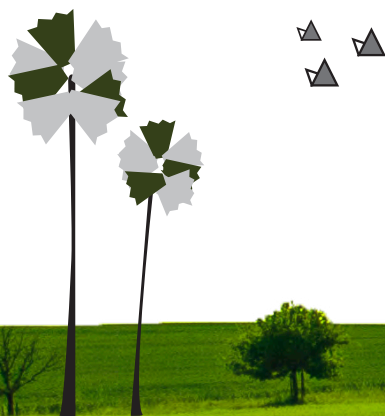


# **A Promise Unfulfilled: A critique of the Land Reinvestment Committee**



**This research was conducted by the following organisations and individuals:** Land In Our Hands, Olive Branch; Civil and Political Rights Campaign Group; Action Group for Farmers Affairs, Kayah Earthrights Action Network, Ethnic Concern, Shwe Chin Thae Farmer Network, Pone Yeik Sit, Farmer Development and Environment Watch Group, U Myo Thant (Farmer Affairs Activist), Ayeyar Tharlar Civil Society Organization, Daw Myint Myint Sein (Farmer Representative LRC).

**The organisations and individuals above received technical support from:** Billy Ford, Ko Htoo Kyaw Win and Tharthi Myay Foundation.

**December 2017**



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**December 2017**

"Land has very deep meaning and value for us. It is our lives and the very blood in our veins. Without our land, our nationality will vanish. Land is our dignity." <sup>1</sup>

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<sup>1</sup> Kayah farmer quoted in Transnational Institute. "What is the meaning of land?" January 2015 available at: <https://www.tni.org/en/publication/the-meaning-of-land-in-myanmar>

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## Summary

This report was written collaboratively by organisations assisting farmers in four States and four Regions, including members of Land Reinvestigation Committees in Myanmar. It is intended to assist the Government in their efforts to ensure that land illegally confiscated by various authorities in the past, is returned to the families who need it to support their livelihoods and provide food security. Ultimately, a fair and transparent system of land tenure is essential if communities across Myanmar are to have any hope of participating in, and benefiting from, a growing economy. Research in neighbouring countries, including China and South Korea, has shown that protecting smallholder farmers, including upland swidden farmers, can be more sustainable in terms of economic, social and political impacts, than large-scale agribusiness.<sup>2</sup>

This research finds that existing laws do not protect farmers from land confiscation by Government bodies and the laws also do not give farmers rights to reclaim their land. Furthermore, where land is taken in the name of legitimate public interests (for example, development projects agreed by the elected Government) the law is too vague and open to interpretation, especially by the confiscating authorities. As a result, farmers do not receive adequate and just compensation or appropriate resettlement.

Because the law offers weak protection of farmers' rights, the government has sought to create alternative procedures to enable the return of land. These procedures have become a focal point for conflict between those who confiscated land and those whose land was taken. The Land Reinvestigation Committee process creates an unequal playing field of vested interests, whereby those authorities responsible for originally confiscating land are the same bodies who today are determining whether, and to whom, it should be returned.

The Land Reinvestigation Committees need urgent reform. Any land redistribution is by definition a political process requiring firm political will in support of reforms. Therefore, the return of land in Myanmar can only be successful if the legislative branch is able to impose their moral legitimacy over the executive and judicial branch. In Myanmar, the moral authority of the elected National League for Democracy party, whose manifesto and subsequent policies have clearly expressed a promise to return land to smallholder farmers, cannot be denied after their overwhelming victory in the 2015 general election. All farmers in Myanmar, who represent 70% of the population, are expecting the NLD to deliver secure land use rights.

Where land has been released by the state, the process of determining claims between competing farmers, whom may both have justifiable claims, should be settled by a local community negotiation process. It will be clear to communities when claims are made without any basis, and communities themselves should be allowed to decide a settlement if more than one family had used the land prior to or post the confiscation. The outcome of disputes should be determined by a fair and participatory

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<sup>2</sup> See for example, Joe Studwell, 2014 *How Asia Works* (Grove Press, London), Cramb, Manivong, Newby, Sothron, Sujang June 2015 "Alternatives to Land Grabbing: Smallholder Engagement in Commodity Booms in Southeast Asia" BRICS, RCSD Chiang Mai University.

process of negotiation, involving local communities, as recommended in the 2016 National Land Use Policy.

This report makes recommendations to reform the LRCs in four main areas. They are intended to ensure a fair, transparent and accountable process that delivers justice to Myanmar's smallholders, whilst avoiding arbitrary decisions and corruption that serve only to further disenfranchise communities and undermine Myanmar's democratic and economic transformation.

## List of Abbreviations

CCMVFL – Central Committee for the Management of Virgin, Fallow, and Vacant Land

CSO – Civil Society Organization

DOA – Department of Agriculture

DOALMS – Department of Agricultural Land Management and Statistics (formerly SLRD)

FAB – Farmland Administration Body

GAD – General Administration Department

IDP – Internally Displaced Person

LRC – Land Reinvestigation Committee (2016 – present)

LUC – Land Use Certificate

MOALI – Ministry of Agriculture, Livestock, and Irrigation

MOFA – Ministry of Foreign Affairs

MOHA – Ministry of Home Affairs

MRLG – Mekong Region Land Governance

MONREC – Ministry of Natural Resources, Environment, and Conservation

NLD – National League for Democracy

PLIC – Parliamentary Land Investigation Committee (2012-2016)

USDP – Union Solidarity and Development Party

VFVL – Virgin, Fallow, or Vacant Land



## 1. Methodology

This research is about people trying to get their land back after it has been taken from them unlawfully. The report's aim is to highlight the challenges and barriers faced by farmers and other rural and ethnic communities who are trying to reclaim their land through the Land Reinvestment Committees. It also seeks to make realistic and practical recommendations to government, policy makers and members of the LRC with a view to creating an effective and fair mechanism for the return of land.

The need for this research was initially discussed and agreed at a Tharthi Myay Foundation three-day residential workshop in May 2017 that brought together farmers' rights activists, lawyers and members of Land Reinvestment Committees from all over Myanmar. At the meeting we found that LRC members in different areas had different and very unclear understandings of how investigations and decisions are made, because there is very little publicly available information about the LRC process. The twelve organisations and activists (listed on page 1) decided to pool their information and work together to plan, design and execute a report detailing farmers experiences with the LRCs at different levels. As research data was collected, a series of five workshops were held involving various combinations of the participants to discuss the design, the research process, findings and the report. This report is the outcome of those meetings, and all participants have had a full and equal say in the findings.

The participants, having decided to conduct the research together, held an initial two-day workshop on the 16/17th June 2017 in Yangon. It was designed and facilitated by the individuals conducting the research. The group received technical research support from visiting masters student Billy Ford<sup>3</sup> and Ko Htoo Kyaw<sup>4</sup> who assisted in co-ordinating the activities. The participants decided to focus the research in Kachin, Kayah, Chin, Rahkine, Bago, Ayeyawaddy, Mandalay and Sagaing. The areas were chosen on the basis of where the participants are based or have good contacts, and in order to achieve balanced representation of Bamar and ethnic areas.

Following the initial workshop, the participants conducted fieldwork and collected information. A total of 230 individuals were reached, including 23 members of LRCs at different levels, 45 civil society groups and 59 farmers. Research involved;

- (i) Key informant interview with 10 experts;
- (ii) 13 focus group discussions in the eight areas with a total of 93 participants;
- (iii) 98 written surveys with famers, CSOs and LRC members;
- (iv) 3 Validation workshops, 2 of which were held over two days;
- (v) Desk review of primary and secondary documents.

After the first research data had been collected and key findings drafted, a validation workshop was

<sup>3</sup> Billy Ford is the former Country Representative for Freedom House in Myanmar, and is currently studying at the University of Berkeley California. He received a scholarship from the Goldman School at UCB in order to conduct this research.

<sup>4</sup> Ko Htoo Kyaw Win is the Coordinator of the Human Rights Defenders Forum in Yangon.

held to collectively analyse the data, assess where more information was needed and begin to consider draft recommendations. A workshop was held on the 5th August 2017 to finalise the Research in Brief document and design an advocacy strategy. A further meeting took place on the 24th August to discuss the contents of this report. The final draft of this report was checked by all participants prior to publication. The sample size is small, but the groups involved have each been working in Myanmar on issues of justice and farmer affairs, within their respective communities, for over ten years.

## 2. Background

### 2.1 Why is land restitution such an important issue?

The consequences of ‘land grabbing’ are catastrophic for rural communities in Myanmar. In 2015 the farmers network ‘Land In Our Hands’ (LIOH) published a report based on participatory research with over 2,600 individuals that revealed the devastating effects of land grabbing on rural communities. Land grabs don’t only affect livelihoods. On the basis that land lies at the very heart of social, cultural, spiritual, political and economic life, the impact of land grabbing is very broad and damaging. The LIOH report found that only 18% of individuals continued working as farmers after their land was grabbed. *“Deprived of their farmland and farm-based livelihoods, families are broken apart as individual family members are compelled to migrate in search of work, whether inside Myanmar or, as often is the case, outside the country.”*<sup>5</sup>

Land has been, and continues to be, grabbed from farmers and rural communities in Myanmar on an enormous scale. A large proportion of Myanmar’s population (70%) are small-scale agricultural farmers. Land grabbing increased dramatically under the military government from 1988 onwards.<sup>6</sup> It is estimated that a total of 5.2 million acres of land were confiscated from farmers between 2011 and 2013 alone.<sup>7</sup>

Since 2010, economic and political liberalisation have opened Myanmar up to foreign direct and private investment. The U Thein Sein and current NLD administrations have decided to promote economic development through use of land for; contract farming, large-scale agro-industrial projects and special economic zones (SEZs). This economic model is widely supported by foreign governments who since 2013 have gradually lifted economic sanctions and supported land titling/registration projects.

The 2014 Myanmar Household Census found that there are currently about 31 million acres of agricultural land in Myanmar. Official figures from MOALI indicate that 3.8 million acres of allegedly vacant or fallow land were confiscated and granted to Ministries, companies, the Tatmadaw, or individuals, for agricultural development purposes between 1992 and 2016. This does not include land confiscation for other purposes, such as military encampments or infrastructure projects. Other research, by Kevin Woods and Global Witness puts that figure at 5.2 million acres.<sup>8</sup> When including confiscations for other development projects, or simply for transfer from smallholders to more powerful individuals, the total could be much higher than this.

Land is also closely linked to ethnic conflict and the ongoing peace process. The majority of the population

5 Land In Our Hands (LIOH), *“Destroying People’s Lives: The Impact of Land Grabbing on Communities in Myanmar”* December 2015 report. See also TNI, 2016 *“The Rights to Land at a Crossroads”* <https://www.tni.org/en/article/the-right-to-land-at-crossroads-in-myanmar>

6 The LIOH report states that of the 2,657 incidents of land grabbing investigated, 50% were conducted by the military alone, or acting with companies or other Ministries. Ibid., p. 29

7 Woods, Kevin. *“Commercial Agriculture Expansion in Myanmar: Links to Deforestation, Conversion Timber, and Land Conflicts”*. Forest Trends Report Series. March 2015. See also U San Thein, et al. *“Agro-Business Large Scale Land Acquisition in Myanmar: Current Situation and Ways Forward”*. Presentation by Mekong Region Land Governance in Nay Pyi Daw. February 14 and 15, 2017

8 Global Witness. *“Guns, Cronies, and Crops”*. March 2015; Woods, Kevin. *“A Political Anatomy of Land Grabs”*. The Myanmar Times. March 2014.

in ethnic areas are small-scale farmers that practice customary 'upland' forms of agriculture. In those areas land has very strong cultural, spiritual and social meanings. Ethnic armed groups have control over swaths of land and have their own common law land tenure systems and land use policies.<sup>9</sup> Yet, it is in these areas, and in areas where fighting is ongoing (such as Kachin and Northern Shan States), that the military continues to confiscate land and drives communities away through conflict and intimidation. This has resulted in an estimated 1.3 million refugees and people internally displaced by conflict. It is likely that a significant acreage of land may not be returned if peace is secured.<sup>10</sup>

Thoughtful reform of the LRC is essential because of the potentially imminent return of the more than 1 million refugees and Internally Displaced Persons (IDPs) to their homes, which has already begun for some refugees on the Thai-Burma border.<sup>11</sup> The issue of how to provide restitution for returning IDPs and refugees will require a much more effective mechanism than the LRC in its current form.<sup>12</sup>

## 2.2 What is the legal and administrative framework?<sup>13</sup>

### *Land use rights, not ownership*

Under the 2008 Constitution, which is the supreme law in Myanmar, the State is the ultimate owner of all land.<sup>14</sup> Without any legislation giving private ownership rights, it is not possible for individuals and non-state enterprises to own land, but they can only acquire land use rights. However, under the 2017 Investment Law, both foreign and domestic Myanmar companies are able to purchase the lease of land for up to 50-years (renewable), including agricultural land, if their proposal is approved by the Myanmar Investment Commission. This gives companies more rights over the use of land compared to farmers.

### *Classifications and registration of farmland*

There are many different classifications and sub-classifications of urban and rural land types in Myanmar. This report is about returning land to farmers, so the following section will focus on the classifications of land that affect them, in particular: those contained in the 2012 land laws.<sup>15</sup>

The 2012 Farmland Law governs how farmland is used, agricultural techniques and types of crops that can be cultivated. It places a duty on farmers to seek registration of their use of the land within the limited recognised classifications (in the form of a Land Use Certificate, 'LUC', also known as a 'Form 7'). The idea

<sup>9</sup> The Karen Land Use Policy was finalized in 2016.

<sup>10</sup> Internal Displacement Monitoring Centre: "Myanmar: Comprehensive Solutions needed for recent and long term IDPs alike" March 2014 <http://www.internal-displacement.org/south-and-south-east-asia/myanmar/2014/myanmar-comprehensive-solutions-needed-for-recent-and-long-term-idps-alike/>

<sup>11</sup> This report was written prior to the crisis in Rakhine State. Transnational Institute. "Re-Asserting Control: Voluntary Return, Restitution and Right to Land for IDPs and Refugees in Myanmar". Myanmar Policy Brief 20. May 2017.

<sup>12</sup> For more on right to land for IDPs see: Transnational Institute. "Re-Asserting Control: Voluntary Return, Restitution and Right to Land for IDPs and Refugees in Myanmar". Myanmar Policy Brief 20. May 2017.

<sup>13</sup> See Annex 1 for a summary of the Key Legal Provisions

<sup>14</sup> 2008 Constitution, Article 37 "The Union (a) is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union; (b) shall enact necessary law to supervise extraction and utilization of State owned natural resources by economic forces; (c) shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law."

<sup>15</sup> Farmland Law 2012: Vacant, Fallow and Virgin Land Management Law 2012

is that the LUC will allow farmers to buy, sell and inherit use rights as well as access credit. The issuance of certificates should, in theory, provide security of tenure. The reality is that the registration process is long and complicated, and, as the state can withdraw use rights, it provides only severely limited security.

The law does not recognise customary land uses or techniques for cultivation that many communities use<sup>16</sup>, and it is estimated that only 15% of farmers have a LUC for the land they cultivate.<sup>17</sup> Without a LUC, farmers and rural communities are either at risk of a more powerful actor claiming title of the land, or of the plot being deemed to be vacant or fallow.

### ***Is there a right to have land returned?***

There are no statutory laws that set out any rights, tests or processes for returning land that has been acquired illegally/grabbed. The 2008 Constitution does provide a number of protections that could be interpreted to give individuals a right to restitution.<sup>18</sup> However, on the basis that individuals do not have a right to directly petition the Constitutional Court<sup>19</sup>, enforcing those rights is practically not possible.

### ***What do the laws say about the state taking land back?***

There are a number of laws that allow the Government to rescind the right to use farmland. The main statutory provisions setting out the standards and procedures for taking land back are the:

- Farmland Law 2012;
- Vacant, Fallow and Virgin Land Management Law 2012;
- Land Acquisition Act 1894<sup>20</sup>.

#### *Farmland Law 2012*

Under the Farmland Law 2012, if a farmer breaches the conditions of use dictated by the LUC then the Farmland Administration Body (FAB)<sup>21</sup> can impose fines or ultimately revoke the use rights, reclaim possession of the land and imprison farmers for up to two years.

#### *Vacant, Fallow and Virgin Land Management Law, 2012*

The Vacant and Fallow Land Management Law 2012 was enacted to allow the state to reclaim land that is:

- a) "*virgin [meaning] land in which cultivation was never done before*", or;

<sup>16</sup> The most common of these is 'taungya' or 'upland shifting cultivation' that relies on a rotational system

<sup>17</sup> Displacement Solutions. Land Acquisition Law and Practice in Myanmar. May 2015

<sup>18</sup> Articles 35, 356 and 372 Constitution (2008)

<sup>19</sup> Article 325 Constitution (2008)

<sup>20</sup> Other laws, for example the 2014 Special Economic Zone Law, outline the process for land confiscation in specific cases. Each of these laws is currently being reviewed by the Pyidaungsu Hluttaw.

<sup>21</sup> The FAB is the administrative body mandated to allocate LUCs but also settle disputes. See Annexe 3.

- b) 'vacant' and "fallow" land meaning which was tenanted in the past but has been "abandoned by the tenant for any reason" and "the lands that are specifically reserved by the State" <sup>22</sup>.

This provision needs to be considered along with the limited sub-classifications of farmland that do not include customary or traditional forms of cultivation, such as upland shifting or swidden farming. The result is that land being used by rural communities for traditional agricultural activities (particularly in ethnic areas), or land which has not yet been formally registered, is designated as vacant and fallow. Often, these areas of land are then subject to claims for use rights by individuals or organisations other than the occupant farmer, with LUCs being wrongly being issued to such speculative claimants.

This law is also being used to reallocate commons land, such as playing fields, common grazing land in towns, community ponds and other commonly held lands that are essential to support livelihoods and for the socio-cultural life of towns and villages.

### *Land Acquisition Act 1894*

The Land Acquisition Act 1894 is out-dated and does not reflect current land governance in Myanmar. The law sets out the process for payment of compensation when the state reclaims land for a 'public purpose'. The reality is that few, if any, cases where land was taken by the State in its various forms since 1962, have followed this procedure. For example, although the Land Acquisition Act 1894 includes the need to inform users that the land is being considered for acquisition, and provides for a right to object, a research report in 2015 found that farmers were virtually never notified before their land was confiscated.<sup>23</sup>

### **Is there a right to judicial review?**

Ultimately, there is no mechanism under the 2012 land laws for a farmer to use a court to challenge an administrative decision on registration or retraction of land use rights. Technically, judicial review could be sought by issuing a Constitutional writ<sup>24</sup>, but in practice this is a lengthy and expensive process that usually ends in failure.<sup>25</sup> Rather, the 2012 laws provide for an administrative procedure to settle claims and disputes, but these do not include judicial review. This could be considered to be unconstitutional, since the Constitution states that there should be a separation of powers, meaning that the judicial branch should be able to review decisions made by the Executive administration.<sup>26</sup>

<sup>22</sup> Article 2 Vacant and Fallow Land Act 2012

<sup>23</sup> Land in Our Hands Network. "Destroying People's Lives: The Impact of Land Grabbing on Communities in Myanmar". December 2015.

<sup>24</sup> Using Articles 296 or 378 Constitution 2008.

<sup>25</sup> See Myanmar Lawyers Network and Asian Human Rights Commission, "Land and Law in Myanmar: A Practitioners Perspective" 2015 (in Burmese and English). Pursuing a writ is a difficult, lengthy and costly process, and almost always fails.

<sup>26</sup> Constitution (2008), Articles 11 & 19. Separation of power between the executive (government), legislature (parliament) and judiciary (legal sector) is essential to ensuring a functioning democracy in which the rights of citizens are protected from the abuse of government power by an independent judiciary.

## 2.3 Who are the key actors involved in land governance?

The Executive arm of the government has primary responsibility for managing land in Myanmar. Land policy and directives are led by the Cabinet (Office of the State Counselor, President and the two Vice-Presidents) and are filtered down to the key ministries. The main statutory government bodies are:

- Ministry of Agriculture, Livestock, and Irrigation (MOALI);
- Ministry of Home Affairs (MOHA);
- Ministry of Natural Resources, Environment, and Conservation (MONREC).<sup>27</sup>

The military (Tatmadaw) exerts control in land administration through the MOHA (since the Constitution designates a serving Military officer as Minister of MOHA) and its extensive administrative arm, the General Administration Department, which is present in land administration at every level of government.<sup>28</sup>

The key bodies that are within the Executive arm involved in the administration of farmland and vacant, virgin and fallow land are:

**General Administration Department** In addition to MOHA, the GAD is also accountable to the President's Office and the Union Government. Local GAD offices are responsible for a wide range of activities therefore, and tend to be over-stretched. The GAD has significant decision-making power over land confiscations, including confiscations by the military to which the GAD is accountable.

**Department of Agricultural Land Management and Statistics (DOALMS)**, (formerly Settlement Land Records Department), is responsible for developing kwin and cadastral maps of all farmland. It is also the main department responsible for scrutinising land use applications and issuing the Form-7/LUC .

*There are also a number of relevant executive committees:*

**Farmland Administration Body (FAB)** is mandated to review land use applications in collaboration with DOALMS, grant and revoke land use certificates, determine land value, and resolve disputes over use rights, among other responsibilities.<sup>29</sup>

**Land Reinvestigation Committees** are mandated with investigating claims for the return of land to those who have been the victims of land grabbing. There is a limited role for members of parliament in the LRCs at State and Regional levels, but not at the top level.

<sup>27</sup> Ministry and Committee names have changed since the NLD administration assumed control of government in April 2016. MOALI was formerly the Ministry of Agriculture and Irrigation (MOAI) and MONREC was formerly the Ministry of Mines and the Ministry of Environment, Conservation, and Forestry, for example. Inconsistent translation from Burmese to English also complicates.

<sup>28</sup> See Asia Foundation 'Administering the State in Myanmar: An Overview of the GAD', October 2014 <http://asiafoundation.org/publication/administering-the-state-in-myanmar-burmese/>

<sup>29</sup> For detailed outline of governance structure see: Displacement Solutions 'Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations'. May 2015.

## What is the role of elected representatives?

The function of the legislative branch, the Pyithu and Amyotha Hluttaws (Union Hluttaw) is two-fold: to provide a 'check and balance' to the work of the Executive and to make and change laws (legislation).

Scrutiny of the Government is carried out in the daily Hluttaw sessions where members can put questions to Government Ministers and their representatives. It also takes place through the work of Committees, which can also invite experts and civil society organisations (CSOs) to give evidence when discussing the effects of Government policies and laws on their constituents or considering changes to legislation. With regard to farmland, there are several committees in both the Amyotha and Pyithu Hluttaws that can carry out this function.<sup>30</sup>

The drafting of new legislation or amendments can be initiated by Hluttaw Committees, individual members of the Hluttaw, or by Government Ministries. Legal Affairs and Special Cases Assessment Commission (hereafter 'Special Commission'). The Special Commission also often offers advice to the Hluttaw in their consideration of draft laws, and all laws are also passed to the Attorney General's office to check consistency with the Constitution and other legislation. Importantly though, the final agreement on laws is decided by vote in both Hluttaws, with the final acceptance into law being made by the President.

In addition, individual MPs also have to represent the concerns and difficulties faced by their constituents. They are accountable to the manifesto commitments of their parties, and to the constituents whom they represent – many of whom are the victims of land confiscations.

## 2.4 Land Governance Reform Efforts

U Thein Sein's Government enacted the 2012 *Farmland Law and the Vacant, Fallow and Virgin Land Law* referred to above. It is important to keep in mind that these laws are the first time for at least two generations that rural communities have been able to register land use rights, and to buy, sell and mortgage those rights, without consideration of the benefits of common or communal rights.<sup>31</sup>

Even prior to the land registration process, which makes land a commodity to be bought and sold for the first time in Myanmar, land grabbing had significantly increased under the 1988-2010 military rule, a period in which martial law was in place in many parts of the country. After the 2012 laws, land grabbing – i.e. the confiscation of land without due process – increased and the Thein Sein administration began a tentative land reform<sup>32</sup> process following many demonstrations and clashes, some violent, between

30 **Pyithu Hluttaw** Committees concerned with land restitution: Government's Pledges, Guarantees and Undertakings Vetting Committee; Bills Committee; Farmer and Worker Affairs Committee; Citizen's Fundamental Rights Committee. **Amyotha Hluttaw** Committees: Agriculture, Livestock and Rural Development Committee; Farmer Affairs Committee; Ethnic Affairs Committee; Citizen's Fundamental Rights, Democracy and Human Rights Committee; Public Complaints Committee; Natural Resources and Environmental Conservation Committee; Government's Pledges, Guarantees and Undertakings Vetting Committee; Bills Committee.

31 Jones, L. 2014. *The Political Economy of Myanmar's Transition*

32 'Successful land reform...require 'a transformation in the balance of power within the rural community and in society at large' (Sobhan 1993, 7). Attempts to implement land reforms without changing the balance of power – what Sobhan calls 'inegalitarian reforms without social transition' – at



farmers, police and companies who had purchased land from the military.<sup>33</sup> In order to reduce these conflicts, in late 2012 the Parliamentary Land Investigation Commission (PLIC)<sup>34</sup> and the Land Allotment and Scrutiny Committee were formed to investigate land that had been grabbed unlawfully, and to start to consider land reform.

### Parliamentary Land Investigation Commission (PLIC)

Forming the PLIC was not without difficulty. The Hluttaw, at the time dominated by the Union Solidarity and Democracy Party (USDP), held a heated debate when the proposal was put to the vote, though it was eventually passed 300 votes to 176. During the debate, the Ministry of Agriculture claimed that all land acquisitions had taken place according to the law, and that instead the government should *"investigate those 'inciting' farmers to complain about losing their land."*<sup>35</sup>

The PLIC was established to receive complaints from farmers and make recommendations to the Ministries as to what land should be returned. The Commission initially estimated they would receive around 300 complaints - in fact they received well over 15,000.<sup>36</sup> The Commission had 74 members, all of whom were MPs, and was given a vaguely-worded mandate, with no power to enforce recommended actions. Once it made a recommendation, the Commission could send the recommendations to the relevant Ministries, or to the Land Management Central Committee that was established to oversee the return of land.

The members of the PLIC formed 11 sub-groups to do field-level investigations in states in regions and make countrywide investigations on land confiscation cases. The Commission investigated land confiscation cases from 1980 to 2000 and found that at least 500,000 acres of land were taken illegally by military, government institutions and private companies.

Experts interviewed in the production of this report said that the few cases that were resolved by the PLIC were relatively "easy", or cases where the cost to confiscating authorities was minimal. For example, in some cases the Tatmadaw returned segments of land it had confiscated, but only if it was not being used in any way, and if the land was of low value.

Since the PLIC had no power to enforce decisions, some MPs used their influence, and the media, to negotiate with companies directly. Sometimes this was successful, though in most cases the return

best yield only modest results." Joyce, Rosset and Stanton 2005, "Land Reform and Sustainable development" <http://citeseerx.ist.psu.edu/viewdoc/download?sessionid=E291616D75575C7644D792C6CB7165A?doi=10.1.1.583.612&rep=rep1&type=pdf>

33 For example, in February 2013 a policeman was killed and 45 farmers injured when officers charged at farmers, at the urging of the company representative, following an agreement between the farmers and the authorities to disperse a demonstration against the company that was not using land they had purchased following an illegal land grab. A film of the incident was widely distributed <https://www.youtube.com/watch?v=IQ1PIV2fJX8> See <http://www.mmimes.com/index.php/national-news/4249-clash-in-myanmar-s-delta-leaves-one-dead-dozens-injured.html>.

34 <http://www.mmimes.com/index.php/national-news/3591-commission-will-report-over-300-land-grabs-to-hluttaw.html>. Confusingly, the Committee was also known as the Union Parliament Committee for Confiscated Land and Other Lands; and the Farmland Investigation Commission.

35 Myanmar Times, 30 July 2012, "Reps ignore ministry on land-grab committee" <http://www.mmimes.com/index.php/national-news/243-reps-ignore-ministry-on-land-grab-committee.html>

36 It is significant that there are conflicting reports as to how many cases were received by the PLIC. The report by U San Thein, et al. "Transparency Under Scrutiny: Information Disclosure by the Parliamentary Land Investigation Committee in Myanmar". Mekong Regional Land Governance. February 2017 gives a detailed analysis of the publicly available data from the PLIC reports and concludes that the statistics simply do not add up.

was only a temporary measure and farmers did not receive Land Use Certificates. Such negotiations accelerated during the run up to the November 2015 general election.<sup>37</sup> However, there was no formal process and the relationship between the PLIC and the Land Resources Management Committee that was set up to implement the PLIC's recommendations was not clear.

In summary, the PLIC represented a promising step toward addressing the issue of confiscation in Myanmar, and its reports offered valuable public acknowledgement of the complexity of the problem. Despite that, the Committee was ineffective because:

- members were either directly or indirectly involved in confiscations being investigated;
- it had no power of enforcement;
- it lacked a clear process for investigation and making recommendations;
- it failed to result in the actual return of land to victims of land grabbing.<sup>38</sup>

### **A national land use policy?**

At the same time as the PLIC was formed, a review took place to develop a National Land Use Policy (NLUP) that would be the basis of a comprehensive new land law. The hope was that a new law would lead to the repeal of existing laws and give clarity and security of tenure.

International partners, notably USAID, assisted the Government to consider the implications of a comprehensive policy and helped draft the NLUP. For the first time, the government also included a period of public consultations on the draft NLUP in late 2014/15.<sup>39</sup> This consultation process was by no means perfect, but it did encourage farmers' associations and civil society organizations to learn about the law and debate what farmers wanted and needed to protect their livelihoods, and give them the freedom to choose how to farm.

Early drafts of the NLUP did not comply with international norms, and were criticised by local and international civil society organizations. Given the lack of rights for farmers in the 2012 laws, it was not expected that the NLUP would benefit farmers and ethnic minorities. However, on the eve of leaving office in January 2016, the final draft that was passed by the outgoing U Thein Sein administration was partially compliant with international standards and included recognition of customary law (essential for ethnic communities in particular), processes for judicial review of land title claims, and sets out a framework of procedures for restitution to IDPs and returning refugees.<sup>40</sup>

<sup>37</sup> For example, in February 2015 the Chair of the Committee U Tin Htut was quoted as saying, "The deputy minister said more than 310,000 acres of land had been given back to their former owners. But in the real world, there are a lot of people who haven't got their land back," he said. <http://www.mmmtimes.com/index.php/national-news/13185-govt-accused-of-misleading-mps-on-land-returns.html>

<sup>38</sup> U San Thein et al., February 2017 *ibid*.

<sup>39</sup> see Forbes, E., (2017). Civil Society Participation in Land Policy Making: the innovative experience of Myanmar's pre-consultation on the National Land Use Policy. Mekong Regional Land Governance Project. Vientiane and Yangon.

<sup>40</sup> The Voluntary Guidelines on the Responsible Governance of Land Tenure" UN FAO <http://www.fao.org/nr/tenure/voluntary-guidelines/en/> for a Burmese language version see <http://mylaff.org/document/view/2559#>

## The NLD and Land Reform

The NLD's landslide victory on the 8th November 2015 election was, in part, a result of the party's commitment to return land to farmers.<sup>41</sup> The day after the new Government was formed the Deputy Agriculture Minister confirmed that returning land to victim farmers is the duty of the Government.<sup>42</sup> In the 2015 election manifesto the NLD said it would prioritise the tenure rights of farmers and give assistance to small-scale farmers as drivers of economic development. The NLD election manifesto states:

*"It is essential to improve the quality of life and reduce levels of poverty in rural areas, which are home to the majority of the country's population. Restrictions on agricultural freedoms and absence of land tenure security greatly harm farmers.*

- 11 .1. We will work towards...the fair resolution of farmland disputes, the establishment of land tenure security, and transparency in line with laws and regulations regarding the protection and transfer of farmland....
- 11 .4. We will strive, in accordance with the law, to ensure the return to farmers of illegally-lost land, and payment of compensation and restitution...
- 11 .6. We will defend against illegal land confiscation practices."<sup>43</sup>

However, the NLD remained silent on the merits or otherwise of the NLUP. It was widely reported in the media that the policy was sent to the Special Commission to review in December 2016.<sup>44</sup> This Commission was formed in 2012 when Thura U Shwe Mann was the Speaker of the Lower House and Chairman of the military-backed USDP. Daw Aung San Suu Kyi as early as February 2016, before the NLD had formed the new government, renewed its mandate with U Thura Shwe Mann as the Chair. At that time, the 23-member commission was dominated by former USDP MPs who had lost their seats in the election.<sup>45</sup> According to press reports, the Special Commission rejected most of the progressive aspects of the NLUP and most especially Part 8 of the NLUP on guidance to recognise the land rights of ethnic nationalities.<sup>46</sup>

Rather than taking the opportunity to draft a comprehensive land law based on the best parts of the NLUP, the NLD Government focused on trying to immediately help farmers who had lost land by completing the work of the PLIC. It has also started a process to amend the 2012 Farmland Law and the Vacant, Fallow and Virgin Land Act 2012. The law review process has included consultation with affected stakeholders at the Hluttaw Committee level, but has yet to include the main demands of farmers.<sup>47</sup>

41 National League for Democracy, 2015 Election Manifesto (paragraph 4 (ii)) page 11:

42 <https://www.irawaddy.com/news/burma/return-of-seized-land-a-top-nld-priority-deputy-agriculture-minister.html>

43 NLD election manifesto 2015 [http://www.burmalibrary.org/docs21/NLD\\_2015\\_Election\\_Manifesto-en.pdf](http://www.burmalibrary.org/docs21/NLD_2015_Election_Manifesto-en.pdf)

44 for example Myanmar Times, <http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/23986-parliamentary-commission-advises-overhaul-of-national-land-use-policy.html>. The Commission is also known as the Pyidaungsu Hluttaw Legal Affairs and Special Cases Assessment Commission and commonly referred to as the Special Commission.

45 See <http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/19149-trepidation-speculation-as-commission-gets-to-work.html>

46 For a full discussion of the letter from the Special Commission (that is not public) see World Rivers Network, "Myanmar: New Policy Promoting Indigenous Rights Under Threat" April 4, 2017 <http://wrn.org.uy/articles-from-the-wrm-bulletin/section1/myanmar-new-policy-promoting-indigenous-rights-under-threat/>

47 Myanmar Times, August 2, 2017 "Legislators want more changes to farmland law" <http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/27064-legislators-want-more-changes-to-farmland-law.html>

To finalise the work of the PLIC, in May 2016 the new government formed the Land Reinvestigation Committee (LRC). However, there was no consultation with civil society or farmers groups in the design of and policy for the LRC. There was also concern that the LRC process might fail to stand up to the powerful interests involved in land grabbing.

Further, in the 18 months since the formation of the LRC farmers who continue to work on land that had been confiscated are still being arrested, and in some cases farmers that had applied to the LRC to review their claims have also been charged under a variety of laws. For example:

- In February 2017 *Mizzima* newspaper reported that 350 farmers are facing jail time for protesting confiscation of their land. In most of these cases the farmers were charged for trespassing or mischief. For 15 of the farmers, the confiscation had taken place in the past year despite numerous directives and announcements from the Government that no new land confiscations would occur until all past confiscations have been investigated fully.<sup>48</sup>
- In April 2017, ten farmers in Shan State were recently sentenced to 16 months hard labour for working on land that had been confiscated from them.<sup>49</sup>

In response to this situation, in August 2017, Pyitthu Hluttaw MP U Aung Lwin from Hmawbi opened a debate in the Hluttaw to ask the government to suspend the prosecution of farmers for trespass if they had made a claim for their land to be returned. In the debate, the Deputy Minister of Home Affairs, Major-General Aung Soe, was reported as saying that confiscation had been undertaken by “*authorized organizations*” using “*executive power*”, to support Supreme Court Judge U Myint Aung (former Yangon Region High Court Judge), who said it was “*impossible*” for the judiciary to stop accepting cases while the land disputes are being examined, and that it was “*unlikely*” ongoing trials would be suspended.<sup>50</sup> In an unusually strong intervention, the Speaker of the Pyitthu Hluttaw, U Win Myint, was reported to have said “*Those whose land was taken have nothing to eat, but those who have taken the land have more assets than they know what to do with,*” Win Myint said. “*If their disputes are settled at the court, fair rule of the law will probably not be possible.*” This was a clear reference to the power of those with money to influence the decisions of judges. In reality, however, the farmer has no legal claim to the land once the local authority has issued the confiscating party a land use certificate.

48 February 10, 2017 <http://www.mizzima.com/news-domestic/350-myanmar-farmers-facing-court-over-land-grabs>

49 Htay Hla Aung, “*Shan State farmers get 16 months for ploughing grabbed land*”, Eleven Media, April 25, 2017.

50 Frontier Myanmar, “*Speaker Rebukes Supreme Court Judge Over Land Conflicts*” 24 August 2017 <https://frontiermyanmar.net/en/speaker-rebukes-supreme-court-judge-over-land-conflicts>

### 3. Findings

#### 3.1 What is the LRC and what can it do?

The Land Reinvestigation Committee was established by Presidential Notification 14/2016 on 5th May 2016, and is chaired by Vice-President-2 Henry van Thio. The Notification also urged that no further land grabs take place until after the Committee had completed its investigations, and that it expected all cases to be finalised in six months.<sup>51</sup>

A letter to Union Ministers in June outlined the policies and procedures for the Union Ministers to follow *"to urgently address the land-grabbing issues for the people not to face losses from confiscation of farmlands and other lands."* The Central Committee is mandated to:

- 1) form lower-level committees;
- 2) assist lower-level committees in scrutinizing claims;
- 3) submit reports to relevant Ministries, Departments, Councils, State/Regional Governments, or the Pyidaungsu Hluttaw;
- 4) assist Ministries, companies, military, etc. in the return of land, and;
- 5) investigate if lower-level Committees addressed the cases according to the law.<sup>52</sup>

There is no policy or procedure setting out how or who makes the final decision. In practice, it seems that the Central Committee is not mandated to make decisions, although the majority of respondents in the research for this report assumed that ultimately, the Central Committee approves decisions made at lower levels.

However, while the lower level committees included, for the first time, farmer and civil society representatives, as well as MPs, the Central Committee members are the heads of Government Ministries and the Chief Ministers of the States and Regions, so the process would appear to have removed the decision-making from the legislative arm of Government (elected Members of Parliament) to the Executive (see Annexe 2 for the members of the LRCs at all levels). However, unlike the Parliamentary Land Investigation Commission, it is assumed the intention was for the LRCs to be able to enforce their recommendations, which perhaps explains why it is not lead by MPs. This research was not able to identify any claims that had resulted in a decision to return land, and the order/notifications setting out the LRC procedures are silent on the nature of its decisions. It is therefore not clear to what extent the LRC has the power to enforce decisions.

<sup>51</sup> 12 May 2016, "Return of Seized Land a top NLD Priority" <https://www.irrawaddy.com/news/burma/return-of-seized-land-a-top-nld-priority-deputy-agriculture-minister.html>

<sup>52</sup> President's Office Notification No 14/2016. May 5, 2016.

Committees have been established in most places down to Township level but are not formed as committees at village/ward tract level. At most levels, committees are often inactive. In Mandalay Region, for example, respondents indicated that the village/ward committees are only for appearances, and serve no actual function. Respondents told us that the Township committee conducts all investigations, and passes reports to the district level or directly to the State/Regional level. In other places, the LRC has met only a handful of times.

Even when they do meet, all members are rarely present. Namati's research found that *"it is difficult to get the attendance of all members, thus, some committees have decided 75% attendance is valid"*.<sup>53</sup> This can provide a pretense for continuing without farmers and CSO representatives in attendance when they are not able to attend meetings due to other commitments. Often they are not informed at all.

The Notification establishing the committees identifies facts that deserve *"serious attention"* including:

1. ensuring that committees have adequate staff to operate committees and *"win trust and reliance from the people"*;
2. informing people about land issue management;
3. resolving land disputes systematically, and;
4. cost for investigation must be *"used from the budget of relevant regional/state government"*.<sup>54</sup>

More than a year after establishing the LRC, these issues need much more *"serious attention"* than they currently receive.

## 3.2 The LRC Process

The information below has been put together from data collected during the course of this research. As there is no public record of the way in which the LRCs process claims, we have collated the experiences of farmers, CSOs and LRC members at different levels, to try to describe what is happening on the ground. Our findings are largely similar to those in the report published by Namati in June 2017, though it is important to note that we found considerable differences in the way that LRCs operate in different areas. There was also some information, particularly regarding decision-making, that we were unable to ascertain. This lack of transparency and clear procedures for making and deciding claims, and for returning land, provides an indication in itself of the weakness of the LRC process as a means to finally resolving illegal land grabbing in favour of the original land users.

### 3.2.1. Submitting a claim

There has been limited effort by the government to inform to farmers how to submit a claim to the LRC, except for the public announcement in the Government-run media that a claim can be made to the

<sup>53</sup> Namati. *"Myanmar's Foray into Deliberative Democracy: Citizen Participation in Resolving Historical Land Grabs"*. June 2017.

<sup>54</sup> Ibid.

LRC at any level.<sup>55</sup> No forms have been provided to farmers that enables them to submit all necessary information. They therefore write letters as best they can. The vast majority of farmers interviewed submitted their claim to every level, as well as to other government bodies such as the State/Regional or National Hluttaw, the Farmland Management Committee, relevant Ministries, or directly to U Htin Kyaw or Daw Aung San Suu Kyi.<sup>56</sup> Awareness of LRCs is much lower in States than in Regions, and there is evidence that State-level LRCs rarely meet, if ever.

Because farmers do not know how to make a complaint, and they are desperate to get their land back, they write many letters, to anyone they think might have power. LRC members explained that submitting cases to multiple levels complicates the investigative process, as multiple committees might end up conducting parallel investigations of a single case.

Further, there may be thousands of farmers who do not know about the LRC and cannot make complaints. We found that farmers rely on connections with local administrators or civil society representatives to help them access the LRC.

### 3.2.2. Initial vetting & investigation

According to the letter from the Central Committee dated 10th June 2016, the LRCs are to consider claims according to five points. There are three additional points if it is military land. There are eight points to consider in returning the land: see figure 5 at page 22.

Once a case has been submitted, the LRC should meet to determine if the claim is worth investigating. If the committee decides to investigate the case, it may be passed to a lower level for the investigation. Division-level LRC representatives, for example, reported that most of the cases that they address come from the State/Regional level. Township level representatives explained that most cases come from direct submission, but they also receive cases from higher levels. The LRC investigation often includes review of all submitted documents, interviews with farmers and the 'grabber', review of *kwin* maps (held by the DOALMS/SLRD), and review of any past documents related to the confiscation (held by the GAD).

As noted, farmer representatives are regularly excluded from investigations, giving DOALMS and GAD near-autonomy. In Shwebo township, the farmer representatives on the district-level committee report that they have only been involved in four or five out of over 400 cases that have come to the committee. They cannot confirm if investigations have taken place on the other cases or if reports have been written and passed along, but they know that they have been excluded from participating in numerous investigations.

<sup>55</sup> The government-run Global New Light of Myanmar announced in April 2017 that, "citizens who wish to submit injustice or dissatisfaction can lodge complaints to their respective township, community, district, Nay Pyi Taw, region, or state's Committee office."

<sup>56</sup> Namati also noted this problem in their report "Myanmar's Foray into Deliberative Democracy: Citizen Participation in Resolving Historical Land Grabs." June 2017.



## Figure 5: Policy and Procedure for Land Investigation by the LRC

### 5-point policy for general investigations

1. Check if land is in use, how it is benefitting the public, and the condition of any infrastructure on the land.
2. Check if the land is bringing economic development and jobs.
3. Investigate whether compensation has been previously provided.
4. If land is being used effectively and was taken lawfully, do not release it.
5. If land can be released, return it to the Union Government and Central Committee within two months and subsequently return it to the original owner according to the 2012 Farmland Law.

### 3-point policy for dealing with military confiscations

1. Do not release land that has military infrastructure on it
2. Land taken for military use must use only the least required area for its purposes and no more.
3. Any excess land must be returned to the original owner.

### 8-point work procedure for immediate return of released lands

1. Temporarily transfer land to those who can show documents to allow them to work on the land as soon as possible.
2. In the absence of documentations, if a community elder testifies that it was the claimant's land, transfer it temporarily while further scrutiny takes place.
3. If more than one party claims the land, refer the case to the court for judgement.
4. Determine if compensation has already been paid for the confiscated land.
5. In the case of compensation, the State/Regional government should negotiate and determine the true value to ensure the owners do not face losses.
6. Temporary working permit for one season must not be longer than one year.
7. The activities of the committee must be publicised once a month in a transparent way.
8. Return land that was confiscated for regional development projects, but not used.

### Do not return land if...

1. The land was confiscated legally, according to 1894 law and/or 1953 Nationalisation Act, or
2. The landowner was previously compensated for the confiscation.

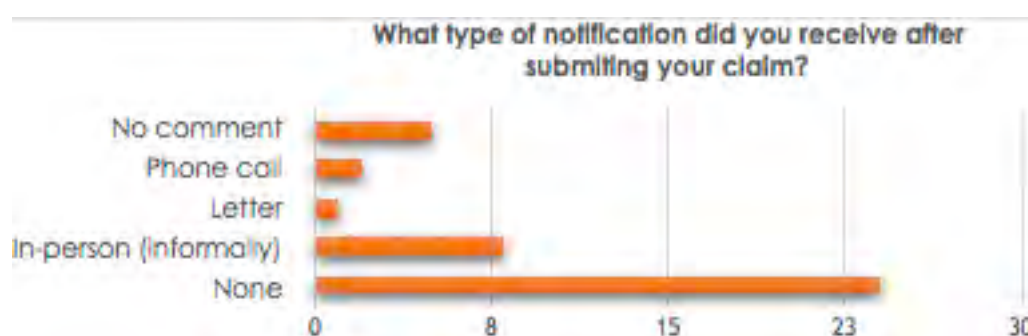
*From the unofficial translation of a letter from the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands to Union Ministers, 10th June 2016.*



CSO and Farmer representatives expressed concern about a time and resource imbalance on the LRC that allows the Government representatives greater involvement in the process. They are paid professionals, while CSO and farmer reps are volunteers with other professional responsibilities. The CSO and Farmer representatives must use their own time and money to participate in the committee.

The GAD/DOALMS control of the LRC is particularly concerning given both entities' involvement in past confiscations and close ties to the Tatmadaw. Given it falls under the military-controlled Ministry of Home Affairs, the involvement of the GAD raises concerns about the objectivity of GAD officers, particularly when investigating confiscations by the Tatmadaw. This is especially concerning given the weak systems and processes that govern the LRC, which open up decisions to individual discretion. Involvement of military officers at the State/Regional level, is concerning for similar reasons. Under the PLIC, *"military-related cases were referred directly to the military and reported along different processes and procedures"*.<sup>57</sup> It appears that this is no longer the case, but CSO representatives, LRC members, and experts explained that the LRC must get Tatmadaw approval before conducting an investigation, which raises concerns about the accessibility and objectivity of the investigations. Similarly, *"the Forest Department, Land Record Department and City Development Committees were involved in land confiscations. People who worked for these organisations at that time are now working for Region and Township committees currently under the purview of the Central Committee on Confiscated Farmlands and Other Lands"*.<sup>58</sup>

FGD participants in Shwebo expressed frustration that the same individuals who are authorised to confiscate land (FAB) are also authorised to investigate confiscations (LRC). The FAB and LRC are both chaired by a GAD officer from the District to the Village/Ward levels, and both bodies include a DOALMS/SLRD representative at every level from the State/Region level to the Village/Ward.



### 3.2.3. How do farmers prove tenure or use rights?

Farmers must provide evidence of ownership, and DOALMS/SLRD maps must verify that the area of land that is being claimed was confiscated. To prove ownership, claimants must provide documentation

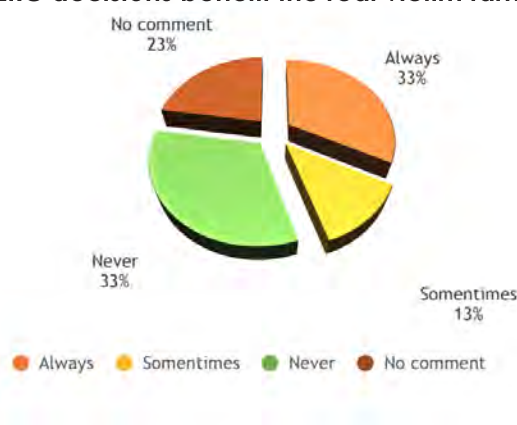
<sup>57</sup> U San Thein, et al. *"Transparency Under Scrutiny: Information Disclosure by the Parliamentary Land Investigation Committee in Myanmar"*. Mekong Regional Land Governance. February 2017.

<sup>58</sup> Htoo Thant. *"Committee for solving land disputes accused of conflict of interest"*. Myanmar Times. September 28, 2016.

(tax forms, loan documents) or be able to 'prove' that their claim is valid through testimony from the community. In some locations, though, only a township administrator's testimony is considered, whereas in other places, a neighbouring farmer's testimony will be considered.<sup>59</sup> Community testimony can only be used to grant temporary use rights, while a more in-depth investigation takes place.<sup>60</sup> Namati estimates that 30-40% of farmers have some sort of documentation to verify past ownership.<sup>61</sup> Farmers do not have access to these maps, however they often date to colonial times and fail to include the full area of cultivated land. There are also large areas of farmland for which maps do not exist because DOALMS/SLRD has not surveyed that land. This can be because DOALMS officers are over-stretched, or that they simply choose not to record certain farmland.<sup>62</sup> Again, connections with key government representatives are often the only way to get access to these maps.

The instructions from the Central Committee do not clearly explain how lower level committees should prioritise cases. As a result, Committees prioritise in different ways in different regions: in some places, cases after 1988 are prioritised, whereas some areas operate on a 'first come, first served' basis. Namati found that in some regions non-military cases were prioritised over military cases.<sup>63</sup> Finally, some focus group participants felt that priority was given to those cases that had been reported in the media.

#### Do LRC decisions benefit the real victim farmer?



#### 3.2.4. Who writes the report and recommendations?

The research revealed that in most cases the Secretary of the Committee, who is the DOALMS or SLRD representative, drafts the report and recommendations. Only in two cases was the drafting process reported as involving the whole committee.

<sup>59</sup> Focus group participants in Pyay said that only a Township administrator's testimony is admissible, whereas FGD participants in Padaung, Mandalay and Shwebo said that a neighboring farmer's testimony is also admissible.

<sup>60</sup> Central Reinvestigation Committee for Confiscated Farmlands and Other Lands. Letter to Union Ministers. June 10, 2016.

<sup>61</sup> Namati. "Evidence is Not Sufficient to Secure Land Rights in Myanmar". January 2017.

<sup>62</sup> Farmers also reported having to pay 'tea money' to the SLRD to ensure their land is prioritized for surveying. In cases of military confiscation, farmers can be charged under the State Secrets Act if they try to document military land maps (ex. photograph these maps) according to the Namati report, *Ibid*.

<sup>63</sup> *Ibid*.

- In some cases, the full committee reviews and edits the report before signing it and passing it along to a higher committee.
- One District-level committee in Sagaing Division regularly sent reports without farmer or CSO representative signatures. When they began to receive requests from the higher level for all signatures from all members, they continued to send the report without all signatures, but attached a letter indicating that the CSO and farmer representative were not available to review the report.
- Sometimes, the report is passed to a higher committee even if it does not receive support.
- MPs have also been excluded from investigations and decisions. MP U Thant Zin Htun, who is a member of the LRC in his constituency said, "*when I asked the committee (LRC) to present me with copies of its findings, it replied that it was handling it*".<sup>64</sup>
- The report, as written by the DOALMS/SLRD representative, does not always reflect the facts. In Pyay, a Township-level LRC<sup>65</sup> representative explained that he had only signed 10 of 44 cases that had come through the LRC because he was either excluded from the investigation and could not verify the facts, or the report did not reflect the findings of the investigation. The 34 cases he did not sign were passed along without his signature.
- Farmers are not present when their case is being reviewed, they are not permitted to see the report about their case, and they are not able to appeal the decision.
- The lack of a clear system for writing reports means that the NLD's intention for the process to be inclusive and representative is far from being achieved. There is no transparency, so it is impossible for farmers to understand the role of their representatives, whether elected MPs or appointed members of the committee, and therefore impossible to hold anyone to account for decisions taken. As a result, farmers do not feel that Committee decisions reflect their interests.

### 3.2.5. What Happens After an Investigation is completed?

Once an initial investigation and report have been completed, the cases are typically passed up through the hierarchy of LRC committees. Committees may also return a case for re-investigation if signatures of all members, key information or documents are missing.

Despite seeking to interview farmers whose case had been completed, no documents to prove this were found among the participants in this research, and no farmers interviewed had had their land returned. However, in numerous interviews and FGDs farmers said different authorities informed them verbally that investigations into their claim had been completed. Once the claim leaves the committee to which it was submitted, it becomes even more difficult to track the case and processing can be endless. **Most respondents indicated that they know that their case is pending, but they are not sure of its current status.**

<sup>64</sup> Htet Naing Zaw. "Lower House Speaker Urges Govt to Return Inactive Land to Rightful Owners". *The Irrawaddy*. June 13, 2017.

<sup>65</sup> She added that it is possible that more cases came through the committee that she was not aware of, but she only knew of 44 cases.

This highlights a major problem with the process: it is impossible for complainants to track claims. Given that farmers are submitting hand written letters to many different bodies, it is also likely to be difficult for the LRCs to track individual claims as well.

In media reports covering the April 2017 first Annual Report of the Central Committee, it was claimed that over 2,000 cases had been settled.<sup>66</sup> However, the report itself was not made public, unlike the PLIC reports, and the media reporting was insufficiently detailed to enable the researchers to find any completed cases. In fact, we did not find any examples of farmers who had received land title for claims they had made. Namati's report also found that *"decision-making, not investigation, is the problem"*, and pointed to *"limited human resources at decision-making level, poor investigations, unclear guidelines for decision-making, and an unwillingness to make decisions that would be unpopular with the public, government, or military."*<sup>67</sup>

### 3.2.6 Final decision

It is not at all clear which level of the LRC, or whomever else, makes the final decision. The establishment of committees at State and Regional level was thought to be an important step to decentralising decision-making, and it was the intention that cases be resolved at these levels.<sup>68</sup> However, even members of lower level committees interviewed for this report did not know who makes the final decision, and the vast majority claimed that only the Central Committee makes final decisions.

Some key interviewees for this report said that the State/Regional LRC or Chief Minister (who is the Chair of the LRC at that level) review the report from the lower level committees and then conduct negotiations with the grabber. The result of the negotiation is then passed to the Central Committee for approval. From there, the decision-making process continues to be unclear, in part because there is so little information about the functioning of the Central Committee. Certainly, based on information from CSO and land experts, it appears that no civil society representatives or MPs attend the Central Committee.

**From the information we have, it would appear that decisions are based not on the rights of the farmer or the illegality of the initial confiscation, but on negotiations with the grabber.** This results in only land that is of little value to the current land title-holder being returned. For example, in a recent case in Hpa-an, the investigators reported that a part of the land could be returned because it was *"unnecessary for the state"*.<sup>69</sup> Research in Sagaing, Bago, Mandalay, and in Yangon revealed that only low-value land, that is convenient for the grabber to give up, is returned.<sup>70</sup>

<sup>66</sup> Global New Light of Myanmar. "2,075 land grabbing complaints settled in one year". April 13, 2017.

<sup>67</sup> Namati 2017, Ibid.,

<sup>68</sup> Leckie, Scott. "Restitution in Myanmar: Building Lasting Peace, National Reconciliation, and Economic Prosperity Through a Comprehensive Housing, Land and Property Restitution Programme". Displacement Solutions and the Norwegian Refugee Council. March 2017.

<sup>69</sup> Karen News. "NLD hands back 232 acres confiscated farmland – rightful owners not happy". June 23, 2016.

<sup>70</sup> A 2017 Mekong Regional Land Governance (MRLG) report on the work of the Parliamentary Land Investigation Committees also concluded that in focusing on urban areas where land was taken by Ministries other than the military, *"the Commission has evaded some very critical land confiscations issues rather than tackling them."* It further stated that *"(t)he key underlying problem is the lack of a clear indication about the methodology designed and deployed by the Commission to identify and scrutinize land confiscation cases."* San Thein, Pyae Sone and Diepart, J.-C. (2017). Transparency Under Scrutiny. Information disclosure by the Parliamentary Land

In addition, in at least one case, the decision of the LRC was overturned by regional authorities. In June 2017, the LRC recommended return of a section of a land grab from the 1990s. When the LRC passed its decision to the Yangon government, it decided to ignore the decision because the land was “not appropriate for use as a paddy field”.<sup>71</sup>

A further complicating factor in knowing who makes the final decisions, and on what basis, is the reported role of the Special Commission. A report by the USAID on Land Stakeholders claims there is a two-tier process, depending on the complexity of the case:

*“The Central Committee has original jurisdiction for special or old cases, meaning cases that have an unusual significance because of high value, a large number of affected citizens, or other reason for their unique need to be addressed, or cases that were filed years ago, but have not yet been resolved. Such claims can be submitted directly to the Union Assembly Legal Affairs Advisory Committee, chaired by U Shwe Mann, who has authority to call chief ministers, ministers, and others to address these cases as part of the work of the Central Committee.*

*“Ordinary cases go from the village tract to the township to the district levels; they proceed to the regional level if not resolved at the district level, and finally to the Union level for ultimate resolution, if not resolved at the regional level. The Union Assembly Legal Affairs Advisory Committee may send an observer, if needed.”<sup>72</sup>*

Without knowing which bodies and which individuals are mandated to make final decisions on cases, it is impossible for farmers, and the general public, to hold anyone to account for those decisions.

### 3.2.7. Return of land

It is also not clear what role the LRC plays in returning land once a claim has been decided. None of the respondents reached by the researchers had received land back, and none knew of any farmers in their areas that had. The LRC investigation procedures state that in cases where land is being used by the state for the ‘public interest’, and therefore cannot be returned, farmers can receive compensation (if they had not already). Again, no farmers involved in the surveys had received compensation.

It might be assumed that once a farmer’s claim has passed the investigation procedure and been shown that the confiscation was illegal, the claimant would then be immediately issued with a land use certificate or Form 7 under the 2012 Farmland Law. Point 5 of the 8 points that the LRCs are to consider when investigating a claim states: “if a certain relevant department or organization is going to release the confiscated lands that are not being used for the state and the people, they need to return the lands

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Investigation Commission in Myanmar. MRLG Case Study Series #1. Vientiane: Mekong Region Land Governance.

71 Myint, Moe. “Rangoon gov’t allegedly reneges on land agreement”. June 3, 2017.

72 USAID, “Land Stakeholder Analysis: Governance Structures and Actors in Burma” May 2017, p.12. Accessed from MyLAFF <http://mylaff.org/document/view/4015>

to the Union Government and the Central Committee for Confiscated Farmland and Other lands within 2 months and to hand them back to the original owners in line with the Land Law, rules and regulations, systematically." (see above) The State/Regional and township LRCs are then responsible to "oversee the procedure to urgently transfer the released land to the relevant owners." This creates further opportunity for the GAD to control the process.

Under the 2012 Farmland Law when land is 'released', it becomes state land that is publicly available, enabling individuals to submit an application for a Land Use Certificate/Form 7 (LUC). The farmer must then begin another lengthy administrative process, overseen by the MoALI and the SLRD, to receive a temporary Form-3 that, following further investigations, may later be replaced by a permanent Form-7.<sup>73</sup> The Global New Light of Myanmar announced that claimants can check with their local LRC office (the GAD office, in most places) to see if their land has been "released" or "discarded" by the government so they can then apply to use the land.<sup>74</sup>

In very few areas were the LRCs found to have issued public announcements about any land that had been 'released' following their investigation of claims. Since farmers are not kept informed of the progress of their claims, they are not able to immediately submit an application for land title if their claim is successful. Some respondents said that disputes between farmers can arise if it is known that land has been released, and regardless of who made the claim, anyone can apply for the LUC. Research in numerous locations revealed that during dispute resolution conflicts of interest and corruption can take place. An MP on the LRC said that the "primary obstacle in settling these land disputes is to figure out the identity of the rightful owner".<sup>75</sup> Analysis by Dr. Nyein Zarni Naing identified this as a major obstacle as well. He explained that "courts [have] no jurisdiction to decide land dispute case if it is not civil suit... there are no guidelines to resolve such competing claims".<sup>76</sup>

Conflicts between competing farmers should be resolved through community-wide resolution processes, as tentatively described in the 2016 National Land Use Policy. The procedures for resolution need to be discussed and agreed in a public consultation that includes all stakeholders, but giving priority to recognized historical use of the land

### 3.2.8. Membership and conflicts of interest<sup>77</sup>

Conflicts of interest arise from situations in which a public official or decision maker has a private interest that could influence the impartiality and objectivity of his or her performance and duties. 'Private interests' can include any advantage to family, close relatives, friends and persons or organisations with whom there are, or have been, business or political relations.

<sup>73</sup> For more information on problems with the land registration process see: Allaverdian, Celine. "Formalisation of Land Rights in Myanmar". Presentation by GRET March 11, 2016.

<sup>74</sup> Global New Light of Myanmar. "2,075 land grabbing complaints settled in one year". April 13, 2017.

<sup>75</sup> Htoo Thant. "Two laws to be amended to solve land disputes". Myanmar Times. February 14, 2017.

<sup>76</sup> Nyein Zarni Naing. "Understanding Land Return Process, Policy, and Governance. Prepared for MRLG. July 2017.

<sup>77</sup> See Annexe 2 for a table summarising LRC membership



In conducting this research it has become clear that a major obstacle to the effectiveness of the LRC at all levels is the issue of membership and conflicts of interest. This observation was raised by U Kyaw Swe Latt of the Dagun Farmer Affairs Group in Sept 2016, who expressed concern over the clear conflicts of interest:

*"Under previous governments, the Forest Department, Land Record Department and City Development Committees were involved in land confiscations. People who worked for these organisations at that time are now working for Region and Township committees currently under the purview of the Central Committee on Confiscated Farmlands and Other Lands. This means that the people the government has made responsible for settling land seizure cases may have participated in land grabs. That is why we are concerned."*<sup>78</sup>

All Ministries are, or have been, involved in confiscating land from farmers and rural communities without following the law and procedures for taking land. The fact that officials from those Ministries are also members of the Land Reinvestment Committees at all levels (for example the Ministry of Industry, Construction and Defense), and the Central Committee represents potential conflict of interest, even without looking at specific administrative processes: the confiscating party is often the one investigating the confiscation.

Involvement of serving military officers at the State/Regional level, is concerning for similar reasons. Under the PLIC, *"military-related cases were referred directly to the military and reported along different processes and procedures"*.<sup>79</sup> It appears that this is no longer the case, but CSO representatives, LRC members, and experts who participated in this research explained that the LRC must get Tatmadaw approval before conducting an investigation, raising concern about the influence that the military has over the process before the investigation even begins.

The GAD/DOALMS control of the LRC also raises conflict of interest issues given that both bodies have been involved in past confiscations and have close ties to the Tatmadaw. The involvement of the GAD, which falls under the military-controlled Ministry of Home Affairs, raises concerns about the objectivity of GAD officers, particularly when investigating confiscations by the Tatmadaw. The power held by DOALMS/GAD representatives is made worse by unclear procedures and policies of the LRC. Decisions are based on individual views and discretion.

In one focus group, farmers explained that in 2013 when they applied to the SLRD office for a Form-7, the SLRD representative notified the local GAD office, which subsequently confiscated their land. In numerous FGDs, farmers and LRC members indicated that the DOALMS and GAD representatives work together and are often the ones that prevent a case from moving forward. FGD participants in Shwebo expressed frustration that the same individuals who are authorised to confiscate land (FAB) are also

<sup>78</sup> "Committee for Solving Land Dispute accused of conflict of interest." Myanmar Times. 28, Sept 2016. <http://www.mmmtimes.com/index.php/national-news/nay-pyitaw/22765-committee-for-solving-land-disputes-accused-of-conflict-of-interest.html>

<sup>79</sup> U San Thein, et al. "Transparency Under Scrutiny: Information Disclosure by the Parliamentary Land Investigation Committee in Myanmar". Mekong Regional Land Governance. February 2017.

authorized to investigate confiscations (LRC). The FAB and LRC are both chaired by a GAD officer from the District to the Village/Ward levels, and both bodies include a DOALMS/SLRD representative at every level from the State/Region level to the Village/Ward.

The Mekong Regional Land Governance (MRLG) found that between 2012-2015 60% of confiscated farmland was allocated by the Central Vacant Fallow and Virgin Land Administration Committee. 35% and 5% were allocated by the Regional Commander and Chief Minister respectively. Of 3.8 million acres, 55% was conceded to private corporations.<sup>80</sup> Again, even cursory analysis of land confiscations reveals concerning conflicts of interest between beneficiaries of land confiscation and the individuals, within and connected to LRCs, that are investigating the legality of past confiscations.<sup>81</sup>

According to the MRLG findings, the six largest corporate beneficiaries of agricultural confiscation are Yuzana company, Htoo Company, U Toe Naing Mann (son of U Shwe Mann), Great Wall Company, U Thant Zaw Shwe, and Daw Thiri Shwe. Virtually all of these corporations and individuals have close ties to the Tatmadaw. Given that the Tatmadaw oversees the GAD, this could cause conflicts of interest when investigating confiscations that were done by these corporations. In addition to corporate agricultural concessions, 32% of the land was conceded to individuals, 8% to the military and 6% to other organizations.<sup>82</sup>

Although the conflicts of interest identified above are clear, there is no mechanism for them to be recorded or addressed. This is made worse by the fact that farmer representatives are regularly excluded from investigations, giving DOALMS and GAD members unchecked control over investigations, decisions, and reporting. As mentioned above, in Shwebo township, the farmer representatives on the district-level committee reported that they have only been involved very few of the 400 cases that have come to the committee. They cannot confirm if investigations have taken place on the other cases or if reports have been written and passed along, but they know that they have been excluded from participating in numerous investigations.

<sup>80</sup> U San Thein, Diepart, Jean-Christophe, et al. "Agro-Business Large Scale Land Acquisition in Myanmar: Current Situation and Ways Forward". Presentation to MOALI, the Amyotha Hluttaw and Pyithu Hluttaw by Mekong Regional Land Governance. February 14-15, 2017.

<sup>81</sup> U San Thein, *ibid.*.

<sup>82</sup> U San Thein, Diepart, Jean-Christophe, et al. "Agro-Business Large Scale Land Acquisition in Myanmar: Current Situation and Ways Forward". Presentation to MOALI, the Amyotha Hluttaw and Pyithu Hluttaw by Mekong Regional Land Governance. February 14-15, 2017.

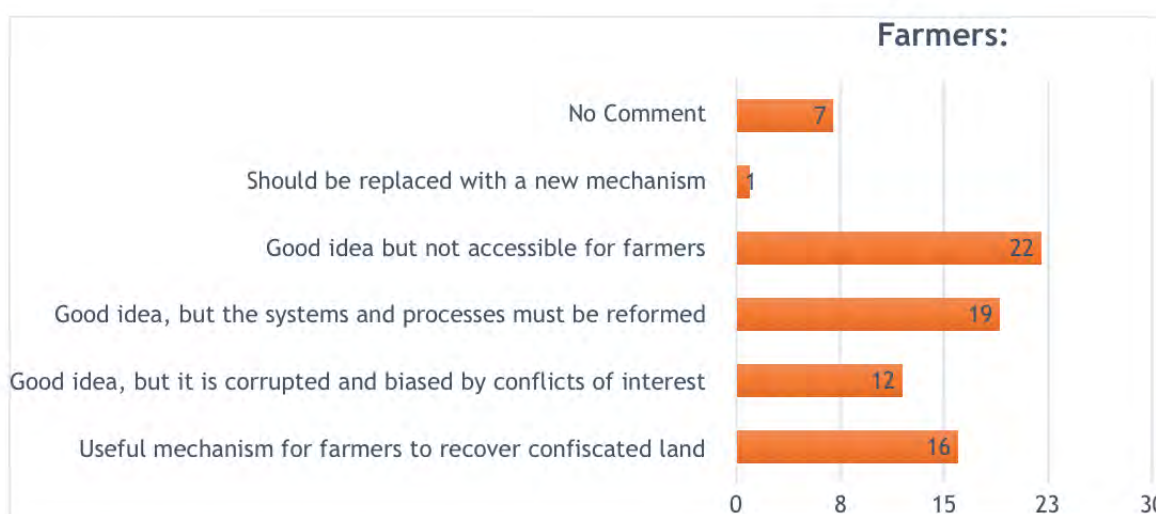


## 4. Conclusion

One expert consulted for this report explained that the main reason that the LRC is dysfunctional is because of an unwillingness of the NLD to acknowledge that it is dysfunctional. In eight focus groups, participants said that they believe that the NLD is more focused on addressing past land confiscations, but that it has failed to challenge DOALMS/SLRD and GAD, who are inhibiting progress.

More than half of all land grabbing cases investigated by the PLIC concerned land taken by the military. Of the land returned under PLIC process, only 4% was military land. Retired SLRD officer U Zaw Min explained in a presentation in November 2016 the ways in which the military avoids returning land.<sup>83</sup> *"The military has been practicing sharecropping and contract farming with the farmers on the grabbed lands. According to the current policy, they need to release and return all those lands. Since they do not want to release and return those lands, they lie about the truth saying they have no lands on which sharecropping and contract farming are practiced. They are avoiding the current policy."*

Demonstrations in Mandalay Region over the past two months are an indication of the frustration of the farmers whose expectations have not been met. Nevertheless, respondents in this research welcomed the work of the LRC, but the vast majority replied that they felt it must be revised to be effective, with only 16% saying that they thought it is a useful mechanism.<sup>84</sup>



To maintain the trust of farmers, and to achieve the aims of justice and support to small holder farmers that the NLD is committed to, the Government must urgently reform the Land Reinvestment Committee process in the following ways:

<sup>83</sup> U San Thein et al., 2017 *ibid.*.

<sup>84</sup> U Zaw Min, *Grabbing and Released Land Cases (Farmland and Other Types of Land)*, November 2016 available at <http://mylaff.org/document/view/3687> English version <http://mylaff.org/document/view/3686>

## **5. RECOMMENDATIONS**

The current LRC policies are not effective or being followed and should be redrafted to ensure fairness and accountability.

### **INVESTIGATIONS**

1. The process and evidence required to make a claim and decision should be clear and simple for both farmers and LRC members;
2. In the absence of official documentation, the LRC must accept letters of recommendation from the community, not only the township administrator;
3. After a claim has been submitted, investigations and the report should be completed within one month by the Township committee, lead by the farmer representatives. Farmers should be interviewed during the investigation and treated with respect and not as criminals;
4. To speed up the process, LRC members should have the power and authority to require the land grabber to come and give evidence to the Committee;
5. The investigation report must be considered by farmer representatives. To avoid delays, if a member disagrees he/she can write a letter and attach it to the report;
6. The investigation report and supporting evidence should be sent to the State or Regional level without delay.

### **DECISIONS**

1. Decisions must be public made at the State/Regional level within at least one month of receiving the investigation report.
2. The basis of decisions should be whether the confiscation was illegal, and not on the availability of the current land, or powerful interests:
  - a) If a farmer can demonstrate, on balance of probabilities, that the land was acquired illegally then it should be returned. If the farmer has no official documentation then letters of recommendation from community members should be sufficient to demonstrate ownership.
  - b) The burden of proving that the land was acquired legally (i.e. as per the Land Acquisition Act 1894) should be on the military, Government or private company. If this cannot be done then it must be found that the land was acquired illegally.
  - c) If the land was acquired illegally then the land, or part of it, should be returned.

- d) The only reason that land illegally acquired should not be returned is if buildings which have a public interest have been built on it;
  - e) Public purpose must be clearly defined;
  - f) If it is impossible to return all or part of the land, because a building has been constructed, then any surplus land must be returned and compensation or alternative land should be provided.
  - g) There should be no difference in the decision-making process for military, Government or private company grabs and they should have to satisfy the public interest test when deciding not to return land that was illegally acquired.
  - h) The existence of an intention to use the illegally acquired land in the future must not be used as a reason for not returning the land.
3. Ensure that LRC decisions at state/regional level for the return of land are binding, and that LRCs have a duty to follow-up, monitor and ensure land is given back to the victim farmer and that he or she receives a Form 7 from the SLRD/GAD.
  4. Farmers should:
    - a) Be present at any LRC meeting (at all levels) which is discussing or deciding his or her case and be entitled to make representations, through a CSO or lawyer,
    - b) Have access to the investigation reports and final decision;
    - c) Have the opportunity to appeal to an independent and specially appointed judge if he or she considers the decision to be unlawful or in breach of the policies and guidelines
  5. The following steps should be taken to implement the changes mentioned above:  
The process and decision-making guidelines should;
    - a) Be drafted in consultation with civil society that focus on farmer affairs;
    - b) Incorporate the recommendations in this report;
    - c) Be approved by the Farmers Affairs and other relevant Hluttaw Committees without delay
  6. The government should create an online case tracking and monitoring system that is farmer friendly.
  7. There should be an awareness-raising program for farmers and CSOs about the LRC, its purpose, and how to access it.
  8. Training on the procedures and relevant laws and administrative processes should be provided to all LRC members to educate them on their responsibilities. Training should focus on the principles that underpin an independent and fair quasi-judicial process.

## **TRANSPARENCY AND ACCOUNTABILITY**

1. Allocate an adequate budget to each committee to promote an inclusive and thorough investigative and decision-making processes.
2. Enforce the moratorium on land confiscation until all past cases have been investigated.
3. To avoid arbitrary decisions and corruption and with a view to ensuring a fair, transparent and accountable process, it is recommended that the Central Committee be responsible for overseeing the following measures:
  - a) All LRC meetings (at all levels) should be held in public and all documents, including meeting minutes, reports and decisions, made publicly available;
  - b) Establish a claims management system (preferably digital) that allows farmers and LRC members to track the status of a claim and prevent unnecessary duplication;
  - c) Provide public notifications, through quarterly press conferences, public disclosures (on their President's website, for example) of LRC activities;
  - d) Ensure that all LRC committees are meeting at least fortnightly, and conduct an inquiry into those that are non-functional;
  - e) Enforce the requirement for monthly reports to be issued by the Township, District, State/Region Levels, which outline cases rejected, pending, and completed at that level;

## **MEMBERSHIP**

1. The Secretary of the LRC should be:
  - 1) an MP at the state/regional level, and;
  - 2) a farmer representative at the district/township/village ward levels.
2. Increase the percentage of non-Government representatives to at least 50% at each level of the LRC, including the Central Committee (Non-Governmental includes farmers, lawyers, CSOs focusing on farmer's affairs and state/regional MPs)
3. If a Committee member has a conflict of interest in that he/she, his/her family or friends, were involved in, or benefitted from, the land acquisition being investigated, he or she must not take part in meetings, the investigation or decision-making procedures.
4. Members should have a demonstrated track-record of working on behalf of farmers, and knowledge of land laws and local land issues.
5. Guidelines should describe each position at each level and specify roles and responsibilities in detail between levels and within committees.

## Annexe 1: Key Elements of the Law

### 2008 Constitution

- Article 37 makes the government the ultimate landowner
- Article 37(c), 356 & 372 place limited duties on the State to protect land and property use rights
- Articles 11 confirms the separation of the executive, legislative & judiciary “to the extent possible” [do we need to mention no mention of right to judicial review]
- Article 23 places a duty on the State to enact “*laws to protect the rights of the peasants*”
- [Article 377 provides for constitutional writs but they only apply to freedoms in Chapter VIII]

### 1894 Land Acquisition Act

- Outlines multi-stage process of land acquisition that includes timelines and appeals mechanisms. Includes notification period, inspection process, appeals process, notice of acquisition, additional inspection & value analysis, negotiation, payment, and confiscation.

### 2012 Farmland Act

- Enables confiscated with limited governmental justification (ex. to convert from manual to mechanized production)
- Grants the government control over what crops are cultivated.
- Excludes farmer representatives from key administrative bodies.
- Process of acquiring a land use certificate is complex, inaccessible, and not transparent.
- Unconstitutionally does not recognize judicial review of administrative decisions.
- Does not recognize communal land ownership or joint-registration for households
- No indication of how “*fair market value*” is calculated
- Recognizes non-rotational upland cultivation.

### 2012 Virgin, Fallow and Vacant Land Law

- Establishes mechanism for leasing VFV land
- Acknowledges that farmers are currently cultivating VFV land and stipulates that the CCVFV should work to protect the interests of farmers that are cultivating VFV land.
- Does not restrict access to judicial review of CCVFV decisions

### 2014 Promotion & Protection of Farmers’ Rights Law

- Strengthens supports for smallholder farmers, including related to acquiring LUCs.

### 1992 Forest Law

- Establishes mechanism to gain access to forestland, and establishes penalties for individuals trespassing on reserved forestland.

<b>Annexe 2: LRC &amp; FAB Membership</b>		
<b>Position</b>	<b>LRC -Investigate Land Confiscation</b>	<b>FAB - Revoke LUCs and Confiscate Land</b>
<b>CENTRAL</b> Chair Vice Chair Secretary Members	VP MOHA / MOALI  MOD, MONREC, MOI, MOC, NPT Council, MOHA, MOHA	MOALI MOALI DOALMS/SLRD Ministers
<b>STATE/REGION</b> Chair Vice Chairs Secretary Members	Chief Minister MOALI / MP MOHA MONREC, MOALI, Military Officers, 3 Farmers Union Reps, DOALMS	GAD  DOALMS/SLRD
<b>DISTRICT</b> Chair Vice Chairs Secretary Members	GAD MP DOALMS/SLRD MONREC, MOALI, 8 Farmers Reps	GAD  DOALMS/SLRD
<b>TOWNSHIP</b> Chair Vice Chairs Secretary Members	GAD  DOALMS/SLRD 3 Farmers Union Reps, Township Development Committee Rep, DOALMS, MPF, MONREC, MOALI, MOALI, MP	GAD  DOALMS/SLRD
<b>VILLAGE/WARD</b> Chair Vice Chairs Secretary Members	GAD Village Cooperative Association DOALMS/SLRD MONREC, Elder, 4 Farmers Union Reps	GAD  DOALMS/SLRD Farmer & Village Elder



## Summary

This report was written collaboratively by organisations assisting farmers in four States and four Regions, including members of Land Reinvestigation Committees in Myanmar. It is intended to assist the Government in their efforts to ensure that land illegally confiscated by various authorities in the past, is returned to the families who need it to support their livelihoods and provide food security. Ultimately, a fair and transparent system of land tenure is essential if communities across Myanmar are to have any hope of participating in, and benefiting from, a growing economy. Research in neighbouring countries, including China and South Korea, has shown that protecting smallholder farmers, including upland swidden farmers, can be more sustainable in terms of economic, social and political impacts, than large-scale agribusiness.

Because the law offers weak protection of farmers' rights, the government has sought to create alternative procedures to enable the return of land. These procedures have become a focal point for conflict between those who confiscated land and those whose land was taken. The Land Reinvestigation Committee process creates an unequal playing field of vested interests, whereby those authorities responsible for originally confiscating land are the same bodies who today are determining whether, and to whom, it should be returned.

This report makes recommendations to reform the LRCs in four main areas. They are intended to ensure a fair, transparent and accountable process that delivers justice to Myanmar's smallholders, whilst avoiding arbitrary decisions and corruption that serve only to further disenfranchise communities and undermine Myanmar's democratic and economic transformation.

**This research was conducted by the following organisations and individuals:** Land In Our Hands, Olive Branch; Civil and Political Rights Campaign Group; Action Group for Farmers Affairs, Kayah Earthrights Action Network, Ethnic Concern, Shwe Chin Thae Farmer Network, Pone Yeik Sit, Farmer Development and Environment Watch Group, U Myo Thant (Farmer Affairs Activist), Ayeyar Tharlar Civil Society Organization, Daw Myint Myint Sein (Farmer Representative LRC).

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