



**Commentary on the National Land Use Policy Forum to be organized
in Naypyitaw on 2nd and 3rd October 2018**

Land in Our Hands (LIOH)

1 October 2018

Introduction

We, Land in Our Hands (LIOH), welcome the initiative to develop a new land law. However, we strongly believe that law making process needs to be democratic that enables participation of affected and vulnerable people in decision making; guarantees the right of ethnic peoples & community to govern and manage land & natural resources; and solves existing land conflicts with socially just way.

The following points are crucial and fundamental in shaping the right to govern and manage the land resources and its rules in current and future Myanmar's political landscape.

According to the announcement of Ministry of Agriculture, Livestock and Irrigation of Myanmar in 2016:

- 1) 60% of the population of Myanmar depend their livelihoods on agriculture and livestock rearing.
- 2) Two thirds of the population land-dependent on land for survival is landless.
- 3) Only 20% of the population is working on less than 10 acres of land and the majority 70% is working on less than 5 acres.

According to the 2012 figures from the Department of Agricultural Lands Management and Statistics (DALMS):

- 1) Myanmar has a total of 167 million acres of farmland.
- 2) There are a total of 50 million acres of vacant, fallow, virgin land, of which 82% is in ethnic regions;
- 3) Out of the total area of vacant, fallow, virgin land, 5 million acres have been authorised for use.
- 4) 45 million acres of land that have not yet been permitted for use are under the mandate of Vacant, Fallow and Virgin Land Management Law of the Government.

Many legal provisions relating to farmland and land-use are overstuffing and many of them have contradictory interpretations. Most of these laws descended from oppressive policies since colonial & socialist era; were drafted & enacted for managing the land and natural resources inconsiderately to shape "State-mediated capitalism" or "military-crony capitalism" and "ceasefire economy" or "ceasefire capitalism" in ethnic areas with ceasefire agreements. These laws oppose and impede the interests of poor communities (especially in ethnic areas) or they are such laws that lack compassion and consideration.

In article 37 of the 2008 Constitution, the provision which states that "the Union or the Government 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" gives the power that covers over all properties and lands that the Government do not own and it has been a source of misuse/abuse of power that can use force to evict the assets of the societies.

For example, 2012 land-related laws (the Farmland Law and the Vacant, Fallow & Virgin Land Management Law) and amendments to those laws (in 2017) are defining the lands that ethnic communities have owned, lived and managed for many years as vacant, fallow & virgin land. Consequently, communities from 82% of ethnic regions will become squatters (illegal tenants) or in other words, criminals. These laws can deteriorate the existing inequalities, injustices and conflicts, thus LIOH has released our objection in this regard.

Since the Vacant, Fallow and Virgin Land Management Law makes the tradition, custom and way of life of the ethnic communities fade away and disappear; rob displaced people the rightful right to return

while driving and shaping the destruction of their existence, it will escalate the opposition and resistance of the local ethnic communities and ethnic armed organizations, spread the conflicts in different forms and directly affect the peace process.

The new land law would resolve the existing problems and guarantee the land governance & sovereignty of future generations only if the law making process is clear, transparent, democratic and participatory.

National Land Use Forum

We have learned that National Land Use Policy Forum based on National Land Use Policy will be organized on 2 and 3 October 2018 in Nay Pyi Taw under the lead of the Government.

The National Land Use Policy (NLUP) allows the collaboration of the smallholder farmers and civil societies in making decision on land use & management on farmland. We understand that smallholder farmers and civil societies have been given safeguards regarding the economic and political interests as well as large control over economic and development projects.

To tear down these safeguards, the forthcoming National Land Law needs expanding its extent to the rights to land and land sovereignty of the people instead of pruning into property rights. There is the need to have the laws protecting & ensuring the accessibility, the right to use & the right to manage/control the farmland for farmers and providing remedies (land restitution) to societies suffered from past and current violation of these rights.

In the land policy drafting process that had started in 2014, the Government initially arranged to approve the policies, that had been drafted with the opinion of a minority of individuals from the government side, in a setup where only a few civil society organizations including farmers in a very short amount of time. However, LIOH network and allied such as many ethnic farmers and civil society organizations had worked to get the wider consultation process that brings many stakeholders' contribution, and thus some good outcomes were achieved (despite many concern points still remain in the policy). For example, we were able to include provisions such as ethnic land rights, land restitution and harmonization of land related laws.

1. Comments on the process of the NLUP Forum

- There is not clarity whether, according to the two-day agenda of the forum, the objective and topics to discuss are a "forum to draft a land law" or a "forum to present the policy implementation of the Government". If it is a National Land Law drafting process, it is important for people to know about that topic in advance. Only then, people will be informed and study in advance and will prepare to be able to participate and discuss effectively.
- According to unconfirmed news, the Government has already drafted National Land bill. But people have the right to know facts such as: is this draft land law based on which points, who drafted it, how is the draft law linked with National Land Use Policy Forum on 2 and 3 October etc., and the Government has the responsibility to provide information broadly as the general public have the right to information. The Government must be accountable to the public.
- The general public had not been informed widely about the forum in advance but only in a very limited time frame. The information about the forum and the agenda were released at the last minute. In addition, even that information was passed on by some non-governmental organizations that collaborate with the Government. By looking at these conditions, we conclude that this forum is a process that intends to limit and control public participation and is weak in transparency, responsibility and accountability.
- It is required for the civil society organizations that want to attend the forum to register initially online and participants will be selected and invited according to the criteria from those who have registered. The opportunity for the people who will be the most directly affected and for

civil society organizations is restricted and their ratio of participation is extremely low. The invitation was opened very close to the time of the forum so there was no time to make preparations for effective discussions.

- These restrictions and/or criteria are an enormous barrier against achieving a public consultation where people and civil society organizations can effectively participate.

2. Comments on Forum agenda

- Generally, we find that the Forum prioritizes sharing the information of the current Government initiatives with the general public. Determining the land use zones and the information on establishing the national map system (OneMap Myanmar) etc. are crucial topics. They should be debated actively in practice and it is also important to include truly relevant individuals/organizations who should be involved in the process. The participants must also know about the topics to discuss and all information before the Forum so they can make preparations. But according to the Forum agenda, they shall discuss within the time restrictions and existing frameworks. Therefore, the way the Forum is set up, it seems that the Government will announce and share the activities it has implemented and/or is implementing and exploit the Forum to declare, “general public has been consulted and agreement has been reached”.
- In 21st Century Panglong Union Peace Conference dialogues, which is one of the current reform landscapes of Myanmar, land and natural resources sector is included and Government, Hluttaw (Parliament) and Tatmadaw group, ethnic armed organizations group and political parties group are discussing policies and basic principles with political dialogues according to regions, ethnic nationalities, themes and union level. It is not clearly seen whether the discussion outcomes of this Forum will be included in the Forum agenda to harmonize and link with the peace process. We observe that these processes seem to be going in parallel and each dialogue needs to connect with the other. Moreover, although civil society organizations are allowed to discuss 5 themes separately in the peace process, there is no provision to formally link these dialogues with the Union level and national level decision-making process. In this National Land Use Policy Forum, we find that the participation of civil society organizations is not formally recognized or provided.
- In the Forum’s agenda, there is a session to discuss the activities for the way forward. Working on land resources issue must intend to resolve the current issues and to guarantee the right of the public to govern the land sovereignty in the future. According to current political system of election for every 5 years, when a new government is formed, all the committees established by the previous government must be dissolved. Only when the Government group and parliaments with 5-year term prepare to present and discuss clearly how they will work with land management related permanent civil service departments, how it will be done at what time, how the responsibility and transparency will be assured, then the space for dialogue of the Forum will be genuine, meaningful, effective and comprehensive.
- In regards to the agenda for group discussions, we found out the topics for discussions are selective from NLUP however important provisions are excluded. Essential points to consider are:
 - It is necessary to have a session on customary land tenure system to discuss it effectively. How can the current, existing and already established good land management systems and policies of ethnic armed organizations, ethnic communities be recognized?
 - In regards to the session on “National Land Law and Harmonization of land related laws”, existing land related laws cannot resolve the current land disputes and moreover, some of these laws are framed in such a way to legitimize previous land grabbing issues. Sections 35 and 36 of Farmland Law and sections 26, 27 and 28 of Vacant, Fallow and Virgin Land Management Law are found to be land grabbing laws that add more to the

suppression of the farmers and make sure the farmers can be sentenced with years of imprisonment. Therefore, we hope for a new umbrella national land law that will encompass all existing land laws and make amendments and/or repeals of these laws and contribute to the peace process. If a new law is drafted under or in harmony with the existing land related laws, we are very concerned that a new land law, that will continue to suppress the land rights of smallholder land users and/or farmers and ethnic communities, will emerge.

- There is also a session to discuss strengthening the collaboration of land related committees. Although these committees have different roles and processes, the members involved are (overlapping) the same so we are greatly concerned that the discussions under the topic of **“strengthening the collaboration”** will favor more corruptions (the same person taking different roles & powers) rather than effective resolution of current land conflict. Therefore, it is necessary to include and discuss a topic on a model (programme) that can resolve the current land issues.
- In the session on **“Establishment of the working committees and technical advisory body of National Land Use Council, ensuring the genuine representation and assigning effective terms of reference in establishing Nay Pyi Taw Council, Regional and State Land Use Committees”**, genuine representation and effective terms of reference are crucial. How do we measure and/or determine genuine representation? In the current context, farmers unions are not officially permitted to establish. In addition, there should be clear decision-making process aside from including representation and centralized system should be relaxed and repealed.
- We welcome the approach to address and resolve effectively the disputes of rights to use the land and challenges of land management applying the guidelines of National Land Use Policy. On other hand, it is essential to discuss effectively the challenge of “how to resolve the land conflicts with the guidelines of the National Land Use Policy” while there are current land laws that do not prioritise the land rights of smallholder farmers, smallholder land users, displaced persons and ethnic communities. Agriculture Development Strategy (ADS), developed and endorsed with the support of Asia Development Bank, Food and Agriculture Organization and Livelihood and Food Security Funds, recognizes and accepts that land tenure of the farmers in rural areas of Myanmar is the most important issue. In particular, it accepts and recognizes the issues that have been caused by the insecurity of land tenure including farmland grabbing that has been legitimized by the new law. According to the Agriculture Development Strategy, it will be necessary to connect and take into consideration national policy, food and nutrition security national action plan, rice sector development strategy and value-added food processing road map etc. so there is a need for a lot of preparation.
- One important point for serious attention according to the forum agenda, it seems focusing more on presenting the situation of the Government’s current actions and discussing/exchanging the priorities for the National Land Use Council (NLUC). Therefore, we conclude that special care must be taken that this forum might be ended up with the participants knowing & endorsing the government’s agenda however labelling ethnic communities & civil society organizations came together for an agreement.

Conclusion

The visions and actions on current land resources related policies and/or laws of Myanmar are a task of vital importance, as they will establish the dignity of the State and its citizens, rights and sovereignty, peace and future of development.

We conclude that legal reform should be focused on resolving complex land conflicts within the current political context with the fact of lacking protection on smallholder farmers, ethnic peoples & communities whose livelihoods depend on land (due to poor reach of the policies & laws to the whole country); and the fact of legal trend that allow promising threats to those communities.

We have questions to the NLUP Forum that will take place on 2 and 3 October 2018:

- Will the Forum be able to draft laws that guarantee the organizations, mechanisms and provisions to take measures together with the sufficient powers:to resolve current land issues clearly and decisively and to protect the farmers and communities from future land grabbings by applying as follows:
 - Investigation power;
 - Dispute Resolution power;
 - Power to prosecute land grabbers and accomplices without statutory time limitations;
 - Power for land restitution or compensation to victims of land grabbing and those displaced by armed-conflicts (compensation not only for the confiscated land but also for the loss of income of the victims during the period of land confiscation);
- Will the Forum be a driving force for transparent law drafting process with full participation of public and civil society organizations?
- Will the Forum be able to draft land laws that support current peace building in an alternative way?

The new national land law making process is crucial, as it will impact significantly the present and the future of all societies in the country; we expect the process will be inclusive, participatory, systematic and effective.

We aspire for a national land law drafting process that will fulfill the land sovereignty and right to land of the people of the future federal union.

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Land

“Land is not commodity”

“Land is invaluable”

“Land means livelihood and a life with dignity.”

“Land means safety and security.”

“Land is the freedom from exploitation and slavery.”

“Land is the identify of each human being.”

“Land is solidarity of the family and surviving together.”

“Land is legacy and remembrance.”

“Land is the identity of the ethnic groups.”

“Land is the society.”

“Land is the relation among the past, present and future of the people.”

“Land means the continued existence of the family whose many generations have passed on and represents the knowledge that has been pass along from one generation to another.”