freedom of crop choice. Moreover, farmers were forced to sell nearly a third of the crops produced at the government's prescribed price. Agricultural loans were and still are severely limited to farmers and the only formal channel of credit is the government operated agricultural bank which only disburses small amounts of loans to support the cultivation of state-prioritized crops. Agricultural productivity had been and is still declining.

b. Historical Patterns of Landlessness

When the land nationalization act was conceived around 1948, the ceiling limit of agricultural land per adult family member was considered at the rate of 12.5 acres for paddy land, 6.25 acres for upland (ya), and 2.5 acres for alluvial land (kaing). Such limits were optimal for farming livelihoods. Land fragmentation due to farm family succession cycles and indebtedness leading to land lost, contributed to the difficulties rural households faced in accessing adequate land to meet their livelihoods needs. There were also large-scale village resettlements directed by the government to accommodate infrastructural construction, i.e. dams and government factories, leading to forced relocation of farming communities and further contributing to landlessness. Military acquisition of land also created additional pressures. . Thus the size of farm holdings per family became smaller while the landless population increased in rural areas.

In search of available lands, migrant farmers and landless families settled on vacant lands. Some settlers encroached forest areas including reserve forests. In the market economy, both state enterprises and private entrepreneurs expanded their production with large demand for raw materials. Sugarcane area expansion was one example. Shar Pyin reserve forest near Thegone township and Yin Khae reserve forest near Kathar were encroached by pioneers farmers, as well as government-operated sugar factories for their area expansion.

c. The Rise of Agri-business in the Market Economy post-1988

With the onset of the market economy in 1988, after the SLORC government announced that Myanmar was going to be a market-economy, assumed that agriculture productivity was low and concluded that existing land resources were not fully utilized by farmers who were lacking investment. The created a new policy of promoting private investment in agriculture production. In 1991, the SLORC formed the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land. The Committee was empowered to scrutinize and grant native companies and private citizens the right to use waste land for agricultural business (including livestock and aquaculture). If the land was developed, more land could be granted up to a maximum of 50,000 acres. Since the contract farming model had been adopted by the government , no systematic efforts have been made by relevant government agencies review or assess their performance. Government policy to allocate land to private companies was based on

an untested assumption that private companies would make better use of this land than small holders. According to the Department of Agricultural Planning, a total of 1.9 million acres have been granted to 204 companies by 2011, with half of that in Tanintharyi and Kachin State, a huge jump from 225,242 acres since 1999. According to the MOAI report, out of 1.89 million acres granted, the land actually developed and cultivated by the businesses are found to be only 35.6 % and 20 % of total respectively. In the case of perennial tree crops enterprise, full scale planting was done in the periphery areas but interior areas were actually left bare.

Historically, there were no government-directed land re-settlement schemes for poor farmers and landless agricultural workers in the waste land areas. This led rural people to settle and resettle themselves, often on land that they would fail to register. As the agri-business model was promoted by the government, this led to patterns of land conflicts that we have today: crony companies and powerful families connected to the military government were given the land titles for large tracts of waste lands within which scattered pieces land are also being cultivated by farming communities—many of whom had settled on these lands generations earlier—often without registering their land for permanent land use rights. Moreover, upland farmers who operate under customary law have been losing their lands to agri-businesses on the ground that their "fallow lands" could be categorized as such under the Waste Land and Fallow Land Instruction.

d. Post-2010 Elections and the 2012 Farmland Law & Virgin, Vacant, Fallow Land Law

The military government handed over to the democratic parliamentary government in 2010. The majority of the parliament seats were won by the dominant former ruling government's Union Solidarity Development Party (USDP). President U Thein Sein has taken successive measures of political reforms, economic reforms, monetary reforms and his direct and constructive engagement with the opposition leaders Daw Aung San Su Kyi had led the US, EU, Japan and the international communities to change their relations towards Myanmar. The Western economic sanction has been relaxed and there are renewed interests of foreign direct investment into Myanmar—creating both opportunities and risks. With extra capital flowing in and few outlets for investment, land, both urban and agricultural, has become a major area of speculation that is known, but not regulated— rapidly and artificially driving up the price of land. Combined

with the government's crop campaigns to increase export of some cash crops, the rising price of land is motivating companies to get their hands on more land under the Virgin, Fallow, Vacant Land Law.

Soon after the new government formation, the USDP proposed a new Farmland Law and to strengthen the 1991 "Wasteland Instructions" into law to the Parliament. It was passed by the Parliament on 31st March 2012, and came into force on 31st August 2012. This land law prescribed the provisions stating that agricultural lands could be sold, transferred, mortgaged, rented or leased, thus making a land market in agriculture and investment. In a growing market economy, in which land is becoming increasingly valuable, there is even more reason to ensure that farmers have land tenure security.

Despite the government trying to create more clarity with these two new land laws, today's land conflicts are compounded by a number of factors relating to how land is classified, how it is managed by multiple government entities with often overlapping authority, and a number of other economic and social factors. Myanmar does not have a comprehensive framework, policy document or clear process for land use planning that involves multiple stakeholders. This is a critical gap in the foundation for sustainable development of both land management and tenure systems. In addition, the land classification, especially classifications of forest reserve and agricultural land, is rigid. Much of the classification itself dates from the colonial period, and current classifications are not always reflective of current land use, nor do they reflect changes in ecological productivity. The result is that, for example, some forest reserves have now been partly or completely converted to agricultural use, but are still administered by the Forest Department.

There are only a few ways to register land for tenure security, and these processes were little understood nor used by people living in remote areas, particularly in the uplands. Land classified as agricultural is managed by the Settlement and Land Records Department, while forest land is managed by the Forest Department. Each agency follows a distinct process for registering land to smallholder farmers. For agricultural lands, farmers can register their land with the SLRD, cultivate continuously on the land, and pay taxes. Permanent land use or *U Paing* is granted after five years, and hereditary rights are granted after 10 years. The SLRD

would also need to include this land in their surveys. For forestry land, the application of a process under the Community Forestry Instructions grants thirty-year tenure guarantees to Forest User Groups.

The most common form of traditional tenure (and historically supported by statutory law) is the concept of *dama-ucha,* which means that the one who cultivates wild land first (literally, "wields the machete") becomes the owner. Under this mechanism, land belongs to the one who cultivates it first, and according to traditional tenure, this ownership still holds while the field is fallow. Under colonial rule this was considered formalized registration if the land was cultivated and taxes paid continuously for 12 years. Although the practice was nominally abolished under the 1953 Land Nationalization Act, this practice is still taken into consideration in disputes or tenure allocation by communities using customary tenure.

e. Vulnerability of Smallholder Farmers

While these changes in Myanmar, including the two new land laws, set the stage for increased investment in land and economic growth, they also set the stage for Myanmar to become the latest victim of the global "land grab" phenomenon. There is a clear danger for smallholder farmers in Myanmar, whose tenure rights are not secure and whose high debt levels put them at continual risk of stress sales leading to loss of access to land for sustainable livelihoods. Instead of creating institutions to support these farmers to become more productive in a free-exchange market, where farmers are supported by choice, information and affordable inputs, the new laws place a number of restrictions on farmers so that it will be even harder for them to retain their land. For example, most farmers do not eveb know how to register their land with the new Land Central Management Committee. Upland farmers that have been governed by customary land tenure, with no knowledge of statutory laws until now are facing the greatest threats of land confiscation.

A Harvard Kennedy School team which carried out an "Assessment of the Myanmar Agricultural Economy"[3] in 2009 shortly after Cyclone Nargis concurred that relatively smaller farm sizes of a few acres to a few dozen acres generally show higher output per acre, greater use

[3] Harvard Kennedy School, Assessment of the Myanmar Agricultural Economy, prepared for International Development Enterprise; January 2009

of labor and less use of capital per ton of paddy than very large farms with similar land and water conditions. For certain cash crops like rice, labor-intensive methods such as transplanting contribute to such high yields—methods that are often foregone in larger industrial farms. The team concluded that good policies need to be in place to encourage the efficient use of land and should not force farmers off their land if they are competitive.

To better understand the experiences faced by farmers in this transitional context, farming communities that are involved in land confiscation cases were documented from 13 villages across three townships in June and July 2012.

2. Objectives of the Study

The objectives of the study are to:

(a) Share farmers' voices to decision-makers to help decision-makers reform policies that will meet the needs of their constituents

(b) Inform the design of policies that will strengthen land tenure security for farmers in Myanmar

3. Methodology

Study on land confiscation was conducted in the following 13 villages in three townships; Pyin Oo Lwin, Naung Cho, and Sagaing.

Village	Township
1. Myauk Kone Gyi	Naung Cho
2. Par Pauk	Naung Cho
3. Gan Gaw	Naung Cho
4. Kyauk Me Law	Pyin Oo Lwin
5. Wet Won	Pyin Oo Lwin
6. Naung Hlaing	Pyin Oo Lwin
7. Inn Yar	Pyin Oo Lwin
8. Ye Chan Suu	Pyin Oo Lwin
9. Aung Chan Thar	Pyin Oo Lwin
10. Gway Pin	Pyin Oo Lwin
11. Ma Gyi Inn	Pyin Oo Lwin

12. Yaw Thit Kyi	Sagaing
13. Shan Tat	Sagaing

Limitations of the Study

The villages were chosen given ease of access to them, but the study recognizes that the sample of villages is very limited to the center of Myanmar. This does not mean that the study prioritizes problems only in central Myanmar. On the contrary, it is recognized that the uplands, where communities have traditionally managed land under customary law, and where land is largely unprotected by land tenure security under statutory law, are most vulnerable to land confiscations.

The definition of land confiscation should have been set before the assessment was made. However, in this pilot study, the definition was not set prior to assessment. It was difficult to define land confiscation which happens in multi-layered contexts. On the other hand, land confiscation is not a theoretical concept, and it was derived from empirical evidence. In Myanmar, it has been covered by media since the time of SPDC, and legal cases have also receive attention.

The qualitative method was applied in this study. Semi-structure questionnaires were prepared before conducting field visits. Small group discussions with farmers that had experienced land loss were conducted in selected villages. The participants in each session ranged from 10 to 20. The study team also reviewed the farmers' land-related documents.

A major limitation in this study was that the source of documentation was only available from one side: farmers affected by land loss. The study team could not access official data sources from government and private companies, therefore preventing the team from verifying the story provided by farmers. . However after available data was thoroughly checked, the report was prepared.

4. Profile of the Villages

1. Households, Population, and Ethnic Distribution Among 13 Villages

The data on village household, village population, and racial distribution was obtained from verbal reports from participants. A majority of villages are small in size. Four villages are composed of less than 100 households. Five villages have 100-199 households. Three villages have 200-399 households. One large village has more than 2,000 households. Bamar, Shan, and Shan-Bamar (mixed blood) are the dominant ethnic groups in these 13 villages. Minority people found in villages in Pyin Oo Lwin and Naung Cho Townships are Gohka, Lisu, and Lwe La. Some of the villages were in the low lands while others were on the hilly slopes that local farmers call *taungya*.

2. Education and Health Facilities

There are primary schools in all villages. A middle school was found in one village. There are two high schools in a large village. Eight villages have no clinic. Sub-Rural Health Centre was found in three villages, and Station Hospital was found in two villages. In villages where there is no clinic, villagers have to travel three to five miles in average to seek health care from nearest health centre.

3. Transportation

Two villages, Wet Won and Aung Chan Thar are situated alongside the Mandalay-Muse highway road. Three villages, Myauk Kone Gyi, Par Pauk, and Kyauk Me Lay are located close to the newly constructed China-Mogok road. These villages are located about 20-30 miles away from Mandalay Muse Road, and transportation was difficult in the past. The remaining eight villages are located about 2 to 7 miles away from main road. All villages except two are easily accessed by cars, motor bikes and bicycles for all seasons. Telecommunication through cable network is available in two villages.

4. Agriculture

Majority of farmers in six villages practice single-crop cultivation alongside perennial crop cultivation and orchards, while farmers in seven villages practice double-crop cultivation.

Types of land use by majority of farmers in 13 villages represent six groups; (a) *ya* (b) Paddy+*ya*, (c) *ya*+*taung-ya*, (d) *ya*+Orhcard, (e) Paddy+*ya*+*taung-ya*, (f) Paddy+*ya*+*taung-ya*+Orchard. In this case, *taung ya* is rotational farming, and not shifting cultivation (*shwe paung taung ya*). In addition to type of land use mentioned above, farmers from nine villages in Pyin Oo Lwin and Naung Cho Townships use extra plots in their residential compound to practice home gardening. Major crops grown in 13 villages are paddy, wheat, maize, nigar, ground nut, sesame, sunflower, bean, pigeon pea, sugarcane, cotton, tea plant, peach, cabbage, cauliflower, carrot, flowers, taro, ginger, pineapple, betel leaf, banana, and mango.

5. Income Sources

Farming is the only available legitimate livelihood in most villages.. No significant off-farm enterprises were observed all villages. On the other hand, farming cannot provide year- round income except in two villages (Gan Gaw and Ye Chan Su). Farming households extract forest products from forests, chop wood and produce charcoal for commercial purpose.. In Naung Hlaing where chopping wood is strictly prohibited by authorities, villagers dig the mountain, extract rocks and sell them to construction sites. In Gway Pin and Ma Gyi Inn, migration to other places to earn a living started when de-forestration and legal constraints no longer allowed farmers to extract forest products. Mason, backing clay bricks, gold mining, jute plucking, pricking tea leaves are main sources of income for them. Non-farm livelihood sources such as selling goods, machinery works, food shops were seen only on the road side villages such as Wet Won and Aung Chan Thar.

5. Brief History of Land Confiscation in 13 Villages

Among the 13 villages profiled, four villages marked with two stars (**) include farmers who lost land with permanent land use rights (*U Paing*). These cases where farmers with *U Paing* still lost their land demonstrate a complete disregard for the strongest form of legal protection farmers have to their land.

Case 1. Par Pauk Village, Naung Cho Township

Par Pauk was a Shan village located near to China-Moegoke road, with about 80 households and and a population of about 400. Farmers had been growing on those lands since the time of their ancestor and under customary laws, farmers did not categorize these lands as wasteland. The average holding is 15 to 20 acres with half used at any one time, while the other half lies fallow for 3 to 5 years. The easily arbitrated conflicts locally with the village leaders, and with the witness of neighbors; formal records were not used. On paddy, ya, and taung-ya lands, farmers grow cereals, edible oil crops and industrial crops. They never tried to get permanent use rights from the SLRD and the authorities never suggested otherwise. While communities had been paying taxes to the SLRD for many years, the land under confiscation was judged officially as wasteland. On document review, farmers did not have permanent right for land use for lost lands.

In 2000, about 500 acres were taken to establish Lwin Gyi Prison. No compensation was given the farmers who lost their land. In 2011, the prison returned about 400 acres of land to farmer. Recently in June 2012, land under the Wasteland instructions was given to two companies Aye Nyein Khaing Company and Min Oo Company, affecting 82 households who on average lost 5 acres each, and total loss was estimated at 613 acre. No compensation was given to these households. The total land allocated to the companies is about 1,200 acres, alongside the China-Mogok road. Farmers came to learn of this only when company trucks arrived and dislodged sands on their farms. They asked company to show them the letter of permission for land use. They learned from document that the lands were already transferred to ANK Co. since 2010. Tension rose between companies and farmers. One farmer was arrested in that event, judged for posing threat to government staff, and sent to prison to serve 6 months term. Farmers continue to use this land and are trying to fight the companies.

Case 2 Myauk Kone Gyi Village, Naung Cho Township

Myauk Kone Gyi village was situated near to newly constructed China-Moegoke Road. Village people were Shan with about 90 households, and a population of 450. These people operated under customary laws, growing paddy, maize, and sesame on rotational taung-ya plots; they also grew on what they considered pasture land. They never registered their land for permanent use rights.

Land confiscation was carried out for three times by three different agents here. About 250 acres used by farmers were lost over these three attempts of land confiscation, affecting about 45 households. Firstly, a branch of Myanmar Cotton and Sericulture Enterprise (MCSE) under Ministry of Agriculture and Irrigation (MoAI) initiated the process of land confiscation in 1996-1997. A sericulture project headed by a military officer pressured farmers to grow mulberry. Initially, farmers were provided with seeds, fertilizers, petroleum and loan by project. Farmers had to return their farm outputs to the project. Farmers were at first willing to participate in project, and grew mulberry for two to three years during the initial period. Later, the project stopped supporting the farmers, which was followed by decline in farm output. On the other hand, the sale price for farm output was low, and farmers stopped making profit and stopped growing mulberry. At this point, the project asked farmers to return the loan if farmers did not continue to participate in project. Farmers returned the loans to the project and cleared their debts in 2002. The MoAI also asked farmers to hand over the lands to the project to grow mulberry by themselves. However MoAI failed to continue implementation of project. The project did not lease lands to farmers, so farmers began to grow maize on unused lands with the aim to regain control over lands. Then they expanded to cultivate paddy and nigar. The project manager did not prohibit farmers. Farmers later realized that they never received land tax bills from the SLRD since then.

The area of land used for project purpose was estimated to be about 300 acres among which about 100 acres were formerly used by farmers. The project transferred part of the land which was about 100 acres to Union Solidarity and Development Association (USDA) for a coffee plantation, but coffee was only planted on 25 acres.

The remaining part of land which was about 75 acres was left unused for seven to eight years. The coffee plantation also ended in failure within two years. After that, USDA leased the 100 acres of land to farmers and a prison with rent which was fixed at Ks. 5,000 per acre for one year period. The prison received about 30 acres, and the farmers received about 50 acres of land. The remaining 30 acres were transferred to high ranking officer. Farmers reported that those who

were membership of USDA (or) farmers who agreed to apply membership to USDA were prioritized in land lease.

Finally, AAA Co. arrived in 2005-2006. AAA Co. (farmers called 3-As) was allowed to use 173 acres of land in the context of wasteland. Pasture land which was formerly used by nine farmers was also included in land confiscation made by AAA Co. The company forced the 9 farmers to sign in agreement by giving them a small amount of compensation. Farmers refused to do it. Farmers learned that AAA Co. already had Form 105 (permanent land holding title).

According to complaint letter sent to President, total acres lost was estimated at 174, and 24 households in the village were affected by sequential land confiscation. No compensation was given to these farmers by the sericulture project and USDA.

Case 3 Kyauk Me Lay Village, Pyin Oo Lwin Township

Kyauk Me Lay village is located close to China-Moegoke Road. Village people were Shan, and there were about 90 households with a population of about 500. The village stands at east creek of a stream which is a border between Pyin Oo Lwin Township and Naung Cho Township. Official paperwork shows that tax has been served to the SLRD since 1977, but villagers never registered for Form 105.

Although the village is located in Pyin Oo Lwin Township, lands are administered under Naung Cho Township. About 90 acres were confiscated, affecting 12 households. Tenure of land under confiscation was customary, and farmers hold non-permanent right for land use over the lands which were outside of supplementary survey conducted by SLRD. Land confiscation was carried out in the name of coffee project at first, and later it was changed to private farms in the context of wasteland.

Farmers knew their lands were grabbed only when they saw the strangers slashing in their farms. Farmers were told that their lands were already grabbed by a coffee project since 2007. The stranger showed farmers the document on 30 years grant for land use. Farmers learned from document that their lands were grabbed in the context of wasteland. Eventually, the farmers found out that the 90 acres were grabbed by two high ranking officers in the name of coffee

project since 2007 about which was totally unknown to farmers. The two high ranking officers handed over the land to another officer. Finally, the 90 acres were sold in to two different private investors.

Farmers informed high level authorities about their troubles and sent a complaint letter to President. Authorities from Naung Cho Township GAD summoned farmers to office to enquire the case. Later, business woman came to village to give compensation in cash. At first, compensation was fixed at Ks. 700,000 for all farmers, and eventually raised to Ks. 15 million. Farmers did not accept. Farmers explained that the compensation shared among 12 farmers would not be enough to use for more than two years. They did not know what to do for their survival beyond two years. The land price alongside the China-Mogok Road had greatly increased in the recent year, and speculation was already happening.

** Case 4 Wet Won Village, Pyin Oo Lwin Township

Wet Won is an aggregate of small villages located alongside the Mandalay-Muse Road. Both Shan and Bamar lived in the village. Land confiscation happened three times over the BSPP era (1962-1988) and the early years of the SLORC (1988-1997) government. Land loss farmers hold permanent rights for land use (*U Paing*) for paddy and ya lands which were grabbed for prolonged periods.

The first incident occurred in the 1980's. About 100 acres of lands were given to the Paik Chin Myaung Sarsana land (monastery land). Compensation in cash was given to farmers. In addition, farmers were allowed to continue growing on extra plots of Sarsana land. Farmers did not need to pay any kind of rent during the BSPP and SLORC periods. Later, the Village Peace and Development Council (VPDC) managed the process of land lease to farmers. From that time onwards, VPDC leased lands with rents to farmers. The rent rose to Ks. 30,000 per acre for a year. Farmers continued growing on farms by paying rents to village administrator. After the new land laws were promulgated in 2012, the VGAD withdrew the tenancy. Fifteen households were affected in this cause. Problems arose between farmers and VGAD.

The second incident occurred in 1989-90. The Commander in Chief, Central Command seized the land to implement Japan-Myanmar Cucumber Growing Project. The land under confiscation was estimated at 150.86 acres. There were 73 affected households. Soon after, farmers were

forced to contribute their labor in preparation of the land for cucumber plantation.. In reality, no cucumbers were grown on the land.

Two years later, villagers were informed that the land taken for the cucumber project was to be used for village extension, but that was also not true. The land was left barren. Farmers were not given any opportunity to grow on this land. Farmers did not complain out of fear.

Farmers tried to regain the use of land in 2010 when a new government took power. The truth about ownership for the land use rights to the land use was revealed. Farmers found that land revenue bills were issued to a person who was the wife of a high ranking officer who commenced the land confiscation. Based on the evidence provided by farmers, the earliest period of the land revenue bill issued to the lady was 2004. On the other hand, farmers also paid land revenue for their lost lands throughout the period of land loss although they did not use lands. Farmers later learned that the lady already received permanent land use title over the lands which were grabbed for cucumber project.

The third incident was in 1990-91 by MFF Company. Farmers who participated in small group discussion did not know much about events related to MFF Company because their lost lands were not included in the confiscation by MFF Company. Total land acre confiscated by both the cucumber project and MFF Company was estimated to be 350 acres. Land loss- farmers were not provided with any kind of compensation by both agents.

Case 5 Naung Hlaing Village, Pyin Oo Lwin Township

Naung Hlaing village is composed of 160 households, a mix of Shan and Bamar. They practiced taung-ya on land under the management of the forest department. The understanding of farmers is that they grew crops on land considered to be unclassified public forest. This land was reclassified as wasteland and then given to private individuals.

Land confiscation commenced in 2008. The forest department claimed the land to be forest area by applying a 1914 military map. The measuring scale in the old map was different from that provided by the SLRD and used by the villagers. Consequently, the boundary of the forest area in the map was altered, and a vast area of land went back to the forestry department, including

half of the village households of Tha Pyay Ye, a neighbouring village of Naung Hlaing. The rest of the land in this village remained under the management of SLRD. 400 acres around the village were transferred to private individuals for agriculture purpose.

The 400 acres of land were divided into two halves with approximately 200 in each. Each half was shared by two kinds of end users, high ranking officers and business persons, for private farming. About 200 acres formerly used by farmers were lost in land confiscation. Participants reported that 54 households in their village lost lands in the revival of the forest area. Villagers do not have clear plans on how they will regain this land.

Case 6 Inn Yar Village, Pyin Oo Lwin Township

About 180 households of Shan and Bamar constitute Inn Yar village. Paddy, ya, and taung-ya have been cultivated by villagers. Grabbed lands were reported as not having permanent use rights (*U Paing*). Taung-ya, pasture land, and village owned lands were included in two attempts of land confiscation which were carried out in the context of wasteland.

The first attempt of land confiscation was made by a coffee project in 2008. Farmers were informed by representatives from the coffee project, SLRD, and village administrator. 50 acres were to be taken affecting 15 household. After a farmer leader was summoned to present in discussion with township GAD, farmers posed no more resistance and came to accept the project. No compensation was given to farmers by the coffee project.

The second incident involved Htoo Co. The company grabbed 1,000 acres of land under the Wasteland Instructions. Farmers from three neighboring villages including Inn Yar were affected by Htoo's land confiscation. About 100 farmer households in Inn Yar were affected. Htoo Co. did not inform farmers prior to land confiscation.

A strange event occurred just prior to land confiscation. Township SLRD asked farmers to submit request for *U Paing*. Cost for processing U Paing was collected from farmers at a discounted rate of Ks. 2,000 per acre and Ks. 5,000 for 3 acres. Farmers then submitted their documents to SLRD. On the next day, they heard that their lands were already grabbed by Htoo Co. It seemed that the local SLRD was trying to extract as much as they could from the farmers until the end.

Htoo Co. gave Ks. 50,000 per acre as compensation, much below market rate. Farmers accepted the compensation in cash. Compensation was given to farmers at Pyin Oo Lwin. At this point, compensation was cut by local level administrators. Farmers received only Ks.40,000 per acre. Farmers complained about it to higher authorities, who then returned to the money.

**Case 7 Gan Gaw Village, Naung Cho Township

Land confiscation was a historical event in Gan Gaw village. The lands were already titled with *U Paing*. Paddy and ya fields were successively used generation to generation. Paddy fields were very productive, and during the BSPP Era, Gan Gaw village won the first prize in the contest of paddy production in Naung Cho township.

Kha La Ya 22 (Infantry Battalion 22) occupied the land in 1971 to implement military agriculture and livestock breeding project. Military allowed farmers to continue growing on their lands. Farmers followed planned crops production policy of BSPP as farmers from other villages in the country did. The only difference between them and other farmers was that they had to contribute crops free to military. It happened for 2 years just before the 1988 uprising broke out.

Military transferred the lands to MoAI in 1989-1990. MoAI allowed farmers to continue farming. Farmers did not need to offer any crops nor pay any kind of rent for use of land. It lasted only up to 1995-1996. In 1995-1996, MoAI assigned a coffee project to grow coffee. Coffee project leased the lands to business persons to implement the project. Authorities from coffee project gathered farmers to inform the project plan. Farmers did not agree to the project plan but only a few farmers dared to express their disagreement. No compensation was given to farmers. The 13 business persons shared the land. Farmers completely lost their lands since then.

Total land loss of Gan Gaw and nearby villages was estimated at about 1,200 acres in which 600 acres were paddy fields and the remaining 600 acres were ya. Approximately 80 households, half of Gan Gaw village, was affected by land confiscation since 15 years ago. Some land to the west of village remained in the hands of villages. The local SLRD told them to apply for certificates three times in 1995, 1997 and 2005, but each time after fees were paid, no certificate was issued. In fact, in 1995, some sham certificates were given, only realized 2 years later when the SLRD administrators were changed.

Finally, their lobbying to district level chairman of the General Administrative Department (GAD) received attention. The GAD called for a multi-stakeholder investigation, at which farmers presented photos of the companies' misuse of land for other purposes. Given this and the fact that farmers asked to have *U Paing*, The GAD chairman has told the farmers that he will try to get the land back for them.

Case 8 Ye Chan Suu Village, Pyin Oo Lwin Township

Ye Chan Suu which is about 2 miles away from Muse-Mandalay Road is growing with the influx of people from Northern Shan State and Central Myanmar. Plantation of flowers is a major source of income in the village. The flower market was very unstable, and farmers reported that the plantation of flowers was actually like betting in a game. Betting invited strangers.

Land confiscation was made in the context of wasteland in 2009. In this event, forest land was transformed into wasteland firstly, and then wasteland was transformed into private farm.

Farmers from Ye Chan Suu knew that some of their plots were located in reserved forest area. They knew well reserved forest demarcation by observing *Boke Taing* (erected stone pillar for making boundary of reserved forest). Farmers in Ye Chan Suu village were already provided with right for land use over forest area as a reward for their struggle against red flag communist party during Anti-Fascist People Freedom League period (around 1950). From that time onwards, forest lands were gradually transformed into farmlands, without permanent land use rights, from generation to generation.

During BSPP period, a steel mill was established near the village, and large area of land was occupied for factory purpose. Farmlands used by Ye Chan Suu and neighbouring villages were grabbed for factory occupancy. Government gave compensation in land to farmers by moving back the boundary of the reserved forests to allow for farming. Farmers reported that withdrawal of the boundary of reserved forest was made only on verbal agreement. They did not hold *U Paing* because they were growing crops on the lands which were outside supplementary survey of SLRD.

In 2009, a business person was provided with right to use 500 acres of land formerly designated as forest land for agriculture purpose. The land was necessarily changed to wasteland before it was entitled for private farm. Among the 500, about 200 acres were being used by 58 farmers. Farmers were removed, and then a land dispute between farmers and the private farm followed. Tension became increased and some farmers were sued for their struggling against private farm.

**Case 9 Aung Chan Thar Village, Pyin Oo Lwin Township

Aung Chan Thar, a roadside village is situated between Mandalay and Pyin Oo Lwin. There were about 400 households in the village, and majority of village people are Bamar.

Land confiscation by 3 different agents happened 3 times over 16 years. The first was made by sericulture project in 1994-95, which was followed by a coffee project in 1995-96. Some plots which were located in the area designated as unclassified forest were taken for implementation of both projects. Farmers using that land did not hold *U Paing*. Sericulture project grabbed 98 acres of land which affect 18 households. Coffee project grabbed about 100 acres which affected 20 households. The coffee project gave compensation in cash Ks. 20,000 per farmer. Farmers did not accept compensation because they did not want to cooperate in land confiscation. Both projects failed to implement assigned tasks, and lands were left unused over the prolonged period.

The last land confiscation was made in the name of Kyaing Taung protected forest project in 2007. The project grabbed 760 acres, affecting nearly all households in the village and five neighboring villages. An announcement was made that varieties of timber would be planted by the forest department. About 30% of lands grabbed by forest project were already titled with permanent right for land use. No compensation was given to any of the farmers.

The project failed to keep its commitment. No timber plantation was done. In 2010, lands were divided into plots and fences were erected and given to individuals from the business and military sectors.

Case 10 Gway Pin Village, Pyin Oo Lwin Township

A small village, Gway Pin is located in the valley, with 112 households. Lands were used in customary way, and farmers do not hold permanent land use rights. They practiced ya and served land revenue over the lands which were not included in supplementary survey of SLRD.

Land confiscation of 200 acres was done by big dam project (Ye Ywa Dam) in 2002, affecting 35 households in this village. The dam project was implemented under the guidance of Ministry of Electric Power No (1). No information on land confiscation was given to villagers by responsible agent. Big machines and bull dozers arrived. Farmers were forced out with no compensation. Farmers did not dare to claim for compensation. The dam was opened in 2010. Electricity was sold to China. The village stood in the dark.

Case 11 Ma Gyi Inn, Pyin Oo Lwin Township

Ma Gyi Inn is a small village with 74 households. All 375 of the people there are Bamar. Sequential attempts of land confiscation happened over 11 years. The first attempt was primarily made by MoEP (1) for Ye Ywa Dam construction. MoEP (1) assigned Hi-Tech Co. to build a factory for grinding stones in 2000. Hi-Tech Co. built a factory in the large compound. About 20 acres used by three farmers were included in factory compound. Both Hi-Tech Co. and MoEP (1) did not inform farmers. No compensation was given.

The second attempt of land confiscation was made by Ministry of Science and Technology (MoS&T) in 2003-2004. The reason for the confiscation land was and still remains a mystery for farmers. One day, soldiers came to prepare 200 acres of land to be taken by the Ministry. Since then MoS&T did not come back to their lands. No utilization of lands was seen over the period. About 30 acres used by 10 farmers were lost in unknown project of MoS&T. Also farmers from three neighbouring villages lost lands in this event.

In 2004, the Armed Forces came to settle in the area to defend against air strikes. Commander in Chief of Central Command met the farmers to order that the land be handed over. The total acre taken by the military settlement was estimated to be 600 acres, with 40 acres taken from Ma Gyi Inn. Nget Kyi Thike, neighbouring village of Ma Gyi Inn lost most in army settlement. No compensation was given, but the Armed Force leased lands to farmers with rent.

In another incident, the reserved forest area was extended. *Boke Taing* (stone pillar erected for demarcation of reserved forest) which formerly stood at the slope of mountain went down to the plain to make new boundary.

In total, 26 out of 74 households were reported for land loss in sequential land confiscation in Ma Gyi Inn.

**Case 12 Ywa Thit Kyi Village, Sagaing Township

Ywa Thit Kyi was a large village with more than 2,000 households. The village was situated at the bank of Irrawaddy River, and transportation was best among 13 villages. Farmlands were mainly paddy and ya. In contrast to farmers from Pyin Oo Lwin and Naung Cho Townships, all plots used by farmers in the village were already titled with permanent right for land use. In this case, the dispute over the right for land use arose after the new land law was promulgated in April, 2012. In fact the problem started in the BSPP Era, and grew unnoticed for a prolonged period, and burst open soon after new land law was promulgated.

The oldest case of land confiscation among 13 villages happened in 1967. Lands were grabbed for establishment of state owned textile factory. Farmers were informed that their lands were to be grabbed for public good. Government gave compensation in cash at a rate of Ks. 25 per acre. The actual price of one acre at that time was about Ks. 400 which was equivalent to 1 kyat of gold. Farmers refused to accept the compensation because they were not willing to pay their lands to government. The government pressured farmers to sign in agreement which was expressed as “We donate the lands with satisfaction.” Total land grabbed by textile factory was estimated at 500 acres. Farmers requested the Chairman of the Divisional People’s Council, Sagaing Division to allow them to grow on the 200 acres of extra land outside factory compound. About 45 farming household, who were former users of these lands, regained temporary use rights. Farmers had to follow the BSPP policy as other farmers did. This period lasted for 20 years.

Since 1985, farmers had to pay rent in crop to the factory for the welfare of factory workers. Paying rent was practiced from that time onwards with no interruption up to now. Pigeon pea was the crop used for payment. The factory also assigned farmers to grow cotton, which lasted until 1995 when rent was changed to cash. Now, rent is Ks. 15,000 per acre for one year. In

addition, township SLRD continued to issue land revenue bill to these farmer over the prolonged period up to now.

Since 1993-94, farmers were working on the land continuously. After the new land law was promulgated, the factory announced that the tenancy for farmers was over. Disputes between factory manager and farmers rose up.

Case 13 Shan Tat Village, Sagaing Township

This is the second oldest case of land confiscation. Land tenure over the lost lands was unknown to farmers. Land revenue bills were not issued to farmers over the prolonged period. No documents were available.

Farmers grew on pasture land in the past. The pasture land was occupied by Livestock Breeding and Fishery Department (LBFD) in early 1970s for development of pasture. LBFD used the land for growing grasses. LBFD remained with its project for 20 years. The Army came to settle near the village in the early 1990s. LBFD terminated the project and handed over the land to the Army. After 3 years, the Army again transferred the land to Kha La Ya 13 and Kha La Ya 33 (Infantry Battalion 13 and 33).

Ten years ago, the Chief asked village administrator to lease the lands to former farmers as priority. However former farmers were ignored in land share. Former farmers complained to Chief of Infantry Battalion. The Chief gathered the farmers and called an auction for land use. Former farmers and new farmers competed in the auction. The payment for rent for one acre for one year rose from Ks. 6,000 to Ks. 10,500. Former farmers lost in auction. Farmers who won the auction paid rent to the Chief. A monk close to village administrators also got a share and distributed the lands to his relatives. Dislike to village administrator and monk grew strong among former farmers.

Chief of Infantry Battalion returned the rents to farmers in May, 2012. He told farmers that the use of land was up to the wish of farmers. Farmers did not know why the Chief returned the rents to them. Disputes over these 200 acres between 40 farmer households grew and remain unresolved.

6. Recommendation for the Land Confiscation Parliamentary Committee

During the military regime, there was no freedom from fear. Land confiscation was taking place extensively throughout the country. Voices from farmers were not heard nor articulated. There was no private media but the single state –run media expressing all the time "All is well and prosperous." Rule of law was not prevalent. Persons, government institutions or business companies who have access to power participated in land confiscation. Those who received lands used portions of their land to the benefit of the authorities who gave permit of land use right to him. Those whodeveloped that portion of the landmight cultivate the crop in the name of the authority implying that he expressed his "Garawa" (Gratitude) to the boss. Thus attempts to support land use security for the farmers and poor would have faced united resistance from both these developers and the authorities.

While land confiscation is not a new problem in this country, the country is facing a significant turning point. With a civilian government in place headed by the reform-minded President Thein Sein, the Government recognizes that issues relating to land conflict are a serious concern that could have negative impacts on the stability and prosperity of this country. Land problems can impact on: foreign investment, sustainable economic growth, the environment, social stability and the rational development of a democratic system of governance that respects the rights of all citizens.

Rising discontent across the country can be seen in the stories about land conflicts being reported on a daily basis by local and foreign media. With the opening of political space, such as the recent Peaceful Protest Law (2011) and the with the right to form farmer associations included in the new Farmland Law, farmers are taking their complaints to the authorities at all levels of government, hiring lawyers to represent their cases in court (excluded from the Farmland Law for handling land disputes), and risk imprisonment. In response, Burma's Lower House set aside four days July 23-26 to debate the issue, with 45 MPs bringing up cases of land confiscations from their constituencies, culminating in the formation of a Parliamentary Commission formed

to probe the alleged forcible land confiscations in 14 states and divisions in Burma. Until the government needs to rework its land use laws to take into account competing interests of private sector and rural populations, lands conflicts could continue to impact on the social and political stability in Myanmar.

The Land Core Group of the Food Security Working Group has taken the initiative to produce an objective report documenting the land confiscation of 13 villages in central Myanmar in order to help the Parliamentary Commission with their mandate. Several important conclusions can be drawn from this assessment and the Land Core Group recommends that the Parliament and the government takes this into account when making decisions regarding national land conflicts.

1. **Respect for the Rule of Law:** In 4 out of the 13 cases included in this study, farmers' with permanent use rights (*U Paing*) have been dispossessed of their land. This demonstrates a complete disregard for the strongest form of legal protection farmers have to their land. In other cases, farmers have been farming for generations under customary law on land outside of the scope of the government's land survey area, now deemed "virgin or wasteland" with potential for being re-allocated under the Wasteland Law. As Myanmar attempts to develop a regulated land market, it is not just the laws but the respect for the rule of law is needed. Therefore cases involving farmers holding *U Paing* need to be resolved fairly and farmers given back their land . Where farmers do not yet hold U Paing, but can demonstrate that they have been farming on land for an extended period, they need to be given an opportunity to register their land permanently or be given compensation for the land at present market-value

2. **Consider a longer time-frame**: The Land Confiscation Investigation Committee has set out the inquiry framework including 23 dos and don'ts (responsibilities of the investigation committee members) and among these, one restriction states that the land confiscation cases that took place before 1988 shall not be considered. Demarcation of the problems after 1988 (i.e. the year the SPDC military government took over the country) could be easily understood. But it should be noted that many existing land

conflicts started before 1988. Dropping such case out of the problem boundary means denial of the existing troubles of the farmers.

3. **Prioritizing support for smallholders**: The current market economy orientation provides both opportunities and risks to smallholder upland farmers. The opportunities include fair market prices for crops and increased access to agricultural inputs. But to maximize the opportunities under the market economy, farmers require land tenure guarantees, choice in crops cultivated, and inputs such as credit and extension services. Smallholder farmers also require protection from some of the risks of market economy, including practicable avenues of recourse in case of land dispute, and regulation of agribusiness land acquisition practices. Under these conditions and guarantees, smallholder farmers will have a solid foundation to be food secure and contribute to national production goals.

4. **Government ministries need to work together under a comprehensive land use framework:** Competition between ministries over land prevents efficient use of the land. Achieving equitable and sustainable tenure guarantees in the uplands will require targeted and intensive coordination between Ministries and Government departments at all levels. The current land classification system clearly divides responsibility for land classified as agricultural, forestry, and other, between responsible Ministries. While this may be effective and efficient for land administration within that classification, the regulations are difficult to adapt to communities' current uses of land i.e. communities farming on denuded forests may find it hard to convert that land into agricultural land. These laws also cannot be used in the uplands where communities applying customary tenure farm across land classifications. Therefore a comprehensive framework for land use is needed. The implementation of this would require effective coordination between all responsible Ministries and allow for more decentralization of decisions.

5. **Independent and accessible procedures to address grievances**: The 13 case studies demonstrate how difficult it is for farmers facing land conflicts to access fair arbitration for their grievances. For people with little education living in remote areas, it is difficult

to maneuver in or engaging with the government and legal systems. The new Farmland Law states that the Farmland Management Board will arbitrate all land disputes, but as many of these disputes may involve the Ministry of Agriculture itself, the objectivity may be compromised. As such, there may be a need to establish an independent and high-level body that arbitrates land cases.

While these two new land laws bring Myanmar closer to establishing a land market, there are still weaknesses to the laws. Companies that have been allocated land under the Wasteland Bill are now caught up in complications. In part due to lack of profitability in the farming sector, earlier this month, the Aye Ya Shwe Wa Company in the Delta, owned by Burmese tycoon Tay Za, returned more than 40,000 acres of confiscated farmland to the government to return to the original owners. The Land Core Group has recently carried out a legal review of these two land bills to show how these laws in their current form will likely negatively impact on the land tenure security of rural farmers and communities in Myanmar, which could lead to increased levels of land conflict and social instability in the country. The legal review recommends that the new legislation be revised into a more comprehensive and balanced approach to land management and land use planning in Myanmar. This opportunity encourages better governance of land resources in the country, respects the rights of the citizens of Myanmar, and allows for the sustainable economic development of the country's natural resources.

It is clear that land confiscation is the outcome of a range of pre-conditions such as excessive power uses; corruption of the government staffs tendency of business people to take advantage of the assigned lands for exploitative uses of lands for profitable purposes other than real farming; lack of sustainable land use planning; ignorance of farmers in protecting land use rights; complexity in granting process of land use titles; lack of transparency in land administration; state's lack of awareness of farmers' problems; lack of farmers' organizations; manipulation of the land use classification boundaries for the personal benefit; and emergence of land market, etc.

Based on a comprehensive survey and categorization of the land confiscation problems, a proper frame work should be developed by the Parliamentary Commission to adjudicate fair outcomes by relevant authorities, with the participation of farmers' representatives. For some cases which

are difficult to make solution, alternative solutions should be considered, such as the creation of an independent adjudication body (outside of the Ministry of Agriculture's direct authority).

While the present study still has limited geographical coverage and the study team did not have the opportunity of making contact and interview with the local officials involved in the process, it covers a range of land confiscation conflicts. This study would serve a good starting point for the Parliament's comprehensive land confiscation assessment. The Land Core Group of the Food Security Working Group would be pleased to have these cases subjected to the fair review of the investigation committee as formed and approved by the Parliament in 8 August 2012. The Land Core Group would be willing to continue to partner with relevant authorities in the government to continue to resolve the land challenges faced by the people of this country.

The Food Security Working Group (FSWG), established in 2003 is a network of over 140 national and international NGOs, working on improving practices related to food security in Myanmar. The FSWG supports its members with a range of services including: technical seminars/trainings, workshop, dissemination of information, access to resources, learning and exchange forums, representation, opportunities to collaborate in evidence-based research, and advocacy.

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