



## A Summary of the National Dialogue on Customary Communal Tenure of Rotational & Fallow Taungya



Policy Brief prepared for Land Core Group

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## Foreword

From 13-14 February 2015, the Ministry of Environmental Conservation and Forestry, the Transnational Group and the Land Core Group organized a National Dialogue on Customary Tenure of Rotational and Fallow Taungya. The meeting brought together a myriad of stakeholders including government officials, legal experts, academics and local civil society organizations to discuss the recognition of customary communal tenure land management arrangements, with a particular emphasis on how customary tenure might be recognized in the forthcoming National Land Use Policy and National Land Law.

This policy brief aims to advocate for the recognition of customary communal tenure of rotational and fallow taungya in the upcoming National Land Use Policy and National Land Law. The brief draws most directly, but not exclusively, from discussions and scholarship presented at the recent national dialogue.

## Acronyms

|        |                                                     |
|--------|-----------------------------------------------------|
| FALUP: | Forest and Agriculture Land Use Planning            |
| GAD:   | General Administration Department                   |
| GPS:   | global positioning system                           |
| ICC:   | Indigenous Cultural Community                       |
| ILO:   | International Labor Organization                    |
| IP:    | Indigenous People                                   |
| LCG:   | Land Core Group                                     |
| LIFT:  | Livelihoods and Food Security Trust Fund            |
| MOECF: | Ministry of Environmental Conservation and Forestry |
| NLUP:  | National Land Use Policy                            |
| SLRD:  | Settlement and Land Records Department              |
| TABI:  | The Agro-Biodiversity Initiative                    |
| TNI:   | Transnational Institute                             |

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## I. Introduction

In order to foster dialogue among a variety of stakeholders on the recognition of customary communal tenure practices in Myanmar, from 13-14 February 2015, the Ministry of Environmental Conservation and Forestry (MOECF), the Transnational Institute (TNI) and the Land Core Group (LCG) organized a National Dialogue on Customary Tenure of Rotational and Fallow Taungya. The Dialogue provided an overview of and raised awareness about current debates faced incorporating customary tenure into land policy planning, drawing on challenges and successes in the region. Participants discussed the potential role of customary tenure in the National Land Use Policy (NLUP) given the current land law framework and communal practices, drawing on experiences of Myanmar and international experts and civil society organizations engaged in work surrounding communal tenure arrangements. These discussions lead to the adoption of a series of guidelines related to customary tenure that MOECF and related agencies may utilize in finalizing the national land use policy and drafting the land law.

## II. National Land Use Policy

The second day of the Dialogue began with a presentation on customary communal tenure in the draft NLUP by U Tin Maung Than, Deputy Director with MOECF. The Government of Myanmar initiated a land use policy drafting process in 2013 and in October 2014 initiated a process of public consultation on a finalized draft

policy, with a view to finalising a new National Land Use Policy for Myanmar. An important aspect of the draft policy pertains to the recognition of customary land tenure practices and the potential formal recognition of communal tenure arrangements. This is covered in detail in Part VII of the current draft policy.

## III. Global & Regional Perspectives

International expert Gonzalo Colque from the Fundación Tierra and an expert on customary communal tenure in Bolivia provided an analysis of the importance of customary land rights from a Bolivian and global perspective. Customary communal tenure, in a variety of forms, remains prevalent on a global scale. It is a vibrant system for managing land and resources in customary ownership by vulnerable ethnic groups, indigenous people and poor rural people. Moreover, land has not only an economic function but also the social function of protecting rural poor and community-based livelihood systems. Recognition and protection will include social and political dimensions.

Recent land reforms and land titling initiatives can and should provide valuable lessons to the Government of Myanmar as it now undertakes similar efforts.<sup>1</sup>

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, stated the TNI's Jenny Franco, are currently the highest international voluntary standard based on negotiation and agreement by United Nations Member states. Myanmar is a signatory to these guidelines. Though the tenure guidelines do not establish a human right to land, they are explicitly anchored in the international human rights framework and thus contribute to making land tenure and land management a matter of human rights. For example, Part II of the guidelines explain the measures

states should take to recognize and respect legitimate tenure right holders and their rights, safeguard legitimate tenure rights against threat and infringement, promote and facilitate the enjoyment of legitimate tenure rights, provide access to justice to deal with infringement of tenure rights and prevent tenure disputes, among other topics. This provides a framework within which indigenous land use rights, such as customary communal land use rights, can be effectively protected.<sup>2</sup>

Recognizing the importance of recognizing customary communal tenure, the diversity of customary communal land use practices in Myanmar and the current legal framework in Myanmar, the Dialogue sought to bring together practitioners from neighbouring ASEAN countries to discuss successes and challenges in customary communal tenure recognition.

While the country contexts and projects implemented vary, these endeavours are united by the fact that they aim to recognize existing customary communal land use and support the livelihoods of indigenous peoples. Among the country contexts discussed, the Philippines and Cambodia have successfully implemented customary tenure recognition land laws; Lao PDR has developed a customary communal tenure recognition project that is currently at a pilot stage.

Mr. Sophorn Sek of the International Labor Organization, which provides support to indigenous communities based on its Convention 169 (1989), provided an overview of the Cambodian experience recognizing and registering customary communal land use rights in the national cadastre. His presentation touched on the process of identifying communities as natural legal persons (for purposes of customary communal land tenure arrangements), mapping current land use, capacity building and support delivered to stakeholders engaged in this process, coordination of operational procedures at the national level and the challenges and achievements encountered in the Cambodian context thus far. Mr. Sek highlighted

the one-window service implemented in Cambodia to manage the cadastral land titling process of communally held property. The formulation of national policies related to land management were informed by meaningful consultations with civil society organizations. During this process, the Government of Cambodia and donors set up a coordinating body to facilitate the awareness and build capacity among a broad range of stakeholders, including indigenous groups.<sup>3</sup>

Mr. R.J. de la Rosa discussed salient characteristics of indigenous peoples' land rights legislation in the Philippines, challenges faced and the Philippines constitutional framework. Land reform has occurred in the Philippines in the midst of a context of a highly ethnically diverse population where land conflicts have resulted from state development programs and where civil society is strongly engaged. The Philippines has undergone a political transition that included the adoption of a new constitution. Article II section 22 of the 1987 Constitution recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development. An Indigenous Peoples Rights Act (1997) recognizes ethnic group controlled land under the status of 'ancestral domain' land and provides land use rights on this basis.

Under the Philippines' framework, ancestral domain refers to all areas generally belonging to indigenous cultural communities or indigenous peoples (ICCs/IPs) comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually. It shall include lands which may no longer be exclusively occupied by ICCs/IPs but from which they have traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators. Certificate of ancestral domain title formally recognizes the rights of possession and ownership of ICCs/IPs over their ancestral domains

identified and delineated.<sup>4</sup> Challenges faced in implementing this policy have included a cumbersome process for administering ancestral domain claims, budget limitations, conflicting ancestral domain claims and difficulties implementing free prior and informed consent policies.

Each of the ancestral domains in the Philippines is made up of the combined territories of the whole indigenous people or tribe living in many adjacent villages, often the territory synonymous with present-day local administrative authority. By contrast, in Cambodia the territory recognized for collective titling is that of one village. The village is also the traditional body for customary land management in at least some portions of Myanmar.

Mr. Pheng Souvanthong and Mr. Saysongkham Sayavong of the Ministry of Agriculture & Forestry in Lao PDR provided Dialogue participants with an overview of land tenure in Laos, with an emphasis on the work the The Agro-Biodiversity Initiative (TABI) project is conducting on formally recognising and mapping long fallow shifting cultivation cropping areas. As in Myanmar, in the Lao PDR context all land is ultimately owned by the state.

Historically in the uplands the Lao government policy has been to “stabilise and

eradicate” shifting cultivation practices; however, more recently there has been a re-evaluation of the low level of success of this policy. This is due partly to the TABI project and Ministry of Agriculture and Forestry developing participatory Forest and Agriculture Land Use Planning (FALUP) which recognizes the reality of upland cultivation, and then aims to develop (plan and zone) sustainable management of long fallow rotational upland cultivation.

The FALUP process operates at a village level where it differentiates between permanent forest (forest that has never been cleared) and bush fallow areas that have at some point been cleared by villagers for rotational shifting cultivation. Ultimately the project aims to issue communal land titles for both (i) the upland cultivation and bush fallow zones, and (ii) the community forest zones, with a view to providing customary land management systems with a security of tenure. The mapping and registration process takes a participatory approach to mapping village boundaries that allows the incorporation of fallow lands used for shifting cultivation into the titling process.<sup>5</sup> Unlike examples from some neighbouring countries this method for communal title can be issued to any ethnic group or cultural community without registering that group as a special entity.

#### IV. Customary Communal Land Tenure and Rotational Fallow Farming Practices in Myanmar

During the first day of the dialogue, Kirsten Ewers Anderson presented research she carried out in Chin and Shan States on behalf of LCG. The research was carried out to identify how it could be possible to carry out cadastral registration of rotational and fallow farmland and codify customary tenure in collaboration with Myanmar’s Settlement and Land Records Department (SLRD). The research carried out in the Northern Chin state found that the rotational and fallow farmland was managed under

communal tenure where each year families were allocated plots by lottery in the *lopil* (mountain tract) of that year to cultivate. Inside the common property some families could have private ancestral claims on certain plots or claims on orchards or terraces they had developed, but as a rule land was equally shared and every one physically living in the village had rights of access to farmland. The internal rules for managing and sharing the lands in Northern Chin villages today are similar to rules observed by a British officer, H.N.C. Stevenson, who lived in Falam in the 1930s, indicating that these rules for managing and sharing of the land have a long history. Stevenson noted that “[T] the *klang ram* - although ‘com-

munal' - contains many internal ancestral claims of individuals to different plots in different *lopils* and that the *bil ram* - although 'private' - is subject to many rights of the community as a whole, so it is not exclusively private."<sup>6</sup> The land of a Northern Chin village may have 18 different *lopil* and a fallow period of up to ten years if only one or two *lopil* are opened in a given year.

Internal Rules for land management differ from village to village, dependent on the village's land resource endowment, the size of its total land area, population density, ethnic group identity and culture, clan identity and kinship, women's status, private land claims within the common property, inheritance, bride prices, and transactions to borrow/lend land between village members.

In at least some parts of Shan land is held primarily by individual title; nonetheless villages administer their land collectively. Researchers said, "Surprisingly, they wanted communal tenure for the totality of all agricultural land, including fallows, inside the village boundaries. The similarity that they share with Chin - and with the observations of last century - is the criterion that only persons living in the village have rights to access land in the village territory. The person must live in the village. In the Shan pilot villages, a person with an irrigated paddy field who leaves the village must surrender the land to the village common pool for elders, headmen and others to redistribute."<sup>7</sup> Claims on land in the village territory are private claims, but the validity of the claims is embedded in the overall village communal tenure of land defined by the exclusion of outsiders. The land can be called customary communal tenure, because rights of access to land are based on the criterion of residence or occupancy in the village.<sup>8</sup>

Over the course of the project, researchers recorded the internal rules of the customary tenure arrangements in villages visited and wrote the rules down in

both Myanmar and local ethnic languages so that village members might re-examine their internal procedures and agree upon them. Additionally, researchers developed statutes in collaboration with local communities, in order to help the community request recognition as an association or organization by the General Administration Department (GAD).<sup>9</sup>

These research findings were complemented by a presentation by Sai Sam Kham of Metta Development Foundation, which discussed challenges recognizing and protecting customary communal tenure in Shan State. The presentation featured a number of case studies based on Metta Foundation's work in Shan State. One case study presented discussed Pan New village, Kwun Lone township, Northern Shan state where Shan and other ethnic groups live. The community manages around three thousand acres within a rotational fallow farming system. The farming system provides food support for local people and represents the culture traditions of local ethnic people. Research also showed that the rotational fallow farming system implemented in this village promotes biodiversity. Large-scale rubber producers have acquired some of the village's land through land concessions. The community now struggles in implementing their previous farming practices and breeding livestock. They also struggle to find firewood and wood with which to build houses. The presenter emphasized the need to protect customary communal farming practices, such as rotational fallow farming, as these practices are central to the livelihoods of many indigenous people, such as the Pan New community.

A representative of the Karen Environmental and Social Action Network presented an overview of customary communal practices within Karen communities. Particular emphasis was placed on the practice of Kaw. Kaw, meaning geographic area in the Karen language, refers to the ancestral and spiritual territory

of that community. Kaw also refers to the community based management system of resources for and by the community. Community meetings, presided over by village elders, are held to make decisions as to how land should be assigned and managed at a community and household level. Within communities, there is a diverse array of land uses including forest use and rotational farming. Individual use rights are also assigned for households to engage in such practices as wet paddy cultivation and orchard gardening.<sup>10</sup> During the panel discussion, Karen community leaders noted that it would be difficult to impose traditional land administration systems on Kaw practices. Individual titling would not gain buy-in from local communities because the commodification of land would alienate it from communities and be in tension with local beliefs about land. Additionally, land administration would come into tension with the communal practice of deciding land use collectively at a village or community level, both for communal and individual land uses.<sup>11</sup>

Subsequently, a presentation by Zaw Wint Phyo of civil society organization Resource Rights for the Indigenous Peoples covered the findings of customary land tenure practice in Naga Region. Topics covered included types of land under customary tenure system, access to land, conflict resolution mechanism for land disputes and procedures of customary land tenure practice. The presentation highlighted the prevalence of shifting cultivation techniques in the Naga self-administered zone. Jhum, or shifting cultivation, is one farming technique among others practiced in the Naga region. Jhum is practiced both individually, at a household level, and collectively, i.e. among villages, or clans, within a given village territory. Designated jhum land is clear to each household in the village of practice. Under this form of shifting cultivation, substitute crops and vegetables are grown in the Jhum land to feed domestic animals and in case of natural disaster. Among Naga people it is generally believed that this crop rotation is beneficial to soil fertility.<sup>12</sup>

## V. Legal Framework in Myanmar

A session presented by USAID's Robert Oberndorf gave an overview of the current legal framework relating to land tenure and implications for formal recognition of communal tenure arrangements. The presentation covered how the current legal framework works, analysing how the Constitution in Myanmar recognizes and protects immovable land property rights, and how language in this apex legal document compares with constitutional provisions found elsewhere in ASEAN countries. Other existing legal tools found in the existing legal framework that could potentially be used for the recognition of customary communal tenure were also discussed, including provisions found in the Association Registration Law, the Farmland law, the Forest law and related Community Forest instructions, and the Vacant, Fallow and Virgin Land Law. The relative strengths and weakness of these legal instruments were explored, with the conclusion being reached that the existing legal framework in Myanmar was adequately designed for the explicit purpose of formally recognizing and protecting customary communal tenure. Mr. Oberndorf made the argument that a new legal mechanism specifically designed for the formal recognition and protection of customary communal land tenure rights is needed in the Myanmar country context. Such a mechanism should be flexible in order to meets the needs of various ethnic groups in Myanmar, and to adapt to changes in land use by communities over time. It was recommended that the forthcoming comprehensive umbrella National Land Law should include a chapter that included language that would support the formal legal recognition and protection of customary communal tenure.

## VI. Group Break-out Session

During the second day of the dialogue, participants broke up into four groups to discuss select topics in more detail. The main topics of discussion and conclusions reached during this session are summarized below.

### Customary Communal Tenure within the Current Legal Framework

The current legal framework lacks the tools to recognize all kinds of land use and to designate communal ownership. Current laws need to be amended to account for a wide range of land uses. Within the Naga region alone there are six to ten different classifications, none of which are described in existing laws or regulations. It is not clear how within the legal framework communities may own land if they want communal land ownership; it could be possible to register ownership under the farmland law or the associations law though neither of these instruments were drafted for this purpose. Moreover, there is no provision for designating how a legal entity defines its rights (i.e. how members enter and exit community, how rights are assigned among community members).

Several intermediary steps need to be undertaken for the recognition of customary communal tenure to become a reality. Land use needs to be mapped in a participatory manner that involves local communities. Once land use is mapped, a common classification system must be adopted as part of the community's internal rules for land management and land sharing. A system must be agreed upon and village committee must be elected to administer the classification (either an existing agency or a new agency created for this purpose).

It would be prudent for the preceding policy decisions to be overseen by a customary land tenure working committee; the group recommends the creation of such a committee.

### Customary Communal Tenure in the National Land Use Policy

The current draft of the NLUP recognizes in Part VII customary tenure and further development of the draft may include explicitly also rotational taungya as a land use system that can be registered in the name of the community. Rotational taungya is a widely practiced form of communal land management. To meaningfully recognize ethnic customs and practices the policy must also recognize these rotational practices.

The group spent a significant portion of their time debating whether customary communal arrangements were best recognized through zoning regulations or through the creation of a new land classification (or several new classifications). Recognizing land use through zoning would be easier to administer. An area zoned a particular way may include several land classifications. Within an area zoned for customary communal tenure, a variety of customary communal land uses could be practiced. A new classification on the other hand may provide increased tenure security if it included a preliminary mapping. Either under a zoning regime or an expanded land classification system, land use management committees should be created within communities to manage the process of designating, recognizing and protecting land use classifications. The preliminary mapping of such zoning may later inform a legal cadastral registration of the communal land parcels.

### Decision Making & Dispute Resolution around Customary Land

Several short-term strategies to curb land loss and disputes surrounding customary communal land use were discussed. Some group members suggested that communities make agreements not to sell their land, as was carried out in Cambodia. Where land concessions are already part of the government's practice, communities should seek to negotiate with the government for protection measures against land alienation. It is im-

portant that communities receive adequate compensation for lands expropriated and doing so would quell community conflicts. A short-term moratorium on land concessions in ethnic areas is needed to facilitate the peace process and to ensure that further conflicts do not take place.

Steps should be taken to prevent land conflicts. Participatory land mapping with government involvement and buy-in may support this end. Communities should also be involved in land use planning. Minimum standards or principles and community safeguards should also be adopted.

Current conflicts often stem from a misunderstanding of customary tenure practices; this may be addressed by increasing understanding of customary communal practices in the judiciary and exploring the possibility of adopting community based dispute resolution mechanisms. The local ecological and social contexts related to customary communal tenure are often only accessible to local people. In some areas of the country there exist overlapping customary systems, such as Northern Shan State. Customary systems are not always equitable, though, and there is a need to develop community safeguards. The judiciary has the authority to make decisions on land cases, though there is minimal understanding of localized customs within the national court system (with courts often seated at only a regional level). Alternative dispute resolution mechanisms could serve to harmonize customary and national law, though they would need to understand the various diverse customary systems and technical issues around land. They would also need a review mechanism to ensure their independence and effectiveness.

### **Customary Land Mapping & Classification**

The group first discussed the benefits of land mapping. Mapping provides definite demarcation of boundaries and can support a land classification process. The existence of maps can also support the resolution of land disputes and can control land grabbing. Ad-

ditionally, as land users seek to register their land existing maps can support their claims. Participatory land mapping in particular has the added benefit of empowering communities. Though the term “ancestral lands” needs to be defined more precisely within the Myanmar contexts, recognizing ancestral claims may also empower communities and create community buy-in to a mapping process.

A variety of challenges may be faced in implementing a land mapping process. The technology available to communities and the technical capacity of communities may limit their ability to participate in the mapping. As mapping is carried out, boundary disputes may arise. General guidelines must be agreed upon for how the mapping is to be undertaken, while taking into account that this should be adaptable to different regional contexts. The power dynamics between local communities, the government and other stake holders may also prove challenging.

It is recommended that community based participatory mapping be undertaken. In order to accomplish this, technical support to communities is needed and general practices should be drawn from good practices (in the region and globally). Technical support, such as trainings on the use of global positioning system (GPS) technology, should be supplied to communities. Guidelines for boundary mapping procedures and land use planning should be adopted. The government and community should be in coordination for the duration of the process and should share the goal of creating a bottom up system for land recognition and land resource control recognition. Over the course of the mapping, boundary disputes may arise and a grievance system should be set up to address this. The mapping should be carried out with the understanding that different strategies may be undertaken in different areas of the country depending on regional context (i.e. conflict and non-conflict areas). Once completed, the mapping can and should serve as a tool for communities to understand their rights and prevent future land grabbing and disputes.

## VII. Discussion

As national dialogue participants engaged in small group discussion and debate over the course of the two-day meeting, discussions could be seen to coalesce around several themes highlighted below:

### Global and regional perspectives on rotational and fallow taungya

Shifting cultivation farming, a subset of customary communal farming practices and land use arrangements, is widespread in ethnic areas of Myanmar. Shifting cultivations involves cultivating a series of plots sequentially; after cultivating a field it is left to fallow for several years, typically long enough for pioneer tree growth.<sup>13 14</sup> Research has shown that up to 7% of the world's population engages in shifting cultivation practices.<sup>15</sup>

Shifting cultivation has been a misunderstood ecological system; research, however, has highlighted the social and ecological benefits of shifting cultivations. It has been argued that the practice is economically inefficient and ecologically harmful. Shifting cultivation techniques have been shown to enhance biodiversity and promote climate change adaptation while also promoting social cohesion and food security.<sup>16 17</sup> Rotational fallow taungya, or shifting cultivations, has been carried out under a broad range of community based tenure regimes that mediate the sharing of land and natural resources. Local customary tenure institutions of upland farmers of shifting cultivation function to maintain social and food security. Farmers practicing shifting cultivation conserve more forests on their land than farmers utilizing any other technique, while maintaining productive use of cultivated land. Techniques used in these systems are generally appropriate for their agro-ecological contexts and cultivators often have complex and comprehensive knowledge about resources, land use and the surrounding environment. In comparison to sedentary cultivation, shifting cultivation lowers environmental impact and forest regrowth during the fallow period promotes biodiversity. Generally no toxic inputs such as pesticides, herbicides and synthetic

fertilizers are utilized. At the same time, the institutional mechanisms embedded in traditional rotating fallow taungya systems can ensure access to productive resources for all community members.<sup>18</sup>

Given the sustainability of shifting cultivation techniques and the fact that a wide number of rural people are currently practicing shifting cultivation through customary communal tenure arrangements, it is paramount that these practices are protected and, in so doing, that the livelihoods of those that engage in them are protected.

### Deeper analysis of customary tenure

Ethnic populations in Myanmar practice a variety of farming techniques and a deeper understanding of these practices is needed in order to develop an effective land policy framework that recognizes customary communal tenure. During the Dialogue several customary communal tenure practices were highlighted. This account of customary communal tenure was by no means exhaustive and rather serves to illustrate the rich diversity of practice among Myanmar's ethnic populations. The OECD's 2014 Investment Policy Review of Myanmar emphasized that land legislation should "consider the diversity of customary law that varies across different ethnic groups and geographic areas"<sup>19</sup> This is echoed by the presentations and discussions at the national dialogue.

### Other customary practices

It should be recognized that not all customary practices are communal in nature. Some customary practices are carried out on an individual or household basis. Some customary practices include non-land use specific practices; on the same territory different groups may have the rights to remove certain resources and cross the land. These rights may sometimes come into conflict. There might also exist a hierarchy of rights that are held by individuals and communities. The diversity of all of these customary, and not necessarily communal, practices should be taken into account when registering land use and undertaking mapping.

## VIII. Policy Recommendations

Based on expert presentations and group discussions at the national dialogue, the following policy recommendations have been formulated.

**Recognize and protect customary land and resource management systems to ensure food security of ethnic rural populations, protect biodiversity and promote sustainability.**

Ethnic communities in rural Myanmar engage in a variety of customary communal land and resource management systems, including rotating fallow taungya farming techniques. Though hostile assumptions and prejudices toward shifting taungya practices persist, “in recent years perceptions are becoming more sympathetic, mainly due to scientific studies which confirm that under conducive conditions swidden systems are efficient, productive, sustainable and environmentally beneficial.”<sup>20</sup> Communal farm management techniques, including rotational taungya, are presently under pressure due to ongoing inappropriate economic developments such as large-scale land concessions that disregard customary tenure practises. A lack of tenure security around customary lands together with this inappropriate economic development is leading to high levels of land grabbing around the country. Recognizing and protecting sustainable customary land and resource management practices is necessary to protect the legitimate livelihoods of rural ethnic peoples of Myanmar and to halt land grabbing of customary lands.

**An interim safeguard mechanism is needed to immediately protect and recognize customary tenure arrangements.**

While the national land use policy is currently in a draft stage, it should be recognized that the policy is part of a longer process to develop a comprehensive national land law and harmonize existing laws to the policy. Hence a comprehensive legislative framework for the recognition of customary communal tenure will require both time and the collaboration of a variety of stakeholders to develop. In the meantime, ethnic communities will continue to face a lack of tenure security because of ongoing economic development that ignores their traditional land management systems. The loss of customary communal lands has serious detrimental effects on peoples’ livelihoods and also creates long-term instability and tension between domestic and foreign investors and rural communities. As recently completed research by Michigan State University has suggested, “[g]iven ongoing granting of concessions, a major priority is to protect the land rights of tradition-

al land users operating under customary tenure in extensive long fallow farming systems”<sup>21</sup> An urgent need exists to create an interim mechanism for the recognition of customary land use rights in order to protect the legitimate livelihoods of rural ethnic communities and preserve social stability and economic development until a more comprehensive long-term solution is formulated and written into law.

**A high level Customary Land Tenure Working Committee should be formed to take necessary actions to recognize and protect customary tenure and sustainable rotating fallow farming systems.**

The formulation of a comprehensive legal framework to recognize, protect and support customary communal tenure rights requires the collaboration and buy-in of a myriad of stakeholders. The National Land Resource Management Central Committee is uniquely positioned to ensure the high-level government collaboration needed for successful policy and legislative development. Experiences in the region shared during the recent national dialogue, particularly those from Cambodia, stress the importance of a central coordinating body devoted to issues related to customary tenure. It is recommended that the Committee establish a Customary Land Tenure Working Committee to support the protection and promotion of customary communal tenure, with the participation of and dialogue between a variety of

stakeholders, including ethnic communities and civil society organizations. The working committee could carry out such activities as research, the development of policy recommendations and the implementation of pilot projects.

**A process for exploring and documenting various customary tenure regimes and protections should be set out in order to generate further policy recommendations.**

Ethnic communities practice a diverse range of customary communal land use and communally managed farming practices; the recognition and support of these practices will not be accomplished through a “one size fits all” approach. Further research is needed into how lands are held and managed within ethnic communities. This may include research into communal arrangements and mapping of existing land use. Furthermore, research presented at the Dialogue noted “[a]dditional research is

required to help prepare a compendium on lessons learnt on the procedures that can lead up to a cadastral communal land registration”<sup>22</sup> A process for exploring and documenting these practices should be formulated so that community practices can be better understood. Such a process should feed into inclusive law and policy formulation and address long-term needs of communities. The proposed Customary Land Tenure Working Committee may manage the process.



## IX. Next Steps

The preceding policy recommendations can begin to be implemented by pursuing the following next steps in the short and medium term.

### **1) Formulate an interim mechanism to immediately recognize and protect customary communal tenure arrangements.**

An urgent need exists to create an interim mechanism for the recognition of customary land use rights in order to protect the legitimate livelihoods of rural ethnic communities and preserve social stability and economic development until a more comprehensive long-term solution is formulated and written into law.

### **2) The National Land Resource Management Central Committee should form a high-level working committee on customary communal tenure.**

The formulation of a comprehensive legal framework to recognize, protect and support customary communal tenure rights requires the collaboration and buy-in of a myriad of stakeholders. The National Land Resource Management Central Committee is uniquely positioned to ensure the high-level government collaboration needed for successful policy and legislative

development. Experiences in the region shared during the recent national dialogue, particularly those from Cambodia, stress the importance of a central coordinating body devoted to issues related to customary tenure.

### **3) Explore mechanisms for protecting customary communal tenure.**

Ethnic communities practice a diverse range of customary communal land use and communally managed farming practices; the recognition and support of these practices will not be accomplished through a “one size fits all” approach. Further research is needed into how lands are held and managed within ethnic communities. A process for exploring and documenting these practices should be formulated so that community practices can be better understood. This may include research and development of policy solution and the implementation of pilot projects.

### **4) Outcomes of exploratory mechanisms should provide input to law and policy makers on how to improve existing policies and laws.**

Such a process of creating and implementing exploratory mechanisms should

feed into inclusive law and policy formulation and address long-term needs of communities. The proposed Customary Land Tenure Working Committee may manage the process. In its governance capacity the

working committee should ensure proper channels exist to communicate the outcomes of research activities undertaken to law and policy makers.

## X. Conclusion

The recent National Dialogue on Customary Communal Tenure of Rotational and Fallow Taungya presented a unique opportunity to bring together a myriad of stakeholders to engage on these important issues within the context of the current national land policy and land law drafting. Participants enjoyed the opportunity to engage with government counterparts in a transparent and open manner. The National Land Use Policy has the potential to provide some formal recognition of communal tenure arrangements. Presentations highlighted the prevalence and diversity of customary communal tenure arrangements, both globally and within Myanmar. International experiences in customary land management and integrating customary practices in national policy emphasized the importance of tenure security for overall national development. Participants discussed the successes and challenges in implementing such policies. Within the Myanmar context, the current legal framework provides mechanisms that could be utilized to recognize communal tenure arrangements; however no current law or other regulatory mechanism was specifically designed for this purpose. Breakout sessions provided participants an opportunity to discuss topics covered by presenters in more detail. These sessions culminated in the formulation of guidelines that, along with the continued engagement of a variety of stakeholders, participants and organizers hope will inform the national land use policy and land law formulation process.

## XI. Annex

### Opening Speech of Dr Nyi Nyi Kyaw, Director General, Forest Department, Ministry of Environment Conservation and Forestry

To all the scholars and experts from International, experts from respective government ministries and departments, and to all the participants who are coming to attend this event The National Dialogue on the Customary Communal Tenure and Rotating Fallow Taungya, I would like to say Mingalarbar!

This national dialogue is jointly organized by our Ministry, Land Core Group and Trans National Institute (TNI) and funded by LIFT.

Please allow me to briefly explain about the National Land Policy that has been developing in collaboration with various stakeholders.

Land use policy development which is

in line with today workshop today is very much important task for our country. It is important to have proper laws, by laws, policies, and implementation mechanisms that is relevant to the present situation in the sector of land reform while the country is being undergoing political, social, economic, and administrative reform process. That's why we have been drafting this crucial policy.

Allow me to give you a brief history on the process of drafting this policy. We have started all of this process in 2012 when the government gave us this assignment to our ministry to develop National Land Use Policy. The fifth draft of the national land use policy is being developed in July 2014. It is

not just our ministry alone who drafted the fifth draft of the policy. In fact, it has been done through several consultations and policy recommendations from various scholars and experts, and collaboration of various stakeholders. We have also received many recommendation and policy inputs after several consultations. The fifth draft of the national land use policy is basically drafted based on all those recommendations and inputs we received.

That's why, we have launched the first public consultation meeting on the sixth draft of the national land use policy in October 18. After that meeting, we have also organized several public consultation meeting during November, in 17 towns of various States and Division Regions across the country. Also we have organized the first Discuss Round Table Meeting in Naypyidaw during January 31 – February 1, to review and revised on the policy fifth draft. There were 66 attendees during that round table meeting, coming from various backgrounds; representatives from government departments, civil society, retired officers who are experts, scholars and experts from international. We have received many good recommendation in the meeting which is very helpful in developing a better policy. I like to express my special thanks to all of you who attended that meeting and gave their recommendation to us on that day.

Also, we are planning to organize the 2<sup>nd</sup> Discuss Round Table Meeting in Yangon during coming 18-19-20<sup>th</sup> at Kandawgyi Palace Hotel. That's why, I would like to invite all of you, not only to those who attended the first meeting, but also to everyone who are coming to attend today meeting, scholars and representatives to join the upcoming meeting as well.

Moreover, I would like to extend my invitation to all the stakeholders who are in collaboration with us in this land use policy regards to kindly attend our 2<sup>nd</sup> Discuss Round Table Meeting on the 18<sup>th</sup>-19<sup>th</sup>-20<sup>th</sup>.

I would like to explain some points relating to today discussion. As you may see in the title of the meeting, there is a customary land use and land ownership practices in our

country. Although they have been practicing the customary land use and land ownership practices inherently since their forefathers' times, most of it are not recognized in the legal mechanism, such as law and policies and thus remains out of the legal protection. For instance; in the indigenous areas, we see the local people are facing difficulties in solving land problems in various cases, and it is also difficult to bring the issue under the legal mechanism to be resolved because their customary land use and land ownership practices are not recognized by laws and policies at present time.

That's why I would like to request all of you to discuss the issue of customary land use and land ownership practices so it could be recognized and codified as one of the articles in the National Land Use policy.

Also, I would like to inform a little bit about the activities being initiated by our department; Forest Department, Ministry of Forest and Environmental Conservation, in relation with the discussing topic today. In comparison with other countries, our country has more forest covered areas. Our indigenous tribes lives on those forest. They extract the forest materials and cultivate in those forest for livelihood. Talking about the cultivation of the indigenous people inside the forest area, we know they have been using forest land for shifting cultivation since 1856. Here again, the term "*Taung-Ya*" is a scientific terminology. To literally translate it would mean, *Planting/Cultivating on the hills/mountain*. The Burmese say it "*Shifting Cultivation*". Shifting cultivation means, one may cut down trees, cultivates there, and when the quality of soil got declined in one or two years times, he/she moves to other location for cultivation again.

In moving one place to another for cultivation purpose, trees are cut down and burnt so they can cultivate on the land, causing loss of forest and soil damage. That's why, speaking from the perspective of environment and biodiversity conservation, *Taung-Ya* system is not a good way to practice. Therefore, instead of *Shifting Cultivation* system, *Taung-Ya* system can be maintained as *Permanent*

*Taung-Ya* using soil conservation techniques.

In our perspective, the forest perspective, *Taung-Ya* system refers to the cultivation system practices in the forest area where people grow crop plants and trees mixed up together. Growing crop plants inside/between trees also makes the soil fertilized which is good for trees. It is a combination system that can also increase the crops production. Therefore, when we say *Taung-Ya*, it does not mean the shifting cultivation one, but it should be transformed into the permanent *Taung-Ya* system. On that also, there are local people entering into forest land for various reasons; for the cultivation of paddy, for living, for non-irrigated plantation, or to grow long term plants/trees, etc. Since the local people have trespassed into the forest land since long times a go, government feels that it is no fit from socio-economy perspective to remove them from those areas although it is rightful by law to do so. That's why, starting from 2013, government has de-gazetted the encroached land such as household areas, cultivating land, common land such as Churches, schools, clinics, monasteries, etc, existing inside the protected and reserved forest areas. We have de-gazetted those land from the protected and reserved forest land areas for the development of the socio-economy life of the local people. Actually, according to State policy, we are to establish 30 percent forest land out of the total land area of the country. However, since we have abrogated some parts of the forest land to local communities, the percentage of the forest land drop down from 25.8 % to 24.6 %.

In order to meet the State policy, we are trying to extend the forest land within the forest covered land which is under government management. We are providing assistance to transform the shifting cultivating land existing inside the forest land to be *Permanent Taung-Ya* that grows crops and trees together (or, Crops Forest), and also to establish the Community Forestry for the local communities. In relating to this here, I would like to inform you about one of the Community Forestry Development Programs.

At present, as I mentioned earlier, our

people from the rural areas depends on the forest land, forest materials, and forest products. Then, there is a population growth, yet no more land to cultivate. So, they cut down trees from nearby forest land which can easily be assessed and turn the land into cultivating land for their livelihood and survival. Therefore, we are trying to establish Community Forestry that promises mutual benefits by transforming into new practices or system. We have started this program since 1995 and the instruction was released by our Forest Department to give permits to those who like to apply for the Community Forestry establishment in their local areas. Those who establish the Community Forestry will be allowed to pay no taxes on this type of forest and its related production for thirty years.

Taxes will not be charged on any production came out of this Community Forestry and will be freely used. However, though this CF program was launched since 1995, our objectives are not fully achieved yet for various reasons. According to our observation and analysis, it is because there are lots of paper works that requires local people to travel down to cities or township centers to do the paper works which they are not familiar and difficult procedures for them. And the other one is the technical challenges. The most important concern is that local people are reluctant over the 30 years tax free promise. For these reasons, the Community Forestry program seems there is no satisfactory success as it should be.

The de-gazetted Yar land from protected land will be transformed as Community Forestry of the local people with collaboration between relative departments, organizations and local authorities. We will also provide seedlings and distribute to those who will establish the CF. Technical assistance will also be provided, and then the required fund. Also the agricultural costs. For that, we will also prepare a loan system. We have discussed that we will provide micro-credit loan or forming small groups for seasonal loan on crops from banks.

For the farmland, the Settlement and Land Record Department will have to pro-

vide certificates while the community forestry users will be supported with capital investment from credit scheme for their income generation activities.

Therefore, even though the customary land are falling inside the forest land, it can be legalized and own by the local people through transforming it into Community Forestry, and they will enjoy thirty years tax free promise as well. That land (CF) will also be allowed to inherit by next generation. That's why, I would like to inform you all that any land that exists within the territory of Forest Land or Land managed by Government, it can be applied and operated as Community Forestry if the local authorities would agrees to do so at the local level.

The other one is the *Rotational Taung\_Ya system*. On that again, as I mentioned earlier, *Taung-Ya* is an *Agro Forestry System*. It is a mixture of agricultural crops and forest trees. On this, we will use it on *Rotation Based*; that is we grow this year on this land, and then move to other location next time. The currently used *Taung-Ya* land will be free for some time to replenish soil fertility. During this free time of fallow period, growing soil-enriched species on that land will resolve soil

degradation issues. It can also prevent from top soil cover run-off.

Therefore, I like to request and invite to all the scholars, economists, scientists present in the today meeting, as I mentioned earlier on *Taung-Ya* system, to kindly discuss and suggest in order to be successfully implemented the *Taung-Ya* system that is scientifically as well as economically suitable.

As my conclusion, the duty of our Forest Department is to manage the forest land. We are also doing governance reformation in our system in accordance with the concept of Social Forestry since the forest is interrelated to all the local communities. On that, during this very important meeting where we will all discuss about the customary land ownership and rotational *Taung-Ya* system, a magnificent ratio of which is related to our Forest Department, there will be some of our experienced officers discussing in the meeting today. Therefore, I like to request to kindly discuss and give advice relating to our implementations, and to suggest means to elevate development of the local people, as well as for better governance. I conclude here and thank you so much!

Applause!

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